

**Government Response to the report of Te Aka Matua o te Ture |  
Law Commission:**

***The Use of DNA in Criminal Investigations | Te Whakamahi i te Ira  
Tangata i ngā Mātai Taihara***

**Presented to the House of Representatives**

# Government Response to the report of Te Aka Matua o te Ture | Law Commission: *The Use of DNA in Criminal Investigations | Te Whakamahi i te Ira Tangata i ngā Mātai Taihara*

## Introduction

---

The Government has carefully considered the report of Te Aka Matua o te Ture | Law Commission: *The Use of DNA in Criminal Investigations | Te Whakamahi i te Ira Tangata i ngā Mātai Taihara* (the report), presented to the House of Representatives on 27 November 2020, and responds to the report according to Cabinet Office circular CO (09) 1.

## Summary

---

The Government thanks Te Aka Matua o te Ture | Law Commission (the Law Commission) for its comprehensive review and accepts the overall findings of the report. The Government accepts the conclusions that the Criminal Investigations (Bodily Samples) Act 1995 (the CIBS Act) is no longer fit for purpose and that the regime lacks adequate independent oversight and governance structures. The Government also accepts the recommendation for a new Act for the DNA regime and the recommendation to establish an independent oversight body.

The Government view is that further work will be required to determine the operational settings for the regime and is committed to addressing these in a comprehensive policy and legislative process. The Government will assess the scope and scale of work required to reform the DNA regime and consider when it could be progressed.

## The Law Commission report

---

In 2016, the Minister of Justice asked the Law Commission to review the CIBS Act. The resulting report is a product of a comprehensive review and wide consultation and finds that the CIBS Act is no longer fit for purpose.

The report spans 579 pages and makes 193 recommendations to address a range of issues across the entirety of the regime. The issues identified include considerable legislative gaps and insufficient independent oversight, as well as a failure to adequately accommodate human rights, tikanga Māori and the Crown's responsibilities under the Treaty of Waitangi. The Law Commission emphasises that these issues are compounded by rapid advances within forensic science and by the age and complexity of the CIBS Act.

The report further highlights that the impact of these issues is compounded for Māori because of DNA's significance in te ao Māori,<sup>1</sup> and the disproportionate representation of Māori in the criminal justice system.

---

<sup>1</sup> DNA represents whakapapa (genealogy) information, which is taonga and engages tino rangatiratanga and the principle of active protection, under the Treaty of Waitangi. It also gives rise to rights and responsibilities according to tikanga Māori

## ***The Law Commission's recommendations***

The recommendations in the report relate to repealing and replacing the CIBS Act with a new, modern and comprehensive Act. This would include:

- regulating or amending existing regulation to eliminate current statutory gaps, increase safeguards to protect the rights and interests of individuals and their families (in particular for Māori), and to clarify boundaries for the regime
- establishing an independent oversight committee for the regime, and strengthening the oversight and governance structures more generally, and
- establishing a new, centralised DNA databank. This DNA databank would include several indices to accommodate the gaps that need to be filled. Establishment of this databank would also involve amending current regulations that relate to sampling, storing and retaining DNA profiles, including special rules regarding the collection and retention of DNA of children and young people.

## **The Government Response**

---

The Government commends the Law Commission on producing a comprehensive and well-balanced report on a legally, scientifically and operationally complex area of the law that engages constitutional principles and impacts on both public and private interests. The report is the result of extensive work and represents a substantive contribution to future reform of the DNA regime. The Government is grateful to the Law Commission and to those it consulted in the review process.

### ***The Government accepts the findings of the report and agrees that a new Act and an independent oversight body for the regime is required***

In the report, the Law Commission identified a range of issues with the current operation of the DNA regime and concluded that the CIBS Act is no longer fit for purpose. The report also highlighted that the regime lacks the transparency and robustness afforded by adequate governance and oversight structures.

The Government accepts these findings, including the conclusion that the CIBS Act is no longer fit for purpose. We consider that the risks associated with the identified issues may contribute to the erosion of trust and confidence in the criminal justice system and could potentially lead to unjust outcomes.

The Government therefore agrees with the Law Commission's recommendation that the CIBS Act should be repealed and replaced by a new, comprehensive and modern Act.

The Government also accepts the Law Commission conclusion that the regime requires strengthened governance and oversight, including the establishment of an independent oversight body.

***Further work will be required to determine the operational settings for the regime***

The Government view is that further work will be required to analyse and finalise the operational detail of the proposed new regulatory system and its governance and oversight structures. For example, the Government thinks that the form of the independent oversight body and its functions should be determined later in the process.

Reform of the DNA regime involves important considerations that are associated with high personal and public interests, and the recommended changes relate to technically and operationally complex matters. Changes to the regime will have significant implications for Police, the forensic service provider, the courts, the judiciary and law practitioners, as well as members of the public.

The Government recognises the important contribution of the operational settings in successfully reforming the DNA regime. These settings will give effect to overarching principles and establish the framework for a comprehensive system. In determining these settings, a careful balance must be struck between the requirements for effective law enforcement and the rights, needs, and interests of both individuals and collective groupings affected by the collection and use of DNA. The Government view is therefore that the operational settings are best addressed as part of a comprehensive policy and legislative process, involving multi-agency input and active Māori involvement.

***The Government will consider when reform can be progressed***

Reform of the DNA regime will require a considerable amount of work. The Government will evaluate the scope and scale of this work and consider it alongside other reforms to determine when it can be progressed.