



LAW · COMMISSION

TE · AKA · MATUA · O · TE · TURE

TERMS OF REFERENCE

THE USE OF DNA IN CRIMINAL INVESTIGATIONS

The Law Commission will conduct a comprehensive review of the Criminal Investigations (Bodily Samples) Act 1995 (the Act). The Act provides the New Zealand Police with powers to collect, retain, and use DNA in criminal investigations. It also regulates two DNA profile¹ databanks that are maintained, on behalf of the Police, by the Institute of Environmental Science and Research (ESR).

The Act was the subject of significant amendments in 2003 and 2009. The purpose of this review is to determine whether the current legislation is fit for purpose and whether it is keeping pace with developments in forensic science, international best practice and public attitudes, in relation to the collection, retention and use of DNA in criminal investigations. The review will also examine whether the Act gives appropriate recognition to both law enforcement values and human rights, including the right to privacy.

The Law Commission's review will include (but not be limited to) an examination of the following areas and issues:

Recognising public and individual interests

- Identification and assessment of the law enforcement benefits of the use of DNA in criminal investigations
- Whether human rights, including the right to privacy, are appropriately recognised
- The legal and ethical issues around the control and ownership of DNA
- Whether Māori interests, including in relation to tikanga Māori, are appropriately recognised.

Recognising the broader context

- Recent and predicted scientific developments in the forensic analysis of DNA
- International agreements, obligations and best practice
- The relationship between the Act and regimes governing the collection, retention and use of other biometric information including fingerprints
- The relationship between the Act and other related legislation including the Children, Young Persons and their Families Act 1989, the New Zealand Bill of Rights Act 1990, the Privacy Act 1993, the Health Information Privacy Code 1994, the Criminal Record (Clean Slate) Act 2004 and the Search and Surveillance Act 2012.

¹ It is important to note the distinction between a DNA *sample* and a DNA *profile*. A DNA *sample* means the actual physical sample of bodily/genetic material: for instance a sample of blood or saliva from a mouth swab. The information derived from the forensic analysis of the sample is a DNA *profile*. A DNA sample is also sometimes referred to as a “bodily sample”. The Criminal Investigations (Bodily Samples) Act 1995 governs how DNA samples from blood or mouth swabs must be obtained. However, most genetic material can be used to obtain a DNA sample.

Improving legislative design

- The scope, coverage and accessibility of the Act, with a view towards simplification and improving legislative design.
- The checks and balances that protect the integrity of the databank regime
- The criteria for deciding from whom to collect a DNA sample. Procedural and technical matters including the requirements governing consent, the use of reasonable force, taking DNA samples from children, young persons and other vulnerable persons, retention of DNA samples and DNA profiles, reporting requirements, record keeping and information sharing with domestic agencies and foreign law enforcement agencies.

Review Process

This review will be conducted by the Law Commission. The Commission will engage with interested parties in both the public and private sector during the review, and will carry out a public consultation process. The Commission will also establish an officials group and an expert advisory group to provide technical expertise and advice representing a range of perspectives.

The Commission will produce an issues paper in mid-2017. Following a formal consultation process, the Commission will publish a final report in August 2018.