

MEDIA RELEASE

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Donna Buckingham
Commissioner
Law Commission

LAW COMMISSION RECOMMENDS NEW DNA LAWS FOR CRIMINAL INVESTIGATIONS

Te Aka Matua o te Ture | Law Commission today released a report that recommends a new, comprehensive regime to control how DNA is obtained, used and retained for criminal investigations.

The report has revealed significant gaps in the operation of the current law, including insufficient independent oversight and a failure to accommodate human rights values, tikanga Māori and the Treaty of Waitangi | te Tiriti o Waitangi.

Donna Buckingham, lead Commissioner on the review, said:

“In 1995 Aotearoa New Zealand became only the second country to establish a legal regime for the use of DNA in criminal investigations. But time and technology have moved on and what a tiny amount of DNA can reveal about a person has grown hugely in twenty-five years.”

“DNA analysis is a valuable tool for Police, but the current law has gaps and can also be confusing and complex to apply in practice.”

“We are particularly concerned that the current regime has limited independent oversight. The lack of such monitoring falls short of international best practice.”

“The Law Commission is recommending a new legal framework to clarify how Police can use DNA in criminal investigations. Our recommendations also seek to reduce the impact of collection and use of DNA on people’s privacy generally and to address the disproportionate impact of the current regime on Māori.”

In July 2016, the government asked the Commission to review the Criminal Investigations (Bodily Samples) Act 1995. The Commission released an Issues Paper at the end of 2018 and received submissions from the public, academics, government agencies and other interested organisations. Since then the Commission has tested its proposals with officials and experts in forensic science, criminal law and tikanga Māori. The Commission has also received feedback from judges and young people.



The Commission has worked closely across the entire review with New Zealand Police and Institute of Environmental Science and Research (ESR) scientists who operate the current system.

List of core recommendations:

- Improving protections for adults from whom Police seek to obtain DNA by consent or on arrest.
- Requiring a court order to obtain DNA from suspects who are children or young people or who lack the ability to provide consent.
- Regulating the use of DNA where the current law is either silent or fragmented. This includes elimination sampling, mass screening, familial searching, and genetic genealogy searching.
- Establishing a single DNA databank to hold all DNA profiles obtained by Police with clear rules on how these DNA profiles can be used.
- Restricting the retention of offenders' DNA profiles and aligning any retention of youth offender profiles more closely with the rehabilitative focus of the youth justice regime.
- Creating an independent mechanism for the assessment of new DNA analysis techniques and whether these should be approved for use.
- Improving oversight by increasing the role of the judiciary, establishing a new DNA Oversight Committee (with mandatory Māori representation), and providing for external auditing by the Independent Police Conduct Authority.

ENDS

Background:

Te Aka Matua o te Ture | Law Commission is an Independent Crown Entity operating under its own statute, the Law Commission Act 1985. It reports to the Minister responsible for the Law Commission. The Commission's statutory purpose is to "promote the systematic review, reform and development of the law of New Zealand". The Law Commission receives its work programme for reform and development work as references from the responsible Minister under section 7 of the Law Commission Act and from Parliament. Visit lawcom.govt.nz for more information.

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This media release, a Q+A document and the full publication are available from our website at lawcom.govt.nz/our-projects/use-dna-criminal-investigations

