CRIMES (APPEAL AND REVIEW) AMENDMENT (DNA REVIEW PANEL) BILL 2013

Bill introduced on motion by Mr Geoff Provest, on behalf of Mr Greg Smith, read a first time and printed.

Second Reading

Mr GEOFF PROVEST (Tweed—Parliamentary Secretary) [4.50 p.m.], on behalf of Mr Greg Smith: I move:

That this bill be now read a second time.

The DNA Review Panel was established in 2006 to provide an avenue for post-conviction review on the basis of new DNA evidence. The panel provides an opportunity for wrongfully convicted people to prove their innocence by having DNA tests conducted on crime scene exhibits that were held by police. The panel has a number of functions, primarily arranging for New South Wales police to conduct searches for exhibits that might contain DNA evidence, arranging for DNA tests of any evidence found during those searches, and referring cases to the Court of Criminal Appeal when DNA tests raise a reasonable doubt as to the convicted person's guilt. The panel has fulfilled an important role in the New South Wales criminal justice system. I thank the panel's chair, Mr Ken Shadbolt, as well as all the panel's past and present members, for the diligence with which they have approached their functions since the panel's establishment.

While this bill does not propose the continuation of the panel functions, it in no way implies any criticism of the panel or its work. The role of the panel was always intended to be time limited. Under the principal Act, the panel's functions automatically cease on 23 February 2014, unless extended by proclamation. That legislative time limit reflected a view, at the time the panel was introduced, that the routine use of DNA testing during investigations would soon render the role of the panel redundant. However, it has since become apparent that DNA testing is a constantly evolving science. Even improvements between 2006 and today mean that DNA profiles may now be obtained, where previous tests yielded inconclusive results. These advances in technology mean that evidence capable of exonerating a convicted person may only become available a significant time after a convicted person has exhausted all avenues of appeal.

The ability of a wrongfully convicted person to seek DNA testing provides an opportunity to redress miscarriages of justice, increases public confidence in the criminal justice system and provides a chance to identify the actual perpetrator of an offence. While the need for post-conviction DNA testing has not disappeared, Australia does not suffer the high rates of wrongful convictions that are seen in other jurisdictions around the world. Despite the existence of the panel, New South Wales has not had a high demand for post-conviction DNA review. The panel has considered only 31 applications since its establishment, and none of those has warranted a referral to the Court of Criminal Appeal. As a result, the recent

statutory review of the DNA Review Panel found that there was insufficient justification for retaining the panel in its current form.

The review found that the existing provisions for post-conviction review, in part 7 of the principal Act, provide adequate redress for people who are wrongfully convicted. The difference for people relying on DNA evidence to support a part 7 application is that they cannot rely on photographic or other second-hand evidence of an exhibit. Access to actual biological material is required to enable forensic analysis. As a result, while the panel itself will not be retained, the essential provisions regarding the retention of exhibits and access to DNA testing will remain. The provisions will also be expanded to remove the 2006 time limit for exhibit retention and access—an expansion that was widely supported by stakeholders who made submissions to the statutory review, including the panel itself.

I will now outline each of the amendments in turn. Items [1] to [3] and item [11] of schedule 1 repeal the existing provisions relating to the DNA Review Panel. Items [4] to [8] of schedule 1 amend the existing duty for New South Wales police and other State authorities to retain biological material gathered in connection with the investigation or prosecution of an offence for which a person has been convicted. The amendments alter the existing duty in a number of ways. They remove the 2006 time limit for retention of exhibits; provide that exhibits must only be retained where a person was sentenced to imprisonment following a trial on indictment; and enable material to be retained in the form of a swab or sample, provided that the swab or sample is taken by a suitably qualified officer.

These amendments strike the right balance between ensuring that evidence is retained for future testing in the right cases and that space and resources required for retaining exhibits are appropriately targeted. Item [9] of schedule 1 provides a new section 97, which provides mechanisms for a convicted person, or their representative, to arrange for access to information about, and testing of, biological material that has been retained by police or another authority. Police are permitted, but not required, to provide information to the applicant or their representative, and to forward biological material to the NSW Forensic and Analytical Science Service for DNA testing. The ability to facilitate testing by agreement will reduce the need for court-ordered disclosure. However, if police do not agree to provide information or arrange for testing, a convicted person may seek an order from the Supreme Court.

The circumstances in which the court may make such an order reflect the current eligibility for making an application to the panel. The court may make an order if the applicant was convicted of an offence punishable by imprisonment for at least 20 years, if they continue to be subject to the sentence imposed and if the applicant's claim to innocence may be affected by DNA evidence obtained from the material to be tested. The court may make an order in respect of an offence that carries a maximum penalty of less than 20 years imprisonment if there are special circumstances that warrant the making of an order. Item [10] of schedule 1 makes transitional arrangements to deal with any applications to the panel that are outstanding on the day on which the panel sunsets.

The provisions of the bill will take effect on the day that the panel sunsets under existing section 97. The bill provides a long-term system for exhibit retention and testing in New South Wales. It streamlines the procedures for post-conviction review so that people relying on DNA evidence to support a review will now utilise the same provisions in part 7 as all other applicants. However, the bill ensures that people applying for review on the basis of DNA testing will have access to the evidence they need to support an application. I commend the bill to the House.

Debate adjourned on motion by Ms Carmel Tebbutt and set down as an order of the day for a future day.