

Forensic Justice Advisory Sub-Committee Meeting minutes

Date:	7 September 2023
Time:	1:00 pm – 2:00 pm (AEST)
Venue:	Room 9.08, 33 Charlotte Street Brisbane, Brisbane, QLD or via Teams

ATTENDEES

Chairs:	Ms Julie Dick SC, Co-Chair Mr Kerry O'Brien AM, Co-Chair
Members:	Chief Inspector David Neville, Biometrics, Forensic Services Group, Operations Support Command, Queensland Police Service (QPS) Mr Todd Fuller KC, Deputy Director of Public Prosecutions, Office of the Director of Public Prosecutions (ODPP) Ms Leigh Smith, Assistant Director, Serious Crime, Criminal Law Services Ms Natasha Mitchell, Biology Manager, Forensic Science Queensland Dr Simon Walsh PSM, Chief Scientist, Forensics, Australian Federal Police Mr Alastair Ross AM, Director and Principal Consultant, Forensic Advisory International
Standing Invitees:	Professor Linzi Wilson-Wilde OAM PhD, Chief Executive Officer, Forensic Science Queensland (FSQ) Mr Aaron Suthers, Executive Director, Queensland Health DNA Commission of Inquiry Taskforce Ms Melinda Pugh, Crown Law Executive Director and DJAG Representative
Invited Guests:	Ms Allyson Lindsay, Director, Case Review, Queensland Health DNA Commission of Inquiry Taskforce Hal Quin, Legal and Legislative Reforms, Queensland Health DNA Commission of Inquiry Taskforce Ms Catherine Scott, Executive Director, Forensic Operations, FSQ
Secretariat:	Queensland Health DNA Commission of Inquiry Taskforce
Apologies:	Dr Kylie Stephen, Assistant Director-General, Office for Women and Violence Protection Ms Jess Wellard, Executive Director, FSQ Establishment, FSQ

MINUTES

Item	Item description
1	WELCOME, CONFLICTS OF INTEREST, MINUTES AND ACTIONS
1.1	Welcome, Acknowledgement of Country and apologies 1.1.1 Acknowledgement of Country provided by Co-Chair Julie Dick. 1.1.2 Apologies were noted from Dr Kylie Stephen and Ms Jess Wellard.
1.2	Confidentiality and conflicts of interest 1.2.1 No conflicts of interest were recorded by those present.
2	MATTERS FOR DISCUSSION AND ENDORSEMENT
2.1	Minutes from previous meeting on 8 June 2023 2.1.1 No feedback or corrections were provided by members for the draft minutes of the Forensic Justice Advisory Sub-Committee (FJASC) meeting, held on 8 June 2023. Agreed outcomes: <ul style="list-style-type: none"> Members endorsed the minutes of the Board meeting held on 8 June 2023, as a true record.



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2.2	<p>Updated action items report</p> <p>2.2.1 Members were invited to consider the action items report. Co-Chair Dick invited Ms Allyson Lindsay to speak to the open action items, which all related to making adjustments to the <i>Case Review Process</i> and <i>Retrospective Case Review Principles</i>.</p> <p>2.2.2 Ms Lindsay confirmed these documents had been amended in line with the discussion at the 8 June 2023 FJASC meeting, and members' feedback had been sought out of session. No feedback was received and final versions had been circulated to members with the rest of the papers in advance of this meeting.</p> <p>Agreed outcomes</p> <ul style="list-style-type: none"> Members noted the updated action items report and agreed to close the open actions.
2.3	<p>Discussion with Chief Magistrate / Discussion with QPS Prosecutions</p> <p>2.3.1 Co-Chair Dick noted that these discussions had been prompted by several magistrates issuing directions to FSQ for testing of results, which was increasingly impacting case prioritisation and risked blocking the courts. The Chief Magistrate had previously not supported the suggestion to provide material about upcoming cases to the courts and suggested this should be handled via ODPP and QPS.</p> <p>2.3.2 A phone meeting had been facilitated by Mr Todd Fuller, ODPP with the Superintendent of QPS Prosecutions, who had indicated their willingness to assist. All committal matters and summary hearing matters are noted through the QPS DNA Unit, to ensure only necessary matters are forwarded to FSQ for testing, which will help to reduce unnecessary pressure on the lab.</p> <p>2.3.3 Co-Chair Dick had offered to provide an information flyer outlining guidance (currently being prepared), which could be circulated to prosecutors, once available. Discussions were also held about the possibility of making similar arrangements to those put in place by ODPP in their case review system. It was also discussed that it would be preferable for any communication, where necessary, to be handled between executive members of the ODPP and QPS to avoid excessive calls to the lab by different prosecutors.</p>
2.4	<p>Options for implementation of Recommendation 117</p> <p>2.4.1 A discussion paper in relation to implementation of recommendation 117 of the Commission of Inquiry into Forensic DNA Testing in Queensland (COI) Final Report had been circulated to members in advance of the meeting.</p> <p>2.4.2 By way of background, Mr Aaron Suthers outlined that the COI's Final Report had noted an apparent absence of a mechanism for defence representatives or self-represented defendants in criminal matters to request further testing of DNA samples. To remedy this, recommendation 117 suggested the Queensland Government should "create and implement a system whereby the accused person or their lawyers may request further testing, analysis or interpretation of samples processed by the lab." The initial six-month delivery timeframe for Recommendation 117 had been extended by the interim Advisory Board, with the new due date currently being 1 November 2023.</p> <p>2.4.3 Mr Suthers then outlined the options in the paper for implementing recommendation 117, which at the high level include an administrative option (using administrative guidelines, such as publicly accessible policy document) or a legislative option (implementation would occur via a new legislative provision). [REDACTED]</p> <p>2.4.4 A further option, not outlined in the agenda paper, had been identified, where the decision maker would be the interim Advisory Board (once legislation has been passed to transform the interim Advisory Board into the Council), and one of its statutory functions could be to make decisions of this nature.</p>

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2.4.5	[REDACTED]
2.4.6	<p>The members then discussed the advantages and disadvantages of the proposed options, making the following observations:</p> <ol style="list-style-type: none"> a. The courts would not have the necessary power to request for samples to be re-tested that would meet the intent of Recommendation 117. It could also place a significant additional impost and pressure on the court, as it could be argued the court cannot proceed until retesting has occurred, and it could essentially be introducing the potential for further pre-trial hearings. b. Given the right to appeal, there could potentially be an issue with vexatious and frivolous applications, likely to come from people representing themselves, seeing an opportunity to make applications to stifle court processes which would also increase pressure on the courts. c. It was further noted that under a legislative scheme the decision by the decision maker could also be a subject to judicial review (under Part 3 and Part 5 of the JR Act); however, this would not be the case if an administrative guideline is adopted(leaving only Part 5 JR Act applications open). d. As with the current system, there will always be people who do not agree with their convictions, and believe further DNA testing would prove their innocence. It is therefore critical that any new process is sound and robust, which could be used by people with prior convictions as well as the accused currently going through trials. e. Potential waste of resources to test excessive numbers of samples unnecessarily should also be taken into consideration, while retaining an appropriate mechanism for people to still appeal against the decision and request testing of further samples. The process would need to adequately consider both the perspective of those facing charges and those who have been convicted. f. Consideration whether legislative approach would have the advantage of being able to limit the number of opportunities for a review of the decision, which is appropriately balanced against the associated resource implications. However, it was also noted that in the criminal space multiple avenues are open for several appeals (for example, where fresh evidence emerges). g. DNA is only one part of forensic evidence and other types of evidence should also be considered. h. An administrative process may work better for current matters before the courts as there is more flexibility for courts to halt proceedings until retesting has occurred. i. There are wider policy and resource considerations, beyond the options outlined in the paper, if any party (if they see the value) are given the ability to utilise the services of the lab. These considerations may be better addressed under the legislative approach. j. Under administrative approach, the Director-General may not have the necessary know-how to make a decision but should have the means to delegate this as appropriate, for example to the interim Advisory Board/Council (with legal, police and scientific representation). k. Regardless of which option is chosen, consideration should be given to the appropriateness of providing a reasonable timeline (from application to decision) to ensure swift resolution. However, it was also noted there is a trade-off with setting minimum standards that the applicant has to meet. It was further suggested that the bar could be raised for every subsequent application with requirement to meet more criteria. Consideration should also be given to those seeking to continue testing

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	<p>privately (ie those who can afford it). It may also be appropriate to apply a sunset clause.</p> <p>2.4.7 Mr Suthers specifically sought members' views in relation to an appropriate entity as the decision maker, which could be the Council (currently the interim Advisory Board). There had also been some previous thinking this could potentially be the Director-General of DJAG; however, this is deemed to constitute a conflict of interest. Should there be support for making the Council the decision-making body, the legislation could include making determinations of this nature as one of its functions. It is suggested legislative powers should just focus on decision making and not specify anything in relation to the process, which would be administratively considered separately.</p> <p>2.4.8 The intention is for the Council to be the independent body that has the responsibility to oversee the laboratory, to ensure the services provided are fit for purpose. The broad membership of the Council will provide the necessary perspectives (including from the point of view of prosecution, police, legal aid, bar association, indigenous, victim support, etc). There could be principles for decision making, including that only a core group of independent members/chairs are able to make the decision, following discussion by all Council members.</p> <p>2.4.9 Mr Suthers thanked the members for useful discussion as it will support a further iteration of the paper, which may be circulated out of session, depending on the timing. An application for extension for implementation of recommendation 117 will be put to the interim Advisory Board.</p> <p>Agreed outcomes</p> <ul style="list-style-type: none"> • Members noted the proposed options and agreed to provide further feedback out of session, if required. • Members were broadly supportive that the FSQ Council may be an appropriate pathway for deciding applications for further DNA testing.
	<p>STANDING ITEMS</p>
<p>3.1</p>	<p>Update from FSQ CEO</p> <p>3.1.1 Professor Linzi Wilson-Wilde provided an update on current issues. There has been recent scrutiny and active media interest in FSQ, particularly by The Australian. Professor Wilson-Wilde had been interviewed by Hedley Thomas and David Murray, and the interview was also attended by Mr Walter Sofronoff KC and Ms Julie Dick SC, in their capacity as Co-Chairs of the FSQ Interim Advisory Board (and in Mr Sofronoff's capacity as former Commissioner of the COI).</p> <p>3.1.2 This recent media interest has focussed on a problematic validation conducted in 2007 called 'Project 13', which led to contamination issues and substantially lower DNA yield being obtained until mid-2008. The abstract in the validation report published in relation to Project 13 contains a statement which appears untrue, namely that the outcomes of the automated extraction method were comparable to those of the manual extraction method. It has also been suggested that the scientists who authored the report intended misleading management. The journalists were questioning why action has not been taken against the authors of the report, and also suggested the COI had missed the issues around the yield.</p> <p>3.1.3 The team at FSQ has spent considerable time reviewing the relevant materials and subsequent analysis. That method from Project 13 was withdrawn in 2008 and the lab returned to previous method. It is understood that the authoring scientists (majority of whom are no longer working at the lab) had at the time attempted to raise issues regarding yield management with the management, who had advised the method would be implemented regardless.</p> <p>3.1.4 Professor Wilson-Wilde was tasked with reviewing the Project 13 report during the COI from the perspective of contamination issues.</p>



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	<p>3.1.5 The actual study design was flawed and the report should not have been signed off, as the method was not fit for implementation. In 2009 the lab sought to rectify the issues with the yield, however, the 2009 studies also have clear issues with the methodology and analysis, and cannot be compared 'like for like' with the 2007 project.</p> <p>3.1.6 The conversation with the journalists then focussed on the recent positive changes in the lab and the results achieved in numerous cases, which were covered in the first article in The Australian (further articles are expected).</p> <p>3.1.7 Responding to this media interest has had significant resource implications on the lab (in terms of staff time), which has impacted backlog issues. FSQ has put in place some processes to undertake confirmation checks around current systems. Current systems were reviewed by Dr Rececca Kogios (VIC) and Heidi Baker (NZ), and there had also been a technical review, which was essentially a deep dive audit, by Dr Julie Murikami (PathWest, WA). A further project is planned to undertake further assessment to ensure there are no concerns with FSQ's current systems. This will also feed into national work undertaken through Australia & New Zealand Forensic Science Society providing definitive guidelines on how to validate and verify.</p> <p>3.1.8 Excellent candidates have been secured for most positions in the leadership team. The position of Executive Director (Forensic Establishment) had been temporarily filled by Ms Jess Wellard, however, she has just resigned. Serious consideration will need to be given how this gap will be managed.</p> <p>3.1.9 A total of 33 recommendations made by the COI Final Report have been delivered with further 57 recommendations in process. The drafting of four-year strategic plan is nearing completion and is undergoing consultation.</p> <p>3.1.10 There had been an outage of the case management system recently, which impacted FSQ's service delivery and had a significant flow on effect. Urgent consideration is given to moving the case management system to a cloud-based solution. Critical changes will also be required to speed up the back-end processes (eg reports for courts). The number of scientists who can write statements for courts is limited, and the recruitment of additional suitably qualified scientists has been affected by the limited pool. Court dates continue to be a significant issue. Work is also under way to explore what capability can be added to the forensic register to streamline the back-end statement writing.</p> <p>3.1.11 The issues with forensic register have also impacted the commencement of outsourcing to the UK scientists, as well as the four external scientists who have commenced work on interpretations.</p> <p>3.1.12 Development of a framework for a secondment initiative is under way to target suitably trained overseas forensic scientists to explore if they would be prepared to move to Queensland temporarily (eg for 12 months) with some support provided. This arrangement would serve as a trial for such scientists before they decide on a potential permanent move.</p> <p>3.1.13 A new project proposal process has been implemented as well as a new empirical study design process, which are working well as it they are identifying the issues right at the beginning and how validations and verifications occur to ensure an appropriate design. There is then full transparency and visibility to ensure they are delivered correctly. The Forensic Biology Sub-Committee is then used to support that process.</p> <p>Agreed outcomes</p> <ul style="list-style-type: none"> Members noted the progress update from Professor Wilson-Wilde.
3.2	<p>Progress update from Director, Case Review</p> <p>3.2.1 Ms Lindsay provided a progress update since the previous meeting, outlining the following:</p> <ol style="list-style-type: none"> Legal-led case review process had commenced on 5 July 2023. Changes were made at the same time to bring the case review and business as usual work under the same team.



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	<ul style="list-style-type: none"> b. Responsibility for the allocation of case review has transitioned across to the Biology leadership group, and a case prioritisation and allocation model has been developed to support this work. c. The prioritisation and allocation model seeks to assist with considered and strategic decision making for which cases need to be allocated and in what order (driven by court dates and court type, as well as other information such as whether the defendant is in custody and sample size). This model is not able to be supported by the Forensic Register and this work is currently conducted on Excel spreadsheets. d. These changes have impacted on the pace of the case review work. e. Up until end of June 2023, 203 case reviews had been completed. From July onwards, four case reviews have been finalised and a number of further cases are being progressed in line with the agreed workflow. There are currently seven requests with QPS for exhibit lists and exhibit confirmation, 19 matters in progress with ODPP, 13 matters are ready for allocation for legal led scientific review and 13 case reviews are in progress (allocated to scientists). f. To speed up the process, a decision had been made to progress some smaller cases, generally with up to 10-12 samples, straight to full scientific review (from a practical point of view this is deemed more effective, while relatively low risk) and there are currently 24 such matters ready for review. g. For the most part the processes with QPS and ODPP are working well. <p>Agreed outcomes</p> <ul style="list-style-type: none"> • Members noted the progress update from Ms Lindsay.
OTHER BUSINESS AND MEETING CLOSE	
4.1	<p>Any other business</p> <p>4.1.1 Members raised the following issues under other business:</p> <ul style="list-style-type: none"> a. Mr Fuller clarified that there had been misleading information in relation to one of the 'success' cases in the press release (the request had been made with the Attorney-General's office and ODPP was only contacted after the draft had already been sent to the press). Mr Todd highlighted a risk and raised caution regarding making case information available too quickly, which may impact accuracy as had been the case in this instance. b. Mr Fuller also raised an issue around priority listing and magistrates' directions, with a couple of court dates being missed. The members discussed the various contributing factors affecting these issues and the need to provide enough information early enough so that FSQ has sufficient time to prioritise appropriately, and also the need to work with the magistrates to assist them with triaging cases. c. Chief Inspector David Neville raised an issue around the backlog, and that QPS investigators are increasingly concerned about the length of time to get results. While they appreciate the issues faced by FSQ, these testing delays may increase the risk to the community with people potentially re-offending. CI Neville noted that while it is essential to support the court and justice outcomes, from the public safety point of view it is also important there is timely testing to support investigative work and solving of crimes. This should be appropriately balanced against the demands of the courts (including communicating with magistrates). d. Professor Wilson-Wilde noted that a paper is being drafted in relation to Project 13 (recommending that all serious cases between October 2007 and July 2008 be relooked at), which FSQ will provide to the Secretariat to send out.
4.3	Meeting close