

**JUSTICE COMMITTEE**  
**SCOTTISH BIOMETRICS COMMISSIONER BILL**  
**SUBMISSION FROM PETAL SUPPORT**

Reply to the request for information and views to the proposed bill by:

PETAL (People Experiencing Trauma and Loss) Support after Homicide.

PETAL Support offers bereavement counselling, including emotional and practical support to the families and friends who have experienced the grief and trauma of losing a loved one to homicide in Scotland.

**PETAL Support's view on Biometrics Commissioner Bill 2019**

***1. What are your views on the establishment of a Scottish Biometrics Commissioner as a new body to scrutinise the police?***

Biometrics is now part of everyday life in Scotland and worldwide. PETAL Support believes that the establishment of a Scottish Biometrics Commissioner as a new body is an essential element in the development, accuracy of performance and governance of biometric information within the Scottish biometric legislation. Biometric identification utilising matching Template and Sample evidence is used regularly in solving serious crimes currently by law enforcement agencies in Scotland and can be instrumental to conviction or acquittal in courts of law. In crime detection PETAL believes that new technology improvements on existing methods of retrieving established biometric results quicker, and more accurately, will solve serious crimes including homicide quicker. The new NGI (Next Generation Identification) providing improvement to existing methods, and new developing identification techniques will give Police Scotland access to impressive technology at their disposal. Therefore, the new Commissioners remit should include independent scrutiny of Police Scotland.

***2. What are your views on the proposed role, responsibilities and enforcement powers of the Scottish Biometrics Commissioner?***

PETAL Support is in general agreement with the role and powers that is within the auspice of the Commissioner.

***3. What are your views on the provisions in the Bill for the drawing up of a Code of Practice by the Commissioner, and how compliance with the Code is monitored and reported on?***

PETAL Support in general concurs with the development of a Code of Practice relating to aspects of provisions within the Scottish Biometrics Bill. However, we would raise concerns about the following:

## **Section: 10 Report on the Code of Practice**

Items (2) and (3)

PETAL has the opinion that the length of time suggested in the reporting of Code of Practice Review and Report Findings is not short enough. This is in respect of the suggestion of the first at 3 years and subsequent reports at 4 years. PETAL would expect these important responses in the first instance maximum up to 2 years and similarly up to 3 years in subsequent reports.

## **Section: 22 Annual report**

Items (1) (a)

PETAL is in the opinion that the Commissioner in addition to each annual published report on the Commissioner's activities, must also highlight examples of non-conformities (not just recommendations) to the Code of Practice with detailed remedial actions performed in that period.

### ***4. What are your views on the appointment process for the Commissioner and the funding being provided to enable them to carry out their role?***

PETAL Support believes that this very important role should be properly funded, and that appropriateness and due diligence should be held in high regard when appointing the Commissioner to the role. The audited accounting expenditure should be inspected annually, and interim reported half yearly for due diligence on forecasted annual expenditure.

### **PETAL would like that the following be taken into consideration:**

PETAL totally understands that the role of the Commissioner and that the relevant system, operating procedures and procedural protocols will perform at the highest standard of audit. Also, the collection, analysis, presenting, storing, and destruction of any new biometric material or capture is held in the highest regards. Justifiable and accurate biometric evidence presented in reports are critical pieces of evidence in homicide High Court. PETAL would also like to highlight the following:

### **Biometrics: Fairer positive outcomes for victims of serious crime**

- Biometric recognition can be deemed as very important as a crime prevention measure before the criminal act (e.g. any suspect's early detention, or perhaps a violent criminal entering Scotland). PETAL is well aware families who have had suffered the loss of a loved one by homicide in these circumstances. Crime like this is devastating has been committed by undetected violent criminals who enter Scotland unopposed, or not identified serious enough for surveillance. The sharing of biometrics with other countries law enforcement agencies may help early detection and prevention in Scotland.

- In Scotland the three-verdict system including 'Not Proven' exists as an outcome by jurors at court trial. Some families/PETAL service users have suffered the anguish of this verdict. PETAL believes that advances in biometrics may increase the conclusiveness of evidence presented to juries at trial and will possibly lead to more acquittals (by a not guilty verdict) and convictions (by a guilty verdict). It is known that the forensic investigation alone after the event, may not provide enough convincing recognition evidence as to the perpetrator of the crime. This is in contrast to second generation biometric systems, where the biological traits to be used for person recognition are known in advance and can be used in conjunction with traditional forensic methods to add weight to evidence presented.
- Biometric recognition which is fully automated and not subject to quantifiable measures item of evidence, and a particular source. Thus, less external factors while examining and interpreting the evidence can be called to question by prosecution or defence lawyers.
- In Scotland the Double Jeopardy (Scotland) Act 2011 prevails. Where parliament makes provision as to the circumstances in which a person convicted or acquitted of an offence may be prosecuted anew; and for connected purposes. Previous homicide cases that did not have conclusive evidence for a conviction at trial could be re-tried with significant new evidence. Biometrics may increase the conclusive/inconclusiveness as new evidence in this case. A new biometric system can acquire additional samples of a biometric trait or traits for more significant evidence provision.
- The quality of the evidence data obtained in the case of forensics is typically lower than that of biometrics and the use of both will strengthen a more accurate, fair and justified conclusion to serious crime trials.