

**Government Response to the report,  
Forensic Sampling and DNA Databases in Criminal Investigations  
by the Victorian Parliament Law Reform Committee**

*[tabled in the Legislative Assembly on 3 March 2004,  
and in the Legislative Council on 31 March 2004]*

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The Government welcomes the Report of the Victorian Parliament Law Reform Committee ("the Committee") on its inquiry into the use of forensic sampling and DNA databases in criminal investigations.

The inquiry was first referred to the Committee by the Legislative Council on 21 November 2001, and reinstated by the Governor in Council on 17 April 2003. In June 2002, the Committee released an Issues Paper and called for submissions, and in July 2002 held two days of public hearings. After the Inquiry was reinstated, the new Committee carried over the submissions and evidence obtained by its predecessor and conducted further public hearings in July 2003. The Inquiry received a total of 28 submissions and heard evidence from 42 persons appearing at the public hearings.

The Inquiry was timely; after fifteen years of forensic sampling, Victoria is well-placed to review the operation of these laws and to ensure that the legislative framework for DNA profiling and databasing provides the scope and safeguards needed to gain the maximum benefit from this important forensic tool.

The Government has given in principle support to most of the Committee's recommendations. In response to this report, the Government will be considering a range of reforms to Victoria's DNA sampling laws, as part of the review of the *Crimes Act 1958* foreshadowed in the *Justice Statement*. This opportunity for comprehensive review may well identify further issues requiring legislative attention. For this reason, all recommendations identified now as having 'in principle support' will therefore be subject to further consideration before implementation, whether this involves legislative amendment or administrative action.

Key proposals for reform include provision for the expanded definition of 'forensic sample' offences, the DNA sampling of police members and a review of the current definitions of intimate and non-intimate procedures and the requirements and safeguards for their conduct. In addition to the reforms recommended by the Committee, the review of Victoria's DNA sampling laws may highlight the need for further legislative reform in this area.

In some cases, where amendments have since been made to forensic sampling provisions which were the subject of recommendations, further consideration of the Report's recommendations will be required. In other cases, the Committee's proposals would have an impact on the systems or processes of a number of relevant government agencies, and further consultation is needed to develop a workable approach.

The Government takes this opportunity to thank past and present members of the Law Reform Committee for its comprehensive review of this complex and important area of criminal law.

## RECOMMENDATIONS AND RESPONSES

Summary of Recommendation	Government Response
<b>ETHICS, PRIVACY and the CONDUCT OF FORENSIC PROCEDURES</b>	
<p><b>4.1 Non-retrospective provisions</b></p> <p>That legislation amending the forensic procedures provisions contained in Subdivision 30A of the <i>Crimes Act 1958 (Vic)</i> not have retrospective effect and therefore not apply to procedures sought and profiles obtained prior to the enactment of the amending legislation.</p>	<p>In principle support.</p>
<p><b>4.2 A purpose clause</b></p> <p>That Subdivision 30A of the <i>Crimes Act 1958 (Vic)</i> be amended to insert a 'purpose clause', to prevent the use of DNA samples and profiles obtained pursuant to these provisions for purposes other than forensic purposes in criminal investigations.</p>	<p>In principle support. The Government affirms the principle that DNA samples should be used only for the purpose(s) for which they are provided. Consideration will also be given to defining the term 'criminal investigations' to include investigations conducted to establish:</p> <ul style="list-style-type: none"> <li>(i) the whereabouts of missing persons; and</li> <li>(ii) the identification of unknown deceased persons.</li> </ul>
<p><b>4.3 Evidence obtained from physical examinations</b></p> <p>That in considering the wider implications of the Australian Law Reform Commission's report on genetic information for Victoria, the relevance and appropriateness of section 464ZE(6) of the <i>Crimes Act 1958 (Vic)</i> should also be reviewed.</p>	<p>In principle support.</p>
<p><b>4.4 Destruction of the DNA reference sample</b></p> <p>That Subdivision 30A of the <i>Crimes Act 1958 (Vic)</i> be amended to provide that a sample obtained pursuant to Subdivision 30A must be destroyed as soon as practicable after a forensic profile has been derived from the sample.</p>	<p>Further consideration is required. Policies and practices relating to the destruction of DNA material will be reviewed as outlined in response to Recommendation 4.5. See also Recommendations 7.4 and 10.1 below.</p>
<p><b>4.5 Protocol for destruction of profiles and related information</b></p> <p>That the National Association of Testing Authorities, the Victoria Forensic Science Centre (VFSC) and the Department of Justice:</p> <ul style="list-style-type: none"> <li>(i) collaborate to review: <ul style="list-style-type: none"> <li>(a) the current definition of destruction; and</li> <li>(b) the processes used by the VFSC to de-identify DNA profiles and related information; and</li> </ul> </li> <li>(ii) establish a protocol which satisfies the privacy concerns of the donors and is practicable to implement.</li> </ul>	<p>In principle support with implementation subject to competing priorities.</p>

## RECOMMENDATIONS AND RESPONSES

Summary of Recommendation	Government Response
<p><b>4.6 Prescribed information for donors</b></p> <p>That the <i>Crimes Act 1958</i> (Vic) be amended to provide that all persons who undergo forensic procedures should receive standard prescribed information as to the nature of the procedure, the investigation(s) for which it will be used, and their legal rights, their entitlements under Subdivision 30A and avenues of complaint or appeal, expressed clearly and simply in a language that the donor can understand.</p>	<p>In principle support for provision of standardised information. However, further consideration is required to establish what legislative or administrative action may be required, especially in relation to the provision of information to vulnerable persons, such as children and the mentally impaired.</p> <p>Further consultation is required with organisations catering for culturally and linguistically diverse (CALD) communities within the criminal justice system to ascertain whether the existing legislative provisions and operational arrangements are adequate to obtain informed consent from persons not fluent in English.</p>
<p><b>4.7 Unequivocal indication of donor's consent</b></p> <p>That the <i>Crimes Act 1958</i> (Vic) be amended to require an express or unequivocal indication of the donor's consent.</p>	<p>In principle support.</p>
<p><b>4.8 Self-administered buccal swab</b></p> <p>That section 464 of the <i>Crimes Act 1958</i> (Vic) be amended to provide that the buccal swab, when self-administered, is a non-intimate procedure.</p>	<p>In principle support. Already partially implemented with enactment of new section 464SA inserted in the <i>Crimes Act</i> by the <i>Crimes (Amendment) Act 2004</i>. Under these provisions the relevant suspect may, at the discretion of the police member authorised to carry out the procedure, offer the person the opportunity to elect to take a self-administered buccal swab.</p> <p>Further consideration will also be given to the adequacy of the existing definitions of intimate/non-intimate procedures and the statutory requirements applying to the conduct of these procedures in the light of recent developments in DNA sampling techniques and laws. See also response to 4.10 below.</p>
<p><b>4.9 Donor's right to nominate type of procedure used</b></p> <p>That the <i>Crimes Act 1958</i> (Vic) be amended to provide that a person from whom a DNA 'reference' sample is sought has the right to choose the method by which the DNA sample is taken.</p>	<p>In principle support. However, it is recognised that there may be certain circumstances where police should retain a discretion not to allow a person to choose the method by which the DNA sample is taken. For example, it may not be appropriate for a person to elect to take a self-administered buccal swab where the compliance of the person involved or the safety of others cannot be assured.</p>

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Summary of Recommendation	Government Response
<p><b>4.10 Video-recording of the taking of blood samples</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to require forensic procedures involving the taking of blood samples to be video-recorded</p>	<p>In principle support for maintaining a requirement for the video-recording of intimate procedures, with further consideration required in the context of the proposed review of the current definitions and requirements for the conduct of intimate and non-intimate procedures. See also response to 4.9</p>
<p><b>4.11 Attendance of independent practitioner</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to enable the requirement for an independent medical practitioner to attend when the donor's chosen practitioner will carry out the procedure, to be waived in exceptional circumstances.</p>	<p>In principle support. Further consideration will also be given to the meaning of the term 'independent' medical practitioner in this context and to other practicable alternatives to the current provisions and arrangements.</p>
<p><b>4.12 General rules for the conduct of forensic procedures</b></p> <p>That Subdivision 30A of the <i>Crimes Act</i> 1958 (Vic) be amended to include the 'general rules' for the conduct of a forensic procedure, as set out in Section 23X1 of the <i>Crimes Act</i> 1914 (Cth), not already included in Subdivision 30A:</p> <p>'A forensic procedure: ...</p> <ul style="list-style-type: none"> <li>(a) must be carried out in circumstances affording reasonable privacy to the suspect; and</li> <li>(b) except as permitted..., must not be carried out in the presence or view of a person who is of the opposite sex to the suspect; and</li> <li>(c) must not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the forensic procedure or required or permitted by another provision of this Part; and</li> <li>(d) must not involve the removal of more clothing than is necessary for the carrying out of the procedure; and</li> <li>(e) must not involve more visual inspection than is necessary for the carrying out of the procedure.' </li></ul>	<p>In principle support for the development of general rules/guiding principles. However, the proposed rules - especially (b) and (c) - will require refinement to establish a practicable balance between security and privacy concerns.</p> <p>In reviewing the rules appropriate for the conduct of forensic procedures attention will also be given to whether legislative provision is required to cover timing requirements for the conduct of forensic procedures involving persons taken into custody for that purpose.</p>
<p><b>4.13 Obtaining a second reference sample</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to provide that where:</p> <ul style="list-style-type: none"> <li>(i) it is shown that the first sample was inadequate or insufficient to obtain a profile; and</li> <li>(ii) reasons are given for the inadequacy of the sample;</li> </ul> <p>the taking of a second non-intimate reference sample can be authorised on the conditions that:</p> <ul style="list-style-type: none"> <li>(i) the first sample is destroyed and evidence provided to this effect;</li> <li>ii) the same conditions as to the retention, destruction and use apply to the second sample and profile as to the first). </li></ul>	<p>In principle support, subject to further consideration in the light of the proposed review of the definitions of intimate and non-intimate procedures.</p>

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Summary of Recommendation	Government Response
<b>OFFENDERS</b>	
<p><b>5.1 Research into repeat offending in Victoria</b></p> <p>That the Department of Justice fund and initiate research on trends in repeat offending in Victoria to establish the proportion of persons who, having committed minor summary or indictable offences, are subsequently convicted of serious indictable offences, and to develop means of targeting and rehabilitating minor offenders most at risk of recidivism.</p>	<p>Implemented through existing programs. Corrections Victoria is currently heading a national working group (part of the National Corrections Advisory Group) which is reviewing the means by which recidivism is defined and reported. Victoria is shortly to trial a re-worked model providing for a more comprehensive understanding of recidivism.</p>
<p><b>5.2 Defining Schedule 8 ('forensic sample') offences</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to re-define 'forensic sample' offences, listed in Schedule 8 of the <i>Crimes Act</i>, as serious indictable offences for which a maximum penalty of five years' imprisonment or more or a life sentence can be imposed.</p>	<p>In principle support, subject to further consideration as part of the proposed review of the <i>Crimes Act</i>.</p>
<p><b>5.3 Compulsory sampling of adult offenders sentenced to prison term</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to provide that an order for a non-intimate forensic procedure be issued automatically where a capable adult is:</p> <ul style="list-style-type: none"> <li>(i) found guilty of a serious indictable offence for which a maximum sentence of five years or more or life imprisonment can be imposed; and</li> <li>(ii) sentenced to a term of imprisonment for that offence</li> </ul>	<p>Not supported. Expanded sampling of offenders can be achieved through 5.2, without diminishing judicial discretion on a case-by-case basis.</p>
<p><b>5.4 Retention of discretionary court orders for vulnerable offenders</b></p> <ul style="list-style-type: none"> <li>(i) That orders for all forensic procedures conducted pursuant to section 464ZF involving children and incapable offenders found guilty of serious indictable offences continue to be determined by the courts on a case-by-case basis pursuant to section 464ZF of the <i>Crimes Act</i> 1958 (Vic);</li> <li>(ii) That the Committee's proposal in Recommendation 5.2 for a revised definition of an offence for which a forensic procedure may be required on a finding of guilt (a 'Schedule 8' or 'forensic sample' offence) also apply in relation to orders sought for the sampling of children and incapable offenders.</li> </ul>	<p>In principle support.</p>

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<p><b>5.5 Spent convictions and the destruction of offenders' profiles</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to provide that, in relation to indictable offences for which a sentence of two years or less has been imposed and the offender's DNA profile has been entered on the Victorian DNA database, the profile must be removed from the database and destroyed following a period of 10 years without a subsequent conviction.</p>	<p>Not supported. Implications of a spent convictions regime for evidence retained on forensic databases will be addressed in considering the development of a spent convictions regime for Victoria.</p>
<b>SUSPECTS</b>	
<p>Recommendations 6.1-6.4 and Recommendation 12.2 relate to the provisions governing the determination of applications for relevant suspect orders made by the courts under sections 464T (adults) or 464U (children). In June 2004 the <i>Crimes (Amendment) Act</i> 2004 was passed, making a significant change to the laws governing the compulsory sampling of suspects in Victorian criminal investigations. The <i>Crimes Amendment Act</i> enables senior police officers to authorise compulsory non-intimate procedures involving capable adult relevant suspects. The above-mentioned recommendations will be given further consideration in the light of the recent legislative amendments.</p>	
<p><b>6.1 Application for a relevant suspect order</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to provide that an application for a relevant suspect order under sections 464T(3) or 464U be required to specify whether the crime scene sample has been analysed and, if so, whether it has produced a profile against which the suspect's profile can be compared.</p>	<p>Further consultation is required to establish whether the proposed legislative action is necessary to bring this information to the attention of the court.</p>
<p><b>6.2 Factors relevant to orders for compulsory procedures</b></p> <p>That the relevant provisions of Subdivision 30A of the <i>Crimes Act</i> 1958 (Vic) be amended to include the considerations listed in sections 23WO and 23WT of Part ID of the <i>Crimes Act</i> 1914 (Cth) in relation to the grant of an order for a compulsory forensic procedure on a suspect, namely:</p> <ul style="list-style-type: none"> <li>(i) the background of the suspect: his/her age, physical and mental health, cultural background and religious beliefs and, in the case of Indigenous persons, his/her customary beliefs;</li> <li>(ii) the availability of a less intrusive way of obtaining the evidence;</li> <li>(iii) the suspect's reasons for refusing consent; and</li> <li>(iv) any other matter considered relevant.</li> </ul>	<p>In principle support, subject to further consideration in conjunction with Recommendations 6.4 and 12.3. Further consideration will be given to this proposal in the light of the powers granted to police to authorise compulsory procedures involving relevant suspects.</p>
<p><b>6.3 Multiple suspects</b></p> <p>That Subdivision 30A of the <i>Crimes Act</i> 1958 (Vic) be amended to clarify the process for seeking court orders in investigations involving multiple suspects, by requiring each application to indicate the number of applications that are being sought in relation to other suspects</p>	<p>In principle support. However, further consideration is required to ensure that firstly, the provision of such information is restricted to circumstances where it is relevant to the determination of the application and secondly, that the provision of such information does not prejudice ongoing investigations or individual privacy considerations.</p>
<p><b>6.4 Relevant suspect orders for vulnerable persons</b></p>	

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Summary of Recommendation	Government Response
<p>That section 464T(3) in relation to incapable persons and section 464U(8) in relation to children, of the <i>Crimes Act</i> 1958 (Vic) be amended to provide that, in considering the grant of an order for a compulsory forensic procedure involving an incapable person or a child, 'the welfare of the person' be taken into account.</p>	<p>In principle support, subject to further consideration as to the meaning of the term 'welfare of the person' in this context. See also responses to Recommendations 6.2 and 12.3 regarding considerations which may be taken into account at hearings for relevant suspect orders.</p>
<p><b>6.5 Re-defining 'relevant suspect' offences</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to re-define 'relevant suspect' offences for which a court order for a compulsory forensic procedure can be sought, as serious indictable offences for which a maximum term of imprisonment of five years or more or life can be imposed</p>	<p>In principle support for bringing relevant suspect and offender sampling provisions more closely into alignment. However, further consideration will be required in the light of the proposed review of the <i>Crimes Act</i>.</p>
<b>VOLUNTEERS</b>	
<p><b>7.1 The retention and use of victims' and relatives' profiles</b></p> <p>That Subdivision 30A of the <i>Crimes Act</i> 1958 (Vic) be amended to provide that:</p> <ul style="list-style-type: none"> <li>(i) the profile obtained from a victim, complainant or a relative of a missing person shall not be stored in or matched against the crime scene index of any DNA database; and</li> <li>(ii) breach of these requirements constitutes a serious breach for the purposes of section 464ZE and renders the DNA evidence inadmissible in criminal proceedings against the donor.</li> </ul>	<p>Further consideration is required. It is recognised that such profiles should not be used for forensic purposes unrelated to the purpose for which the samples were originally provided. It is not desirable, as a matter of public policy, for the profiles obtained from victims or their relatives to be compared against the index of unsolved crime scenes for the detection of offences unrelated to that for which the victim's or relative's DNA was obtained. However, it is also essential that the identification of persons involved in disasters can be achieved through the DNA database.</p>
<p><b>7.2 Forensic purpose of voluntary sampling</b></p> <p>That section 464ZGB of the <i>Crimes Act</i> 1958 (Vic) be amended to provide that an adult volunteer may provide a DNA sample only when it is sought in relation to an investigation into the commission of a specified indictable offence, and where crime scene evidence exists against which the DNA profile of a donor can be compared.</p>	<p>In principle support. Further consideration will be given to whether there should be any exemptions. For example, a DNA sample may be sought from a volunteer in relation to the investigation of the whereabouts of a missing person.</p>
<p><b>7.3 Limited use of volunteers' DNA</b></p> <p>That Subdivision 30A of the <i>Crimes Act</i> 1958 (Vic) be amended to provide that the profile obtained from a volunteer shall only be matched against the profile for the crime scene and shall be stored on the volunteers (limited purpose) index.</p>	<p>In principle support. It is agreed that the principles governing the sampling of volunteers should also apply to the elimination sampling of police and laboratory staff whose DNA may be required for elimination purposes in criminal investigations. Further consideration is required as to possible exceptions to this proposal.</p>

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Summary of Recommendation	Government Response
<p><b>7.4 Destruction requirements for volunteers' profiles</b></p> <p>That Subdivision 30A of the <i>Crimes Act</i> 1958 (Vic) be amended to provide that a profile obtained pursuant to section 464ZGB should be destroyed as soon as practicable after:</p> <ul style="list-style-type: none"> <li>(i) the donor has been eliminated from the investigation or</li> <li>(ii) it has been determined that analysis of the donor's profile is not required;</li> </ul> <p>whichever occurs first.</p>	<p>Further consideration is required in the light of the response to Recommendation 4.5, regarding protocols for destruction.</p> <p>It should be also noted that there are practical difficulties in determining when a volunteer has been eliminated from an investigation or when the profile is no longer required.</p>
<p><b>7.5 Volunteer to be present at retention order hearings</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to provide that applications made for the retention of DNA samples and information after consent has been withdrawn must be heard and determined in the presence of the donor of the sample.</p>	<p>In principle support for a volunteer to be provided with notice of a hearing and to be entitled to be present. Further consideration is required as to practicality in some circumstances.</p>
<b>CONSENT</b>	
<p><b>8.1 Evidence of non-consent: admissibility provisions</b></p> <p>That Subdivision 30A of the <i>Crimes Act</i> 1958 (Vic) be amended to insert a provision, based on section 23XZ of the <i>Crimes Act</i> 1914 (Cth) as follows:</p> <p>Evidence of a person's refusal or failure to consent, or withdrawal of consent, to a forensic procedure is not admissible in proceedings against the person except to establish or rebut an allegation that a police member or another person investigating the commission of the offence concerned acted contrary to law in carrying out that investigation.</p>	<p>Not supported. Admissibility should be determined at the court's discretion taking into account the particular circumstances of the case.</p>
<p><b>8.2 Confidentiality of volunteers' consent/refusal</b></p> <p>That Subdivision 30A of the <i>Crimes Act</i> 1958 (Vic) be amended to provide that:</p> <ul style="list-style-type: none"> <li>(i) individuals who do not consent to participate in a mass screening program must not be identified or identifiable to other members of the community; and</li> <li>(ii) the disclosure of information enabling the identification of such persons should be an offence under Subdivision 30A.</li> </ul>	<p>In principle support.</p>
<p><b>8.3 Broader definition of incapable person</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to incorporate a broader definition of an 'incapable person', along the lines of the definition contained in the Model Bill and Commonwealth provisions, to include persons suffering temporary, as well as permanent, incapacity at the time the DNA sample is sought.</p>	<p>In principle support, with further consideration required to assess the adequacy of existing arrangements for identifying and appropriately dealing with persons incapable of giving informed consent. This is addressed in response to recommendation 8.4 below.</p>



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Summary of Recommendation	Government Response
<p><b>8.4 Review of procedures for identifying incapable people</b></p> <p>That Victoria Police and the Office of the Public Advocate jointly review current procedures for the identification of incapable persons.</p>	<p>In principle support.</p>
<p><b>8.5 Exclusion of incapable persons from voluntary sampling</b></p> <p>That section 464ZGB of the <i>Crimes Act 1958 (Vic)</i>, which permits volunteers to undergo forensic procedures by consent, be amended to specifically exclude incapable persons from its operation.</p>	<p>In principle support.</p>
<p><b>8.6 Court orders to sample persons held at Governor's pleasure</b></p> <p>That Subdivision 30A of the <i>Crimes Act 1958 (Vic)</i> be amended to allow an application to be brought under section 464T or 464ZF for an order for a forensic procedure involving a person held at the Governor's pleasure or detained after being found not guilty because of mental impairment.</p>	<p>There is in principle support for reform which enables persons found not guilty by reason of mental impairment to be required to undergo a forensic procedure, where they would meet the test of suspicion provided in section 464T. However, further consideration is needed to establish the most appropriate means of giving legislative effect to this policy, and to the application of section 464ZF in these circumstances.</p>
<p><b>8.7 Review of the role and duties of independent persons</b></p> <p>That Victoria Police and the Office of the Public Advocate clarify the role and duties of the Independent Third Persons in the administration of the forensic procedures regime.</p>	<p>In principle support. Implementation subject to competing priorities.</p>
<p><b>8.8 Support for Indigenous persons</b></p> <p>That the Department of Justice consult with Indigenous and legal organisations to determine the most appropriate form of legislative and practical support for Indigenous persons whose DNA samples are sought for criminal investigations.</p>	<p>In principle support. A strategic objective of the <i>Victorian Aboriginal Justice Agreement</i> is the delivery of fair and equitable justice services. Adoption of this recommendation is consistent with this objective and the Agreement which notes that in order to ensure Indigenous people achieve better justice, justice agencies and the Indigenous community must work together. Accordingly, legal organisations such as the Victorian Aboriginal Legal Service will be consulted with regard to the most appropriate course of action.</p> <p>Further consultation is also required to ascertain the adequacy of the safeguards currently available for the sampling of persons whose first language is not English.</p>

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<b>POLICE POWERS AND RESPONSIBILITIES</b>	
<p><b>9.1 Audit of systems for administration of DNA sampling</b></p> <p>That the Auditor-General undertake an audit of the systems in place for ensuring compliance with the requirements of Subdivision 30A and the notification by Victoria Police of critical destruction and retention dates to the forensic laboratory.</p>	<p>In principle support.</p>
<p><b>9.2 Responsibility for the provision of reports and DNA evidence</b></p> <p>That the <i>Crimes Act 1958 (Vic)</i> be amended to provide that where a request is made for a forensic report or a portion of a crime scene sample, the Victoria Forensic Science Centre will be responsible for:</p> <ul style="list-style-type: none"> <li>(i) making the forensic report available; and/or</li> <li>(ii) providing access to the crime scene sample for re-testing.</li> </ul>	<p>Not supported. Existing arrangements, which place responsibility for this, along with other operational matters, on the police informant, are preferred. The existing arrangements preserve the confidentiality of personal information relating to the subject of the DNA material and confine laboratory responsibilities to matters relating to the analysis of DNA evidence.</p>
<p><b>9.3 Regulations for the collection of DNA samples</b></p> <ul style="list-style-type: none"> <li>(i) That the National Association of Testing Authorities, the Victoria Forensic Science Centre, Victoria Police and the Victorian Institute of Forensic Medicine (VIFM) collaborate to develop 'best practice' procedures to govern the collection and handling of DNA person samples by Victoria Police and the VIFM; and</li> <li>(ii) That these procedures be prescribed as regulations pursuant to section 464ZGJ of the <i>Crimes Act 1958 (Vic)</i>.</li> </ul>	<p>In principle support. The development of best practice procedures is supported, whilst noting that current procedures are among the best in the world. Further consideration is required as to legislative implications.</p>
<p><b>9.4 Elimination sampling of Victoria Police members</b></p> <p>That police members be required to provide a DNA reference sample for elimination purposes, and that the profiles obtained be stored along with profiles of Victoria Forensic Science Centre laboratory staff, on the internal VFSC staff elimination database.</p>	<p>In principle support. Victoria Police has also referred this issue to the National Police Commissioners Policy Advisory Group ("PCPAG") for consideration at the national level.</p>
<p><b>9.5 Guidelines for an elimination sampling policy</b></p> <p>That Victoria Police develop a clear policy on elimination sampling outlining:</p> <ul style="list-style-type: none"> <li>(i) when staff samples and profiles may be destroyed;</li> <li>(ii) the uses to which the profile can and cannot be put; and</li> <li>(iii) policies and procedures for the destruction of this material after employment has changed or terminated.</li> </ul>	<p>In principle support.</p>

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<p><b>9.6 Safeguards and penalties for breach to cover DNA samples and related information obtained from police and laboratory staff</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to ensure that the unauthorised retention or use of DNA samples, profiles and related information, obtained from police members and laboratory staff and stored on an internal staff elimination database, constitutes a breach of Subdivision 30A</p>	<p>In principle support.</p>
<p><b>9.7 'Best practice' procedures for collection of crime scene evidence</b></p> <p>That the National Association of Testing Authorities, the Victoria Forensic Science Centre and Victoria Police collaborate to develop 'best practice' procedures to govern the collection, handling and preservation of crime scene evidence containing DNA samples.</p>	<p>In principle support, noting that current Victoria Police and VPFSC practices already conform to world's best practice.</p>
<b>LABORATORY SYSTEMS AND SERVICES</b>	
<p><b>10.1 Notification of destruction of sample</b></p> <p>That the <i>Crimes Act</i> 1958 (Vic) be amended to require that, when destruction of a forensic sample is required under Subdivision 30A, the Victoria Forensic Science Centre be required to notify the person in writing and report to the Chief Commissioner of Police in writing within 28 days [of whether the sample has been destroyed].</p>	<p>In principle support. This proposal provides statutory clarification, but no change to current operational practice.</p>
<p><b>10.2 Annual publication of DNA profiling data</b></p> <p>That data maintained by the Victoria Forensic Science Centre relating to:</p> <ul style="list-style-type: none"> <li>(i) the number of samples received, analysed and destroyed;</li> <li>(ii) database detections;</li> <li>(iii) the inculpation and exculpation of suspects; and</li> <li>(iv) the sampling of volunteers</li> </ul> <p>be collated and released annually.</p>	<p>In principle support, subject to further consideration as to the most appropriate forum, contents and format of the proposed publication, as well as the appropriateness of the existing reporting requirements contained in section 464ZFE. Implementation will also be subject to competing priorities.</p>
<p><b>10.3 NATA Accreditation in forensic science for laboratories</b></p> <p>That Subdivision 30A of the <i>Crimes Act</i> 1958 (Vic) be amended to provide that in relation to the analysis of forensic samples, only forensic reports produced by laboratories accredited by NATA in the field of forensic science will be admissible in criminal proceedings in Victoria.</p>	<p>In principle support, subject to further consideration as to the form of any legislative recognition that NATA accreditation might receive. NATA accreditation ensures consistency across similarly accredited organisations while confirming high levels of technical competency. However, recognition of this qualification should not absolutely preclude the admission of relevant evidence in Victorian criminal proceedings, if at the discretion of the court, having considered factors set out in section 464ZE, the court finds in all the circumstances that the evidence should be admitted.</p>

RECOMMENDATIONS AND RESPONSES

Summary of Recommendation	Government Response
<p><b>10.4 Independent footing for the Victoria Forensic Science Centre</b></p> <p>That the Victoria Forensic Science Centre should be established on an independent footing, namely:</p> <ul style="list-style-type: none"> <li>(i) managed by an independent Board, to include representatives of client groups;</li> <li>(ii) accountable through annual reports to the Victorian Parliament;</li> <li>(iii) at arm's length from its major clients; and</li> <li>(iv) funded by a body or department separate from Victoria Police.</li> </ul>	<p>Not supported.</p> <p>In this context, it is vital to have in place arrangements which ensure the impartiality, although not necessarily the structural independence, of the forensic laboratory.</p> <p>There are, however, opportunities within the existing administrative arrangements, to recognise the particular position of the forensic laboratory. The existing Advisory Board to the VPFSC may in part achieve the purpose underlying this proposal. Further consideration will be given to proposals, such as the annual publication of reports dedicated to the activities of the forensic laboratory, which underline the specialised functions of the VPFSC.</p>
<p><b>THE ROLE OF DNA EVIDENCE IN CRIMINAL PROCEEDINGS</b></p>	
<p><b>11.1 The impact of DNA evidence on criminal proceedings</b></p> <p>That the Department of Justice, Victoria Police Prosecutions, the Office of Public Prosecutions and the Victorian Courts develop an agreed and consistent process for collecting and reporting to Parliament on the impact of DNA evidence on criminal prosecutions/proceedings, specifically including:</p> <ul style="list-style-type: none"> <li>(i) the number of investigations in which DNA evidence is used, indicating the type of offence involved, and specifically identifying serious crimes against the person, sexual offences, assaults, armed robbery, burglary, theft and, in relation to prosecutions involving DNA evidence:</li> <li>(ii) the number of guilty pleas and findings of guilt recorded;</li> <li>(iii) the number of prosecutions resulting primarily from a DNA database detection;</li> <li>(iv) the role of the DNA evidence; and</li> <li>(v) whether the DNA evidence was contested and, if so, on what basis.</li> </ul>	<p>In principle support. Further consideration is required to establish the feasibility and cost-effectiveness of additional systems that would be needed.</p>
<p><b>11.2 Defining the forensic report</b></p> <p>That the Department of Justice convene a Working Group to report to the Attorney-General, with representatives from the National Association of Testing Authorities, the Victoria Forensic Science Centre, the Office of Public Prosecutions, the Law Institute of Victoria, Victoria Legal Aid, and the Criminal Bar Association, to develop a comprehensive definition of the content of the forensic report.</p>	<p>In principle support. All relevant non-government stakeholders also support this in principle. Implementation is subject to competing priorities.</p>

RECOMMENDATIONS AND RESPONSES

Summary of Recommendation	Government Response
<p><b>11.3 Development of pre-trial guidelines for DNA evidence</b></p> <p>That the Working Group proposed in Recommendation 11.2 above consider a proposal for the development of a protocol or guidelines for the pre-trial preparation and identification of agreed and contested elements of DNA evidence for criminal trials.</p>	<p>In principle support. All relevant non-government stakeholders also support this in principle.</p>
<p><b>11.4 Glossary of technical terms</b></p> <p>(i) That the Victoria Forensic Science Centre compile a glossary of scientific and technical terms used in the analysis of DNA evidence in Victoria; and</p> <p>(ii) That Victoria Police, through its representation on the CrimTrac Board of Management, propose the adoption of the glossary by all Australian forensic laboratories conducting DNA analysis for criminal investigations.</p>	<p>In principle support.</p>
<p><b>11.5 Legal education on presentation of DNA evidence</b></p> <p>That the Law Institute of Victoria, the National Institute of Forensic Science and other agencies involved in the provision of continuing legal education develop programs on the presentation of forensic evidence for forensic expert witnesses and legal practitioners.</p>	<p>In principle support. A range of initiatives is already being undertaken by relevant agencies.</p>
<p><b>11.6 Legal education on DNA evidence for judicial officers</b></p> <p>That the Judicial College of Victoria develop legal education programs to assist judicial officers in understanding and giving jury directions on DNA evidence.</p>	<p>In principle support. Relevant projects already being undertaken.</p>
<b>ADMISSIBILITY AND CRIMINAL JUSTICE PRINCIPLES</b>	
<p><b>12.1 Admissibility of DNA evidence from other jurisdictions</b></p> <p>That in determining whether DNA evidence originating in a jurisdiction which is not a participating jurisdiction for data-sharing purposes under section 464 of the <i>Crimes Act 1958 (Vic)</i> should be admissible in any Victorian criminal proceedings, the court be required to take into account whether the collection and analysis of the DNA evidence would have complied with the requirements of Victorian law.</p>	<p>Further consideration is required to establish the likely impact of this proposal. The Government is committed to measures which will encourage and support data-sharing between jurisdictions which have laws that substantially correspond with Victoria's DNA sampling provisions.</p>
<p><b>12.2 Increased penalties for unauthorised use of DNA material</b></p> <p>That the penalties prescribed in ss 464ZG(2) and (3) of the <i>Crimes Act 1958 (Vic)</i> for the unauthorised retention or use of forensic material be increased to a maximum of two years, in alignment with penalties imposed in other Australian jurisdictions.</p>	<p>In principle support.</p>

## RECOMMENDATIONS AND RESPONSES

Summary of Recommendation	Government Response
<p><b>12.3 The defendant's standing in hearings of applications for relevant suspect orders</b></p> <p>That the <i>Crimes Act</i> (1958) Vic be amended consistent with the provisions of sub-sections 23WX(6) and (6A) of the <i>Crimes Act</i> 1914 (Cth).</p>	<p>Further consideration and consultation will be required in the light of the introduction of police-authorised procedures. See responses to recommendations 6.1-6.4.</p>
<b>POST-CONVICTION REVIEWS (INNOGENCE PROJECTS)</b>	
<p><b>13.1 Post-conviction review process on basis of DNA evidence</b></p> <p>(i) That the Attorney-General establish a process to consider applications for post-conviction review from a serious offender serving a term of imprisonment who makes a claim that DNA evidence may exist that calls his or her conviction into question; and</p> <p>(ii) That this process establish clear criteria for the assessment of applications for post-conviction review, including but not limited to the following:</p> <p>(a) the availability of biological evidence which, if analysed, could produce a relevant, meaningful and probative result;</p> <p>(b) whether the applicant has consistently maintained his/her innocence; and</p> <p>(c) the nature of the evidence relied upon to convict the applicant.</p>	<p>In principle support. Further consideration and consultation with stakeholders is required in relation to how this recommendation could best be implemented and its possible impact on existing resources available for forensic services.</p>
<p><b>13.2 Assistance for re-testing DNA evidence</b></p> <p>That where an application for a preliminary review of the DNA evidence is made through the process developed as proposed in Recommendation 13.1, and meets the specified criteria for a review to proceed, funds be made available through a legal aid allocation for re-testing and analysis of relevant DNA evidence.</p>	<p>There is in-principle recognition that access to legal resources is of critical importance to disadvantaged members of the community, who are disproportionately represented in the prison population.</p> <p>The Victorian Government, through the Victorian Aboriginal Justice Agreement, is committed to improving the delivery of fair and equitable justice services. Further consideration is required to ascertain what financial assistance may be available to support such applications.</p>
<p><b>13.3 Preservation orders for crime scene evidence</b></p> <p>(i) That the <i>Crimes Act</i> 1958 (Vic) be amended to provide that a serious offender, serving a term of imprisonment, may within one year of the expiry of all appeal periods, apply for a court order for the preservation of relevant crime scene DNA evidence; and</p> <p>(ii) the Department of Justice consult with Victoria Police, the Law Institute of Victoria, the Office of Public Prosecutions and the Criminal Bar Association to develop regulations outlining the circumstances in which such applications could be made and granted.</p>	<p>Further consideration is required to establish how a practicable mechanism for the preservation of relevant crime scene evidence might be introduced.</p>

RECOMMENDATIONS AND RESPONSES

Summary of Recommendation	Government Response
<p><b>13.4 Establishment of an accredited crime scene exhibits registry</b></p> <p>That Victoria Police, in consultation with the National Association of Testing Authorities, establish a NATA-accredited Exhibits Registry for the preservation of identified crime scene exhibits.</p>	<p>Not supported at this time. Further consideration would be required to ascertain the feasibility and cost of this proposal.</p>
<p><b>DATA-SHARING AND THE NATIONAL DNA DATABASE</b></p>	
<p><b>14.1 Defining national minimum standards for data-sharing</b></p> <p>That to enable data-sharing to commence on the basis of uniform national standards, Victoria advocate that, in the first stage of data-sharing, participating jurisdictions upload onto the national DNA database only data consistent with the Model Bill definitions of offender, suspect and volunteer.</p>	<p>Victoria's participation in the DNA database is a priority not only for state-wide policing, but also for the advancement of national crime detection capabilities.</p> <p>At this stage, it would be premature to contemplate legislative or administrative action which could impede progress towards achieving a national data-sharing system.</p> <p>Data-sharing through CrimTrac is based on individual participating jurisdictions taking responsibility for ensuring the integrity, security, accuracy, and lawful authority for their data.</p> <p>Further consideration will be given to means to give effect, within Victoria, to bilateral data-sharing arrangements with jurisdictions having corresponding laws, while being mindful of initiatives at the national level, directed at enhancing the accountability of the systems in place for cross-border law enforcement.</p>
<p><b>14.2 Audit of DNA database</b></p> <p>That Victoria, through its representation on CrimTrac, work towards the introduction of a regular, independent audit of the operation of the national DNA database</p>	<p>See response to 14.1 above.</p>
<p><b>14.3 A phased process for entering national DNA database</b></p> <p>(i) That Victoria's participation in the national DNA database be phased in, to ensure that consistent or agreed minimum standards apply to the data entered and retained on the database; and</p> <p>(ii) that in the first stage, only profiles which, at the time of collection, were provided for indefinite and unlimited use be made available to law enforcement agencies in other jurisdictions under data-sharing arrangements.</p>	<p>See response to 14.1 above.</p>

