

Law Society members front genetic info inquiry

In March the Australian Law Reform Commission ("ALRC") and the Australian Health Ethics Committee ("AHEC") held a meeting at the Law Society as part of a joint inquiry into the protection of human genetic information. There were quite a few matters of interest to the inquiry including: the forensic investigation provisions in the Northern Territory legislation and associated Territory and national procedures; the Northern Territory DNA database; potential challenges to the admission of DNA evidence in court; and human rights/privacy issues. David Dalrymple was part of the meeting fronted by ALRC president David Weisbrot and ALRC Legal Officer Gabrielle Carney. This is his report.

Covering a number of issues, my submission to the inquiry focussed on the use of DNA samples in the criminal justice system.

I don't necessarily have any objection in principle to the use in the criminal justice system of compulsorily or even forcibly obtained DNA samples.

However, as I told the inquiry's officers, I do have concerns about the use of claimed DNA matches in criminal cases where there has not been an adequate scientific validation process focussing on the population genetics of the particular set of loci being used in the context of the Territory population (in particular the Aboriginal population).

A scientific validation process needs to be commenced afresh each time a new set of loci is adopted for use, and I said it was not acceptable for the Territory to simply rely on population genetics validation studies carried out in respect of populations outside the Territory (let alone for us to rely on studies carried out by an overseas manufacturer which were not published and freely available to members of the public including defence lawyers and experts).

forensic samples

I submitted to the inquiry that the process of the accumulation and collation by police biologists of forensic samples into an NT forensic DNA database should not be used as the source data for any Territory validation study.

Instead what is needed is a process involving independent experts carrying out random and non-forensic sampling within relevant racial and ethnic sub-groups in the Territory population.

I told the inquiry that legislation relating to the use of compulsorily obtained DNA in police databases and the use of any associated claimed DNA matches in court proceedings should not

refer to DNA as something generic, but should rather identify specifically the loci and profiling technology that the police and prosecution are permitted to rely on.

The legislation should require that that particular profiling system be validated before its authorised forensic use comes into effect, and each time a system is to be replaced by a new one, the legislation should also be updated (after an independent inquiry to confirm satisfactory validation of the new system).

database

Finally, I submitted that the Northern Territory forensic database should be "built", maintained, and operated not by the Northern Territory police but by an independent (in the sense of not being employed by or identified with a party in criminal court proceedings) body, and that subject to appropriate safeguards, information from the database should be accessible on request by both prosecution and defence.

Later, the inquiry heard from Alexis Fraser from the ODPP and her arrival saw the discussion's focus move to the proposed national protocol for forensic DNA databases.

profiles

Alexis expressed the view that police investigators should be permitted to undertake database searches which could extend beyond the profiles of individuals who had been convicted of "serious crime" to individuals who had been convicted of offences such as unlawful entry and unlawful use of motor vehicle.

She also mentioned that the FBI was now moving towards reliance on profiling of mitochondrial DNA as the preferred forensic DNA identification procedure, and that she understood that it was probable that all the other forensic laboratories would ultimately follow suit.

Hopefully we will get another visit from the ALRC before their inquiry is complete. ①

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