

MEDIA RELEASE

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Donna Buckingham
Commissioner
Law Commission

Public to have say on the use of DNA in criminal investigations

The Law Commission has released an Issues Paper and is inviting public input on the use of DNA in criminal investigations.

In 1995, New Zealand became the second country to create a legislative regime for the use of DNA in criminal investigations. The Criminal Investigations (Bodily Samples) Act 1995 (CIBS Act) regulates DNA collection from known individuals, either by consent or by compulsion, and establishes the national DNA databank to hold the resulting profiles.

The CIBS Act focuses on the use of a DNA profile to identify an individual offender – either by offering an investigative lead in relation to unsolved criminal offending or by providing evidence in the prosecution of an offence. For that reason a DNA profile has sometimes been referred to as the ‘modern-day fingerprint’ in terms of the function it performs in the criminal justice context.

But while fingerprints are unique to each individual, DNA by its very nature is shared with ancestors, siblings and children. In the 22 years since the Act came into force, it has become clear that the modern-day fingerprint analogy is increasingly inapt. The science of DNA profiling will continue to develop. Profiling methods may become even more comprehensive, and profiling costs will reduce. Theoretically, whole genome sequencing could ultimately become the standard method of analysing a DNA sample, capable of generating a complete genetic picture of a person. Such a development will give a new perspective on the concept of genetic surveillance in the criminal context.

It is no longer possible to read the legislation and obtain an accurate picture of the role and function of DNA profiling in criminal proceedings.

“We think these developments – and those that the science signals but have yet to come – raise questions on which we need informed public debate” says Commissioner Donna Buckingham. “Such questions must focus not only on how to support the effectiveness of DNA profiling in the criminal context, but also address the privacy, tikanga, human rights and Treaty of Waitangi concerns that arise.”

The Issues Paper can be downloaded at <https://lawcom.govt.nz/our-projects/use-dna-criminal-investigations> and the public can provide their views until 31 March 2019 at <https://dna-consultation.lawcom.govt.nz>. The Law Commission will publish its Final Report in late 2019.

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