REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

REVIEW OF THE CRIMES (FORENSIC PROCEDURES) ACT 2000

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At Sydney on Wednesday 15 August 2001

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The Committee met at 10.00 a.m.

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PRESENT

The Hon. Ron Dyer (Chair)

The Hon. Peter Breen
The Hon. John Hatzistergos
The Hon. John Ryan

HEWITT ROBERT WHYMAN, Chairperson, Aboriginal and Torres Strait Islander Commission, 2 O'Riley Street, Wagga Wagga,

ANDREW JOHN RILEY, Executive Policy Adviser, Aboriginal and Torres Strait Islander Commission, 16 Margaret Street, Sydney, and

IAN HUNTER NASH, Solicitor, Sydney Regional Aboriginal Corporation Legal Service, 619 Elizabeth Street, Redfern, affirmed and examined:

CHAIR: In what capacity are you appearing before the Committee?

Mr WHYMAN: I appear in my capacity as an Aboriginal representative.

Mr RILEY: I appear as a member of the administrative arm of the Aboriginal and Torres Strait Islander Commission [ATSIC].

Mr NASH: I appear as a legal representative for Aboriginal people and an employee of the Aboriginal Legal Service. I would also like to say that I appear in that capacity on behalf of all Aboriginal legal services in New South Wales.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Mr WHYMAN: I did.

Mr RILEY: Yes, I did.

Mr NASH: I have.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr WHYMAN: Yes, I am.

Mr RILEY: Yes, I am.

Mr NASH: Yes.

CHAIR: ATSIC has made a written submission to this inquiry. Is it your wish that that be included as part of your sworn evidence?

Mr WHYMAN: Yes.

CHAIR: I take it that you are happy for the ATSIC submission to be included as part of your sworn evidence?

Mr RILEY: Yes.

CHAIR: I assume you are happy for the submission of your organisation to be included as part of your sworn evidence?

Mr NASH: Yes.

CHAIR: I indicate that if you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. Mr Whyman, I invite you to make a brief opening oral statement to the Committee.

Mr WHYMAN: The opportunity to appear before the Committee, I guess to qualify, I am an indigenous male of 54 years of age. I have been involved in Aboriginal affairs, particularly at a grass

roots level and just lately at an elected level, for the last 30 years. I believe that that qualifies me to appear before the Committee in relation to the inquiry today.

CHAIR: Mr Nash, would you like to make a brief opening statement?

Mr NASH: As a solicitor with Aboriginal legal services for some time and in particular as a solicitor with the Aboriginal Legal Service since the beginning of this year, I have had some first-hand knowledge of the operation of this Act and have also been conversant with a number of other solicitors from Aboriginal legal services in New South Wales about the operation of the Act. I am here hopefully to give some insight into how the Act has been operating and perhaps give some sort of informed opinion as to how the Act might be reviewed and perhaps even amended for its better operation, particularly with respect to indigenous and Aboriginal people. Essentially, that is my position.

CHAIR: Mr Riley, would you like to add anything to what Mr Whyman had to say?

Mr RILEY: Yes. I appreciate the opportunity for ATSIC and its elected representatives—ATSIC is the peak Aboriginal body in Australia—to advocate on behalf of Aboriginal and Torres Strait Islander people on issues that affect their lives. We see this piece of legislation as potentially having impacts on the lives of Aboriginal and Torres Strait Islander people, and it is a good process, particularly for members of our elected arm, to be able to put forward some comments to the Committee.

CHAIR: In commencing the questioning period, I indicate that any question I might ask or my colleagues might ask may be responded to by one or more of you as you choose. It is not compulsory for everyone to answer every question but I leave that to you. To what extent were your respective organisations consulted concerning the form and details of this legislation before it was enacted?

Mr NASH: I have to admit that I do not have any real knowledge of to what the level we were consulted prior to the enactment of it and I cannot say much more than that. I have been involved in this process of review but that is all and I do not have any knowledge as to our input prior to its enactment.

CHAIR: In what respects, speaking generally to start with, do your organisations have concerns on behalf of indigenous people regarding this legislation, dealing with its broad scheme or purpose firstly?

Mr RILEY: The issue of the impact of this legislation on Aboriginal people, the basis for that concern is the number of Aboriginal and Torres Strait Islander people who come in contact with the police and subsequently the judiciary. The role of our elected arm is to ensure that the rights of Aboriginal and Torres Strait Islander people are maintained and upheld wherever possible and that that we have an opportunity to put forward some comments for consideration by committees such as this Committee about how any legislation that has potentially adverse impacts on Aboriginal people in effect works. The comments we put forward are from an advocate's point of view. Obviously, the Committee takes a number of submissions from a number of other people but it is just to try to ensure, particularly from a cultural perspective, that the Aboriginal and Torres Strait Islander people of this State have an opportunity for their elected representatives to try to influence the way legislation is framed to try to minimise potentially adverse impacts on the Aboriginal people of this State.

Mr NASH: Can I just add that from a legal point of view we have a number of specific concerns about this Act. I think the Act affects directly the right, if I can put it that way, against persons self-incriminating themselves and the presumption of innocence. I think the Act bears upon that in some substantial way and a lot of what I have to say relates to that. It also increases specifically police powers with respect to suspects but also people who are convicted, and it affects their rights. Obviously, a large and disproportionate number of Aboriginal people fit into those two categories, and we have concerns about the way the Act affects and increases police powers and powers generally against Aboriginal people but also people generally and the way that the information that is gathered under this Act is used in an ongoing sense. They are some of the concerns that generally we have about the Act.

Mr WHYMAN: It is a fact that as an elected Aboriginal representative there is a high expectation held of me from the community and persons like myself to represent the interests of Aboriginal and Torres Strait Islander people at all levels and in particular the consideration that particularly areas that affect the overrepresentation of Aboriginal people in the system.

CHAIR: You will be aware that section 10 of the legislation deals with the issue of informed consent to forensic procedures relating to Aboriginal persons and Torres Strait Islanders. Do you believe that the statutory protections contained within that provision are adequate? Are there any additional safeguards you might consider necessary? What are your views regarding the interview friend provisions? Are they adequate? How are they working in practice?

Mr WHYMAN: Probably both Ian and I will participate in this question. The latter part I might respond to. I would like Ian to start off with the other one.

Mr NASH: I think the current statutory protection under section 10 goes a long way to protecting Aboriginal people but there are a couple of specific concerns I have with respect to the operation of the section, both as it stands reading it and also how it is operating on the ground in practice. Furthermore, the section itself—and I have to remind myself of the exact section, section 10 (4)—on its face forces the police to inform the Aboriginal Legal Service that it is proposed that a forensic procedure might be carried out, but reading through the entire section, the actual operation of the section does not continue that burden upon the police if under subsection (3) (b) an indigenous person has already waived the right to an interview friend.

CHAIR: Or, alternatively, if the police officer is aware that the person has arranged for a legal practitioner to be present himself.

Mr NASH: That is correct, yes. Just going to the practical operation of what is occurring on the ground, our service has an out of hours, effectively a 24-hours, contact line for indigenous persons in custody, Aboriginal persons in custody. That has been set up under the crimes detention after arrest legislation which is part of the Crimes Act. So, we are contacted I think in the majority of cases, and in virtually all cases where an Aboriginal person is in custody in our region, the Sydney Aboriginal Legal Service region. But often this particular point, that is, the taking or not of a forensic procedure and the proposal to take a forensic procedure by the police, is not raised with us by the police themselves. As I say, I have spent some time doing this and answering these calls myself. It is not until we inquire about whether or not there is such a proposal by investigating police or arresting police that we find out it is on the cards.

It would seem to me if this legislation is to be reviewed it would be in the interests of Aboriginal people in custody that there was some sort of positive burden upon the police to raise with us the prospect of such a procedure being undertaken, and it would seem to me that the legislation as it stands or my understanding of the legislation as it stands is that there is currently not that positive burden. Whilst subsection (4) does say there is, it would seem to me that unless, as you say, Mr Chairman, the Aboriginal person himself has organised for a legal representative to be contacted or spoken to or to be present, in the case where the person has waived his right to have an interview friend present there is no positive obligation for the police to raise the issue themselves. It is fairly technical but it is something I have concerns about.

The Hon. PETER BREEN: Can I just clarify what you say. They ring you and say, "We have a bloke here in custody. He is alleged to have pinched a car down such and such a street". Do they then tell you that he has waived his rights to a forensic procedure or do they not raise the issue with you at all?

Mr NASH: They have not raised the issue with me personally, and I have taken—out of hours I have probably taken between 120 and 150 calls myself and, before I came here, I have spoken with other solicitors who have done it. On only one occasion have they specifically raised the issue themselves. I cannot say I am speaking for every single solicitor who has answered the phone but it is a concern for us that they are not specifically raising the issue themselves.

The Hon. PETER BREEN: So when they ring you they do not tell you that they are going to take a forensic procedure?

Mr NASH: Not usually, no.

The Hon. PETER BREEN: So, in your experience there has been only one occasion when they have told you they were going to take a forensic procedure. When you arrive at the station, how many other instances are there where they have actually taken the procedure without telling you?

Mr NASH: We do not go to the station. Very rarely do we actually attend the station, simply because we do not have the resources to do so. Unless it is a very serious crime, a murder or some other serious crime, we do not attend the station, because we simply do not have the resources.

The Hon. PETER BREEN: So it is only when you get to court that you find out that a forensic procedure has been taken?

Mr NASH: Or if it is the type of forensic procedure they need a court order for. I have had a couple of applications at court because they want to take a blood sample or a buccal swab from the suspect, for instance. But, at the initial stage, when we are called and contacted, it is something we try to raise with them but it is not often raised, in our experience at least, by the police themselves. As I say, the scheme of the Act, whilst there is under subsection (4) of section 10 that obligation, it seems that in certain circumstances it can be circumvented. Subsection (4) is not being practically put in place by the police and there is potential for it to be circumvented within that section, it would seem to me.

CHAIR: Returning to the interview friend issue, I note that the second recommendation in the ATSIC submission suggests to us to redress what you describe as the imbalance that there should be the right to have an independent person at the time of consent recognised in the Act and made a mandatory provision. Could I draw your attention to the fact that the Police Service is urging on the Committee various amendments, one of which is to enable police to exclude an interview friend where the police reasonably suspect the interview friend will obstruct the process. Before you respond, I remind you that there is an existing provision in the legislation that where such persons in fact are obstructing the process they can be excluded. What do you have to say about that request from the Police Service?

Mr WHYMAN: I am not a practising lawyer and I guess I will try to answer this in layman's terms. I think it is vitally important that there be an interview friend, considering that when other matters are at the police station in relation to an Aboriginal person there is a high request that there be somebody present. I really cannot see that an Aboriginal person would not consent to having an interview friend present. I say that with experience myself, currently being Chairman of the Aboriginal Legal Service at Wagga Wagga and having worked as a paralegal for 16 years with that service. My experience with Aboriginal people in custody is that they have always consented to somebody being present and police have insisted that there be somebody present.

An additional procedure to what might be normal charges, for example, taking DNA samples, I cannot see an Aboriginal person not consenting to have a friend present, primarily on the basis that there is the language situation—and that is Aboriginal language against police jargon. I mean, a police officer fires off rapidly, "Do you understand I am going to ask you some questions? You may answer them if you wish but do you understand it will be taken down in evidence and used against you later in a court of law?" An Aboriginal person not understanding that caution would obviously be silly not to consent to having a friend present in those circumstances. In nine cases out of 10 that I have been involved with, Aboriginal people in custody have always requested that there be somebody present.

CHAIR: So you certainly do not view with favour the request by the Police Service?

Mr WHYMAN: I support the ATSIC submission.

Mr RILEY: If I could just add a couple of points to that, just reaffirming the ATSIC submission. We see the presence of a friend as being a safeguard for the suspect, to ensure that any consent that is given is informed consent. There are issues also in relation to instances of illiteracy,

which is unfortunately relatively high within sectors of the Aboriginal community. There are issues concerning mental health conditions, substance misuse. It is a safeguard to ensure that suspects are aware of their rights and are aware of what they are consenting to. As the ATSIC submission points out, we would like that section strengthened to say this really should be mandatory.

CHAIR: You will be aware that section 10, relating to informed consent by Aboriginal people to forensic procedures, applies in particular where the police officer believes on reasonable grounds that the suspect is an Aboriginal person or a Torres Strait Islander. An issue raised in the ATSIC submission is that you are recommending to us that the legislation should in fact provide that where persons claim to be of Aboriginal or Torres Strait Islander descent they are deemed to be such persons for the purposes of section 10 (1) (b).

Mr RILEY: I think that goes back to the question of Aboriginality and the general criteria that ATSIC applies, if that is the appropriate word. If a person claims to be of Aboriginal or Torres Strait Islander descent and is accepted by the Aboriginal or Torres Strait Islander community as having the descent, then that person, I suppose, is deemed to be an Aboriginal person. Of course, it is difficult to have another member of the Aboriginal community at the time the suspect is putting forward the point that he is of Aboriginal descent. It is difficult to qualify that through checking with another member of the community. So, we are saying as a safeguard if people are saying they are of Aboriginal or Torres Strait Islander descent, in the first instance that should be accepted as being the case.

CHAIR: Do you think that is possibly open to abuse? Are people likely to want to get the benefit of the provisions by falsely claiming to be of Aboriginal descent? Presumably that would be a rare instance?

Mr RILEY: One would imagine so. One would assume this could perhaps be tested later on within the Aboriginal community and whether that gives them access to any other rights under the piece of legislation that would not be offered to a person of non-Aboriginal descent.

CHAIR: Mr Nash, did you want to say something further about the interview friend matter?

Mr NASH: Yes. There are a couple of things I would like to say, particularly in relation to the police submission on exclusion of people that might reasonably be expected to interfere with the process, which you raised as part of question 10. It would seem to me that the important question there is whether or not some interference would, in the circumstances, be likely to result in the destruction of some evidence. It would seem to me that in the vast majority of these sorts of cases where samples are taken that is unlikely because it is simply a blood sample. I will come back to this in relation to other questions. If it is a blood sample, a hair sample or a buccal swab, that evidence is not going anywhere. So if the police are asking to exclude an interview friend prior to any procedure actually commencing, I think at the very least that should be limited to circumstances where it is a forensic procedure, that if interference occurs it might be likely to result in the destruction of some evidence. Other than that, I endorse what ATSIC says. I think it is very important that the interview friend provisions remain, from a cultural point of view, and Mr Whyman and Mr Riley are both more qualified to speak on that than me.

Mr WHYMAN: I guess at the best of times the relationship between Aboriginal people and the police can become very strained. For the police to suggest that an interview friend could be a hindrance at a DNA profile test, my view is that it is in the interests of police and Aboriginal people. History shows that the relationship between police and Aboriginal people can get very ugly at times, particularly in communities that are discrete or towns that have high Aboriginal populations, like Brewarrina, Walgett, et cetera, for the police to suggest that they are seeking an amendment that there not be an interview friend present in some instances, that that could further strain the relationship that Aboriginal people and police have today.

CHAIR: Regarding the mass testing of entire communities, the ATSIC submission appears to suggest that you see dangers there for indigenous people in particular. Could you advise the committee what your concerns are in that regard? You will recall that, for example, there was such an instance at Wee Waa.

Mr WHYMAN: Yes; I was going to come to that. And, of course, we understand that that sparked a voluntary line of people.

I would like to speak particularly in relation to those discrete communities, the Aboriginal towns, such as Brewarrina, Walgett, and so on, where predominantly the population is black, more than it is non-indigenous. I speak of some of the communities in my area, such as Murrin Bridge, Arambie, Nanima and Cummeraganja on the Victorian border, where the communities are discrete and small. There is an inter-relationship of people who marry in the community, who frequent each other's homes on a daily basis. Therefore I believe that contamination could be widespread in respect of an individual in a discrete community. There may be the community bus that everybody uses. The community transport might be a car or a couple of cars that everybody uses, and even suspects could use, but the contamination is right across the discrete community.

CHAIR: We were told in a briefing before this hearing got into formal evidence that substantially the testing that occurred at Wee Waa occurred within private homes. That was said to us by way of reassurance that some privacy or confidentiality was maintained. What would you have to say regarding that?

Mr WHYMAN: Speaking from an Aboriginal point of view, there is a thing that Aboriginal people call shame. It is a position where every day the community—and I am talking in relation to a discrete community here—the ears and eyes are in the community, by the community, of anything that goes on in the community. The taking of any procedure administratively by police, welfare authorities, et cetera, sparks a shame procedure in the community. That individual in the community really does not what others to know what is going on with that particular person, particularly in a discrete community, and therefore would preferably want to be dealt with in isolation of the community.

CHAIR: The ATSIC submission makes a recommendation to us that a fund be established by the New South Wales Government to fund the retrial of prisoners where it is found that the DNA profiles do not match those found at the scene of a crime. Is that intended to deal with the innocence issue, that is, a person wrongly convicted? If so, is that put in the alternative to the proposal made by the Police Minister some time ago, which has not yet been fully put into place, of an innocence panel?

Mr RILEY: Touching on the previous issue, in relation to the testing of whole communities, as the ATSIC submission says it is a difficult one to balance in the public interest, there is a process of elimination. In many of the communities that chairperson Whyman indicated, where there are large Aboriginal populations, I suppose if this practice were to become more prevalent it raises the prospect of subsections within the community, and that might be the Aboriginal section of that community saying to a man and a woman, "We are not going to be part of that testing", which then could increase tension within that community and cause friction between the Aboriginal and non-Aboriginal people. It is not the normal practice of police to arraign a whole community of suspects for a process of elimination. But we recognise that it is a difficult question in terms of balancing public interest, and I think Wee Waa was a reasonable example.

CHAIR: Would there be any greater degree of safety, in your view, if such a mass testing program had to occur as a result of an application being made to a court for an order that it happen? In other words, a judge would have to be satisfied on the merits that it was appropriate.

Mr RILEY: It certainly puts some rigour into the process, as opposed to the public pressure perhaps of voluntary testing.

Mr WHYMAN: Where the procedure is carried out is a matter for the community to feel comfortable with. If it is carried out very discreetly and in a discrete Aboriginal community—and I mentioned some of those communities earlier—I agree with Mr Riley, it does cause discussion in the broader community. I guess one could go further and say that if a discrete community were tested for the AIDS virus, that would absolutely blow me out of the water. It would cause a very broad community discussion that that community is being discrete—"It is contaminated now. Don't go near it. Don't allow them into town."

CHAIR: Could I ask one of you to comment on the other issue I raised, regarding establishing innocence?

Mr RILEY: I suppose that is the other side of the coin in relation to DNA testing, not only to the prosecution case but also to assist those who may have been wrongly convicted. Some of the international experience—and it depends which way it is pitched—is that in the States they have indicated that a lot of DNA testing has resulted in the exoneration of previously convicted people. The information that we have been provided does not balance that with the clear-up rates of unsolved crimes that DNA was used for, and I am sure it is a two-way street.

What ATSIC is proposing is that if possible a fund would be established so that if DNA clearly points to the fact that a person may have been wrongly convicted, there is access to a source of funds to provide an appeal process, or to allow an appeal process to have that person retried.

Mr NASH: Could I say two things about it. First, there is obviously some scope for using this sort of information for proving the innocence of people both wrongly convicted and even suspected of committing crimes. So it is, to an extent, a two-way street, and it is of concern to us that at this stage there do not seem to be any formal avenues to allow people to do that. To the extent that that will be done or is proposed to be done, I have to endorse that.

Second, I do not think that that public policy interest in proving that people are innocent, or excluding people, necessarily outweighs the interest in protecting people from the encroachment of State power, and forcing people to undergo testing. We have talked briefly about broadband community testing, as happened voluntarily in Wee Waa. But I think it is something that would have to be considered very carefully and very sceptically if there were some process by which a court order, or any other form of prescriptive testing, took place on a broad scale to try to isolate a particular individual. I think that that is suggestive of "Big Brother", and I just do not think that we live in that sort of community and that sort of country or State.

The Hon. JOHN RYAN: In evidence given to the Committee the point was made that because of the provisions of the Act which allow police a fairly wide discretion of taking samples of arrested individuals, suspects and so on, there can be a situation in some Aboriginal communities where a high proportion of the Aboriginal community have come into contact with the police and where a fairly significant database has been gathered together of the individuals who live in that particular community. Have you any information which might indicate the extent to which that might be a specific problem for indigenous people and the areas in which it might be a problem? If you have such a concern, do you have any recommendations as to what action might be appropriate to ensure that there are not large numbers of indigenous people being monitored genetically, for want of a better term, by the New South Wales Police Service?

Mr NASH: If I can answer, in part at least. Under the current regime of the Act as it stands, I think it is inevitable that that will take place. That is of concern to me, particularly in relation to the provisions that allow for the taking and testing of, but not the destruction of, samples from convicted serious offenders, in that Aboriginal people will be monitored in that way because of the disproportionate number of Aboriginal people within the justice system and the disproportionate number of Aboriginal people serving time for such offences. The legislation as it stands, if I understand it correctly, provides for the taking of a DNA sample in some form from a person who has been convicted of a serious offence, without there being provision for that sample ever to be destroyed and for the link between the individual's name and the sample ever to be destroyed. This, therefore, allows the police, in an ongoing way, to monitor those people both for crimes that may be committed and for crimes that have been committed. That has real implications for the presumption of innocence and the right not to incriminating oneself. I think those provisions markedly affect those rights. I am not sure that that has answered the question directly.

The Hon. JOHN RYAN: One of the suggestions made, I think by the New South Wales Privacy Commissioner, was that the collection of data would enable it to be uncovered whether a significant proportion of the community has had their records taken and that that information was on the database. He was speaking of a community of a wide variety of backgrounds, including people from non-English-speaking backgrounds. That appears to be a matter of interest to people of indigenous background. If that is the case, do you support such a recommendation?

Mr RILEY: In the ATSIC submission, attention is drawn to the fact that a large percentage of Aboriginal people live in rural communities, that there are generally large levels of unemployment among Aboriginal people in those communities, that there is a high incidence of substance misuse, and a lack of entertainment. Inevitably, that leads, unfortunately, to relatively high crime rates. What could eventually happen, through this legislation, is that higher percentages of a certain subsection of a community will have their information on the database. Obviously, the strength of the database is that the more data on it the more comparison can be made. It could be another instance, I assume inadvertently, where indigenous people have a very disproportionate participation in that database.

The Hon. JOHN RYAN: Another group representing Aboriginal people suggested to this Committee that there ought to be a memorandum of understanding between the New South Wales Police Service or the Attorney General's Office and the New South Wales Aboriginal Land Council, particularly with regard to the treatment of samples taken from Aboriginal people, given that for many indigenous people there is a special connection between body samples and their use. I think the word "sorcery" might have been used at one stage in the submission. In any event, there certainly are religious beliefs within the indigenous community that might raise some sensitivity about removal of body samples, be they skin, blood or whatever. Do you think that a memorandum of understanding with the New South Wales Aboriginal Land Council would be appropriate as a solution to those issues?

Mr WHYMAN: I agree with what has been said by Mr Riley and Mr Nash. I might take it a bit further. The taking of samples from a community and a person, in particular if that person is of Aboriginal descent, is not unlike the removal of skeletal remains from one's country. There has to be some sensitivity about the whole thing. I guess there have been many attempts by Aboriginal people and police to solve their differences and work together as Aboriginals and police. That could be an option. Memorandums of understanding are not legally binding on any party. It may go further than a memorandum of understanding. But there has to be some understanding about the sensitivity of taking from somebody what is theirs. As I said earlier, it is not unlike the position with skeletal remains that are outside this country and Aboriginal people are asking for those remains to be returned to this country.

The Hon. JOHN RYAN: That is understood. But, to take the devil's advocate point of view, is there any special memorandum of understanding existing between say the Department of Health and the Aboriginal community given that, as part of the department's job is the taking of pathological specimens from Aboriginal people for the purpose of treatment of various conditions, and to the best of my knowledge there are no special arrangements being made for the disposal of blood products and so on taken as part of those procedures.

Mr NASH: The only point I can make—and I do not know whether there is any, and I take your point—is that consent would not be such an issue in those sorts of circumstances. I think the whole environment under which they are taken—and I cannot really speak from a cultural point of view—has a bearing on this context, rather than the point you make. I am not sure how far that takes it from the cultural point of view.

The Hon. JOHN HATZISTERGOS: I am keen to know whether there are any particular problems concerning Aboriginal young people. Yesterday the Committee heard evidence from the Commissioner for Children and Young People about the provisions of this Act, which she felt put young people in a particularly vulnerable position. Have you read that submission?

Mr WHYMAN: No.

Mr NASH: No.

The Hon. JOHN HATZISTERGOS: She was talking about part 8 of the Act, which deals with the carrying out of forensic procedures on volunteers, and in particular section 2B, which places a young person in the position basically of having an adult make the decision as to whether the young person would participate in a voluntary procedure, with the child being left in the position of objecting or resisting the carrying out of the procedure. I do not know, the way that is phrased at the moment, whether that would be of much comfort to Aboriginal young people who might be more particularly

vulnerable. Do you have any experience, particularly of Aboriginal young people, as to how this legislation has been used, particularly with relation to those provisions in section 2B?

CHAIR: Before you respond to that, could I indicate, for reasons of clarity, that part 8 is the only part of the legislation not yet proclaimed to commence. So that has to be borne in mind. The other thing is that I have put it to Ms Calvert that perhaps consideration ought to be given, on the question of parental consent, to treating 16-year-olds and 17-year-olds on a different basis from younger children.

Mr RILEY: I think, initially, the point relates to our response to Mr Ryan earlier in terms of the sheer numbers potentially of Aboriginal young people who may be subjected to this process. I think discussions with Juvenile Justice recently revealed that roughly 30 per cent of people in their detention centres are of Aboriginal and Islander descent. That is incredibly disproportionate. So again we have this potential, due to a number of socio-economic factors, an incredibly high proportion of a section of our community will be subjected to this process. That is from a social perspective. I am not sure whether Ian has anything to add from a legal perspective.

Mr NASH: I cannot speak specifically in relation to that volunteer provision.

The Hon. JOHN HATZISTERGOS: Basically, the proposal she put forward was that both the adult and the child have to consent, or, alternatively, the matter goes to court.

Mr NASH: In relation to the child being a suspect, if the child has been convicted of a serious indictable offence and a sample is to be taken in those circumstances, regardless of what sort of sample it is, as I understand the legislation, there has to be some sort of judicial review of the decision. Whilst the voluntarily situation is unusual, because it is a voluntary situation perhaps that could be considered. It is in place, as I understand the legislation, in relation to juveniles who are suspects. We endorse that position because of the special nature of children, but perhaps that could be considered in relation to the voluntary provisions, because I think that that additional level of review is a good thing.

Mr RILEY: There is certainly some merit in the suggestion of having some different criteria for young people of 16 and 17 years of age and in relation to people who are younger than that. The notion of having them both agree is interesting. It is certainly something that we would be interested in having some further discussions on.

The Hon. PETER BREEN: Mr Nash, I am curious to know whether you are aware that it appears that certain aspects of the DNA profile can be used statistically to infer that certain questions about whether a suspect belongs to a particular cultural or ethnic group can be determined. I am concerned about that because, as Mr Ryan pointed out, the disproportionate number of Aboriginal people in custody distorts the database. In addition, we have a national database which includes the Northern Territory, where 25 per cent of the population is Aboriginal. If it is true that some aspects of the DNA profile can be used to determine a particular cultural or ethnic group, would you see any prospect or possibility of prejudice arising in relation to the rights of Aboriginal people and the drawing of certain inferences that might jeopardise Aboriginal people in general?

Mr NASH: On the face of it, I would say yes. But perhaps I could take the question on notice.

The Hon. PETER BREEN: We raised the issue with the land council as well. Steve McAvoy pointed out that the human genome project, for example, is actually deconstructing the DNA molecule. One of the purposes of that is to identify which parts of the molecule can be used to say: Yes, this particular sample comes from a person of that ethnic group or that cultural group.

Mr NASH: At the Aboriginal Legal Service conference the week before last one thing discussed—and I think it is in a sense the flip side to your question—is that because the DNA profile of Aboriginal people is distinct in some ways from the profiles of some other ethnic groups, that presents possibilities—and I cannot give statistics as to what level of probability exists—for some mismatch in terms of matching DNA samples from an individual to a crime scene, and so forth. It is something that Peter Zarra, Public Defender, spoke about. It is something that I have not been able to

look into in any detail before coming here today. However, it is something that did come into my mind before I came here. As I said earlier, I will take that question on notice and perhaps present something to you in writing.

The Hon. PETER BREEN: I do not know whether there is any evidence available. The principal question in my mind is that, if there is a disproportionate number of Aboriginal people in the database, does that mean that there will be a disproportionate number of police looking for Aboriginal people as suspects? That is the concern that I have. The other thing that I wanted to check with you is contained in your written submission. You said:

> We believe that there is a need for the police to order a degrading and painful non-intimate procedure without our client's consent. Instead a request can be made to a magistrate at the time of the hearing of the bail application.

I take it that you are suggesting that, in your view, there should be no procedure until a magistrate has made an order in the context of the offence with which a person is charged. Is that what you are suggesting?

Mr NASH: In essence, that is it. Let me just elaborate a little. It seems to me that the one thing that the police can take forcibly from a suspect at this stage without any court order is a hair sample. They also have the power to take other non-intimate samples, which are listed in the Act. That can include scrapings from underneath the fingernails and also samples of, say, blood splatters that are on a person's body or clothing. The thing that is referred to in our submission, without actually saying it specifically, is the hair sample. I want to say something about that.

First of all, the taking of a hair sample, whilst defined as non-intimate, is a painful procedure. Essentially, it is a painful and involved procedure. The second thing is that it seems to me that the hair sample is taken for the same purpose as a buccal swab or a blood sample, which are defined. The buccal swab has its own specific provisions and the blood sample is defined as an intimate sample and the court needs to order that. Because the taking of a hair sample is painful and the reason it is taken is similar to a blood sample or a buccal swab—that is, to get a DNA profile from a particular individual—we say that that specific sample should require a court order.

We say that the hair sample is distinguishable from other non-intimate samples because the nature of other non-intimate samples is transitory. Often the reason for the taking of another non-intimate sample is that there is blood on a person or some sort of other DNA sample that the police might say has arrived on that person because of their presence, for instance, at a crime scene. Because the hair sample is not going anywhere and the purpose for taking it is not going to change—that is, to obtain a sample from the individual—and because of the nature of the sample we say that that sample should be moved into either the buccal swab category or into the intimate sample category.

I do not see any good reason for that not occurring. I can see some justification for police being allowed to order a non-intimate sample to obtain evidence that might disappear. But, from where I stand, a hair sample does not fit into that category. It is a painful procedure. It is a sample that is taken specifically from the body and it is removed from the body of a person. There should be available that additional level of protection. The other thing I would like to say about the taking of samples generally goes back to the first couple of questions that were asked.

Often we are not informed that the police are going to take a sample or that they intend to do so. We are also not informed in great enough detail about why that is going to occur. It would seem to me that that is important. There is some sort of burden on the police to indicate in the context of a case and the suspicion in a case why a sample is going to be taken.

The Hon. PETER BREEN: In your submission you have suggested that the wording of section 20 should be changed so that the police must be satisfied that the procedure, in your words, "will produce evidence". The section, as it presently stands, states:

> A forensic procedure may produce evidence against a suspect that might be used in court.

I am suggesting to you that the test that you are proposing would suggest—to my mind anyway—that the police would need to have some greater knowledge than would be available, certainly at most

crime scenes. In effect, a provision such as that would completely hobble, if you like, the powers of the police to take samples.

Mr NASH: Perhaps our submission is putting it at its highest. What we are trying to get across is that the provisions, as they stand, do not put it high enough. Perhaps we are putting it a little too high.

CHAIR: Would you be happy with the Federal standard, that is, "is likely to produce" rather than "might produce".

Mr NASH: We would be happier, yes.

The Hon. PETER BREEN: We heard evidence from Dr Gans that, in his opinion, there ought to be a court order for taking samples. In relation to suspects, Dr Gans gave evidence that there ought to be a police order for taking samples. In the case of people who are not suspects—those who are just part of police routine inquiries—there ought to be a court order before samples are taken in order to protect a person against self-incrimination. Would you support that position? That would be a solution. I do not know whether it is one that the Government would support but, from a civil liberties point of view, it would be a solution that would more clearly define the obligations of the police.

Mr NASH: I think that court orders and some sort of judicial review process should be in place in all cases. Let me put it this way. The only situation in which I think the police should be empowered to take samples is when there is a great likelihood that the evidence might disappear. I think that there is a logical basis for allowing the police to do that in those situations. But I think in all other situations, whether the person is a suspect or whether it is a routine inquiry, when the evidence is not going to disappear—

The Hon. PETER BREEN: I interrupt you to say that the evidence will not disappear unless the suspect or the person who is the subject of the inquiry disappears.

Mr NASH: I think that that goes back to bail considerations.

The Hon. PETER BREEN: I see what you are saying, yes.

Mr NASH: I think that that is a separate question.

The Hon. PETER BREEN: So in your view the only time that the police should take a sample is when there is some risk that a person might abscond?

Mr NASH: Or when the evidence that is on the person and the reason for taking the sample might disappear, for example, the blood might disappear off the clothing. I cannot give any other examples off the top of my head. I am saying that, if there is a likelihood that a person is going to abscond and there is a real basis for thinking that, the police have the power to refuse bail and it can go before a magistrate.

The Hon. JOHN HATZISTERGOS: What then is the role of the forensic evidence? If you are waiting until a person goes before a court for a bail hearing before an order can be made compelling forensic material to be obtained, what role does the forensic material that you have obtained then have? Is it for the confirmation of guilt or the confirmation of innocence? If you do that at an early stage you might be able to rule a person either in or out. If you delay it until a person has actually been arrested and brought before a court what role does the forensic material then play?

Mr NASH: Are you talking about DNA evidence that is taken from the crime scene?

The Hon. JOHN HATZISTERGOS: No, I am talking about DNA that is taken from the suspect. I think that that is what you are talking about.

Mr NASH: That is what I am talking about.

The Hon. JOHN HATZISTERGOS: What about the suspect? A person has been arrested and has been brought before the court. You say that at that point an order should be obtained. Is that right?

Mr NASH: Yes.

The Hon. JOHN HATZISTERGOS: What role does the forensic evidence then play?

Mr NASH: Once the sample is taken it is matched, in my experience, with samples that might be taken from the crime scene. At the very least it can either determine whether or not that person was present at the crime scene. In sexual assault cases, for instance, it can determine whether or not sexual intercourse has actually taken place.

The Hon. JOHN HATZISTERGOS: I understand all that. What I am saying is that delaying it until that point when a person is coming up for bail precludes the use of that evidence at an earlier point of time to either prevent the person being charged or arrested. Do you follow what I am saying?

Mr NASH: I do.

The Hon. JOHN HATZISTERGOS: At the moment the forensic material is being used, in part, by the police to form a view as to what action should be taken against a person, if any. You are saying that the action should be taken and that the person should be brought up for bail. It is at that point that you decide what will happen—whether or not a forensic sample will be obtained. If that is the case, what value does it have, apart from just confirming a decision that has already been taken—a decision that might not need to have been taken?

Mr NASH: In my experience, the only time at which a DNA sample is taken involuntarily is after a person has been arrested and there are other grounds for suspecting his or her involvement.

The Hon. PETER BREEN: If I understand your answer correctly, you are suggesting, I think, that a court order would put a higher value on the forensic evidence than evidence obtained by the police beforehand without an order?

Mr NASH: It also protects a person and ensures that the sample is being taken for good reason. That is really why I think that court orders and judicial reviews should be there. They protect this legislation from abuse by police. I am not sure whether I have answered your question.

CHAIR: I put this to you as a matter of general principle. It is sometimes overlooked that DNA testing has the capacity to exculpate people as well as inculpate people. So that could be said to be a public policy reason in favour of such testing.

Mr NASH: I think that the voluntary provisions, in part, cover that. I cannot see how, in the preliminary stages of an investigation, other than broad-band testing of a group of people that have been identified, it can be exculpatory, if you understand what I mean.

The Hon. JOHN HATZISTERGOS: There are people on death row in the United States who have just been exculpated.

Mr NASH: I think that is a situation when an individual is quite happy to undergo that. That goes back to a consent issue with the individual.

The Hon. PETER BREEN: I will give you an example that the Committee heard from the Police Service about the laboratory testing process. When the process was first introduced in the United Kingdom—I think it was developed at Leicester University—the police had a rape crime which was very similar to an earlier crime. The suspect confessed to the second crime but not to the first. The crimes were so similar that the police went back to Leicester University and said, "Could you test these with this new process and see how they line up?" When the results came back they showed that the crime was committed by the same person but not the person who had confessed. So

that might be an example of how a person could be excluded if there was an early testing procedure as a result of police intervention as opposed to waiting for a court order.

Mr RILEY: I make a comment from a lay person's point of view. We have to try to balance the issue of self-incrimination against the voluntary nature issue. We have to balance that against the nature of indigenous or Aboriginal society. If a lot of DNA evidence is used to put a person at a particular place, the nature of society is that there are strong connections. People spend a lot of time socialising with each other. In relation to the issue that is being spoken about today, people can voluntarily submit to the process. We have to balance the ability of police to extract a sample with a person's right to not incriminate himself or herself.

The Hon. JOHN HATZISTERGOS: Is there any particular reason why you say it should occur at the bail stage?

Mr NASH: I only used bail as an example because, after arrest, within a very short period of time an individual is brought before a court and before a magistrate.

The Hon. JOHN HATZISTERGOS: Is there any reason why you could not go to the court and make an application for such a procedure where it has been refused and the court makes a determination at a point pre-arrest? What is the difference between pre-arrest and post-arrest?

Mr NASH: I do not think that there is any. I take your point. I guess that where I am coming from is dealing with people who have been arrested. They are usually in custody and that is my experience. I think that if it is pre-arrest, I do not see any problem with that. Summonsing a person, for instance, to bring them before a court so that an application can be made and then a magistrate or some form of judicial body can make a decision, I do not see any problem with that.

The Hon. JOHN HATZISTERGOS: As I understand what you are saying it is that police should not be able to make this decision without reference to a court.

Mr NASH: Yes.

The Hon. JOHN HATZISTERGOS: In the case of a non-intimate sample.

Mr NASH: In the case of a hair sample, which is currently defined as a non-intimate sample.

The Hon. JOHN HATZISTERGOS: A non-intimate, involuntary sample.

Mr NASH: Correct, yes.

The Hon. JOHN HATZISTERGOS: That requires the police making an application to the court.

Mr NASH: It should, yes. And it does not, at this stage.

The Hon. JOHN HATZISTERGOS: Right. I follow that.

CHAIR: Before we conclude, I draw your attention to the fact that in the formal questions we submitted to you, there is advice regarding the various amendments to the legislation that the Police Service is seeking. Some of those items are more contentious than are others. I do not necessarily require you to exhaustively respond to those matters now. At least I ask you to take them on notice and to give us any considered written comments you might wish to make. However, is there anything further you wish to say about that or any other matter, before we conclude?

Mr RILEY: I think that, having taken questions on notice and from an initial look at them, there is some tension between what the police are saying and certainly what is in the ATSIC submission in relation to the interview friend and the issue about which we have just spoken at some length, namely, the police having the capacity to require a sample when the suspect has not agreed. I would be happy to provide some further evidence for the Committee but our initial reaction is that

there is some tension between those things—between what ATSIC and the legal service submission states.

Mr NASH: I guess there are a couple of points that I want to make here. One is in relation to question 7. Very briefly I point out that there does not seem to be anything in place at the moment for people who have had samples taken to be formally notified that there has been a destruction procedure that has taken place. Given the fact that it would seem to me that the police self-regulate the destruction process or the link between the name of an individual and the profile, some sort of notification procedure should be built in so that the person is actually notified when the destruction has taken place.

The second thing I would like to say is something in which I do not have a great deal experience except at a grassroots level. We think that the projections that are put in place for Aboriginal people are a good thing. We do not necessarily, as you have heard, agree with exactly the state of all of them but they do put upon the legal services extra burdens to ensure that they are put in place in some respect. They are State Government Acts and although we are funded by ATSIC, I think that some consideration should be given to State funding, to a degree at least, to allow Aboriginal legal services throughout the State to participate in their being enforced.

A very brief example of that is that my service—the Aboriginal Legal Service—has a 24-hour custody notification phone. I think that at least one other or perhaps two other Aboriginal legal services also have that, but the remainder do not. Therefore, out of hours, there are a number of Aboriginal people—particularly west of the mountains—who do not have 24-hour access to legal advice under the detention after arrest provisions or under these provisions, and that is something that is of concern to us. We hope that the State Government takes notice of, and perhaps gives consideration to, giving us some funding that is outside the funding regime that has obviously been put in place through ATSIC. They are the other things that I really wanted to say today.

CHAIR: The Law Society last week suggested to us that there ought to be a funded duty solicitor scheme for the purpose you mention in a general sense and not dealing with the Aboriginal community. Such a scheme evidently exists in Britain. However, it is very expensive.

Mr NASH: Yes.

CHAIR: So you are saying that you would like some expansion of the resources available to your organisation?

Mr NASH: Yes.

The Hon. JOHN RYAN: Somebody when giving evidence to the Committee reported with regard to inmates in prison the fact that an interview friend was available for Aboriginal prisoners—

The Hon. PETER BREEN: And a legal adviser.

The Hon. JOHN RYAN: —and a legal adviser, which in fact meant that they had become the subject of adverse comment and action from other inmates who did not have the same rights. They were in fact actively discriminated against and in some instances were subjected to some sort of vilification of some kind within the New South Wales prisons service because they had those privileges. Have you had any similar reports? Do you see any way of countering that problem? Would it be a difficulty if in fact all inmates—given that there is a fairly small number—had access to exactly the same privileges, such as the provision of an interview friend and so on, during the course of an interview? Would there be any objection from ATSIC if the situation was made the same for all inmates so that there would be no way of making a distinction between those people with an indigenous background and those without?

Mr RILEY: I think there are a couple of issues from ATSIC's perspective. I take the point that that could create some reverse racism, if you like, within the gaol system. ATSIC is particularly happy that those options are made available or that those services are provided. Again, without harping on the disproportionate representation aspect, I think it again gets back to the fact that two per cent of the population makes up 18 per cent of the prison population and that there needs to be some

affirmative action, if I can use that term, to assist Aboriginal and Islander people in the custody system. In relation to providing a service across the board, off the top of our heads I really do not think that we have an issue with that.

The Hon. JOHN RYAN: I think it is useful to have someone state on the record what you think is the purpose of the interview friend during the taking of a DNA sample such as a buccal swab?

Mr RILEY: I think is to ensure, from our perspective and from discussions we have had this morning, that there is informed consent; that people understand exactly what process is being undertaken and what it is being used for, as well as what their rights are in relation to agreeing or not agreeing. It relates to those types of issues. We focused particularly on the initial arrest stage in discussion of that this morning. I think a trend that is coming forward is that a lot of people in our custodial system have mental health issues, substance misuse issues and levels of literacy issues and I think it is a safeguard primarily to ensure that there is a full and comprehensive understanding, and that consent, when given, is informed consent.

The Hon. JOHN RYAN: The Committee has been asked to consider the fact that in the provision of the interview friend, usually the Department of Corrective Services is telling indigenous people that if they want an interview friend that requires some cost for them to be brought to the prison, that cost has to be met by the individuals themselves. Do you have any particular objection to that policy?

Mr NASH: To the extent that it prevents it occurring, I do. I think that there are a couple of additional reasons. I cannot speak as an Aboriginal person but I can speak from experience. There is a huge power imbalance for anyone at a police station and that is particularly prevalent for Aboriginal people because of problems with education and cultural issues. There are reasons also for having an interview friend there. There is a good reason that they are there and by asking people, who virtually in every situation are of limited means, to take on the expense of making sure that someone is there circumvents the reason for the provision.

The Hon. JOHN RYAN: I imagine that if you were at the Metropolitan Remand Centre at Silverwater and you wanted your interview friend to be someone who had to come from Wellington, it might be fair to say that it ought to be somebody who is reasonably accessible and that, by having a provision which requires the individual to meet his or her own expense, it ensures that that sort of arrangement occurs.

Mr NASH: Certainly.

The Hon. JOHN RYAN: If an Aboriginal person has a suitable interview friend available who can be relied upon to be independent and protective of the person, do you see the fact that the Aboriginal person has to meet the requirements of costs of some other alternative as a reasonable proposition?

Mr NASH: In that situation, yes, but I think that in those provisions there is some caveat, if I may put it that way, in terms of reasonable practicality. I think that the issues you raised probably come under that particular consideration. Another side to it is that often my clients are from areas where their families are not, or they have been arrested in areas where their families are not. To ask for people who would have to come across the State to be there makes it very, very difficult and I take your point completely on that. I think also that if there is someone else who can be there and who can fulfil the role in some independent and proper way, that is fine.

CHAIR: I thank all witnesses and their organisation for their submissions and for the evidence that has been given this morning, all of which is very much appreciated.

(The witnesses withdrew)

(Short adjournment)

JEFFREY THOMAS JARRATT, Deputy Commissioner of Police, 14-24 College Street, Sydney,

MICHAEL ANTHONY RAYMOND, Director, Forensic Services, New South Wales Police Service, Ferguson Centre, George Street, Parramatta, and

NATALIE DUGANDZIC, Legal Officer, New South Wales Police Service, 14-24 College Street, Sydney, sworn and examined:

CHAIR: Mr Jarratt, in what capacity are you appearing before the Committee?

Mr JARRATT: I am appearing as a witness for the Police Service.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Mr JARRATT: Yes, I did.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr JARRATT: Yes, I am.

CHAIR: I take it you are happy for the written submission of the Police Service to be included as part of your sworn evidence?

Mr JARRATT: Yes, I am.

CHAIR: Mr Raymond, in what capacity are you appearing before the Committee?

Dr RAYMOND: I am appearing as the technical adviser, and I also have some knowledge in respect of forensic procedures.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Dr RAYMOND: Yes, I did.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Dr RAYMOND: Yes.

CHAIR: I assume, as with Mr Jarratt, you are happy for the submission of the Police Service to be included as part of your sworn evidence?

Dr RAYMOND: Yes, I am.

CHAIR: Ms Dugandzic, in what capacity are you appearing before the Committee?

Ms DUGANDZIC: I am appearing before the Committee as a legal officer for the Police Service.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Ms DUGANDZIC: I did.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Ms DUGANDZIC: I am.

CHAIR: I assume that you, also, are happy for the written submission from the Police Service to be included as part of your sworn evidence?

Ms DUGANDZIC: Yes.

CHAIR: Could indicate to all of that if you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. Could I add to that statement my knowledge that it is desired by the Police Service, on my understanding, that part of your material be heard in camera. That being the case, at a later stage the Committee will hear that material in camera.

Ms DUGANDZIC: That is correct.

CHAIR: Mr Jarratt, I invite you to make a brief opening statement to the Committee.

Mr JARRATT: Thank you very much. Might I make a brief opening statement and be joined in that by Ms Dugandzic. Thank you for the opportunity to appear before the Committee to provide some clarification of our submission and answer any questions that the Committee may have in relation to the service's implementation of the Crimes (Forensic Procedures) Act 2000. As you know, the Act gives powers to police to carry out forensic procedures on suspects, making it a valuable tool in the investigation of offences.

As DNA is relatively unique, DNA profiling is a powerful tool that can be used to eliminate suspects from an investigation or link conclusively a suspect to a crime scene. The Act also provides for a DNA database. The DNA profile is a series of numbers that is entered onto the Police Service database. The identities of the people who have supplied samples for DNA profiling are retained at the forensic laboratory of the New South Wales Health Department analytical laboratories; they are not held by the Police Service.

To implement the Act, the Police Service established the forensic procedures implementation team, comprising seven staff, in October 2000. Four inmate testing teams, consisting of male and female police officers, were set up to test serious indictable offenders within New South Wales correctional institutions, and these teams report to the forensic procedures implementation team. Standard operating procedures were developed and distributed in January of this year to all regions and key personnel, including prosecutors. Training of officers has been completed, and a DNA training video distributed to each education and development officer attached to each local area command during his or her initial training.

A copy of the video was also provided to crime agencies, the Ombudsman and the inmate testing teams. Training of officers and staff is an ongoing procedure. As you might imagine, with the significant changes to the way that forensic procedures are conducted by police under the Act, some operational and interagency issues have arisen. To resolve these issues an interagency committee was established with representation from: New South Wales Health, Corrective Services, Juvenile Justice, the Ombudsman's Office, Treasury, the Attorney General's Department and the Office of the Director of Public Prosecutions. The service also meets regularly with the Ombudsman's Office in relation to its review of its function.

In relation to the amendments to the Act, I would now like to defer to the Police Service solicitor's representative, Natalie Dugandzic. I believe the first question that she will address relates to some service-proposed amendments.

Ms DUGANDZIC: First of all I would like to make a couple of general comments before I go on to make comments about some of the specific proposals for amendments that we have put forward. I believe it is important to appreciate that, in order to really understand this Act, we have to be aware that it is a compromise Act that is trying to accommodate two quite opposing philosophical views. During the drafting of the Act, because of that fact, the Act was redrafted on a number of occasions. I think that is probably what has led a number of the anomalies that have been brought to the Committee's attention while you have been hearing evidence. It is unfortunate that those types of

anomalies were not picked up prior to the commencement of the Act. However, in the background of drafting and redrafting, unfortunately that was probably unavoidable.

The next thing I would like to draw to the Committee's attention is the fact that when most people speak about the Crimes (Forensic Procedures) Act they are talking about DNA, but the Act also deals with a whole range of other forensic procedures, such as fingerprints, photographs, the taking of fingernail scrapings and the swabbing for gunshot residue. I think that sometimes when we discuss the Act that is forgotten or put aside to a certain degree.

Overall, if I had a one criticism to make of the Act it would be that it is very complex.

It is an Act that has to be understood and implemented by police officers on the street, who obviously are not solicitors. This Act, in my opinion, is so complex that it really is only capable of being understood by lawyers, which is quite unfortunate. Also, in my experience there are quite a few provisions that even lawyers cannot agree on. I think it is a big task to expect police—and, also, suspects and inmates, and other solicitors who may not have had a lot of experience with the Act—to provide appropriate advice on it.

I have read through a number of transcripts of evidence that have been given by people before this Committee and there appear to be a couple of common themes that have emerged from that evidence. One is that there appears to be quite a high level of distrust of the police in applying the Act. I have been involved with the interpretation and implementation of the Act from the outset and I can reassure the Committee that, as far as legal advice is concerned, in respect of any provision of the Act, whenever it has been unclear what it means my office has always read that provision down to give full benefit to the suspect or inmate, rather than trying to extend police powers.

An example of that is section 21 which deals with senior police officer orders. That section implies that the senior police officer must only speak to the suspect's interview friend or legal representative after the order is in fact made. That does appear to be nonsensical, because there is not much point speaking to the officer that is contemplating issuing the order if the order is already made. On that issue it appears to be a drafting error and we have advised police that, in those circumstances, before making the order they should in fact give those people the opportunity to speak to them. There are other examples, but I will not go through all of those. I just wanted to make it clear to the Committee that that is the approach that we have been taking. I have prepared a number of other issues in relation to legislative amendment. Quite a few of your questions cover the same issues that I was going to raise. Would the Committee prefer to commence asking questions now, or would you prefer me to go through my prepared material?

CHAIR: It would probably be better if we go into the questioning period. I was interested in what you had to say about the drafting of the legislation. Dr Jeremy Gans, a member of the law faculty at the University of New South Wales, gave evidence to the Committee recently, and he used such expressions as "the legislation is a drafting disaster". You might not perhaps go as far as he does in that regard. However, it is not the best example I have seen of the use of plain English, which is supposed to be the principle that guides Parliamentary Counsel. I would instance section 12, for example, matters to be considered by a police officer before requesting consent to a forensic procedure. That is an extraordinarily lengthy and unnecessarily complex provision from a drafting point of view. How much input was there from the Police Service to the drafting process?

Ms DUGANDZIC: The Police Service was involved in the drafting process in so far as negotiating with the Attorney General's Department. As you are no doubt aware, the Act is administered by the Attorney General; therefore, the Criminal Law Review Division of the Attorney General's Department was the body that was providing the writing instructions to Parliamentary Counsel. While we contributed in so far as how we would like the Act to work, we were not actually involved to a great extent in the wording or how the Act was set out.

CHAIR: You would be well aware that the New South Wales Act differs from the model bill and in turn the Federal legislation in that the criterion in our legislation provides a somewhat lower threshold for requesting consent to authorising a forensic procedure. The Federal Act provides that it must be "likely to produce", whereas under the State legislation it is simply "might produce". That has attracted some criticism from witnesses. The Law Society would be one example but that does not

exhaust the class of critics by any means. Can I ask the Police Service to justify the lower threshold, in effect?

Mr JARRATT: I think there are probably two issues involved, and if you do not mind I will ask Dr Raymond to address the real consequences. In our fundamental view it is unworkable if the requirement is "likely", and I will ask Dr Raymond to take you through why that is so.

Dr RAYMOND: Scientifically, we do not know at the time whether we have something that is likely to produce evidence that will help confirm or disprove somebody's involvement in a crime scene. This has its genesis in the matter of Crowther in Victoria in 1992. He was a paedophile who was charged with 70 something matters. They had the stronger terminology; they had "would tend" in their legislation at that time. As a result of that, they were not able to get a blood sample as it was under their legislation to try to tie him to a sexual assault. That brought about an amendment to the Victorian legislation and that was taken, I think, on board by New South Wales.

The Hon. JOHN HATZISTERGOS: What was the amendment to?

Dr RAYMOND: That is testing my memory. It is very similar to what we have but the "would tend" was read as "must tend" by the magistrate, which is why he would not make an order.

Mr JARRATT: Presumably it is the Victorian Crimes Act.

Dr RAYMOND: It is the Victorian Crimes Act.

The Hon. JOHN HATZISTERGOS: Was it taken on appeal, when a magistrate made that decision?

Dr RAYMOND: No, it was not taken on appeal.

The Hon. JOHN HATZISTERGOS: You are frightened by that sort of threshold so you need the word "might". That is extraordinary.

Dr RAYMOND: They brought about a number of amendments a couple of years later and changed the wording in accordance with that outcome.

The Hon. JOHN RYAN: Can you think of an instance in which police might want to take a DNA sample in which it could be argued that taking the sample might not produce evidence? The truth is that any taking of a DNA sample would never fail that test. It is almost an unfailable test, which is the concern of the Committee.

Dr RAYMOND: The Act is not just in relation to DNA evidence. There is also gunshot residue evidence. There are also fibres, for instance, that might be found underneath the fingernails when they take fingernail scrapings or swabs of the hand looking for gunshot residue. We do not know if we are going to find anything. That may be because it is fragile evidence that has fallen off. It may be because a person has washed his hands. There is no guarantee that you will find something that will help the case.

The Hon. JOHN RYAN: But a DNA sample which has the capacity to be placed on a database, potentially forever, identifiable with a person's details is clearly a different proposition to some gunshot residue, is it not?

Dr RAYMOND: The DNA certainly is but it was not in 1992 because at that time you needed a 20¢ size blood stain to get a result.

The Hon. JOHN RYAN: Going back to the question I asked, the criticism of the test might lead to as being that there appear to be almost no circumstances in which the police might take a DNA sample which would not fail that test. It is almost a pointless test because there are no circumstances in which that would not fail and in which you could make an argument that it failed.

Dr RAYMOND: They are making an assumption that evidence will be found at the crime scene.

CHAIR: Why was the policy or drafting choice made at a Federal level to prefer the formulation "is likely to" rather than "might"?

Dr RAYMOND: I cannot answer that in detail but the model bill followed the first Victorian legislation. There have been amendments to the model bill more recently. I am not aware of why they decided not to change when Victoria did. I was not involved in that.

CHAIR: It just seems to be somewhat paradoxical that the model bill chose to adopt that form of words and we departed from it here.

Ms DUGANDZIC: Can I add a couple of points on that? It is probably best illustrated through an example. If some hair is found at the crime scene and a suspect is arrested in fairly close proximity to the commission of the offence and the police would like to take a DNA sample for the purpose of matching it to the DNA in the hair strands, I believe that you heard evidence from Linzi Wilson-Wilde from the Police Service that when things like hair are found at the crime scene it is not a 100 per cent probability that you will get a DNA sample from that hair. I think the figure she quoted was something along the lines of 25 per cent. So in those circumstances if the test is likely to produce evidence the police would not be able to take a DNA sample from that person prior to the analysis of the actual hair. There may be arguments as to "what does it matter if it is not done until the analysis of the hair" but from an investigative point of view if the person is under arrest at that point in time, for the investigation there may be reasons why that sample needs to be taken at that point in time rather than several months down the track when the analysis has been completed. So I think there are concerns from an investigative point of view that that may cause difficulties.

The Hon. JOHN RYAN: Taken as a generality, when you say "there are concerns", I would like to have those concerns made more concrete than simply "there are concerns". Given that if a hair sample is found at the crime scene, it is fairly "likely to produce", as opposed to "might produce" is a fair formulation as to why you would want to take tests and it would easily fit that proposition. It was not necessary to have the open-ended "might".

Ms DUGANDZIC: It is my understanding that "is likely to produce" is on the basis of more than 50 per cent chance. So if you have the case of a hair sample being found at the scene and there is only a 25 per cent chance that a DNA profile will be able to be extracted from that hair, I suggest that a 25 per cent chance of extracting DNA from the scene is not likely to produce—

The Hon. JOHN HATZISTERGOS: That is just not right because the legislation talks about reasonable grounds to believe that the forensic procedure might. We are not talking about taking out the words "reasonable grounds to believe", which is a subjective belief. We are talking about taking out the word "might" and substituting the word "likely".

Ms DUGANDZIC: If police officers are aware that there is hair at the crime scene and that it is only a 25 per cent chance that a DNA profile will be extracted from that sample, then I would have difficulty saying that it is likely on that basis that taking a DNA sample from a suspect will produce evidence based on those probabilities.

CHAIR: I am not sure that a police officer at the scene of a crime could necessarily assign a particular probability or percentage. I would have thought in either case, whether it is "likely to" or whether it "might", in both cases surely it is a matter of opinion and that the reasonable ground is the primary test.

The Hon. JOHN HATZISTERGOS: Are you not looking at the surrounding factors which might implicate the particular suspect, coming to a view as to whether there are reasonable grounds in terms of those surrounding factors which may include a variety of other evidence you may have—confessions or statements, eyewitness accounts, material that may have been left at the crime scene—then coming to a view of whether you should go to the next step and get the forensic evidence which might tend to or is likely to produce evidence confirming or otherwise.

Dr RAYMOND: That in fact is the case. When we are dealing with trace DNA it goes down to 8 per cent on a steering wheel, for instance, as opposed to 25 per cent. A lot of the trace DNA results are quite low but there is still a chance that we might get DNA. We had a matter in which a vehicle was used in the commission of an offence. The vehicle was then given back to the owner, and the owner had it detailed and then the person of interest was apprehended. The police phoned me and asked whether they could take it under the Act and I said, "No, it has been detailed. The car has been cleaned. I do not think there is any likelihood that you will find it so you have no power to take a forensic sample."

The Hon. JOHN RYAN: Some of the objection to the formulation might evaporate to some extent if it were not the case that a suspect's DNA sample under part 11 of the Act is able to be placed on a more general crime track database. If it were possible that DNA samples taken for the purpose of a specific investigation were only used at that specific investigation, I suspect that people might be more relaxed about meeting the "might produce". I think a further complication arises when a very low threshold is used to take the sample from a suspect in the first place and can then result in that person being a permanent part of police evidence ad infinitum. I think it is necessary to have a better formulation of words than "might produce".

Mr JARRATT: We acknowledge that there is an issue there to be wrestled with. I take the point about "reasonable grounds", as has been outlined. The issue from the Service's perspective is that it has to be workable, basically. We certainly believe that it is workable in its current form. Obviously, the Committee will make its own determination but we would like it to continue to be workable. We have concerns, and I take Mr Ryan's point that we may have to document the nature of those concerns in relation to a change to that. Can I just ask Dr Raymond to address the primary reason for keeping the DNA string on record. I understand from what Mr Ryan was saying that if it was capped for only a particular purpose and then destroyed, that would lighten some of the genuine concern brought before the Committee.

Dr RAYMOND: The policy is that if a DNA sample is taken in relation to any matter, it is compared with that particular matter and the legislation allows us to search it against the State database or indeed the CrimTrac database, which is not actually in operation, which people may be aware of. If the person is not charged, the policy is that it then just comes off. It is deleted.

The Hon. JOHN HATZISTERGOS: That is just a matter of policy, is it?

Dr RAYMOND: It is a matter of policy. We take it off. We do not wait the 12 months that we could keep it if the person is not charged. That is being written into the revised SOPs. We have a copy of the current SOPs here. It is a decision that has been made by the Police Service, yes.

The Hon. JOHN RYAN: Taken off what?

Dr RAYMOND: The Division of Analytical Laboratories, which is part of the Health Department, holds the State database. They do all the profiling. We do not have any access to any of the profiles. We simply know they exist. We give them the information. We make the decision as to whether or not something has to be deleted and they delete it. They make the connection between the name and the particulars with the profile.

The Hon. PETER BREEN: Do they do it within days?

Dr RAYMOND: We have a contract which requires them to break it within 48 hours, two working days.

The Hon. PETER BREEN: But you are entitled to wait 12 months, under legislation?

Dr RAYMOND: That is correct.

The Hon. JOHN HATZISTERGOS: Can I just direct your attention section 12 (c) (iii). That reads:

> The police officer must be satisfied that:

(a) the person on whom the procedure is proposed to be carried out is a suspect, and

(b) the person on whom the procedure is proposed to be carried out is not a child or an incapable person, and

(c) if the forensic procedure concerned is an intimate forensic procedure—there are reasonable grounds to believe that the forensic procedure might produce evidence tending to confirm or disprove that a suspect committed: …

(iii) another prescribed offence in respect of which evidence likely to be obtained as a result of carrying out the procedure on the suspect is likely to have probative value …

You have "might" in the first paragraph and "likely" in the second. How do you apply that?

Ms DUGANDZIC: The paragraph has caused the Police Service a great deal of concern. It is very difficult to interpret. At this stage I do not think it has been used, although I may be wrong. My personal interpretation of it, and I do not purport that this is correct in anyway, because it is really unclear, is that that means, again using an example, if a person is arrested for break, enter and steal and there is no need for DNA evidence for the break, enter and steal, but it comes to the arresting police officer's attention that the person is also wanted in relation to a sexual assault and there is a need for a DNA sample to be obtained in relation to that matter, this provision would allow those police to take a sample from that person for the purposes of the sexual assault. In saying that, I am not entirely convinced that is the meaning, but that is how I have read it.

The Hon. JOHN HATZISTERGOS: How would you actually apply it? There are two different tests.

Ms DUGANDZIC: Yes, it is really difficult.

Mr JARRATT: With great difficulty.

CHAIR: Further to what I was saying earlier about the difficult drafting of this legislation, and I referred, as I recall, to section 12—that provision is extraordinary for its complexity. It seems to me that in every case in paragraphs (c) to (f) inclusive (ii) and (iii) are comprised within (i).

Mr JARRATT: Yes.

CHAIR: Those matters are clearly prescribed offences.

Mr JARRATT: Yes.

CHAIR: So why go on to specify those other matters in (ii) and (iii) in every case?

Ms DUGANDZIC: I think the reason for having (ii) is that if a person was arrested for a particular offence, say, an assault occasioning actual bodily harm, it might be unclear at the time the sample is taken whether the final charge would be assault occasioning actual bodily harm or assault occasioning grievous bodily harm. So I think the reason (ii) is there is if the police think at the time the sample is taken it is for one offence but it ends up being for an other offence out of the same circumstances, that is still permitted.

CHAIR: In either case, however, from the point of view of legislative drafting, it is a prescribed offence.

Ms DUGANDZIC: Yes, that is correct.

Mr JARRATT: I sense there is an issue—and you may well be coming to it, so please forgive me—about the holdings, that is the name as opposed to the DNA, these various databases and how they are disconnected and why there is a need to retain the DNA number on a growing database, and is it possible to track back to me whose DNA was put on in the process. At an opportune time I would again encourage Dr Raymond to explain in as much detail as the Committee needs to understand how that operates and how we would say it is prevented from backtracking once it is deleted. Again, that will be a matter for the timing of the Committee.

CHAIR: Can we come to that a little later.

Mr JARRATT: By all means.

CHAIR: Remind me if we appear to be overlooking it. Can I just focus on a couple of the more contentious amendments the Police Service is seeking. There is one dealing with interview friends, for example. Stating that matter simply, the proposal that has been put to us is that the police should be entitled to exclude an interview friend where the police reasonably suspect the interview friend will obstruct the process. Before you respond, you would no doubt be aware that there is an existing provision entitling the police to exclude interview friends where they are obstructing the process. Could you tell us why we need to go beyond that, because other organisations are certainly saying to us that that really leaves it to the discretion of the police without assigning any reasons as to whether an interview friend is or is not present. Could I say further that the Aboriginal community in particular and the organisations representing it see the interview friend as being quite a crucial provision and safeguard from their point of view.

Mr JARRATT: I might add, so do we.

Ms DUGANDZIC: That is right. What I would like to say to that is that some police officers express concerns that some accused people may seek to have co-accused people as interview friends, which may compromise an investigation if they were present during the carrying out of the forensic procedure, in so far as they may be able to glean from that process some information about the way the police investigation was going that they were not entitled to know. That would interfere with the process. That is one. The other one is that there was some concern that if an interview friend was being outwardly aggressive prior to the procedure commencing, that the police would have no power to exclude that person until the procedure began; that is they would have to start the procedure, let it escalate and then exclude the person. They were the two concerns.

CHAIR: Could I put this to you. Dr Jeremy Gans, as I have mentioned earlier, gave evidence to the Committee recently. His view regarding the amendment you are seeking is that while he says the police suggestions are sensible, they should be subject to the requirement that the procedure not be permitted to proceed until an alternative interview friend is present.

Mr JARRATT: Certainly I do not think the Police Service would object to that. We have to say very clearly on the record that we understand and support the notion of an interview friend being present. This is not to prevent an interview friend being present. It is in those circumstances that Natalie has identified that we see significant risks for other reasons. Certainly we raise no objection to an interview friend being present. It is simply a matter for the operational reasons we outlined that require that we would seek to delay the process pending the identification of another interview friend.

CHAIR: The reality is that these situations would commonly occur late at night?

Mr JARRATT: And finding someone else is sometimes going to be a challenge. But in my mind it is no different to finding someone to be with a juvenile at the time of interview—the same principle.

CHAIR: I must stress that the Aboriginal community in particular sees this as an issue of great sensitivity and any suggestion that the police might have an unfettered power to exclude an interview friend would be strenuously resisted, I am sure.

Ms DUGANDZIC: We are not seeking an unfettered power. Of course it would be on reasonable grounds, and the police would have to justify their decision to exclude that person.

Mr JARRATT: And certainly if it were to be included I would see it as being a very senior officer who was required to intervene in those circumstances. I would see all sorts of restraints, and it being the exception rather than the rule.

CHAIR: When you say the police would have to justify their decision, that would be only at the subsequent judicial review of what had happened?

Ms DUGANDZIC: Yes, or if there was an issue about the admissibility of the evidence obtained.

Dr RAYMOND: May I give an example? Natalie mentioned the possibility of a co-accused being the interview friend. The classic example here would be a firearms matter, where a gun has been fired by one individual and perhaps the details are not well known at that time. We would come in to swab that person and all they would have to do was shake hands to get cross-contamination and you would not be able to say it came from one or the other. It is that sort of situation we wanted to guard against. There does not have to be an escalation of violence, it can be simple cross-contamination.

The Hon. JOHN HATZISTERGOS: Have police officers been afforded the opportunity to have their DNA put on the databases, voluntarily or otherwise?

Mr JARRATT: Not in a formal sense. We take the view that as recruits we give our fingerprints and they sit there for a lifetime. While we have not engaged in any discussion with the Police Association, which I am sure would had a view, from the executive's perspective we would be only too happy to enter into negotiations.

The Hon. JOHN HATZISTERGOS: Mr Chris Puplick, the Privacy Commissioner, told us of his experience in Britain where the Chief Constable suggested that in order to build up a database and to exclude police from contaminating any crime scenes, their DNA might be taken and placed on the database so it can be tested in the event that there was some incident that required an analysis to be carried out and that the police contamination could be discarded.

Mr JARRATT: Police DNA is taken as a matter of course, routine, as a matter of crime scene investigation.

The Hon. JOHN HATZISTERGOS: All police?

Mr JARRATT: Not all police but as incidents arise as part of the exclusion process we test officers. This is a relatively new process. I was talking about a general policy position as you join as a recruit you give your fingerprints and your DNA. They are on the system and that is it. That has not been adopted, but certainly if I am at a crime scene, as a matter of routine there will be an exclusion process involving me.

Dr RAYMOND: The only DNA that is on a database, as it were, is the DNA of the laboratory analysts. They have a database so if there are any issues of contamination arising from people working in the laboratory it is immediately reflected. But, as Mr Jarratt says, from the crime scene perspective it is in relation to the matter in hand.

Mr JARRATT: There is a significant cost in dollar terms. None of that is insurmountable but if that became a policy, and I personally would endorse the policy, it would be a significant cost.

The Hon. JOHN RYAN: May I seek clarification. We are speaking about databases and using the term almost interchangeably. Could you explain exactly what databases currently exist and are proposed to exist as part of the system? We have heard reference to CrimTrac, a database maintained by the Department of Health, and I have even noticed in the police submission reference to some material kept on COPS as well. Could you explain to the Committee on which databases this material will be maintained?

Mr JARRATT: If I may defer to Dr Raymond.

Dr RAYMOND: At a State level, databases have existed in some States for some time. Victoria has had one for a number of years, along with Tasmania and the Northern Territory. New South Wales has not been funded to the point—

Mr JARRATT: Tony, could I ask you to say precisely what is on the databases?

Dr RAYMOND: New South Wales has had no database, until the beginning of this year. Prior to that, it was a funding issue, so there were no unsolved crimes on a database. Under section

353A of the Crimes Act, you could only be tested in relation to a matter of interest. CrimTrac is the national system which is designed to not only search within your State but to search across States. There are many, many legislative issues that are not easily resolved. So that database does not exist yet. The only samples they have from New South Wales are approximately 2,500 samples from prison inmates sitting on CrimTrac but not being searched against anything.

The Hon. JOHN HATZISTERGOS: It is not operative; it is not being used?

Dr RAYMOND: It is not operative.

The Hon. JOHN HATZISTERGOS: What is on CrimTrac?

Dr RAYMOND: To get down to the specifics, at the State level the police COPS system is a system that logs the Forensic Procedures Act, the fact that a sample has been taken and whether the person is a suspect, et cetera. The sample then goes to the Division of Analytical Laboratories in the Department of Health, where it is analysed. When it is analysed, they subdivide it into a number of databases. One is the name and the particulars of the individual. Very few people have access to that database. A second database contains all the profiles. The profiles are subdivided into crime scene profiles and people profiles. A third database is the database that gives it the CrimTrac link. That is simply a number and the notation "NSW". So when they upload, it goes up as a number with the "NSW" link, up to CrimTrac. If CrimTrac were operative, it would come back and say, "We think there is a match between Nos 1, 2, 3, 4 and 5 New South Wales and 6, 7 8, 9 and 10 Queensland." The two respective laboratories look at it and validate the match—it is always validated before it ever goes back to the police—and then they would go back through the forensic procedures implementation team to say, "You have a match in relation to this matter. What you do with it is now your business." The fact that the DNA profile exists is on COPS, that is, there is a profile.

When somebody is not committed, not convicted, or when there is an appeal, or they are not matched against anything, a message comes from the forensic procedures implementation team down to the Division of Analytical Laboratories and says, "Cut the link." So they do three things. They cut the link between the name and particulars and the profiles, so there is no longer any link to a profile. So when you match, you do not say, "Oh, we have a profile and we used to know who that was." You just do not get the match, but you can still use it for statistical purposes. They also cut the links through to CrimTrac.

The Hon. JOHN HATZISTERGOS: When you say they cut the link, you will not be able to get access to the DNA profiles, is that what you are saying?

Dr RAYMOND: That is correct.

The Hon. JOHN HATZISTERGOS: The names and the particulars remain on the system?

Mr JARRATT: No. Perhaps I could give my understanding and Dr Raymond can correct me. The database which says "1, 2, 3 and 4 NSW" retains forever. The fact that that is Jeffrey Thomas Jarratt is cut, and he is removed from the system, and there can never be any connecting back of that. You cannot go from the DNA 1, 2, 3 and 4 NSW and connect it with Jeffrey Thomas Jarratt; that is simply gone forever. It simply says that there is a DNA record on there. The cut to which Dr Raymond is referring is the removal of Jeffrey Thomas Jarratt from the system.

Dr RAYMOND: Deletion from the IT system.

The Hon. JOHN RYAN: However, there would be remaining on the COPS system the fact that you had a DNA profile taken?

Dr RAYMOND: That is correct.

The Hon. JOHN RYAN: And that would remain forever, would it not?

Dr RAYMOND: That is correct.

The Hon. JOHN RYAN: Does each of these databases have a name?

Dr RAYMOND: The name of the composite Division of Analytical Laboratories database is SACCRED; the CrimTrac database is called NCIDD; and the COPS database is the third one. There is very good reason to keep on the fact that a sample was taken. The reason for that is that, at the end of the day, I would not want somebody revealing a case 10 years down the track and coming back to me and saying, "We want to check you again", and when I say, "You have already checked me", they say, "Where is the proof?" But that is a policy decision.

The Hon. JOHN HATZISTERGOS: I do not understand that.

Dr RAYMOND: If, for instance, the police have half a dozen suspects in relation to a matter, they test the six and none of them are found to match a seminal stain, the matter then goes cold for a number of years, new investigators are put on to it—they review case studies all the time—and they say, "This guy is of interest", there is no indication anywhere that we actually took a DNA sample of him, so we go back and ask for another one.

Mr JARRATT: The experience in New Zealand, apparently, was that they were removed as a matter of system, but after a while people said, "For goodness sake, leave it on there." I guess what we are saying here is that that knowledge on the COPS database—which is not connected to the others, I might add—

The Hon. JOHN HATZISTERGOS: What do you do with it? When you ascertain from the COPS system that they have already had him tested—

Dr RAYMOND: The investigator would be told that the person has already been checked, that there is nothing there.

Ms DUGANDZIC: Another issue in that is that if there is some sort of complaint to the Ombudsman or to some other organisation, they need to have complete records of what occurred in that matter. If we were to delete part of the story, I think it would be very difficult for them to do a proper review.

The Hon. PETER BREEN: Which one of all those databases is called the statistical database?

Dr RAYMOND: The one that holds all the profiles, which is separate to the one that holds all the names. CrimTrac uses a statistical database. The State database part of it is also a statistical database. There have been a number of matters over the years: In New South Wales, Pantoja in about 1995; Milat in 1996; more recently there was one in 1999, but the name escapes me; Stevenson in Victoria in 1994; and Sfoygaristos in Victoria in 1992. All of them were challenged on the fact that the statistical database was not big enough, or that the person came from South Australia or another State and therefore was not relevant to the State in which they had been charged. So a criticism along the way has been the size of the database. So a decision was made nationally that we should build these as best we can, because we assign probabilities to a match, and the bigger your database the more accurate your probability.

CHAIR: May I return to the matter of the amendments that the Police Service is seeking. We have dealt with the interview friends issue. Not all of your proposals are controversial. However, another one I would regard as being contentious would be the one dealing with your proposal to enable a suspect on remand to be treated as a suspect under arrest, so that a forensic procedure may be carried out without a court order at any time. This morning I received a document from the Privacy Commissioner, Mr Puplick. May I quote you a few sentences by way of commentary on that proposal. Mr Puplick says:

> I do not support this proposal as I am not convinced that it points up any real inconsistency. The policy reasons for allowing testing on the order of a senior officer where a person is under arrest do not carry over to a person who has been charged following arrest and is on remand. They should not be subject to enforced testing without a court order where the offence with which they have been charged would not warrant such testing following conviction. To do so would simply encourage routine testing, where the probative value of such tests are minimal. Where testing after arrest is called for, the person on remand or bail for an offence should be readily accessible to allow for a court order to be sought and obtained.

Could I invite the Police Service to say whatever it wishes to say in support of this requested amendment?

Ms DUGANDZIC: In relation to that matter, a lot of the points I wish to make are the points that we wanted to make in camera, so if we could address those matters at the end I can go through the explanation for that request.

CHAIR: We will return to that issue later. However, it seems somewhat extraordinary. If the Police Service is asking for an amendment to the legislation, at some time that will have to be justified publicly and cogent reasons will have to be advanced at that time by the Minister.

Ms DUGANDZIC: That is correct. Although, the way that currently we have been seeking amendments to this Act has been to go into negotiations with the Criminal Law Review Division of the Attorney General's Department and discuss our concerns. That process has been confidential up until now, and it is at the end, when we come to a conclusion of what is going to occur, that it becomes public once there is some sort of agreement between us. In my opinion, that issue is connected with a whole range of other issues, and if I start answering that one question I will get tied up in a whole range of other things as well.

CHAIR: There is a difficulty that this Committee faces procedurally. The Committee is more than willing to go into an in-camera session for appropriate reasons. However, this Committee is charged, by the statute itself, with the task of reviewing the legislation and how it is working in practice. It follows that we have to issue a public report. The Police Service has approached us and said that it wants this particular amendment. We, you would well understand, have to say something, whether it be in support, in opposition, or somewhere between, in response to that request from the Police Service. Is there anything you can say to us in public session that we can put on the record and deal with in terms of our report?

Ms DUGANDZIC: Might I confirm that with Mr Jarratt before I answer?

CHAIR: I do not want to cause any embarrassment, but we do have responsibilities.

Mr JARRATT: I understand that fully.

CHAIR: We can bring you back on a later occasion if you need more time to deal with this particular issue.

Mr JARRATT: That may be appropriate. It may be that the Service chooses to withdraw its proposed amendment from its submission. We could do that in writing out of session. I would like to review the circumstances away from this particular set of evidence, if I may, Mr Chairman.

CHAIR: Yes.

The Hon. PETER BREEN: Which particular amendment are we talking about?

CHAIR: I was referring to the amendment requested by the Police Service which seeks to enable a suspect on remand to be treated as a suspect under arrest so that a forensic procedure may be carried out without a court order at any time. It seems apparent to me that the Police Service might need further time to consider its position regarding this issue.

Mr JARRATT: If that is acceptable to the Committee, we would welcome that.

CHAIR: It is. The Police Service submission starts with statistics on the numbers of DNA samples that have been obtained from serious indictable offenders within New South Wales correctional institutions. Are there are any statistics available for testing outside the present environment at this stage?

Dr RAYMOND: I have those statistics. To give you an update, as of yesterday a total of 5,627 inmates had been tested.

Mr JARRATT: For the sake of the exercise, would you break those down to buccal swabs, hair samples and blood samples?

Dr RAYMOND: Certainly. Of that, 5,327 are buccal, 290 are hair, and two are blood. To take that a stage further: eight of those who gave hair samples indicated that they were going to put up a struggle. I stand to be corrected, but I believe only two actually did so.

CHAIR: What would account for hair samples being taken in 282 cases?

Dr RAYMOND: There is quite a strong view that it is better to comply with legislation rather than to consent. In fact I saw in one of the questions a recommendation that perhaps people should be allowed to comply to give a buccal swab. We would certainly support that position. A number of prisoners have stated that they are not happy to consent but that they will comply with the legislation, which has required the move to a senior police order. On two occasions they were not able to take hair, and they simply got a court order for blood. But, again, there was no struggle or anything; they simply required a court order before they would give a sample.

Mr JARRATT: To make it clear to the Committee, essentially a senior police officer cannot order a buccal swab, which we are advised that the prisoners would be happy to give once an order is given. They do not, for other reasons, want to be seen to be consenting.

The Hon. JOHN RYAN: Is it fair to say that you would accept the change to the legislation that enables an order by a senior police officer to request a buccal swab, whereas at the moment the legislation seems to allow only hair sampling?

Mr JARRATT: That would be a sensible amendment, it would seem to us.

CHAIR: Is that one of the amendments sought in the Police Service submission?

Mr JARRATT: No, it is not. This has come to light through a subsequent revelation.

CHAIR: It seems to me that that would be a sensible and practical solution to avoid unnecessary hair samples being taken.

Mr JARRATT: Exactly.

The Hon. PETER BREEN: Dr Gans said was of the view that the way consents operate under the legislation is farcical and he would prefer orders in all cases, whether senior police orders or magistrates' orders. Do you have a view about that? In effect Dr Gans suggested the abolition of consent provisions altogether.

The Hon. JOHN HATZISTERGOS: The volunteer provisions.

Mr JARRATT: Is it about volunteering?

The Hon. PETER BREEN: I am suggesting that you do not ever ask anyone to consent to giving a sample, but that in every case you get either a senior police order or a court order.

Mr JARRATT: I have an initial view, but I sense that we should take that on advisement and give written advice to the Committee.

The Hon. PETER BREEN: Yes.

The Hon. JOHN HATZISTERGOS: You would not be able to do mass screening, I would not have thought, as was done at Wee Waa.

Mr JARRATT: That comes immediately to mind, and there are issues that we would need to work our way through.

The Hon. PETER BREEN: It seems to me that if it were a judicial officer who made a decision that there ought to be a mass screening in a particular case, that would not only assist the service in terms of carrying out the order but it would also distance the service from the immediate flak from people who do not agree with it.

Mr JARRATT: It is hard to imagine that there would be an order and a volunteer within the same notion.

The Hon. JOHN HATZISTERGOS: That is what exists now, is it not? In effect, they volunteer; and, if they do not volunteer, they can be ordered.

Ms DUGANDZIC: Only in very limited circumstances.

Mr JARRATT: If we went to Wee Waa—

The Hon. JOHN HATZISTERGOS: Wee Waa is a different kettle of fish.

Mr JARRATT: You are right: If you do not volunteer, then you are ordered, in those limited circumstances.

The Hon. PETER BREEN: I would be interested in the Police Service response to that on notice.

Mr JARRATT: Essentially, whether consent should be removed altogether?

The Hon. PETER BREEN: Yes, and have orders in all cases, whether senior police orders or court orders.

The Hon. JOHN RYAN: One of the complexities is that there are all sorts of different outcomes as to what might happen to a particular sample depending whether it was a volunteer sample, or a sample taken pursuant to an order by a magistrate. For example, an inmate who gives a sample pursuant to order of the court and is ultimately exonerated may have the information removed from the database, but it is likely that the inmate who volunteers to give a sample and is exonerated cannot have his or her information removed from the database. That appears to be a somewhat strange anomaly. The material taken from a deceased person as a result of a crime scene investigation appears to stay on the database forever, even if it is from a child and the parents consider it inappropriate that that material remain on the database. That was the reason for raising the issue about consent appearing to result in difficulties like those that arose in courts, such as in the Kerr case, where there are questions as to whether the sample was obtained as a result of informed consent, and the prosecution can lose evidence, as it did in that case. Alternatively, there is this maze of what happens to samples depending on how they are obtained in the first place. It might be simpler if in every instance the sample was obtained as a result of an order.

Mr JARRATT: We would be happy to take that question on notice, Mr Chairman.

Ms DUGANDZIC: I might make one comment on the reference to section 87, which provides that there is no requirement to remove from the database material taken from inmates whose samples were taken by consent but have their convictions quashed. It is my understanding that that is actually a drafting error and that it will be addressed in the next lot of amendments to the Act.

The Hon. JOHN RYAN: There are some coming up?

Ms DUGANDZIC: That is my understanding. I would also like to advise the Committee that the Police Service has adopted the policy that the profile of a person whose conviction is quashed, regardless of whether the sample was taken as a result of consent or by order, should be removed. So we have sort of adopted the approach that we understand is going to be enacted.

CHAIR: The Committee became aware very early during these hearings that Part 8 of the legislation remains unproclaimed. When I learned that, I put a telephone call through to the Minister's

personal staff. I understand that at some stage a letter will be coming to the Committee explaining that. Am I correct in believing that?

Mr JARRATT: That is my understanding from the Ministry, but I am not briefed to provide direct information in relation to that, Mr Chairman, I am sorry.

CHAIR: You would be aware that that is the part of the legislation dealing with volunteers.

Mr JARRATT: Yes.

The Hon. JOHN RYAN: Is the Police Service concerned that many of the 5,000-odd samples taken from inmates in New South Wales correctional centres are, according to section 66 of the Act, supposed to have been taken in accordance with Part 8? Since Part 8 remains unproclaimed, is there any concern that there might be some question as to whether those samples were legally taken? Section 66 (3) provides that a forensic procedure may be carried out on a serious indictable offender who is a volunteer only if authorised by and in accordance with Part 8. Since Part 8 does not exist, how on earth could they possibly have authorised the taking of those more than 5,000 samples?

Ms DUGANDZIC: I do not have concerns that that will invalidate the samples that have been collected, because I believe that refers to where an inmate volunteers, in the true sense, rather than consents to a request under the other provisions of Part 7 to have their samples taken. The request to which subsection (3) refers would be a request for the sample to be placed on either the volunteer unlimited database or the volunteer limited database. The request from police at this stage have been in relation to the offenders database. I think that the Act makes that distinction, so that I do not believe that is of concern at this stage.

The Hon. JOHN RYAN: The section from which I have just read comes from Part 7.

Ms DUGANDZIC: I agree. I believe because Part 8 has not commenced that subsection (3) has no meaning, has no effect.

CHAIR: Dr Raymond, have we dealt with the area in respect of which you said earlier you wanted to give an explanation?

Dr RAYMOND: Particularly as it related to the database?

CHAIR: Yes.

Mr JARRATT: Mr Chairman, I was seeking to address a point that Mr Ryan was making regarding clarity in the distinction between the different points on databases. If that is clear in the Committee's mind, from my perspective that has been dealt with.

CHAIR: At a later stage we might need a person with the necessary expertise to give us a further explanation.

Mr JARRATT: That is available at any time that the Committee requires it.

The Hon. PETER BREEN: Ms Dugandzic just mentioned three databases—the offenders database, the non-offenders database and some other database. I was trying to fit each of those into the descriptions that Dr Raymond gave, and I was not able to work out which ones were being referred to.

Ms DUGANDZIC: The Act sets up the database as containing a number of indices. Section 90 of the Act defines the DNA database system. It contains the following indices: crime scene index, missing persons index, offenders index, suspects index, unknown deceased persons index, volunteers (limited purposes) index, and a volunteers (unlimited purposes) index. That makes up the database that Dr Raymond was referring to as CrimTrac. Is that correct?

Dr RAYMOND: Yes.

CHAIR: How are complaints from suspects and prisoners dealt with under the present system?

Dr RAYMOND: Complaints and suspects are dealt with in the same way as is every other complaint within the Police Service. We are bound by certain regulations to proceed in relation to complaints in a particular manner. These complaints are dealt with no differently. The only difference, I guess, is the fact that we have the Ombudsman's oversighting side of things on a full-time basis in many respects in relation to this Act. We meet with them regularly. They ask for and are given our videos to sight. They particularly target ones where there is an indication that force might have been used. But the complaints are dealt with no differently from any other aspect.

CHAIR: Are statistics maintained regarding complaints arising as a result of DNA testing procedures?

Dr RAYMOND: Only two complaints have come through the Ombudsman's office thus far. One related to a particular inmate who was concerned about what might be done with his sample, for example, it might be left at a crime scene at a later stage to tie him in. The other complaint involved taking samples from inmates who were actually incarcerated under a Commonwealth Act. Given that the respective Attorneys General had not yet agreed to share information, those samples were destroyed. [*The Police Service have subsequently advised that the samples referred to have not yet been destroyed but are to be destroyed in accordance with the batch destruction protocols as outlined on pages 33-34 of this transcript*]

CHAIR: There is a reference at the beginning of the Police Service submission to standard operating procedures, or SOPs. You say that they were prepared and distributed last January to all police regions and key personnel. You further comment that they are being updated. Is it possible for the Committee, in due course, to have a copy of that?

Mr JARRATT: We brought with us a full copy of the extant SOPs. We are happy to provide the Committee with a copy of any subsequent updates.

The Hon. JOHN RYAN: While we are in the process of asking for documents, there was a reference to two memorandums of understanding—one with the Department of Corrective Services and one with the Department of Health. Is it possible for the Committee to have copies of both of those?

Mr JARRATT: That presents no problem. We can arrange that.

CHAIR: I ask you a question regarding what is in common parlance referred to as the Innocence Panel about which the police Minister made an announcement some considerable time ago. So far as I am aware, that has not actually been fleshed out. It does not in fact exist in practice. Can you tell the Committee what is proposed regarding the components of that panel, by which I mean: What agencies are intended to be represented? Will any defence interests, to use a generalised expression, be included? How will it operate? Would it be operated administratively? Has any consideration been given to it being legislatively based?

Mr JARRATT: I cannot answer that question extensively as the matter is being dealt with by the police ministry as opposed to the Police Service. I am able to advise that the service has had a series of meetings this year at which it provided advice on crime scene samples, the process of testing, the time frame involved and the potential service representation on the panel. I understand that the ministry is considering that advice but I am not aware of the proposed membership and function of the panel or how it will be established. I understand that the Minister may well be making an announcement in the near future in relation to the Innocence Panel.

The Hon. JOHN RYAN: Have police procedures changed in any way as a result of the decision in *Kerr v the Commissioner of Police* on 27 July? Material taken by the police was ruled to be inadmissible as evidence because the police, while asking a person to volunteer evidence, indicated to that person that, if he or she did not volunteer that evidence, it would be possible to get an order. Has there been any change to police procedures, or does the legislation need to be changed to accommodate any of the issues that were raised in that case?

Mr JARRATT: We have a different interpretation of that decision. Can we take that question on notice and provide advice?

The Hon. JOHN RYAN: Yes. You stated on page 3 of your submission that some of the serious indictable offenders who were tested under part 7 of the Act and who have since been released from custody are already beginning to come to the attention of the police as suspects of criminal activity. That would seem to indicate that the database is in operation somehow or other. Could you update the Committee on the number of people who have been involved who have been brought to the attention of the police?

Dr RAYMOND: I cannot. In relation to the matched statistics under this Act I am aware of only one matter when the database has signalled a match from one serial offence to another and in fact to a suspect. Most of the matches still have not gone through the courts. I spoke to the Department of Health only yesterday. It does not have any statistics on matches. In relation to the question you asked about people coming to the notice of the police, I understand that we had taken a sample. When those people again came to the notice of the police the police thought that a forensic procedure would be applicable, but they found that we already had a sample.

The Hon. JOHN RYAN: Notwithstanding the fact that CrimTrac does not operate, does the Police Service have some capacity to investigate the database that it has already accumulated within the Department of Health?

Dr RAYMOND: Yes, there is. If they load a new crime scene sample onto the database or a person's sample onto the database, it is routinely searched against what is there within the State.

The Hon. JOHN RYAN: How many samples are available to search on that database?

Dr RAYMOND: I will have to take that on advisement. There are of the order of 5,000 individuals, but I am not sure how many crime scene samples there are.

The Hon. JOHN RYAN: I again refer to a statement in your submission. You refer to the fact that a former detective has been ordered by the Police Service to collate information relating to crime scenes. Your submission states:

> The Police Service has recently recruited a civilian on a part-time basis, a retired detective senior sergeant, to sort through, collate and prioritise for analysis, profiling and entering on the CrimTrac database the unsolved crime scene exhibits.

That appears to be a fairly modest level of resources for a fairly large task. Is that a sufficient provision of resources? How long is it likely to take until all that material has been analysed, prioritised and entered on the CrimTrac database?

Dr RAYMOND: For the last couple of years the unsolved crime has been managed by the Division of Analytical Laboratories. So Mr Cameron's responsibility has been to go back and to try to identify those matters where there may be DNA material which could lead to a person of interest. In other words, he has been going through all the paperwork of the Division of Analytical Laboratories, as it did not have a database prior to this year, and he has been trying to identify which ones we should work through. When our submission states, "This person is committed to that", that is a fairly modest commitment. He works with my group support and with the support of the Crime Agencies. In fact, he is located within what we call the Crime Faculty, which is part of the Crime Agencies. You asked how long it will take to review all these matters. I suggest that it would take until the middle of next year.

The Hon. JOHN RYAN: It has been reported to the Committee that to date only five inmates have refused to give DNA samples to the police. Exactly in what context did that occur? How can that be matched up with the information that you provided of the 290 inmates who have agreed to comply? In any event, it appears as though the inmate population of the New South Wales prison system has been remarkably co-operative with the procedure. Given that they are people who are not normally co-operative, it appears difficult to believe that such a thing has happened without some assistance from the Department of Corrective Services. The inference is that there has been inappropriate assistance from the Department of Corrective Services. Are the police aware of any

complaints by inmates who have told that, if they do not give a sample, they will be visited by a team of prison officers to ensure that they give sample? Is the Police Service aware of any disciplinary action that has been taken against inmates who have refused to co-operate with the giving of DNA samples?

CHAIR: Is there not a cooling off period? Inmates are visited by the governor about three times during that period.

Mr JARRATT: There is a process. No, we are unaware of any such allegations or complaints. No such complaints have come to the notice of the Police Service. But there is a process which is designed to give a person the best opportunity to consider his or her position. In relation to the taking of samples we have taken a considered position so that it maximises an inmate's chances of understanding the circumstances and enables that inmate to come to his or her own conclusions. That is a more constructive example about what has occurred as opposed to the fact that any improper practice has been applied.

The Hon. JOHN RYAN: I notice that you refer in your submission to a number of ways in which the Department of Corrective Services assists the police. Apparently, it has prepared a training video, it has established a forensic procedures implementation team and it counsels up to three times those inmates who have initially refused to give a sample. I suppose that there is a conflict of interest as a result of the Department of Corrective Services providing that sort of assistance to the Police Service in that it puts inmates in a fairly coercive environment when they are making a decision.

Inmates never leave the custody of the Department of Corrective Services. So they would never leave the influence that the department places on them to provide a sample. Does that not place the Department of Corrective Services in a position where it might have a conflict of interest? There appears to be no other opportunity for inmates to discuss this issue with anyone else or to make a complaint.

Mr JARRATT: It is not an area that I feel competent to comment on, given that the Department of Corrective Services is looking after its inmates. I would have thought that its intentions were honourable. It seeks to take into account the rights of its inmates. At least from the evidence that has come back to me, this has been done in a proper and a considered way.

The Hon. JOHN RYAN: The legislation provides that prison officers should be available to supervise what the police are doing. A lot of inmates would not see the difference between officers of the Department of Corrective Services and the police. So to some extent that procedure is unsupervised by an independent outsider.

Mr JARRATT: My experience is that both prisoners and offenders see a significant difference between prison officers and police officers.

CHAIR: Mr Raymond, do you wish to say something relevant to what has just been said?

Dr RAYMOND: I mentioned earlier that there were eight inmates who had indicated that they would not comply with the hair sample, as opposed to five. So these are updated figures. In essence, there is no targeting of prisoners, except to say that we target those who are due release within two months or more. We rely heavily on Corrective Services to do that for us. They talk to them three times and they explain the Act. I think that that collaboration and partnership have gone a long way towards smoothing this process, particularly when we look at what has happened in Victoria.

The Hon. PETER BREEN: When DNA profiles of people who are excluded as suspects are removed from the database within 24 hours, what happens to the bodily sample that was used to extract the DNA profile? Where is it stored and how long is it held before it is destroyed?

Dr RAYMOND: I indicated earlier that there were three things that happened: One was the break from CrimTrac; one was the break from the names; and the third thing was actually the sample itself being destroyed. The contract reads that the samples are supposed to be destroyed within 48 hours. The division of analytical laboratories indicated to me only yesterday that it is finding it very

difficult to try to comply with the destruction of the sample because of the expense of getting it incinerated or burning it in acid. So what we have agreed to do is amend that part of it where it says that the samples will be removed ready for destruction within 48 hours and then destroy it accordingly in batches. But the break is made within 48 hours and then the biological sample is also destroyed where there is a deletion or an exclusion.

The Hon. PETER BREEN: My second question is: Are you aware of any aspect of the DNA profile that can identify that the person belongs to a particular ethnic cultural group, or whether it can be statistically inferred that that person belongs to a particular ethnic cultural group?

Dr RAYMOND: Only the gender that I am aware of. It indicates very, very strongly whether it is male or female.

The Hon. PETER BREEN: I understand that in response to the same question the New South Wales Aboriginal Land Council expressed the view that the human genome project is actually identifying certain cultural aspects from a particular sample in most of the DNA analyses. Is anything like that happening in your laboratory?

Dr RAYMOND: No, there is not.

The Hon. PETER BREEN: Or anything that you are responsible for?

Dr RAYMOND: No, nothing whatsoever. The only things we look at are the bits within the genes. We look at areas where we get variation and there are nine areas. They are, if you like, the cotton wool that supports the gene. They tell us nothing about the person with the exception of the sex gene.

The Hon. PETER BREEN: Could someone with particular expertise, though, be able to tell those things from the material that you are analysing?

Dr RAYMOND: Not from the profile, but from the material, yes.

The Hon. PETER BREEN: But they could do that?

Dr RAYMOND: They could. It might be worth adding that there is an advisory committee that has been set up by the Department of Health which has its first meeting on the 26 August, I believe, and that includes in its number the Privacy Commissioner, the Public Defender, the Director of Public Prosecutions [DPP], representatives from our own ministry, the Police Service, Health and the Attorney General's, I think, to oversight those sorts of issues.

The Hon. JOHN HATZISTERGOS: The areas of DNA that you look at do not have any genetic information.

Dr RAYMOND: No, they do not, except for the sex gene.

The Hon. JOHN HATZISTERGOS: But it is the remaining part of the molecule that is contained in the sample that could be used for a variety of information about genes and predisposition to diseases and so on?

Dr RAYMOND: Yes.

CHAIR: We will now move to the in-camera session. I will have to ask everyone other than witnesses, the Committee staff, Hansard and members of the Committee itself to leave. The two people who are sitting behind the witnesses can leave or stay as they choose, but if they stay they would have to be identified for the record. We will need any media microphones to be disconnected.

Mr JARRATT: While we are moving into private session, Dr Raymond has pointed out that we gave an incomplete answer to an earlier question in terms of the numbers outside the corrective services system. I thought that might come onto the record for the sake of completeness.

CHAIR: We are still on the record and in public session for the purpose of this part of the hearing. Dr Raymond, you can say what you wish to.

Dr RAYMOND: Just very quickly—you asked earlier how many samples we had taken within the legislation. We have taken, to date, 671 buccal swabs, suspect under arrest; 10, suspect not under arrest; 17 hair samples, suspect under arrest; two blood samples, suspect under arrest; and 37 others, 34 of which were suspect under arrest and three not under arrest. Those others range from photographs to hand swab to fingerprint.

CHAIR: They are the statistics relating to people outside corrective services?

Dr RAYMOND: That is correct.

CHAIR: Thank you. We will now move into the in-camera segment.

(Evidence continued in camera)

(The witnesses withdrew)

The Committee adjourned at 1.16 p.m.