DNA EVIDENCE IN THE AUSTRALIAN LEGAL SYSTEM,

REVIEW BY ERIN KELLY


DNA Evidence in the Australian Legal System provides a broad snapshot of various issues to be considered when the issue of DNA arises. While the text starts with a relatively in-depth explanation of the foundational concepts needed to fully comprehend the legal issues that can arise with DNA evidence, the remaining chapters seem to become more generalised as the book goes on.

The purpose of Ch 1 is to provide the reader with the sufficient understanding and appreciation of the science behind DNA profiling. It begins with a short summary of the scientific developments and progressive legal recognition of DNA profiling, primarily in the context of criminal proceedings. Using plain language to describe the biology of cells, molecules and genetics, Smith outlines the scientific basis of DNA profiling along with summarising the various methods of extraction and comparison available to the relevant persons. The chapter concludes by explaining the interaction between DNA profiling and mathematical probability.

Chapter 2 discusses the various legislative frameworks dealing with the collection and storage of DNA samples, and the resultant profiles. Of significance is that the legislation of individual States is no more than mentioned in passing, while a comparatively detailed discussion of the Commonwealth legislation is given. This is not necessarily a failure of the book, given the breadth and depth of the topic to be covered. The short review of some international jurisdictions and their approaches to DNA collection and storage, allows the reader to gain some perspective on where the Commonwealth legislation sits in terms of the global community.

Forensic DNA Databases are discussed in Ch 3. Smith briefly analyses what defines a “database” before moving on to discuss the existing databases within Australia, the United Kingdom and the United States. When discussing the Australian database, Smith provides an explanation as to the specific circumstances in which particular information can be used. The international databases are discussed in more statistical terms and public policy debates surrounding them. The chapter ends with a discussion of various methods of finding “matches” in DNA and how these methods may or may not be conducive to a database.

Chapter 4 begins with the basics of evidence law, discussing relevance, prejudice and expert opinion. The majority of the chapter is dedicated to discussing high-profile Australian cases that have involved the use of DNA evidence, and other important cases that have led to development within the law surrounding DNA evidence and its use. A relatively short discussion of cases from New Zealand, the United States and the United Kingdom is also given. The chapter closes by proposing various ways in which trial outcomes may be able to be improved.

The final chapter discusses how DNA evidence can and has been used to correct the record in terms of acquittals and convictions. This involves an overview of the legislative position of when DNA evidence may be used to adduce a person’s innocence after conviction or to prove their guilt after acquittal. A brief discussion of the policy considerations in relation to this sub-topic is also given.

The book reads like a reference text for university students and, in this context, is considered a useful aide to students who may be covering this topic in assessment or who wish to gain a broad understanding of the issues surrounding DNA evidence. However, for professionals looking to gain a comprehensive and detailed understanding of the topic, this text could act as no more than a starting point.

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