

## FORENSIC PROCEDURES - OVERSEAS INCIDENTS REVIEW COMMITTEE

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| <input type="checkbox"/> Priority A (date.....) | <input checked="" type="checkbox"/> Reply by Ellison |
| <input type="checkbox"/> Priority B             | <input type="checkbox"/> Reply by Ruddock            |
| <input checked="" type="checkbox"/> Priority C  | <input type="checkbox"/> Brief required              |
| <input type="checkbox"/> Appropriate Action     | <input type="checkbox"/> Reply by COS                |
| RECEIVED 14 APR 2004 23659                      |  |
| <input type="checkbox"/> Reply by AGD           | Action Area  |
|   | COS  |
|   | Int: DF  |
|   | Date: 14/4/2004                                      |
| DF/CE/CP  |  |

Forensic Procedures - Overseas Incidents  
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8 April 04

Senator the Hon Chris Ellison  
Minister for Justice and Customs  
Parliament House  
Canberra

Dear Minister

On 14 October 2003, you appointed a Committee to review Division 11A of Part 1D of the *Crimes Act 1914* (Cth). Division 11A was enacted immediately after the Bali bombings on 12 October 2003 to facilitate identification of the victims.

The Review Committee, of which I am the Chairman, consists of representatives of the Federal Privacy Commissioner, the Australian Federal Police, the Commonwealth Ombudsman and the Commonwealth Director of Public Prosecutions.

The scope of the review is:

- (a) the extent to which the provisions of Division 11A contributed to the identification of persons who died as a result of the Bali bombings and to the criminal investigation of those bombings,
- (b) the effectiveness of Division 11A,
- (c) problems encountered in the administration of Division 11A,
- (d) deficiencies in Division 11A, and
- (e) any issues relating to privacy or civil liberties.

The Review sought submissions by placing advertisements in national and major metropolitan newspapers on 28 January 2004. The Review Secretariat also wrote to individuals and organisations which had been involved in the aftermath of the Bali bombings, and to individuals and organisations with an interest in the collection and use of DNA in the criminal investigative process, to invite them to make submissions.

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Division 11A, which was enacted following the Bali bombings, allows access to, matching, and disclosure of, information on a DNA database for the purposes of identifying those killed as a result of the Bali bombings and other overseas incidents which the Minister determines are incidents to which the Division should apply, and assisting in the investigation of such incidents. The application of Division 11A is confined to the involvement of Australian citizens in a terrorism incident in a foreign country.

A number of submissions to the review have suggested that the legislation should be extended to mass casualty domestic incidents, such as terrorist attacks, aircraft disasters and natural disasters. In light of those submissions, and the terrorist attack in Madrid in March 2004, the Committee considers that the adequacy of existing legislation to facilitate effective Disaster Victim Identification (DVI) processes if a disaster resulting in mass casualties of Australian and non-Australian nationals were to occur within Australia is a significant issue.

Under current State and federal legislation, each jurisdiction has its own DVI procedures and DNA database. Part 1D of the *Crimes Act 1914* (Commonwealth) enables jurisdictions to include DNA information obtained from forensic material on the National Criminal Investigation DNA Database (NCIDD) operated by CrimTrac, and regulates access to, matching, use and disclosure of that information. Inter-jurisdictional sharing of DNA information on the national DNA database is restricted to those jurisdictions with corresponding laws and with which Ministerial Arrangements have been made, and sharing of DNA information between jurisdictions is restricted by differences in the matching rules in the legislation of the various jurisdictions. With the exception of Division 11A, neither the federal legislation nor the legislation of any of the jurisdictions enables the disclosure of DNA information for purposes other than criminal investigations (humanitarian purposes) or to overseas agencies or law enforcement organisations.

The Review Committee recognises that the limitations contained in the current legislation and inter-jurisdictional arrangements may hinder the ability of State and federal agencies to cooperate effectively and provide timely DVI in the face of a major disaster. However, the Review Committee believes that the issue is sufficiently important and urgent to bring it to your attention prior to the final report which we expect will not be completed until June 04.

Accordingly, I refer the issue of DVI in domestic mass casualty incidents to you for your further consideration.

Yours sincerely

  
Tom Sherman AO  
Chair