REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO THE CRIMES (FORENSIC PROCEDURES) ACT 2000

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At Sydney on Wednesday 29 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. John Hatzistergos
The Hon. John Ryan

ANDREW HAESLER, Barrister and New South Wales Public Defender, Level 13, 175 Liverpool Street, Sydney, affirmed and examined:

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

Mr HAESLER: I did.

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

Mr HAESLER: I am.

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

Mr HAESLER: I am indeed.

CHAIR: 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 would be willing to accede to your request. I now invite you, if you wish, to make a brief oral opening statement to the Committee in support of your submission.

Mr HAESLER: I think it is appropriate that I give my background in relation to this legislation. In 1999-2000 I was the director of the Attorney General's Criminal Law Review Division and we had the primary responsibility of preparing this legislation for the Attorney and Parliament. I was also a member of the Commonwealth Model Criminal Code Officers Committee and was involved in the initial discussion paper on forensic testing and DNA legislation prepared by that committee and the model bill prepared by the Commonwealth. In that previous capacity I consulted with the Commonwealth Attorney-General's Department in preparation of its bill, which amends the Commonwealth Crimes Act due to commence shortly and was involved in the discussions that led to the present bill, the subject of this inquiry, coming before the Parliament.

The concerns I have in relation to the bill in my present position as New South Wales Public Defender are set out in the paper. The primary concern I see with the bill is that there are conflicting theories as to how extensive DNA testing should be. On the one hand there is a view that everyone should be tested and there should be as many people on the database as possible so that it will maximise when there is a crime and DNA samples found the possibility of what is known as a cold hit. That is, we find the sample of DNA, we have an extensive database with as many people as possible on it and we will then get a match with that DNA. That will then assist the police in solving the crime, so it is said. It will certainly assist the police in investigating the crime.

The other philosophy is that DNA is a useful investigative tool for police but that it is not necessary to have an extensive database. It is necessary to have a database and to allow for the selected matching of crime scenes to suspects of crime. I prefer to think of that as smart policing, with the ultimate aim not being of general assistance with investigation but the solving of serious crime. The present bill is a bit of an amalgam of the two. It is also an amalgam of a civil liberties perspective, which says that intrusions into people's bodily integrity should only be allowed subject to a court order and in certain specific circumstances, against another philosophy which says it is for the greater public good that there be DNA samples taken from everyone so as to solve crime.

The Act attempts to balance that but as with all balancing acts arguments can be put one way and the other and there are inconsistencies with the Act in its philosophical approach. Personally and as Public Defender—one need only look at the title "Public Defender"—I take the view that the civil liberties perspective should be paramount and as barristers we are concerned that if DNA testing is to be used to secure convictions, then it should be targeted first at the more serious offences and carried out in a way that is basically unassailable in terms of the veracity of that evidence.

Another concern, particularly when one looks at the "propaganda" that has come out at various times from the United Kingdom about the success of DNA testing, what they trumpet is the

number of matches not the number of convictions and neither I nor the people who work with me have been able to find out how successful DNA testing has been in other jurisdictions with a view to actual criminal convictions as opposed to matching individuals to crime scenes. There is a danger that that data might be misinterpreted.

I will give an example. Of the 100 or so homicides in New South Wales each year, 80 per cent or 90 per cent are solved within about 48 hours because the offender was known to the police or were family-related or the offender was identified. If DNA testing is carried out in relation to that offender and that crime scene, you will get 90 per cent of homicides resulting in matches. The DNA would have nothing whatsoever to do with the eventual conviction of the offender but you will get a wonderful statistic. What is of more concern is the 10 per cent of homicides which are not solved quickly and targeting the limited resources of DNA to solving those specific crimes and specific suspects for those offences.

As I understand the United Kingdom model, smart policing can direct the DNA sample to an individual but what they like to rely upon is a huge database and hope that eventually someone might get picked up for a break and enter in five years time, at which time they will then get their DNA, which will match the crime scene and they will get a cold hit. The problem is that the crime maybe stale and the DNA match will only be an investigative tool not a proof tool. There is a vast difference. If the sample is a semen sample found from a vaginal swab that is pretty good evidence that the perpetrator was involved. If it is just a cigarette butt found at the scene, it proves nothing. We have all left our DNA here. If there is a crime committed, the fact that we were in this room does not assist the police in any way in proving that the crime was committed by any one of us.

That is the preliminary philosophical problem I found in preparing for the Act. There was healthy and robust discussion between police, the Attorney General's Department and government before the bill came in. What we have reflects a compromise. Healthy and robust discussion took place about the model criminal code and at various government levels. When it comes down to how that balance falls, I prefer the Commonwealth bill because it affords individuals more protection without in any way causing additional problems for policing. It may mean that a couple more cases go to court but as we have seen from practical experience that is quite minuscule in the overall number of cases that result in DNA testing.

My other concern is the appropriateness of resourcing and the speed with which the bill has been introduced. The experience in the United Kingdom is that not all of the hundreds of thousands of samples taken have yet been put on the database. Nearly 80 per cent have been put on the database, which is pretty good, compared to the United States where only a small percentage of the samples are on the database. The rush to collect sample does not mean there is a comprehensive database in any event. The problem with that is that in the United Kingdom there is an independent forensic science laboratory and there are independent forensic examiners. The view of the common people and from the BBC television shows is that it is quite accurate and that the forensic examiners are independent of the police and their standing in the courts is high. At the moment the independent institute of forensic science is an idea yet to be funded and started. There are proposals from the police to hive off as an independent agency the crime scene investigators. That is to be supported but it is yet to be supported with action or finance. This will take time. I presume you have already received some evidence, or will receive some evidence, as to how many DNA scientists we have in the department of analytical laboratories. As of last year we did not have very many. They are employing more and more but there is a dearth of technicians, and if unqualified technicians are involved in the sampling then mistakes will be made. As is shown in New Zealand, sometimes mistakes can be made at the laboratory level that no-one can work out how they occurred, except for the result. That was in the report of the Scott-Eichelbaum inquiry in New Zealand, which I hope you have a copy of.

CHAIR: I understand that we do have a copy of it.

Mr HAESLER: I had trouble getting a copy of it. Having tested the work of the department of analytical laboratories, I understand that its standards are pretty high. The problem is more just getting the staff to put everything onto the database.

CHAIR: Mr Haesler, I wish to confirm for the record that the submission has been made collectively on behalf of the New South Wales public defenders, is that true?

Mr HAESLER: Yes. Obviously, I know more about it. My evidence is on behalf of the public defenders but I think it would be appropriate to say that it is my evidence. It is very hard to put a collective view on such a complex topic. But we have discussed it and there is a general collective view amongst the defenders.

CHAIR: You have said that you participated personally on the Model Criminal Code Officers Committee. You also point out at the commencement of your submission that the New South Wales legislation diverges from the Commonwealth model certainly in two important respects. How did that happen? Would you say that New South Wales has just made a policy decision for whatever reason to diverge from the model bill?

Mr HAESLER: In my understanding a Cabinet committee discuss this matter. Various bureaucrats and senior police attended that Cabinet committee. There was discussion, as I said, of a robust nature. Unless compelled, I do not really want to go into what occurred, but certainly the police took a view that it was not necessary to build in what I call protections—that it could be done in that manner. There were certain other discussions which changed the legislation at political level. We are servants of our Ministers and decisions were made. I cannot put it any higher than that. But one can presume that seeing I was involved in the MCCOC process and approved the Commonwealth Act that certain advice was given and certain advice was considered and the result is there. I am not going to bitch about my advice not being accepted other than to say that I now have an opportunity to put it again to this Committee that I would advise the Commonwealth protections rather than the ones we have in New South Wales.

CHAIR: One important difference between the State and Commonwealth legislation which you draw attention to is that so far as the criteria for requesting consent or authorising proper forensic procedures at State level there must be reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the subject committed a relevant offence; whereas under the model bill and the Commonwealth Act there must be reasonable grounds to believe that it is likely—I emphasise that—to produce such evidence.

Mr HAESLER: The distinction is a legal one but the New South Wales bill effectively says "if there is a possibility it might assist", whereas the Commonwealth one is based on a higher level of proof of probability. That is the distinction between the two words that I make at a legal level.

CHAIR: So you clearly prefer the Commonwealth model?

Mr HAESLER: Basically because the way the New South Wales legislation is drafted, if the police want a sample then there is very little a magistrate can do, other than the test by the senior officer or the magistrate, to refuse. It might produce evidence that will help or hinder. "Might" is such a broad term that it would be very hard for any magistrate to say, "Yes, it might. It might not." The way the Commonwealth Act is structured you only get the DNA evidence if it is going to be useful. In many cases DNA sampling would have absolutely no consequence to the subsequent conviction of an accused person. So in my opinion a more rigorous test should be made. Otherwise, what we are doing is authorising the taking of samples from anyone who is either suspected or arrested.

There are many who have a philosophy that anyone who is suspected or arrested should provide a sample to go on a database. I think the police Minister said as much. He was quoted in one of the papers as saying that suspects do not have the same rights. I disagree with that. If you have a very easy test to pass that means that basically people who are suspects almost automatically will have samples compelled from them. If you have a higher one then the court or the senior police officer has to engage in an examination of why the sample is needed and balance, as with the Commonwealth Act, the needs of the community to solve crime as opposed to the rights of the individual not to have his liberties infringed by the taking of a sample. That balancing act is not—

CHAIR: I take it that you do not take the view that the Commonwealth test is unduly high?

Mr HAESLER: No. If you need a sample you will get it but you have to justify getting the sample under the Commonwealth test.

CHAIR: Another important difference to which you referred as between the State and Commonwealth legislation relates to the balancing of competing public interests in the model bill in determining whether a procedure is justified in all the circumstances. You say that was deleted from the New South Wales legislation. Would you like to say anything to the Committee about that?

Mr HAESLER: Only that the distinction is clear. Effectively, I answered that in response to the last question. It provides an additional protection to an individual which is not present in the New South Wales legislation. I understand that at the Commonwealth level there are concerns that in some States the DNA legislation is so divergent from the Commonwealth's that they may not be, at a ministerial level, allowed to participate in the database. It is perhaps not as nasty as the Northern Territory legislation. Concerns were expressed at the Standing Committee of Attorneys-General meetings that if the States were so divergent there may well be problems with the admissibility of interstate evidence in New South Wales courts.

I can envisage that if samples were taken the way some samples are taken, as I understand, in the Northern Territory and they were sought to be used in a New South Wales court I, as a public defender, would object to that evidence on the basis that it was obtained by the use of torture, contrary to the United Nations covenants. I hope that that will never happen but the Commonwealth was certainly concerned that there be uniformity. Drafters of legislation would like to forestall those sorts of arguments. The last thing anyone wants to be accused of is breaching human rights covenants when it comes to legislation that you have drafted.

CHAIR: In your submission you say, "As the New South Wales Act now stands, if the police want a sample they will get it". Would your concern be allayed to any extent if the New South Wales Act did require, on the Commonwealth model, a balancing of interests to which you referred?

Mr HAESLER: To a large extent, yes. I suppose that there is a bit of hyperbole in that statement that if they want the sample they will get it. Under the Commonwealth legislation if they want the sample for a specific criminal investigation, of course they will get. There is nothing to say that they should not get the sample. If they just want the sample to put on the database, it is available to them under New South Wales law. It is not so available to them under the Commonwealth model. That was the point I was trying to make in that statement. I was not trying to say that if the police want a sample they should not be allowed to get it to follow through with a genuine investigation.

This is coupled with a provision which is in both Acts and was not in the original discussion paper put out by the Commonwealth. The original discussion paper said that if they want a sample to investigate crime A they should be able to get it, but if they want a sample in the hope that it will help them with crimes B, C, D and E they should not be able to get it in relation to crime A and then use it for other investigations. However, both the Commonwealth Act and the New South Wales Act allow for crossmatching. So if someone genuinely has a sample in regard to crime A that can be matched against all other crime scene data on the database.

Once again, that was discussed robustly prior to the legislation going in and also at the Commonwealth level. The rationale for it, once again, the original philosophy is that the more people on the database the more crimes or matches you might have. The argument against it is that if I am being asked as a suspect to provide a sample in regard to a serious sexual assault down the road, I would be more than happy to provide it. However, if I know that my sample will then stay on the database and be matched against other crimes—maybe I committed a break and enter 15 years ago and it is going to be turned up or I have committed some other offence—then I will be very reluctant to co-operate. In my view it is essential that the public feels comfortable about providing samples and co-operating with the police in regard to specific crimes. They would not feel so comfortable and there is a danger that they will not co-operate if they know that by providing a sample in regard to crime A it will be matched against any other crime scene in the nation. That practical problem has not been addressed by the Commonwealth or the State.

CHAIR: In your submission you quoted some remarks made by Mr Justice Michael Kirby of the High Court dealing substantially with self-incrimination. A previous witness to this inquiry, Dr Jeremy Gans, a legal academic at the University of New South Wales, put to us that there is another issue arising out of DNA testing, which he described as surveillance. His view is that when a person is

requested to give a test that the demeanour, when the person responds to that request, is a form of surveillance and may interfere with the right of the individual. Do you have any view in that regard?

Mr HAESLER: No. I wish I could help. The trouble with that is that police believe in their ability to gauge one way or another the reaction of a witness. Some police think they are good at it and some police know that they are not good at it. Indeed, any psychological study has said that most people who think they can tell if someone is lying are wrong. Studies they have done with judicial officers have proved particularly illustrative of that fact: judges get it wrong more often than not. I think we all do. I can understand the concern, but I cannot see how, if there is legislation, it could possibly be addressed. If somebody is asked to provide a sample and a person refuses, that is the person's right. That cannot be used in evidence against that person.

As understand it, Dr Gans takes the view that that may convert suspicion into a reasonable suspicion that someone is involved. When it comes to actual court, assessing the reasonableness or otherwise of someone's belief is so difficult that, because there are so many intangibles that take place in regard to that, I cannot say how it could be addressed in the legislative form. I can see it is a concern because this legislation allows for the gathering of police intelligence. But that is partly the rationale for it on either of the competing philosophical aspects for it. DNA testing is an incredibly useful police competitive tool and no-one is saying we should not live with that as long as it is regulated and open. But it is the degree to which it is open and regulated that people disagree about.

CHAIR: You say in your submission that all a DNA test does is show that there is a link between a crime scene and a suspect. How that link came about is still a matter for evidence at trial. I agree with what you say. However, should that not lessen your concern to some extent? After all, this is just another investigative tool in the hands of the police?

Mr HAESLER: As I said earlier, I am not saying there should not be this legislation. I absolutely believe there should be this legislation. But all police investigative tools should be open to scrutiny by both the courts and the public, and they should be carefully regulated. Otherwise we get into secret policing and a police state, and that is a real danger with unregulated, investigative processes. There is a considerable danger that if rules are not set and enforced then DNA legislation could be used for quite pernicious purposes and that includes building up databases on people. This is another aspect of surveillance. Where you have been you leave your DNA. If the police want to follow someone they can follow someone by DNA sampling. That can be useful.

If someone engages in a crime spree and starts in Townsville and ends up in Victoria, the national DNA database can match crime scenes and say that whoever this offender is he has been moving down the east coast of New South Wales committing offences. When we get that person we will be able to get him for all those offences. That is a useful aspect of DNA testing, and one that would come to court and be tested in the courts. However, if the police want to use the database and follow Ron Dyer, MLC, in his perambulations around the State, they can do it. They can pick up a coffee cup that you used in certain places and test it and follow you that way. That is a form of invasion of people's privacy that has to be guarded against. The technology is available to track the criminal, but it is also available to track individuals for pernicious reasons.

CHAIR: If they followed me around it would be a rather boring exercise.

Mr HAESLER: A number of my clients have said in regard to telephone taps, "God, I hope the police are not listening to this because they are going to be bored rigid." Unfortunately, it usually follows on hour No. 279 with an admission or something that is used against them.

CHAIR: You deal with police corruption in the sense of fabricating evidence. You say, "Are we seriously expected to believe that the sometimes significant minority of police who fabricate evidence won't do so with DNA samples?" Is that not really an argument for cleaning up the Police Service? If you have a tool that is available, life experience would suggest that some people may well corrupt it. However, is that a reason for ruling it out?

Mr HAESLER: No. As I said, we support the existence of the legislation if only because we are realists. There is a tool there to be used. What there has to be is open scrutiny of it. What we are concerned about is that in our system, the best method of having open scrutiny of what the police do

is, generally, the courts. If there is not, if it is just internal investigation or reliance on police to do the right being we have found to our cost, time and time again, that unscrupulous police will exploit that. What we are in favour of is when there is interference with a person's physical integrity that it be open to scrutiny by the court at all stages. That is the point of that. Obviously, in any organisation there may be corruption and one has to be astutely aware of it.

The legislation, to a degree, addresses that in terms of inadmissibility of evidence and bringing in the provisions of the Evidence Act and the International Covenant on Human Rights. That has been brought into the legislation to protect individuals from the possibility of unscrupulous use of DNA. That is what the courts, the public defenders and other defence barristers are about, to ensure that where there is a hint that evidence has been planted, whether it be DNA evidence or otherwise, that it is scrupulously rooted out. So far as the prosecution are concerned, they, too, would not consciously ever use corruptly obtained evidence. They have ethics and integrity that are world renown.

CHAIR: Clearly you are a defence lawyer. Do you think that the Act provides fertile ground for raising issues as to inadmissible evidence?

Mr HAESLER: No. There will be because it is new legislation and new testing, and there have been in the courts a number of cases to test procedures. In three or four recent Supreme Court cases the profiler-plus system, which is used by all Australian laboratories, has had its integrity tested and double tested. That is fertile ground for lawyers, but that is the same with any new system. Now that we have a number of Supreme Court decisions, they will be precedence and they have cleared the present DNA testing system. We were hopeful that there would not be too many cock-ups because if there is interference with the testing problems, or problems at the laboratory then public confidence in the system will be undermined. We are concerned that, if there is scope for undermining public confidence in the system, genuine undermining of it, the whole system will not work.

Yes, there will be testing of it and rigorous testing of it, but to date it has withstood that testing. I do not think it is fertile ground for false testing and false issues to be brought up, but to date they have been pretty good. To date the only DNA case I have done—I have done two, but I will talk about one—was a very strong case of identification rape, "The man who raped me lives down the road. I have identified him." I will not use his name, because he was acquitted. I took the view that it was going to be a very difficult case to win. He was adamant about his innocence. The Friday before the Monday trial the prosecution produced DNA results from the semen samples taken from the victim and they did not match my boy. The charges were dropped the following Monday.

CHAIR: Is that not an important argument in favour of DNA testing?

Mr HAESLER: Yes.

CHAIR: It can exculpate someone.

Mr HAESLER: It can exculpate. We are not here to say that there should not be a Crimes (Forensic Procedures) Act—far from it. I was involved in the drafting and the preparation of it. The defenders are not there to say that anyone who is represented by a defence lawyer should get off—far from it. The vast majority of our clients plead guilty. Our job is to advise people as to what the law is and what the appropriate remedy is for them. If that means pleading guilty, then good; if there is a defence, then we run a defence. What we are concerned about is that there be workable legislation that appropriately balances the right of the individuals, particularly those whose bodily samples have been taken and used against them, as against the rights of the State to have a useful investigative tool. On the second level, that investigative tool should be monitored and appropriate, not just a hit or miss; put everyone into the database and hope the machine goes "ping". Targeted investigation as part of a properly conducted prosecution is far more effective and will be a far more effective use of resources than the general hope that we will get matches that may or may not be admissible in court.

CHAIR: You make some reference at the end of your submission to the innocence panel concept. You say that no formal procedures exist for those seeking to prove their innocence. Some time ago the Minister for Police announced an intention to establish some such mechanism. You say that such bodies as have been announced are subject to vetting by a government committee, which

includes representatives of the prosecution and victims groups. You described that as anomalous and you ask how can such bodies independently assess applications. Is it not rather a question of balance rather than independence when bodies are made up of groups representing one side and the other?

Mr HAESLER: Yes. That would be so with the department of prosecutions because it has a role to play. My concern, really, is for victims groups. In my private practice, before I became a public defender, I did a lot of work for victims groups and victims of crime. But invariably, anyone involved in a victims group has suffered a trauma, and that trauma is reflected in the interest in the area and following up in the area. They are hardly impartial. What interests do they have in assessing whether someone who, in all probability, has been convicted of a serious crime may or may not be innocent? I cannot see how the interests could assist in the objective analysis of whether a person should get government resources to test their conviction.

The bias is so obvious. Yes, there should be police; yes, there should be an independent lawyer; yes, there should be scientists and it should be given, if not some statutory basis, some very formal rules so that people understand how to apply to it and what criteria will be applied. I have that concern with, say, the Parole Board of New South Wales. It is almost a secret deliberation. You just get the result at the end. It is not quite as bad as I make out, but even in the bodies such as that you do not know what the competing interests are.

CHAIR: I have asked previous witnesses whether such an innocence panel should be set up on a statutory or, alternatively, administrative basis. What would be your preference?

Mr HAESLER: A statutory basis, so that we have a right which is enforceable.

CHAIR: The Police Service suggested to the Committee that it ought to consider various amendments to the legislation. I believe that details of the requested amendments have been communicated to you. Do any amendments attract your adverse attention?

Mr HAESLER: Yes. I am sorry that because I have been involved in criminal trials I have not had an opportunity to put my concerns in writing. I have been given amendments (a) to (j), and will briefly address those.

CHAIR: You may do that and and/or supplement your comments in writing, if you so choose.

Mr HAESLER: If appropriate, I will go through them quickly.

CHAIR: Yes.

Mr HAESLER: The first request was that there be consistent criteria for suspect and inmate testing. The regimes in Commonwealth and State legislation are quite separate with regard to suspects in criminal offences and inmates who have been previously convicted. The legislation was done that way deliberately because suspects have not been convicted of a criminal offence and are ordinary citizens. Concern was expressed that persons who have been convicted of a serious criminal offence—and this was vigorously debated at the model criminal code, and, frankly, I lost—were being tested retrospectively. So the legislation imposed some form of restraint upon them after they had been convicted.

CHAIR: Presumably, the rationale for that is that there is a greater likelihood of recidivism in a prisoner group.

Mr HAESLER: Yes, and that was the argument that convinced the model criminal code to recommend it. It is now in legislation. My point is that that rationale is quite different with suspects. To confuse and amalgamate the two is inappropriate. It is as simple as that; the rationale for having inmates tested is a difficult one but is in the interests of the community, given that because inmates are in gaol for serious offences they may tend to commit future offences. The philosophical rationale for testing inmates is quite different from the philosophical rationale for testing suspects, and they should be kept separate.

The second point was to enable a time-out to be permitted at the beginning of the investigative period. If that is to be interpreted, and it could be interpreted, as a way of giving an extra two hours to the police to carry out their investigation it should be resisted. Time out to carry out the sampling is generally taken, as I understand it, during the investigation period. Generally, most of the sampling, whether buccal swabs or blood tests, takes about 10 minutes. If someone under investigation is being detained subject to the Crimes Act, it may be appropriate to amend that Act to allow that any time taken to carry out a forensic procedure during the Crimes Act investigation period should be a time-out.

If someone has an eight-hour order from a magistrate, and an hour of that is spent with a doctor taking a blood test, the police should be given an hour tacked on the end. That would be a more appropriate way of dealing with the problem of police feeling that the investigation is being compromise by forensic procedure time. The rationale for the present legislation is that they get an extra two hours at the end. So they carry out their investigation and get the two hours, but if they carry out the testing during the investigation it may be appropriate to amend the Crimes Act to allow for the taking of a forensic procedure to be classified as a time-out. It would require careful drafting because we want to avoid double-dipping if they get two hours during the investigation and another two hours at the end. I cannot conceive how it could be done at the beginning of an investigative period in any event.

The third amendment is to enable a suspect on remand to be treated as a suspect under arrest. Quite distinct rules are given in regard to interviewing a suspect, or someone under arrest, and when they have been sent to gaol bringing them back and interviewing them again. That is generally frowned upon because the investigation has to be done before they go to court. Procedures exist under which someone can be brought back and reinterviewed. Special arrangements had to be made with the gaols, et cetera. Generally they and their legal advisers are advised. In that case if the police need to get the suspect all that needs to happen if that the police ask for a court order. That is not particularly onerous or difficult task; it is a protection for an accused and ensures that someone who is on remand is not dragged out and tested and can interfere with their defence. There should have been enough evidence to charge the suspect that the beginning. If the police or prosecution need more evidence, what is the problem with going to court? Generally there would be a bail hearing and at the next remand date they could apply for an order. It would require very little extra effort.

CHAIR: You say that there are proper reasons to draw a distinction between the two?

Mr HAESLER: Yes, and any inconvenience to the police investigation would be minimal because anyone on remand would be going backwards and forwards to the court on bail anyway. The police prosecutor or the Director of Public Prosecutions would need only make the appropriate application with notice to the legal advisers. Given the present New South Wales and Commonwealth tests, they would get their sample. The fourth amendment is to allow for the testing of an Aboriginal person or a Torres Strait Islander without an interview friend where reasonably practical. It is a very broad test and would essentially mean that a couple of phone calls were made but the interview friend could not be found.

I am involved in a case at the moment that has nothing to do with forensic testing but the police said that they could not find a witness after looking up his driver's licence and not finding his address. They said that that was a reasonable reason for not bringing him to court. However, three witnesses said that they had worked with him the day before. What is reasonable to a police officer may not be reasonable to a court. The danger is that the police officer's assessment, from a police point of view, of what is reasonably practical may not be the court's view. It may lead to the exclusion of testing because the police did not pull their finger out and try to find a friend. That provision is there to protect the integrity of the police testing. So there cannot be a challenge. We have put in things to avoid this. They got a defence lawyer to help draft this partly to avoid the sort of things that a defence lawyer may well say is inappropriate testing.

If there are rules, and the rules are followed, that stops challenges which are sometimes appropriate and sometimes inappropriate. The best reason for having these tests and constraints is to avoid unnecessary or inappropriate challenges, or, to avoid there being inappropriate testing which will lead to appropriate challenges. Years ago the police put up an argument about videotaping of interviews. They said that it was impractical and that they spend a huge amount of time contesting

records of interviewing in court, sometimes successfully and sometimes not. Now that we have taking of interviews everyone is in favour of it and it has saved a huge amount of court time and a lot of aggravation between the defence and the prosecution. The tests and the requirements are put in for a reason, and that is to ensure that appropriate procedures are followed and that there is no allegation that inappropriate procedures have been followed. For that reason, I believe they should stay.

I refer now to the section 13 simplification. The way that the police do it at the moment is not simple; it is onerous. That is not the fault of the legislation. There is simply no reason why the police cannot get the little form that they read looked at by someone who has an understanding of linguistics and simple English.

CHAIR: But you are not in any way hostile to the suggestion by police that the information should be made clearer?

Mr HAESLER: Yes, but it does not need legislative amendment. They have a format that they read out, and I have an example of it. It is from a recent case in which the interview was transcribed. I hand up a copy of that.

Document tabled.

The police go on and on. In this particular case the person concerned was mentally ill and would not have understood a word that was said to him. The transcript comprises 2½ pages. Bodies such as Redfern Legal Centre Publishing put out a law handbook, which is law in simple English. Many university experts have been working with Aboriginal English, especially in Queensland, and can convert verbage and statutory language into quite simple concepts. All it requires is for the police to have someone who knows what they are doing to convert the reading of the statutory provisions into simple English.

The Hon. JOHN HATZISTERGOS: What about the volume of it? Section 13 mentions a vast number of things including other parts of the Act and matters that may or may not be relevant?

Mr HAESLER: I do not want to get into the fights I had with Parliamentary Counsel, but that information can be put on a reasonably simple sheet for the police. They do not need to read every word of the section. No lawyer or court would insist that to comply with the law the police need to read every word of section 13 and the cross-referencing provisions. All that is required is a series of short points be made to a person. A person has to be aware that he or she is being tested and that the test will be by way of a buccal swab. The person needs to be told that a buccal swab involves the scraping on the inside of the mouth by the use of a little device. The person needs to be made aware that it will be evidence and that if evidence is found against the person it will be used in a court. The person needs to be told who will carry out the procedure. If a screed is read quickly, no-one will understand it and all that will happen is the person will be told, for example, "Sergeant Smith will bung this thing down your mouth and test you." Or when no advice is given Sergeant Smith just goes in and starts testing someone or starts ripping hair from someone's head.

The Hon. JOHN HATZISTERGOS: When you get down to subsection (j), which refers to 3, 4, 5, 6 or 7, whichever is applicable, it becomes very complex.

Mr HAESLER: It is only complex if a sergeant, or someone else, reads out the pages of the bill. There is nothing to stop the police putting together a simple blurb. The police code of conduct book has done that in accordance with the commissioner's instructions. They have reduced what used to be four volumes of commissioner's instructions to a simple volume which is supposed to be in every policeman's bag.

The Hon. JOHN HATZISTERGOS: It has been suggested that they can do that by means of a set speech, which will be prescribed by regulation as suitable for the purposes of the section. Would that be appropriate?

Mr HAESLER: Yes, whether it be regulated or contained in the commissioner's code of conduct. I sometimes get the feeling that police interpret the legislation literally. They believe that they have to read the entire section 13, and that is nonsense. What the police have to do is convey the

information contained in section 13 to a suspect in a way that the suspect can understand. At the moment it appears all they are doing is reading section 13, which no-one could comprehend.

CHAIR: But there is really nothing wrong with what the police are requesting here: simplification of the information sheet?

Mr HAESLER: No.

CHAIR: That seems to be sensible.

Mr HAESLER: That is sensible, but it does not require legislative amendment, and I agree.

The Hon. JOHN RYAN: Except, I think, police were concerned that as the legislation currently stands there is fertile ground for people to appeal that a particular request was not made properly because an individual was not given information according to the complex structure outlined in the Act.

Mr HAESLER: The members of the Court of Criminal Appeal are not fools. If the police did not use the exact terminology— on appeal never works, it does not work.

The Hon. JOHN RYAN: I do not think it was the exact terminology that bothered them, but it has been drawn to the Committee's attention a particular glitch that occurred with a court case, where police essentially carried out an interview. They advised the person who was requested to provide a DNA sample that if a DNA sample had not been provided there was capacity to force them to do so and they had already taken procedures to organise a court order in advance. The court took the view that that was an inappropriate procedure for the police and the DNA test failed. What the police have essentially said to us is that the requirements placed on them are so complex that they need to be simplified in legislation, because they do not want to go through the cost and difficulty of a potential appeal if things could be made more simple. What I am putting to you is, is there value in making it legislatively more simple in order to ensure that there are not vexatious, unnecessary or difficult appeals?

Mr HAESLER: I am not sure of that case. There was a case recently called *Kerr* in the Supreme Court. I appeared in *Kerr* and that transcript is from *Kerr*. If that is the case you are talking about, I can talk about it because it is reported. I cannot talk about other things because—

The Hon. JOHN RYAN: I did not mean to raise the specifics of the case. I am saying that appears to be at least one example of the fact that people are going to test these procedures. There are two pages of difficult legislation that the police themselves find difficult to interpret. They feel quite certain that somebody is going to test it and it will involve them in enormous expense. They would rather save all that by saying that they are required to carry out warnings in accordance with the regulations. That is all the legislation they want, and then the regulations prescribe the form and content of the warnings to be given. Surely it would be made much simpler if that is the case?

Mr HAESLER: Yes and no, sorry. I do not disagree that it can be made much simpler and it should be made much simpler. If it is put in the regulations, fine, as long as we get someone who knows what they are doing to draft the regulations. No problem with that. The no is that in the particular case that is reported, *Kerr v The Commissioner of Police* 2001 NSW Supreme Court 637, that was not the inappropriate thing given. The inappropriate thing was that they had not followed the procedures in the Act with regard to who was to get the interim order, what rights were provided to a person who was obviously mentally ill, and also that police said to him, "We have an order anyway, you may as well consent". That was clearly inappropriate, and will be tested in the courts. If they botch the taking of the samples, yes, court action will be taken.

I see absolutely nothing wrong with that. It is not that it was too complicated; the law was there and they did not follow it. If rules are laid down, the police should follow the rules as well. I do not think they are too complicated. The challenge was not that these things under section 13 were not done. They were done. That is not where the problem was. The problem is there are clear rules—and they should have been set in place—for how they apply for interim orders and who applies. They are

quite simple, and that is a question of training the police. You cannot criticise the defence lawyers, myself included, in this particular case for taking the point.

The Hon. JOHN RYAN: I am not criticising people for making an appeal. The police say that is evidence of the fact that people will appeal and therefore the legislation must be drafted in a manner to minimise the potential of appeals.

Mr HAESLER: Yes. There has been one so far. The police won, but they know that testing will be challenged when it comes further down the track, because of the inappropriateness of the taking of the sample. Every piece of legislation almost invariably ends up in court. There will be one or two tests, but it is a case that there are rules in place and they should be followed. If they can be simplified, and this particular provision did not affect that case, if the police do not do the job properly of course the lawyers will test it. If one can simplify it, sure, but that does not mean it then casts doubt on the legislation or that there should be tests. There should be rules for the police to follow, and if they do not follow them, fine.

The Hon. JOHN RYAN: I am not suggesting it should be cart blanche, but I think we have pursued that question to my satisfaction.

Mr HAESLER: Yes. In regard to the other provisions, some of them are fairly straightforward.

CHAIR: Do not feel obliged to comment on every one of them—only those that you regard as controversial.

Mr HAESLER: They are the controversial ones, or the philosophy behind them is the same. One has to be careful if one puts tests in place that are followed and that are able to be understood by the police. It is a criticism I make of myself and everyone else that this legislation was passed very quickly and it came in very quickly. As a consequence, it will be a while before everyone understands the procedures in place. The New South Wales Evidence Act came in in 1995 or 1996 and we are still going to the High Court to test various provisions. It does not mean we should not have an Evidence Act. There will be some tests and have been some tests as to the adverse ability of DNA evidence and the procedures under the Act. The fact there is testing in the courts will assist how things go. I do not see that as a particular problem. The fact there has been one court case in six months is testament to how well the police are applying the law.

There was a lot of criticism by the Police Association for the detention after arrest provisions when they came in because they were too complicated. That was right. Part of it is because police were not given adequate training. One of the problems with bringing this in quickly is at the moment they are getting training on the job because there was not enough time to train them properly. That is a problem for police, and one they are addressing. They have set up a unit to do it, and I believe they have the capacity, because I have seen their police code of conduct in simple English instructions, to put out appropriate instructions and checklists for police to follow. That they have not done it yet—perhaps they have done it—does not mean something is wrong with the legislation.

CHAIR: Of the remaining amendments the police are seeking, the amendment in (h) seems to me to be somewhat controversial. Would you like to address that one?

Mr HAESLER: Once again it comes to this problem of "reasonably suspects". If an interview friend obstructs the process, then have them out. It is the same in interview. If the lawyers start obstructing the process, they are turfed out. But, until they do start obstructing the process, what is the point of guessing? "Reasonably suspects" means guess that they will.

The Hon. JOHN HATZISTERGOS: Guessing would not be a reasonable suspicion.

Mr HAESLER: No, and that may cause a problem. But how else does one do it? If someone turns up obviously intoxicated and incapable of providing that service, no-one will question that at all, he is not really an interview friend. There are provisions for excluding people as interview friends if they are co-offenders or things of that nature. In my view it will give rise to challenges as to what is reasonable.

The Hon. JOHN RYAN: The police did modify their request in some respect in that regard. They explained to the Committee that they were interested that there can be circumstances where the interview friend nominated by a person who is going to be DNA tested or have a sample taken is a co-accused, and there are measures that a co-accused can take that can undermine the quality of the test. The police explained that a simple handshake, for example, can ruin evidence. Do you see any justification for changes to the law that might at least allow the police to reject a particular person's claim to have a specific interview friend if they believe that the attendance of that person might taint the evidence or taint the quality of the evidence?

Mr HAESLER: I do not think it will make a huge degree of difference one way or the other. Once again, it depends how it is applied. The problem is "reasonably suspects". It will never be able to be properly tested, because it is a suspicion. I would prefer, if it is going to go in, to have something along the lines of, "Persons may be excluded as an interview friend if …" they fit within a certain category of persons. In other words, a person suspected of being a co-offender, a person with a criminal history, things of that nature.

The Hon. JOHN HATZISTERGOS: Earlier you said that with homicide cases, some 80 per cent or 90 per cent were resolved within 48 hours in the sense that the suspect was found, and is stated that DNA used in relation to the detection of these offences would show a statistical correlation reflecting that 80 per cent to 90 per cent but would not necessarily demonstrate that DNA evidence was critical to the arrest of those particular suspects. What I think is critical but which you have not stated anything about is whether the DNA evidence would assist, particularly in reducing the length of any trial which might take place or reducing the number of cases where persons may plead not guilty. For example, I was interested in the fact that you indicated in a rape case you were recently involved in that that case collapsed without it going to the jury on the basis that DNA evidence was obtained the during the trial. I want you to comment on what impact the DNA evidence is having on trial length and trial complexity.

Mr HAESLER: I used the example as a caution about reading too much into the statistics. There is no problem with getting that match, apart from what might be inconsequential cost, but if it is then used to say that DNA was matched in 90 per cent of homicides it will not give you a good idea of how many convictions resulted from that DNA evidence.

The Hon. JOHN HATZISTERGOS: It may not, but what impact does it have?

Mr HAESLER: Sorry, that is a good question. The impact of DNA in the short term, there will be more lengthy trials, because people will need to test the procedures with regard to DNA. There have been a number of trials recently where the profiler plus system was rigorously examined, and that led to much more lengthy trials than would ordinarily be the case. That will change, because there are a series of precedents from Supreme Court judges saying that profiler plus works and you are wasting your time going into a full examination for days and weeks on end as to the process. So, yes, they might be lengthier at the beginning but it will mean more people will plead guilty. If my client had had the DNA test come back and it was his semen, he would have been given certain advice and probably would have taken it. In both cases in that sexual assault case, the testing of the semen sample and matching it against the known suspect would drastically shorten the trial.

The Hon. JOHN HATZISTERGOS: I am interested in a case that has been in the news recently. Judge Latham, in her judgment handed down last Friday, indicated that one of the factors that led to her reducing the sentence by 20 per cent was that the offenders pleaded guilty at the earliest opportunity and that had that the not occurred the trial could have taken four weeks because of complex DNA evidence.

Mr HAESLER: I have not read it and I do not know the facts of that case, so I cannot comment.

The Hon. JOHN HATZISTERGOS: It seems extraordinary that a case which, on my understanding, would probably take a week or two at the most if it were to run as a not guilty plea could stretch out to four weeks on DNA evidence.

Mr HAESLER: I would think so too.

The Hon. JOHN RYAN: I do not believe the judge said it was because of DNA evidence, she said it was because it was a rape trial.

The Hon. JOHN HATZISTERGOS: She said DNA.

Mr HAESLER: My understanding of her concern was that the discount was more for saving the victims of the trauma.

The Hon. JOHN HATZISTERGOS: There was that aspect as well.

Mr HAESLER: I do not know what the defence was or may have been.

The Hon. JOHN HATZISTERGOS: The point I am making is whether DNA evidence is lengthening trials that much.

Mr HAESLER: I think that it is shortening them. It is a bit like when videotaping of interviews came in. Your client was there in black and white on the tape confessing to the crime and it was obvious that he had not been beaten up. You had to say to your client, "The jury is going to have that tape. Why don't you reconsider your options? You get a discount if you plead guilty." It resulted in more guilty pleas. As a defence lawyer I may have the DNA testing checked to make sure that procedures are in place. If things were not carried out and there are holes in the procedure the results might be challenged. But in a recent case where they had been a DNA-based conviction—the trial did not take much longer because of the DNA evidence—my advice was that there were no grounds for appeal because the DNA evidence is conclusive. So we saved a case in the Court of Criminal Appeal.

The advice to clients will be, "Here is some very strong evidence against you. Given that the procedures have been followed and given that the testing from the Department of Analytical Laboratories has been rigorously examined in a couple of court cases, your chances of beating the case are Buckley's and none. There is now a provision which says that you will get a discount if you plead guilty. Why waste everyone's time and why give yourself an extra couple of years in gaol by needlessly fighting this case?" Some clients will say, "I am innocent, I have been framed. I will fight the case." That is fine, that is their right. Those cases will take some time. But in the vast majority of cases I have found that my clients accept the advice I give them and they plead guilty. Hopefully there will be more pleas of guilty and more convictions as a result of DNA evidence.

My concern I expressed at the beginning is that the legislation needs to be monitored. I would like to know whether trials are getting longer. I would like to know whether we are using DNA legislation and testing effectively to ensure that there are more appropriate convictions and shorter trials or no trials at all. That is why I said at the beginning that when analysing the results of this legislation we should focus on not how many matches we get but on how many convictions we get as a result of DNA testing.

The Hon. JOHN HATZISTERGOS: Is anyone monitoring that at the moment?

Mr HAESLER: I have no idea. I am hoping the police are. I do not know whether the Bureau of Crime Statistics is or not.

The Hon. JOHN RYAN: I suppose as a public defender you would have an interesting view of this. Do you believe that offenders who plead guilty and are convicted as a result of a DNA test result are giving up much at all when one considers that they get a 20 per cent discount? Is such a discount appropriate when DNA results are basically overwhelming evidence and it is accepted beyond doubt that offenders are wasting their time? Previously, the only way of getting a conviction in a rape case was to test the integrity of the evidence given by the victim, which was obviously very traumatic for the victim. Now it is almost unnecessary to produce the victim if there is DNA evidence.

Mr HAESLER: It depends on the nature of the case. In a sexual assault case—and I am sure this is what was preying on Judge Latham's mind—the fact that your client's semen samples are found at the scene may mean that sexual intercourse took place but it does not mean that the issue of consent

would not be rigorously tested. I have cross-examined victims of crime on that issue on instructions and it is not very pleasant; it is horrendous. Both prosecutors and the defence come out feeling as though they have participated in a molestation. Anything that encourages people to plead guilty and avoided that has to be given paramount consideration. Otherwise the discount for guilty pleas both in the statute and the Supreme Court recognises that if you co-operate with the system you get a benefit.

Lots of people are caught red-handed and they still plead not guilty. They may want to fight it. It is their right to fight the case. If they give up that right—and one of the most sacred rights an individual has is proof beyond reasonable doubt by a jury of his peers—particularly where it involves a gaol jail sentence, they should be given a benefit for that. If a case involves sexual assault, whether running a defence based on consent or otherwise, all the better. I do not think it is relevant. Going back to what I said originally, if effectively used I believe it will result in more convictions and more appropriate convictions. If it is done badly, a scatter gun approach is taken and procedures are not followed, then all you will get is DNA evidence that matches someone to a crime scene and it will be just one other piece of evidence in a plethora of evidence which may or may not be held to be relevant by the jury.

Targeted DNA testing, in my view, is an effective way of using the legislation and will result in more convictions, particularly for someone's first significant crime. If we brought it in that everyone who commits any offence whatsoever is DNA tested in the hope that we might get a match between them, all we will get is police intelligence that someone was at a scene.. We will not actually get evidence which can be used to convict people. Defender or not, I am not here to argue that people who have committed a serious crime should not be convicted. I believe that procedures should be in place to protect the integrity both of the investigation and prosecution process and the integrity of the individual. They can be balanced. The legislation is not bad at it, but it could be better.

The Hon. JOHN HATZISTERGOS: Is not the principle of a discount for a guilty plea dependent upon the impact of the guilty plea? For example, if a person is caught virtually red-handed and there are minimal prospects of the person being acquitted, then, in terms of shortening the trial process, the guilty plea has less effect on the discount.

Mr HAESLER: Yes.

The Hon. JOHN HATZISTERGOS: If there is a genuine impact from the guilty plea in saving time and resources in prosecuting a person, then the guilty plea has a proportionately greater impact on sentencing.

Mr HAESLER: Yes. The legislation allows for the taking into account of a guilty plea. It cannot be inappropriate. A case before the Court of Criminal Appeal called *Thompson and Hulton*, in which I appeared for the Attorney General and not for the defendant, says that offenders get a discount from 10 per cent up to about 30 per cent. Take, for example, a purely utilitarian plea at the last minute. An offender mucks around but on the day of trial turns up at court and pleads guilty. He gets a discount in the 10 per cent range. Then there is what they call the utilitarian aspect. If it is a big trial, a sexual assault trial or a six-month drug trial, an offender would probably get a bigger benefit. There is also the factor that allows a judge to take into account the guilty plea as evidence of contrition, evidence of remorse and evidence which goes to prospects for rehabilitation. They are also factored in. An offender who shows everything—an early plea, evidence of remorse and contrition and good rehabilitation prospects—could get up to 30 per cent discount. If someone turns up on the day of court and pleads guilty he gets a 10 per cent discount. Judges are not stupid. Ten per cent of what? There is no fixed penalty.

The Hon. JOHN HATZISTERGOS: I appreciate that, but the point I am trying to get to is what impact should a saving of the testing of DNA evidence have on a guilty plea? Has anyone looked at that?

Mr HAESLER: It should be in the mix. If conviction was inevitable the courts look at why a conviction was inevitable. If someone is caught red-handed, that is different than if he made a full and frank admission straight away. An offender gets a low discount if the conviction was inevitable. If DNA evidence shows that conviction was inevitable, then you should get less.

The Hon. JOHN HATZISTERGOS: You indicated that at the moment there are more challenges because the DNA evidence legislation is new and being teased out by people trying to find out—

Mr HAESLER: There are not unexpected challenges. I do not know that there are more.

The Hon. JOHN HATZISTERGOS: You indicated that as time goes on you expect a reduction in challenges.

Mr HAESLER: Yes.

The Hon. JOHN HATZISTERGOS: Therefore, the utilitarian value will also reduce with time.

Mr HAESLER: One would expect so, yes. But one has to be careful with discounts. When we investigated for the Attorney General we found that some people who were pleading guilty immediately were getting less of a benefit than those who waited till the day of trial. The statistics were quite disturbing in that sense. In other words, the person who said, "You have got me cold, Guv, I'm pleading guilty straightaway. Send me to jail", was getting less of a benefit than the person who dragged the whole process out and at the very last minute pleaded guilty. The psychology of that was interesting to examine and it has gone through in the judgment of the Chief Justice. I will not repeat it here. It was a very disturbing statistic that the earlier someone pleaded guilty, sometimes the worse statistically the result might be. It is a very complex process assessing what the discount should be. The judgments of the Court of Criminal Appeal assist in that.

The Hon. JOHN RYAN: I want to raise a couple of issues with you that list at the end of your submission as problems with the Act. You said, "The DNA can be taken from a hair sample taken from the following arrests for summary offences."

Mr HAESLER: I think this may be a glitch in the legislation. Section 3 says that a non-intimate sample includes a hair sample other than a pubic hair sample. Sections 17 and 18 allow for police to take non-intimate samples for summary matters of suspects who are under arrest. Then there is the provision for the taking of a hair sample if someone refuses a buccal swab. That could only be for intimate samples. The whole DNA database is based upon indictable offences. The problem is you can take a hair sample from which DNA can be taken for a summary offence. I think that is something we missed when we drafted it.

The Hon. JOHN RYAN: Is the objection to "summary offence" or is the objection to the taking of a hair sample?

Mr HAESLER: The objection is that in the development of the legislation it was originally intended that intimate samples and the DNA be the same, that there should be the same rules for intimate samples and ones from which DNA could be obtained. Now with the taking of a hair sample as a separate category, that philosophy has been broken up. We now have a situation where hair samples from which DNA can be taken can be taken for any offence. That concerns me. The whole purpose of that was that DNA samples should be restricted to serious offences or indictable offences.

The Hon. JOHN RYAN: What you are suggesting in terms of reform is that it should not be possible to take an intimate sample or a hair sample where a person has committed a summary offence?

Mr HAESLER: Or if a hair sample is required for some other purpose perhaps. It should be absolutely specific that DNA sampling should not occur for summary offences. I do not think that is clear in the legislation.

The Hon. JOHN RYAN: You also say that the Act allows for retrospective testing of prisoners who are serving sentences for offences whose maximum penalty is five years or more. What is your objection there?

Mr HAESLER: It is what I explained to Mr Dyer earlier. I am reputting what I lost at the Model Criminal Code Officers Committee [MCCOC] level that I do not approve of retrospective testing of anyone. Sir Harry Gibbs made that point in his submissions to MCCOC. It is set out in the MCCOC report. It was rejected at MCCOC. I lost the battle there but I am not giving up on it. I understand the arguments to and fro and I say that the getting of the database and the methods that have been used to take samples from prisoners—because there is basically no restriction on getting samples from prisoners—are not worth the benefits that will come down the track. But that is making a political point.

The Hon. JOHN RYAN: The final point to make is that "the provisions for allowing the testing of prisoners allows no effective balancing of rights of the prisoner and the perceived need to simply build a database. If there is little likelihood that a person will reoffend, then why take their sample?" I guess the question I would ask you is: How would it be determined whether there was little likelihood that the person would reoffend?

Mr HAESLER: Most murderers do not reoffend. They have killed the person they wanted to kill, they serve their sentence and we never see them again. That is a good category but, of course, they would be top of the list of people whose samples are taken in prisons. I was a bit concerned, and I am concerned, that what we are doing at the moment is just a blanket testing of prisoners. I do not know how long it will take to get everyone on the database. Should that resource rather have been spent differently? Police have samples from quite serious crimes which have been unsolved. They have people whom they have a pretty good idea might well have been involved, but they are not quite sure. Assuming that we are going to test prisoners—and we are—why do not target that? Why do we not intelligently use police intelligence and say that there are a couple of hundred unsolved crimes, let us not take a random approach and hope that we get a match. Let us take the samples from those people whom we believe might well have been involved in the commission of these crimes.

Let us use the testing smartly rather than going for cold hits. I would have preferred that approach as a bureaucrat. As a public defender, I make the point that has been made by others who do not believe that the interests of the community should take sufficient priority over the retrospective testing of convicted offenders. They are different arguments. As a lawyer, I am used to making slightly different arguments, depending on the case, but that is my concern. At the moment, unlike the Commonwealth and unlike in Victorian, the police cannot say, "This guy has committed 27 break enter and steal offences before he came into gaol. The likelihood is that he will commit others when he gets out. We will need to get his sample as a way of preventing his committing an offence", as opposed to, "This man has only ever committed one offence. What is the prospect that he will ever commit another one? All his reports say that he is a good rehabilitation prospect and that he will get out. That is his one crime and he is not going to do another." Why should he be on the database along with everyone else?

They are competing arguments. But we say that if one takes a philosophical view—that he should only be on the database for a good reason as opposed to building up as big a database as possible as quickly as possible—I say that there is a philosophical dichotomy as to what sort of Act we should have. I prefer the one which provides for a smaller database which is targeted to specific individuals for specific crime scenes as opposed to a broad-based approach of getting everyone on the database. There are lots of civil liberties aspects which are canvassed in my report. Justice Kirby has gone even further in that regard.

CHAIR: Thank you.

Mr HAESLER: I am sorry for going on and on and on.

CHAIR: Not at all. Your evidence has been very helpful. The Committee is very grateful to you for your time and trouble and also for the detailed submission you have made.

Mr HAESLER: I appreciate—I have been there—that there are many considerations involved in the drafting of a piece of legislation and the reviewing of it. Compromise is the name of the game.

(The witness withdrew)

JANE ANNE SANDERS, Solicitor, Youth Justice Coalition, 356 Victoria Street, Darlinghurst, affirmed and examined:

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

Ms SANDERS: I am appearing today as a member of the Youth Justice Coalition. Would you like me to tell you now what the Youth Justice Coalition is, or can I elaborate on that later?

CHAIR: You could elaborate on that later. Did you receive a summons issued under my hand in accordance of the provisions of the Parliamentary Evidence Act?

Ms SANDERS: Yes.

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

Ms SANDERS: Yes, I believe so.

CHAIR: You have made a written submission to the Committee. Is it your wish that that be included as part of your sworn evidence?

Ms SANDERS: Yes.

CHAIR: If you should consider at any stage during the 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. I now invite you to make a brief oral opening statement in support of your written submission.

Ms SANDERS: All right. First I might just elaborate on the capacity in which I am here. In my job, I am the principal solicitor of the Shopfront Youth Legal Centre, which is a legal centre for homeless and disadvantaged young people. I am an accredited specialist in criminal law. Particularly my interest and my experience are in working with children and young people. I am also a member of the Youth Justice Coalition and it is in that capacity that I appear today.

The Youth Justice Coalition is a loose network; it is not an incorporated association or anything. It includes lawyers, youth workers, academics and others who are interested in juvenile justice and the rights of children and young people. We do not have a committee structure as such. We have a convener, who is Janet Loughman from the Marrickville Legal Centre, and we meet once a month at Marrickville. With matters like this, where we are preparing submissions, we discuss our position and our policy at meetings and then generally someone will go and write the submission, as I have done with this. We have made submissions to various inquiries. Just a couple of weeks ago I was giving evidence to the Senate inquiry into mandatory sentencing. We make submissions also in relation to care and protection laws, anti-discrimination laws and really any area of law which affects young people.

I do not want to repeat what I have written in the submission but I would just like to highlight my main concerns. These matters can probably be fleshed out in questions. I am concerned—and I am sure that other witnesses have pointed this out—that the Act in many parts is quite sloppily drafted and there are a few ambiguities. When it comes to the carrying out of forensic procedures on serious indictable offenders, that part of the Act is fraught with difficulties, particularly where children are concerned. As the Committee may know, the Children's Court jurisdiction is very different from the Local and District Courts and with things like the recording of convictions, convictions do not automatically go with a finding of guilt like they do in the adult jurisdiction.

Children who are sentenced to custodial sentences by the Children's Court are sentenced to control orders in detention centres, which is very different from a sentence of imprisonment. Imprisonment is imposed on a child only when the child is dealt with according to law in a superior court, normally for what is referred to as a serious children's indictable offence. There is some ambiguity. My view is that the Act was intended only to have forensic procedures carried out on children who were serving sentences of imprisonment, but there is some ambiguity—particularly in

section 74—which may suggest that any child convicted of a serious indictable offence could be subject to forensic testing. I think that section has to be read subject to section 61 and the rest of part 7. I certainly suggest that that is probably a drafting error or ambiguity which ought to be cleared up.

My other main concern about the way the Act is drafted is the provisions that relate to volunteers. I am extremely concerned about the current volunteer provisions where, in the case of the child, "volunteer" is defined as someone whose parent or guardian has volunteered on their behalf. That ready stretches the definition of volunteer and in my view that is totally inappropriate. Even though a child or young person's parent or guardian volunteers them for forensic testing, the child or young person still has a right to object and the police must tell them about their right to object. However that is very, very different from requiring the child to consent.

It is well known and well documented that the reality is that—despite the popular image of teenagers these days being loud, brash and always saying what they want and what they think and particularly in situations where they are facing the courts, or they are at the police station, or they are in contact with authority figures after their mum or dad has dragged them down to the police station and said "I want you to take a DNA test to prove that you are not the rapist or the armed robber or whatever that everyone is talking about", in a situation where their parent has dobbed them in to do that test— most children generally are not going to object, even if a police officer tells them that they can. They are in a police station, they are scared, their mum is telling them to do this and the police are telling them to do this. They are not going to object or resist the carrying out of the procedure, and they feel that they are going to get into trouble if they do object.

In the view of the Youth Justice Coalition it would be far more appropriate to require a child volunteer to give informed consent to the carrying out of the forensic procedure and also have the informed consent of their parents or guardian or an order of the court. I think the way it is now means that a so-called child volunteer has fewer rights and less protection than a child suspect. A child volunteer can be dobbed in by their parents without having to give consent and without getting legal advice and without ever having to go before a court. That is of enormous concern. That is probably enough for an opening remark. If you have questions I will endeavour to answer them.

CHAIR: You say in an early part of your submission that you are disappointed that the Act, by which you mean the State legislation, does not replicate all of the protective provisions contained in the model bill. I assume one of your major concerns is that the test for forensic procedure under the State legislation being that it might produce evidence—

Ms SANDERS: Yes.

CHAIR: Whereas under the model bill and the Commonwealth legislation the test is that it is likely to produce such evidence. Am I correct in thinking that is a concern?

Ms SANDERS: Yes, that is a major concern. Another concern is that although section 25 sets out the criteria the court must take into account when making an order for a forensic procedure and carries the catch-all rider at the bottom that the court must be satisfied that the procedure is justified in all the circumstances and does afford some measure of discretion and protection against unnecessary procedures, in the model Commonwealth bill, as I understand it, the discretionary factors are spelt out more clearly. For example, the court is required to turn its mind to the balancing act between the need to solve crime and the public interest in protecting the bodily integrity and privacy of citizens. In our view it would probably enhance the protection available to suspects if more of those factors were spelt out for the court to turn its mind to. That would be my concern.

CHAIR: As to the issue of whether a child should be able to consent to a forensic procedure, you say, "We support the right of children to participate in decisions that affect them and we believe the above arguments have considerable merit. However, after careful consideration we believe it is appropriate that children are unable to consent to procedures under the Act." Recently the Commissioner for Children and Young People, Ms Calvert¸ gave evidence to the Committee and I put to her during her evidence that perhaps children should be dealt with in a different way according to their ages. She has come back, as it happens, with a supplementary submission to the Committee and, from memory, the approach she takes is that for children 10 to 14 years the parents should be involved

but for older children they should not be involved. Are you saying, though—and I want to be clear about this—that under no circumstances should children of any age, that is under 18, be volunteering?

Ms SANDERS: No. Let us distinguish between the suspect and serious indictable offender provisions and the volunteer provisions because I believe they are very different. Dealing with children as volunteers, I think it is vital that the children provide their informed consent. I think it is also important that either the informed consent of a parent or guardian be obtained or a court order be obtained if the parent does not consent or cannot be located. For volunteers, yes, I do think there should be informed consent of the child plus some other consent from either parents or a court. I would not support a distinction between children of different ages.

If we were to support an age distinction, I would say probably the more appropriate cut-off age would be 16 because in child protection law children under 16 have to be reported to the Department of Community Services if they are at risk, as you would well know, and it is children under 16 for which the Children's Court can make court orders. Once a child is 16 they are pretty much on their own as far as child protection orders are concerned. With children as volunteers, if there was be an age at which children could consent without parental consent or a court order, I would say that should probably be 16 and not 14, but volunteers is a different thing. If someone is going to volunteer to undertake a forensic procedure, it should be that person who volunteers. It should be a free and informed choice by the child, with the added protection that the parent, guardian or court consents.

I turn now to the provisions dealing with children as suspects and children as serious indictable offenders. Both of those parts are concerned with taking forensic procedures from people under coercion. At the end of the day if the suspect or prisoner does not consent, there will be an application for a court order and in many cases that court order will be granted. We have thought long and hard about this and we find ourselves in very difficult position because the Youth Justice Coalition wholeheartedly supports children's participation and children's rights to make decisions that affect them. In many ways it goes against the grain to say we think children should be deemed incapable of consenting but the reason we support the current position where children are deemed incapable of consent is that a forensic procedure is not a simple medical procedure, it does not have a therapeutic value. It is something that potentially could affect that child or young person for the rest of their lives. Their details could go on a database and could be matched against crime scene indexes forever and a day. That is an enormous thing to ask a child to consent to.

If we could be satisfied that every child that the police wanted to undergo a forensic procedure would have legal advice, a cooling-off period, a support person to talk to, an opportunity to really consider whether to give their consent and had the opportunity to give free and truly informed consent, our position may be different and we might support the right of children to consent but the current reality is that that will not happen. We already see with the Young Offenders Act for example or indeed in any criminal proceedings involving children that children have the right to legal advice.

Before they attempt to interview a child or when they arrest a child police are legislatively required to inform children of their right to legal aid or legal advice and to tell them where to obtain it but despite that many children, in fact the majority of children who are in contact with police do not obtain legal advice, often because they are not told where to get it and although there is a Legal Aid hotline for under 18 year olds which provides free advice until midnight every night, even that is not sufficient to ensure that every child coming into contact with police receives legal advice. So we would not be confident that a child would be able to give free and informed consent, because in reality children at police stations are not going to be able to access legal advice—unless, of course, there was a duty solicitor scheme at the police station where every child got to see that solicitor as a matter of course.

CHAIR: I want to ask you about the legal advice aspect, which is an issue you deal with in your written submission. You point out that in the situation in which a child is a suspect the child must have an interview friend available during the hearing of the application, and may be legally represented. You go on to say, though, that you believe it should be mandatory for a child at least to receive legal advice before an application for a court order is dealt with. You say that the right to legal advice means nothing if the advice is not readily obtainable. Earlier in this inquiry the Law Society gave evidence suggesting that we ought to give consideration to recommending virtually a duty

solicitor scheme to be available to people generally, on the English model. The society conceded that it is quite expensive. A moment ago you made a remark about a duty solicitor at police stations. I wonder how practical that might be given the number of police stations in the State. Is there some lesser alternative in terms of cost?

Ms SANDERS: Yes, I know that it would be an enormous expenditure. It would not be as good as a duty solicitor at the police station but the alternative would be a 24-hour telephone hotline. We currently have a hotline—not a 24-hour one—for under 18s. At the very least a telephone line on which people can ring for advice is necessary—not only in relation to forensic procedures but in relation to suspects at police stations generally. Under part 10A of the Crimes Act when a suspect is in police custody they have a whole lot of rights, including the right to legal advice. But, again, if that legal advice is not readily obtainable, if people do not know where to go to get legal advice and they cannot pay for it, it is not going to happen.

So I would definitely support, at the very least, a 24-hour telephone hotline being available to all suspects. I also think it would be very important not just for the hotline to exist but to make it mandatory for police to tell suspects about the hotline and to give them the number to ring. Obviously, if the suspect had a private solicitor they wished to contact that would be their right. But if the suspect did not have that private legal representative they should, as a matter of course, be given the opportunity to ring that advice hotline. Coming back to the children and the Young Offenders Act, that is what is supposed to happen now with children in police custody.

Police are supposed to give children the phone number for the Legal Aid hotline and encourage them to ring it. Anecdotally, I have heard that that is just not happening in many police stations. Either the police are not aware of the Legal Aid hotline or they feel that by giving a person a number for Legal Aid they are showing favouritism of one legal service over another. Some police officers hold the view—I would say an erroneous and outdated view—that legal advice only gets in the way of the investigation. So they would prefer not to deal with the inconvenience. The legal advice is desirable. I would say for adult suspects, who are outside the scope of my submission, if an adult suspect has the potential to be able to consent to a forensic procedure and were given timely and competent legal advice at the police station it may mean that they will consent to the procedure rather than refusing consent and having the police have to apply for a court order. In many cases legal advice can assist the police and speed up the process and cut out unnecessary court appearances.

CHAIR: On the interview friend issue, I am not sure whether you are aware but the police have recommended to the committee that the legislation should be amended to enable the police to exclude an interview friend when the police reasonably suspect that the interview friend will obstruct the process.

Ms SANDERS: Yes, I am aware of that. I have read that submission. That worries me somewhat. There may be extreme cases in which an interview friend comes to the police station very aggressive and makes it known that they are not happy about their daughter or friend or whatever being subjected to a forensic procedure. They indicate before the forensic procedure is carried out or before the application is made that they will be difficult. In that situation there may be good grounds for the police to want to exclude them.

CHAIR: There is an existing power in the legislation for the police to exclude such an interview friend where they in fact obstruct.

Ms SANDERS: Yes, that is right. There may be cases in which the police know from the demeanour of the interview friend when they arrive and before the process starts. The police have a pretty good idea that the interview friend is going to be disruptive. I can see where the Police Service is coming from on that point, but I would oppose their view. It really is dangerous. For example, an Aboriginal boy who was a client of mine was a nice kid but his mother was very, very aggressive. In court when it came to police she obviously was trying to assist him but in many ways she was his worst enemy because she would disrupt any proceeding that involved her son. I was in the Children's Court on many occasions when she was asked to leave the courtroom. She is probably the sort of person that would attend as an interview friend and then be ejected.

If the police know the suspect, their mother, and do not particularly like the family and think that they are likely to put up a fuss, that would be grounds to exclude that person. I just think it is dangerous. Also, if an interview friend is excluded there is no provision for getting another interview friend in. I think I have raised that in my submission. If you have this situation of an Aboriginal teenager with a very, very aggressive and unhelpful, disruptive parent, she gets ejected before the forensic procedure or during it or whatever and this 16 year-old boy of indigenous background is left with no-one to support him during the application or during the forensic procedure. That does concern me. So I think that if there is a right to kick out the interview friend there must be some provision to get someone else in. As with police interviews of young people, section 13 of the Children (Criminal Proceedings) Act requires an independent adult to be present during the police interview with the young person. If the independent adult is being disruptive, certainly the police can eject them from the interview but they have got to make reasonable efforts to get someone else along; they cannot just keep interviewing the child without an adult present. So I think it is the same situation.

CHAIR: An important issue you raise in your submission, which I believe no other organisation or witness has raised, is that you say that the intention of the Act was that part 7 was not to apply to children serving control orders, which are custodial sentences imposed under the Children (Criminal Proceedings) Act 1987. You go on to say that you have been informed that the Department of Juvenile Justice has interpreted part 7 to include children serving control orders and has foreshadowed—I am not sure whom you are referring to there—applications will be made to test all sentenced inmates in its juvenile justice centres.

Ms SANDERS: Perhaps I could update that. That was certainly my understanding of the situation at the time the submission was written. My source of information was the senior legal officer from the Department of Juvenile Justice, who thought at the time the police were going to be applying to test all children serving sentences in detention centres. I have since spoken to her again and I have also spoken to Natalie Dugandzic, the legal officer at the Police Service. She cannot tell me exactly what is or is not going to happen but the impression I have now from talking to her and from talking to the Department of Juvenile Justice again is that police will only be applying to test children serving sentences of imprisonment and not under control orders.

CHAIR: So you have the clear impression from the Police Service that that is their intention?

Ms SANDERS: I would not say clear impression but I have the impression. The conversation I had was more along the lines that the Act is ambiguous. Section 74 in particular is ambiguous because it just refers to testing a child who is a serious indictable offender, not a child serving a term of imprisonment, but that the police were going to err on the side of certainty rather than going with ambiguity. I presume that to mean that they are going to take the conservative approach and test only children serving terms of imprisonment.

CHAIR: As you may be aware, I am a former Minister responsible for juvenile justice, among other things. My experience would certainly have been that the overwhelming number of juvenile offenders were serving control orders and not terms of imprisonment. So if police were to take that view it would cut it down to a very small number.

Ms SANDERS: Yes, the ones that have committed very serious offences who have been dealt with by superior courts. In our submission that is as it should be. Children serve control orders for all sorts of offences. Remember that the definition of serious indictable offence in this Act—and in other criminal legislation—is an offence punishable by imprisonment for five years or more. A serious indictable offence includes stealing a chocolate bar. That is a serious indictable offence. Jumping in the back of a car that is stolen is a serious indictable offence. There is a whole host of them. Malicious damage is a serious indictable offence, whether it is smashing a window or drawing on a wall with Texta. Most offences that children, and adults indeed, are dealt with for in the courts are serious indictable offences. Yet to call these people serious offenders is really stretching the meaning of "serious" in my view.

Some children are sentenced to control orders simply because there is no other option. There is no accommodation for them or they have been non-compliant with their obligations to report to their juvenile justice officer. They may be sentenced to a very short control order—two weeks even. It

may often be backdated to reflect the fact that they have spent time in custody bail refused or unable to meet their bail because they cannot find anywhere to live. Often a child will be sentenced to a control order for shoplifting, perhaps, or malicious damage—really an offence that is very minor in the scheme of things. To call that person a serious indictable offender and to have them subjected to forensic testing merely because they happened to have been sentenced to a control order for it I would say is inappropriate.

I would also say that in some respects the same applies for adult prisoners. Lots of people are serving short prison sentences for relatively trivial offences, particularly indigenous people and people in rural and remote areas because of the lack of sentencing options. A lot of adult prisoners will be tested under this Act in circumstances when they are not serious offenders, and they are probably not people who should be harassed in this way. But with children it has to be borne in mind that one of the primary aims of the juvenile justice system is rehabilitation. The Children's Court is a closed court, and publication of names and identifying details of children are generally prohibited. All of that is due to ensure that a youthful transgression does not affect a child for the rest of his or her life.

Similarly, the sentencing options in the Children's Court and the diversionary programs under the Young Offenders Act recognise that rehabilitation is a primary consideration and, of course, that is in line with Australia's international treaty obligations. To subject children who are not very serious offenders to forensic testing is a barrier to their successful rehabilitation. It is also an enormous intrusion on their privacy and their bodily integrity.

CHAIR: Clearly, you are saying that there is a very strong case for children to be dealt with differently from adults regarding forensic testing?

Ms SANDERS: Yes.

CHAIR: The opportunity for testing should be restricted to only the most serious cases?

Ms SANDERS: Yes. If the Act is interpreted in accordance with my interpretation, or if it is amended to reflect that interpretation, and if it is clear that the Act applies only to children serving sentences of imprisonment, that could achieve its aim. My preference would be that it be amended to children serving sentences of imprisonment for serious children's indictable offences, which is an offence that carries a maximum penalty of 25 years or more, such as robbery with a firearm and those sorts of matters.

CHAIR: When you were making your initial remarks to the Committee I could not help but smile to myself when you referred to the Act containing ambiguities. A previous witness before the Committee in connection with this inquiry, Dr Jeremy Gans, of the University of New South Wales Law School, told us that in his view the legislation is a drafting disaster, by which he meant that it is not expressed in plain English and it is unduly complex. Do you have any view about the drafting of the legislation?

Ms SANDERS: It could be better, yes. I have read some of Jeremy Gans' comments and he makes some very valid points. Some of the provisions are nonsense. The ones that refer to a prescribed offence or another prescribed offence, or whatever, are a nonsense and there are others that are ambiguous or that are inconsistent with each other. Certainly, the drafting needs to be reviewed. It really needs to be gone through with a fine-tooth comb and really looked at. Jeremy Gans was of the opinion that this is what happens when you try to lift provisions out of the model Commonwealth bill. You lift some provisions out and you change a bit. This is what happens because the Act is not considered as a whole. I have not been through the Act in great detail. I have not analysed all of the drafting errors. I have really commented on the ones that have leapt out at me and the ones that apply to children.

CHAIR: I would certainly agree with you that section 12 is a very clear example of highly complex and unnecessarily complex and repetitive drafting. That is a section dealing with what is a prescribed offence.

Ms SANDERS: I am sure that legislative drafting is an incredibly difficult task. I would not intend any criticism of the drafters of the Act. But it is very complex and it seems that there was an

attempt to partly adopt the model bill. One feature is that the Act may have been rushed through. That is an understatement. Had it been released as an exposure draft, like the new Police Powers Bill, and open for public comment a lot of these drafting difficulties may have been picked up before it was put through. Having crossbenchers move amendments at 2.30 in the morning is not very conducive to making sure that the Act is properly drafted.

CHAIR: You could be saying, in effect, that this Committee might well have conducted this inquiry pre-enactment with some advantage?

Ms SANDERS: I think so, yes.

The Hon. JOHN HATZISTERGOS: Except that we would not have the benefit of experience.

Ms SANDERS: That is true. With the benefit of hindsight even the best piece of legislative drafting has developed leaks or proved to be unworkable. For pragmatic reasons the benefit of experience is useful.

The Hon. JOHN RYAN: Given that DNA material taken from children potentially survives for a very long time on a number of the databases in an identifying fashion, do you think the Act has a sufficient provision for the retirement of that information taken from juveniles? Some effort is made to remove criminal offence records for juveniles after a period of time.

Ms SANDERS: That is right.

The Hon. JOHN RYAN: But there appears to be nothing special to retire information on DNA samples taken from juveniles. Should there be such a provision?

Ms SANDERS: Yes, there is not anything. That is something I did not address specifically in the submission. There are provisions for destruction of forensic material in certain circumstances.

The Hon. JOHN RYAN: The material is destroyed, but the identifying profiles can remain identified, particularly from serious offenders, indefinitely.

Ms SANDERS: Yes, that is right. We would definitely support some sort of provision to retire or delete that information after a certain amount of time. I have already said that that we, the Youth Justice Coalition, believe that it is inappropriate to have widespread forensic testing of juvenile offenders because it is at odds with the principles of rehabilitation. Even with serious offences committed by children there may be some situations where the convictions are spent and yet the legislation allows forensic profiles to stretch on ad infinitum. The spent convictions legislation, the Criminal Records Act, recognises that there is a difference or that there should be a difference between juvenile convictions and adult convictions. Where a conviction is recorded against you as a juvenile, three years crime free and, in most circumstances, the conviction is spent. For adults the equivalent is 10 years. There certainly needs to be some recognition there.

The Hon. JOHN RYAN: Is any provision made for fingerprints taken from juveniles to be deleted from the fingerprint index?

Ms SANDERS: I may be wrong, but I certainly know that if the child is found not guilty of an offence or if the charge is dismissed with a caution fingerprints have to be destroyed. But if the child is found guilty of the offence, so far as I know there is no automatic provision for destruction. In some circumstances you can write to the Commissioner of Police to ask for them to be destroyed, but basically fingerprint records are around for a long, long time. I know that people say that DNA is just like fingerprints, it is an identifying mechanism, it is an important forensic tool, but the potential for the use of DNA material is far greater than the use of fingerprints, and its reliability as a forensic tool and as evidence is questionable. I do not claim to be an expert at all on it, but from what I have read DNA testing is also fallible. The material and the identifying details need to be treated with great caution.

CHAIR: You have made a very clear submission to the Committee for which we are very grateful. Thank you for both your submission and your evidence.

(The witness withdrew)

(The Committee adjourned at 12. 25 p.m.)