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6 July 2006

Hon Graham Giffard MLC  
Chair  
Standing Committee on Legislation  
Legislative Council  
Parliament House  
PERTH WA 6000

Dear Mr Giffard

INQUIRY INTO THE CRIMINAL INVESTIGATION BILL 2005, CRIMINAL INVESTIGATION (CONSEQUENTIAL PROVISIONS) BILL 2005 AND CRIMINAL AND FOUND PROPERTY DISPOSAL BILL 2005

I refer to your letter of 22 June 2006 in which you advise that the Committee has invited me to provide a written submission on these three above named Bills. I further note that the Committee has drawn my particular attention to provisions of the Criminal Investigation Bill 2005 relating to forensic procedures on deceased people.

I would make the following comments:

PART 9, DIVISION 3

I do not envisage any problems in respect of most of these provisions which would enable me to authorise the doing of forensic procedures on deceased people.

I would, however, make the observation that Clause 82(5) is not necessary and is potentially unhelpful.

It should be noted that the position in respect of identifying deceased persons differs from the position in respect of identifying people who are alive. In the circumstance where there is an unidentified body, it is in the interest of all concerned that the body should be identified as quickly as possible. Families of deceased persons who believe that an

unidentified body is the body of a loved one are always eager to have reliable identification take place as quickly as possible to enable burial etc to take place. If a forensic procedure was to incidentally assist with identification of an unidentified body, that would be to everyone's advantage.

The above observation also applies to Clause 77(2) and (3) in respect of identification of deceased persons for the same reasons.

### CLAUSE 112. FORENSIC INFORMATION, USE AND DESTRUCTION OF

I note that Clause 112(3) provides that information obtained under Part 8 or 9 must not be destroyed except with the approval of the Commissioner of Police.

It may be appropriate in the event that forensic information has been obtained as result of a forensic procedure on a deceased person pursuant to Clause 82 that as the forensic procedure was authorised by the State Coroner, the State Coroner should also be able to give approval for the destruction of such information.

### PENALTY PROVISIONS

In my view there should be a significant penalty available in the event that forensic information is deliberately misused.

I note that forensic information may be obtained as a result of intimate forensic procedures and could include, for example, photographs depicting a person's external private parts (see Clause 75(2)(d)). It would be most unsatisfactory if such information was published for inappropriate purposes or placed on the internet.

In my view there should also be an amendment to the Criminal Investigation (Identifying People) Act 2002 to provide for a significant penalty for misuse of identification information.

My concerns in relation to this issue were highlighted by the recent misuse by police investigators of information obtained in the investigation of the deaths of Mac Cody and Bradley Richards who died on the Talawana track near the Cotton Creek Community, east of Newman, in late March or early April 2005. As you would be aware from reports in the media, police took photographs of the bodies of the two deceased

men for the purposes of a coronial investigation. Those photographs were forwarded by email by police officers to other police officers and members of the public and a number of images were posted on a macabre internet website.

In my view, with increased use of the internet enabling publication of private material in a range of inappropriate locations, it is particularly important that there should be suitable penalty provisions to deter those who are minded to make inappropriate use of such material.

I note that in respect of the photographs of Mac Cody and Bradley Richards that I have been informed by Deputy Commissioner Dawson that police do not consider that any offences were committed, apart from disciplinary offences, by those who posted the material on inappropriate websites or forwarded the material for inappropriate purposes. It would be an unsatisfactory situation for most members of the community if forensic information obtained pursuant to the proposed legislation could be misused in this way. I do not consider that the possibility of disciplinary proceedings (even when these apply) would act as an adequate deterrent.

Yours sincerely

Alastair Hope  
STATE CORONER