

## INQUIRY INTO THE USE OF VICTIMS' DNA

**Organisation:** CrimTrac

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**Standing Committee on Law and Justice Inquiry into the use of victims' DNA: Proposed options for dealing with unidentified victims' DNA profiles found in crime scene samples**

CrimTrac provides the following comments on the three options raised in your letter of 10 November 2009, and further to our original submission to the Standing Committee of 9 October 2009.

CrimTrac continues to oppose any changes to the arrangements in place for the use of the DNA profiles of unknown victims of crime with respect to the National Criminal Investigation DNA Database (NCIDD). CrimTrac continues to support the current practise adopted in other Australian jurisdictions where the profile of a known victim is not loaded onto the NCIDD, or is removed from the NCIDD once it is identified as that of a known victim. These rules operate to provide an appropriate balance between protection for victims on the one hand and ensuring national consistency in the use of the NCIDD to investigate serious crimes on the other.

CrimTrac submits that any option for change should recognise the difference between a sample that is known to belong to a victim (through forensic analysis) and that which has not been identified as belonging to a victim.

**Option 1: A legislative ban on the use of a victim's DNA profile against that victim**

While CrimTrac supports the aspects of this option that mean that the national use of the DNA database is not affected, CrimTrac has concerns about adopting a legislative ban on the use of a victim's DNA profile against that victim, given the national implications of this option.

A legislative ban in NSW would impact investigation of serious crimes in other jurisdictions. In particular, CrimTrac is concerned that a complete legislative ban on the use of victim's profiles would cause difficulties in situations where a DNA sample from a crime scene is not known to be that of a victim until after it has been processed, loaded onto the crime scene index on the national database and matched against unsolved crimes. In the event that it has been matched against an unsolved crime in another jurisdiction, a legislative ban may prevent resolution of that investigation if the sample later became identified as a victim's sample. There is also a question of whether a legislative ban in NSW would be effective in other jurisdiction and whether the NSW legislature has the power to legislate nationally.

While an exception that provides a discretion might assist in mitigating the effects of this scenario, it would create a situation of uncertainty in the investigation of unsolved crimes, and prevent national uniformity in the approaches taken to the use of DNA profiles in this area.

In a similar fashion CrimTrac has concerns that while the option is aimed at protecting the rights of victims, it does not take into account the rights of victims of unsolved serious crimes such as murder, sexual assault and national security offences. It is not difficult to imagine a scenario where a victim of a minor crime is identified through a DNA match as the likely perpetrator of a serious offence in the past, but where a prosecution is prevented because of the legislative ban imposed on the use of the victim's DNA.

Given the national implications of the option as identified above, CrimTrac does not support the first option in its current form. An option for a legislative ban when the sample is that of a known victim at the time that the match is made would be supported, if there was an exception for situations where the profile had not been identified as that of a victim at the time that any match

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was made. Other options that would receive more support from CrimTrac would include a discretion on a ban when the profile is matched against a profile involved in a serious crime such as murder, national security or sexual assault.

**Option 2: Limitations on how the crime scene index profiles can be matched against each other to restrict the possibility of matching victims' DNA to unrelated crimes.**

CrimTrac does not support this option. CrimTrac does not support any option that restricts how the crime scene index profiles can be matched against those of other jurisdictions. Nor does CrimTrac support any options that alters one jurisdictions matching tables so that further inconsistency is created between that jurisdictions matching table and those of other jurisdictions.

CrimTrac submits that this option would impede the ability of police to look at and link multiple crime scenes, and would delay the investigation of crimes and the identification of perpetrators. The requirement to obtain elimination samples from all victims before a profile could be loaded onto the national database would mean a significant increase in the number of samples that would need to be processed, with the resultant increased costs, impact on forensic laboratories that are already overburdened, and significant inconvenience to members of the public who are victims of offences.

The most serious implication from a national perspective, would be that this option would also reduce the effectiveness of the national scheme as there would be fewer crime scene profiles loaded onto the national database from NSW, undermining the overall utility of the national database and the ability of police nationally to solve serious crimes, and identify patterns of criminal offending. The main value to NSW in participating in the national scheme is that the unsolved crime scene profiles from NSW are matched to offender/suspect profiles from other jurisdictions. The implications of loading fewer crime scene profiles will therefore be most significant for NSW investigations, particularly given that NSW borders three states and one territory.

**Option 3: A discretionary power for courts to admit DNA evidence from victims "where a court deems it in the interests of justice" for major crime categories**

CrimTrac does not support this option. As profiles loaded onto the system can result in matches in other Australian jurisdictions, this option creates a discretionary power over the use of DNA material in NSW legislation for an offence that might be committed in another part of Australia. It appears that this would require proceedings in NSW to determine whether the evidence can be used in another jurisdiction, which would be outside the power of the NSW legislature. CrimTrac also opposes this option as it again creates a situation where the NSW system is inconsistent with the rest of the country in a national scheme.