

Passed by both Houses



New South Wales

# Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2013

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly,  
Legislative Assembly,  
Sydney,*

*, 2013*



New South Wales

## **Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2013**

Act No , 2013

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An Act to amend the *Crimes (Appeal and Review) Act 2001* to implement recommendations arising from a statutory review of the DNA Review Panel under section 97 of that Act.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crimes (Appeal and Review) Amendment (DNA Review Panel) Act 2013*.

**2 Commencement**

This Act commences on 23 February 2014.

## **Schedule 1      Amendment of Crimes (Appeal and Review) Act 2001 No 120**

**[1] Section 74 Definitions**

Omit the definition of *DNA Review Panel* or *Panel* from section 74 (1).

**[2] Part 7, Division 6, heading**

Omit the heading. Insert instead:

**Division 6      DNA evidence**

**[3] Sections 89–95**

Omit the sections.

**[4] Section 96 Duty of police officers and other officers to retain certain biological material evidence**

Omit section 96 (1). Insert instead:

- (1) This section applies to physical evidence comprising or containing biological material (*relevant biological material*) obtained by any member of the NSW Police Force in connection with the investigation or prosecution of an offence for which a person was convicted (the *convicted person*), but only if:
  - (a) the offence was punishable by imprisonment for life or 20 years or more, and
  - (b) the convicted person was sentenced to imprisonment or full-time detention for the offence following a trial on indictment.

**[5] Section 96 (2A)**

Insert after section 96 (2):

- (2A) The retention of a swab or sample taken from the relevant biological material is sufficient compliance with the duty if:
  - (a) the swab or sample taken is enough to permit DNA testing, and
  - (b) the swab or sample was taken by a member of the NSW Police Force or the NSW Forensic & Analytical Science Service (or its successor) qualified to take forensic swabs or samples.

**[6] Section 96 (3) (d)**

Omit “eligible”.

**[7] Section 96 (3) (e)**

Omit the paragraph. Insert instead:

- (e) the convicted person has ceased to be subject to the sentence imposed for the offence (whether in custody or on parole) or subject to an extended supervision or continuing detention order under the *Crimes (High Risk Offenders) Act 2006*, or

**[8] Section 96 (5)**

Insert “(or a swab or sample taken from the material)” after “tampers with the material”.

**[9] Section 96 (5)**

Insert “(or swab or sample)” after “preventing the material”.

**[10] Section 97**

Omit the section. Insert instead:

**97 Information about and testing of retained biological material**

- (1) This section applies with respect to biological material (*retained biological material*) that is or may be in the possession or control of members of the NSW Police Force or members of any other authority of the State in connection with an offence for which a person has been convicted.
- (2) The Commissioner of Police (or the head of any other authority of the State) may, at the request of a person convicted of an offence (the *convicted person*) or his or her legal representative, do either or both of the following:
  - (a) provide information to the person making the request about whether the NSW Police Force (or the authority) has retained biological material in connection with that offence and, if so, what that material comprises,
  - (b) arrange for such items of retained biological material as may be specified in a request to be sent to the NSW Forensic & Analytical Science Service (or its successor) for DNA testing and then forward the results of that testing to the person making the request.
- (3) The convicted person is liable for the cost of any DNA testing of retained biological material that is carried out at the request of the convicted person or his or her legal representative.
- (4) A person who has made a request under this section may apply to the Supreme Court for an order (a *compliance order*) requiring the Commissioner of Police (or the head of any other authority of the State) to comply with the request to him or her.
- (5) The Supreme Court may make a compliance order if:
  - (a) the offence committed by the convicted person was punishable by imprisonment for life or 20 years or more, and
  - (b) the convicted person’s claim of innocence for the offence may be affected by DNA information obtained from biological material retained by members of the NSW Police Force or members of another authority of the State, and
  - (c) the convicted person continues to be subject to the sentence imposed for the offence (whether in custody or on parole) or subject to an extended supervision or continuing detention order under the *Crimes (High Risk Offenders) Act 2006*.
- (6) Despite subsection (5) (a), the Supreme Court may make a compliance order even if the offence for which the convicted person was convicted was not an offence of the kind referred to in that paragraph if the Court considers that special circumstances exist with respect to the offence that warrant the making of the order.
- (7) In determining whether there are special circumstances for the purposes of subsection (6), the Supreme Court is to have regard to the following matters and any other relevant matter:
  - (a) the nature and seriousness of the offence concerned,

- (b) the length of any sentence currently being served by the convicted person,
  - (c) whether the convicted person has exhausted all avenues of appeal,
  - (d) the interests of justice.
- (8) Nothing in this section permits:
- (a) the Commissioner of Police (or the head of any other authority of the State) to provide information that may reveal the identity of a person other than the convicted person in connection with the offence for which he or she was convicted, or
  - (b) the head of one authority of the State to provide information about, or arrange DNA testing for, retained biological material held by another authority of the State.

**[11] Schedule 1 Savings, transitional and other provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Crimes (Appeal and Review) Amendment (DNA Review Panel) Act 2013**

**Definitions**

In this Part:

*abolition day* means the day on which section 97 is substituted by the amending Act.

*amending Act* means the *Crimes (Appeal and Review) Amendment (DNA Review Panel) Act 2013*.

**Application of amendments to section 96**

Section 96 (as amended by the amending Act) extends to biological material within the meaning of Part 7 of this Act obtained before the substitution of section 96 (1) by the amending Act that is in the possession or control of any members of the NSW Police Force (or members of any other authority of the State) on that substitution.

**Abolition of DNA Review Panel**

- (1) The DNA Review Panel is abolished on the abolition day.
- (2) Each member of the DNA Review Panel ceases to hold office as such on the abolition day.
- (3) A person who ceases to hold an office by operation of this clause is not entitled to any remuneration or compensation because of the loss of that office.
- (4) The DNA Review Panel ceases to have any functions under Division 6 of Part 7 of this Act on the abolition day (including the function of determining or finalising any pending applications to it under section 92).

**Pending searches and DNA testing**

- (1) If the DNA Review Panel arranged for a search for biological material or DNA testing (or both) following an application under section 92 before the abolition

day and the results of the search or testing (or both) had not yet been provided to it by that day:

- (a) the Commissioner of Police is authorised and required to arrange for the completion of any such search or DNA testing (or both), and
  - (b) the NSW Forensic & Analytical Science Service (or its successor) is authorised and required to complete any DNA testing arranged by the DNA Review Panel or the Commissioner of Police and provide the results to the Commissioner, and
  - (c) the Commissioner of Police is authorised and required to forward the results of any DNA testing provided to the Commissioner under this subclause to the applicant for the search and testing.
- (2) If the DNA Review Panel had disclosed the results of DNA testing to the Commissioner of Police before the abolition day but not to the applicant for the testing, the Commissioner of Police is authorised and required to forward the results to the applicant.
  - (3) Nothing in this clause requires or permits the Commissioner of Police to disclose information obtained from the DNA testing of biological material obtained from a convicted person that may reveal the identity of a person other than the convicted person in connection with the offence for which he or she was convicted.

#### **Pending referrals in Court of Criminal Appeal**

Section 94 (as in force immediately before its repeal by the amending Act) continues to apply in relation to any matter that was referred to the Court of Criminal Appeal under that section before that repeal if the proceedings in relation to that matter were not concluded by that time.

#### **[12] Schedule 2 Members and procedure of DNA Review Panel**

Omit the Schedule.