

## Criminal Investigation Week 4 Lessons

### Activity 1

Using the information provided below, Match these terms to the correct definition:

charge	genetic material (such as hair, blood and saliva) that can be used to link a suspect with a crime scene or criminal offence, or to clear a suspect
in situ	evidence that cannot be considered by a judge or jury in court (for example, confessions that were obtained by force)
inadmissible evidence	Under Part 4 of the Law Enforcement (Powers and Responsibilities) Act 2002 (NSW), police are given powers to 'search people and seize and detain things' in certain circumstances.
DNA evidence	a legal document issued by a magistrate or judge and authorises a police officer to perform a particular act (for example, make an arrest, conduct a search, seize property or use a phone tap).
Search and seizure	formal accusation of a person of committing a criminal offence
Warrants	a Latin term meaning 'in the place'; used to describe the place in which a piece of evidence is found or situated





## Activity 4

Using this article: [insidestory.org.au/the-thin-grey-line](http://insidestory.org.au/the-thin-grey-line)

What is the point being made in this article? (see first line of the 2nd paragraph)

---

---

What does 'covert' mean?

---

---

---

---

What is the new law called that gives police the power to conduct covert searches?

---

---

---

---

Using the paragraph that starts with the words "The police powers bill provides a perfect example..." explain how this law takes police powers too far.

---

---

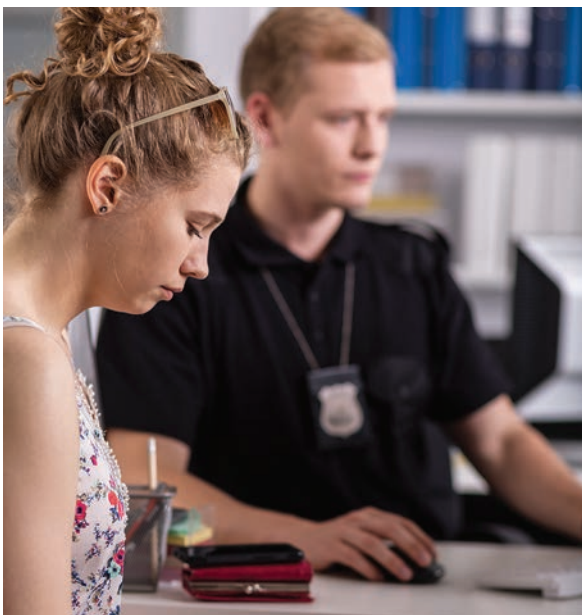
---

---

---

---

---



**Figure 2.2** Community programs have been established to encourage the public to report information about criminal activity.

Some crimes are more widely reported than others – property offences such as car theft, for example. Such crimes may be reported in an attempt to recover the property or because the victims cannot claim on their insurance unless a police report is filed. Other crimes, such as domestic violence or sexual assault, more frequently go unreported. It is estimated that up to 85% of sexual assaults in Australia are not reported. This is often due to the shame and embarrassment victims feel and their unwillingness to go through the ordeal of reliving the experience while being questioned in front of a judge and jury with the offender present. This is so even though legislation that allows victims in sexual assault matters to give evidence by CCTV, rather than being in the room face to face with the accused, has recently been passed.

### Review 2.1

- 1 Describe the role of police in society.
- 2 Outline some of the special powers police are given to perform their duties.
- 3 Describe what a person can do if they believe the police have not treated them properly.
- 4 Explain how a crime is reported.

## 2.3 Investigating crime

Once police receive information about a crime, they will make a decision about whether to pursue an investigation or take no further action. These decisions could be based on the severity of the offence, the likelihood of success and the available resources or priorities. Not all reported crimes are fully investigated and prosecuted, as resources are often directed to more serious or high-priority crimes. The investigation process can be long, as it often includes establishing that a crime has been committed, finding the offender and gathering enough evidence to be able to prove a case against the offender in court.

### Gathering evidence

When a crime has been committed, it is the role of the police to gather evidence to further the investigation and to support a **charge** in court at a later date. This may involve taking witness statements at the scene of the crime and crime scene detectives looking at any evidence left behind. This part of the investigation will usually need to happen quickly, before witnesses forget what they saw or heard and before evidence is compromised or interfered with.

#### charge

formal accusation of a person of committing a criminal offence

Crime scenes and evidence will be preserved where possible until specialists and detectives arrive. Evidence is then documented **in situ** using video and photography, and is meticulously recorded and handled to maintain its integrity as evidence. Evidence that has been contaminated or compromised is **inadmissible evidence**. Organic samples such as hair and blood are particularly vulnerable to being contaminated.

#### in situ

a Latin term meaning 'in the place'; used to describe the place in which a piece of evidence is found or situated

#### inadmissible evidence

evidence that cannot be considered by a judge or jury in court (for example, confessions that were obtained by force)

It is important that the evidence gathered is sufficiently relevant to the case, and is the best possible evidence available to secure a conviction

in court. All evidence must be obtained in a proper and lawful manner, as required by the *Evidence Act 1995* (NSW). If it is not, it may be considered inadmissible at trial, and that may reduce the chance of conviction.

The law imposes certain limits on the way police can gather evidence, and the types of evidence that can be used, to help ensure that the collection of evidence is legitimate and does not interfere with the rights of ordinary citizens. In certain circumstances strict procedures will need to be followed by police and in some situations a court warrant may be required before police can search for or seize evidence. Some of these limits and procedures are discussed below.

The types of evidence that may be gathered by police are varied, and include the oral testimony of the accused, police and witnesses, as well as physical evidence such as objects or weapons. Witness accounts will usually be recorded as statements for future reference. Documents, fingerprints, DNA samples, tape recordings, video surveillance and electronic information stored on hard drives can also be tendered as evidence in a case. The evidence may be handled by several people during the investigation, including the police who gather it initially and experts who may examine it. Great care is taken to ensure that the items of evidence are handled with extreme care and not interfered with in any way.

Gathering appropriate evidence is a complex task. Police officers may be specially trained, or independent experts may be contracted to assist in gathering or examining evidence. For example, the police force has specialised fingerprint and ballistics experts, as well as special teams of crime scene investigators who are trained to search for evidence at the place where a crime took place. In New South Wales, the police investigate the scene first, before the experts are called in to collect evidence. This system provides more room for error due to crime scene contamination. The evidence gathered is often sent on to specialists to be analysed; they may then give evidence in court.

### Use of technology

Technology is frequently used by the police in order to gather evidence and prove charges. However, it can often be difficult for the law to keep up with new



**Figure 2.3** The types of evidence that may be gathered by police are varied.

technology in law enforcement. Any new technology needs to be extremely reliable, because if there is any doubt about its reliability it risks being inadmissible in court or, worse, resulting in a wrongful conviction.

For example, scientific and technological advances have now made the processing and cross-checking of criminal databases easier and more effective for day-to-day policing. State-of-the-art fingerprint and DNA databases make it easy for police to share information across states and internationally. Police surveillance teams are able to record video and audio footage using digital methods, which allow that material to be easily stored and copied. Cybercrime units are often able to locate criminals through their internet activity and track down people committing crimes such as computer hacking, internet scams and international pornography rings.

**DNA evidence** is an important advance in technology that has been particularly helpful in gaining some difficult convictions in both current and 'cold' (unresolved) cases. DNA evidence has been used in Australia for the past 20 years and has often been relied on in court as a dependable form of evidence. It has been a decisive factor in many cases. Jurors find forensic evidence compelling and persuasive even if they do not entirely understand

**NSW Police take DNA from hundreds of ex-offenders to build crime-solving database**  
 Angela Lavoipierre  
 ABC website, 24 August 2015

New South Wales police are collecting DNA samples from thousands of criminals with spent convictions to help solve cold cases and future crimes.

Police are planning to take a further 2000 samples over the next 12 months, adding to 1000 already collected, to build a comprehensive DNA database.

Civil liberties advocates have criticised the program for casting too wide a net and taking samples from people who were, in many cases, rehabilitated.

David Porter from the Redfern Legal Centre, a state-wide service, said there had been a dramatic increase in the use of the practice throughout the year and public resources were being wasted.

'These are people who aren't under suspicion of any crime,' he said.

'The police are taking the time to seek their DNA, we are taking our time to advise them in relation to it, the police are taking further time to lodge an application with the local court, the local court is taking time to hear that application.

'I'm not sure what evil it is addressing.'

Officers have had the power to request DNA samples from past offenders for seven years, but the practice has been relatively rare until recently, when it was made a priority.

Under the program police can visit the homes of past offenders to request a DNA sample if they meet specific criteria.

The offenders must have served prison time for a crime that has a maximum sentence of more than five years and have been charged with a further offence, although not necessarily convicted.

Former offenders receive a letter stating that if they decline to provide a sample a court order will be obtained to compel them to.

NSW Police Assistant Commissioner Peter Cotter said the database would help police solve old and new crimes.

'Across the whole spectrum of crime types from minor property type crimes where no-one has been hurt all the way through to the real serious types of crimes such as serious assaults, sexual assaults,' Assistant Commissioner Cotter said.

He said the program focused on past offenders who had a 'fair chance' of becoming repeat offenders.

But solicitor David Porter said the program was catching people who, in some cases, had only spent days in prison.

'Generally speaking, I think most members of the public would agree that we don't need to be performing DNA tests on serial shoplifters,' he said.

NSW Greens MP David Shoebridge said the program was an attack on civil liberties.

'At a minimum, we should be having the Ombudsman overseeing this process,' Mr Shoebridge said.

'This has been a very secretive operation by the New South Wales Police that we've only really obtained evidence from anecdotally and that is not good enough when you're talking such a substantial use of police resources and such a significant attack on civil liberties.'

the evidence being presented. However, the presence of DNA at a crime scene only establishes that an offender could have been responsible for a crime; it is still up to the police to provide a brief of evidence in order to convict the accused beyond a reasonable doubt.

---

### **DNA evidence**

genetic material (such as hair, blood and saliva) that can be used to link a suspect with a crime scene or criminal offence, or to clear a suspect

---

In New South Wales, police are allowed to take forensic samples such as blood or mouth swabs to test against evidence found during an investigation. A person must consent to the sample being taken – if they refuse, the police can apply to a magistrate for an order to take the sample by using reasonable force. However, there have been concerns over the reliability of DNA testing. DNA testing is a lengthy process. An Auditor-General of New South Wales's report in 2012 highlighted the issue of backlogs in DNA testing. In some criminal cases, the wait is up to 12 months. The backlog in New South Wales ranged from 3500 cases to over 10 200. The turnaround for more serious offences such as murder, manslaughter, rape and sexual assault is much quicker: one to three months. The danger of relying too heavily on DNA technology was highlighted in 2009, when a number of wrongful convictions were discovered in both New South Wales and Victoria – they had been caused by errors in the DNA testing process. DNA samples can also be seen as an effective crime prevention strategy as seen in the media article on page 36 where NSW Police took DNA samples from ex-offenders in the hope to solve both cold and future cases.

### **Search and seizure**

Two of the special powers given to police to assist in investigating crime are search and seizure. Under Part 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), police are given powers to 'search people and seize and detain things' in certain circumstances. One of the most important of these is the power to search and seize without a court warrant.

Powers of search and seizure are often the most controversial of police powers because they represent an intrusion into people's privacy or

personal space. Search and seizure can also be confronting or embarrassing, especially when conducted in a public place.

Police in New South Wales have broad powers to stop and search any person where they 'believe on reasonable grounds' that the person is carrying anything stolen or used in commission of an indictable offence or another specified offence, a prohibited plant or drug, or a dangerous article in a public place. Police can then seize and detain any of these objects, if discovered. Challenges to police searches will often revolve around whether the officer had 'reasonable grounds' to believe that they could conduct the search.

Police may search anything in a person's 'possession or control', including, for example, a person's body, bag, clothes and possessions. Generally, police will ask for a suspect's cooperation and ask the suspect to turn their pockets out and remove bulky clothing. Police may also 'pat down' a suspect's body to feel for any concealed items. Police can also require a person to open their mouth or shake out their hair if they have reasonable grounds to believe that the suspected object is concealed there.

Powers of search and seizure and the rules around them will differ where they involve, for example, a search of premises, a search on school grounds or a search of a person already under arrest or in custody, or where a strip search is required. The *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) also contains a number of procedures for police to follow when conducting a personal search or strip search. These relate to the preservation of a person's privacy and dignity during a search, informing them of the reason why the search is necessary and asking for their cooperation.

Limits and process requirements help safeguard the rights of ordinary citizens when police are gathering evidence, but in New South Wales police powers of search and seizure are still broad. In most circumstances reasonable suspicion will not be a difficult standard for police to meet. In some situations, however, the law will require police to obtain a court warrant before exercising their powers. This is outlined below.



**In Court*****Darby v Director of Public Prosecutions* [2004] NSWCA 431**

The case of Darby illustrates some of the difficulties in the legal definitions of a search and reasonable grounds. In the case, the police were using a sniffer dog, named Rocky, outside a nightclub to detect drugs. The dog would sniff the air to indicate to the police that drugs were present. In Darby's case, the dog sniffed the air, then sniffed 'bunting and ferretting' towards Darby, sniffed his genital area and trousers, and then touched his nose directly on Darby's pocket and stayed there until police came over and searched Darby. The police discovered amounts of cannabis and methyl amphetamine on Darby, who was charged and tried in the Local Court.

The magistrate in the Local Court ruled that the actions of the dog in sniffing so closely and making contact with Darby constituted an unlawful search. Only police officers are entitled to search and only when they make a judgement that there are reasonable grounds – the dog was not entitled to make or capable of making such a judgement. Consequently, the evidence of finding the substances was not admissible because it was gained following an illegal search.

The case was appealed to the Supreme Court, which ruled that the magistrate had erred in law and that the dog's search was not a search and that the police officers' own search was legal because it was formed on reasonable grounds – on the basis of the information conveyed by Rocky's sniffing.

Darby then appealed the judgement to the Court of Appeal, in an attempt to reinstate the magistrate's original judgement. Two out of three justices found that Rocky's actions did not, in fact, constitute a search.

**Use of warrants**

A warrant is a legal document issued by a magistrate or judge and authorises a police officer to perform a particular act (for example, make an arrest, conduct a search, seize property or use a phone tap). In New South Wales, certain searches or seizures cannot be performed without a valid warrant. For example, in New South Wales police can use sniffer dogs without a warrant to search for illegal drugs at pubs or clubs, on public transport or at certain public events, but would require a warrant before using dogs for general searches in any other public places. This judicial oversight helps ensure that those special police powers are used only when appropriate, and provides an additional layer of protection for ordinary citizens against misuse of that power. Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) sets out the circumstances in which a search warrant can be used.

When applying for a search warrant, the police must give substantial reasons or evidence to the magistrate or judge to justify the granting of the warrant. Emergency warrants can be obtained over the phone when time is of the essence in

an investigation or an officer is unable to see a magistrate or judge in person, such as in the middle of the night.

New South Wales police are usually required to have a valid warrant before they can enter and search any premises, residential or business, without the consent of the occupier or owner. The warrant will state the reason for the premises



**Figure 2.4** Police require a warrant to enter and search a premises without the owner's consent.