

Forensic Science Queensland Bill 2023

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The Bill establishes the Forensic Science Queensland Advisory Council (clause 26). The Advisory Council's functions are to monitor and review the policies and procedures of Forensic Science Queensland that relate to the administration of criminal justice, and to give advice or make recommendations about those policies and procedures to the Attorney-General and Director (clause 27). These functions are broad and will allow the Advisory Council to consider written and unwritten policies, procedures and processes.

Forensic Science Queensland analyses specimens that have been collected as part of a criminal investigation. Key stakeholders are, therefore, those who collect the evidential samples and those who are recipients of the forensic analyses. Recipients of the analyses include prosecutory agencies, for example the Office of the Director of Public Prosecutions, Queensland Police Service and Legal Aid. Representatives from these agencies have already been included in the list of 11 members.

Those who collect the evidential samples include forensic scientists, Queensland Police Service members and Clinical Forensic Medicine Examiners. Missing from the Advisory Council member list are the examiners. The purpose of our submission is to provide some historical perspective regarding the value clinical forensic examiners have provided to both Forensic Science and police investigatory processes. We do so from our collective experience of having worked in four Australian states for over 55 years and having seen 1000s of complainants and persons of interest, as well as having written 1000s of expert statements and court appearances as expert witnesses. We believe that a dedicated position on the Council for a Queensland clinical forensic examiner recognises rightfully the importance of this stakeholder when considering any recommendations that relate to the administration of criminal justice.

Improved collection choices and methods

In NSW, regular laboratory analysis feedback to clinical forensic examiners resulted in more consistent messaging to examiners about their collection choices and methods. It also resulted in the removal of oral swabs as a collection method. It was a clinical forensic examiner who initially raised the issue relating to the poor recovery rates for DNA from oral swabs. The results were so poor as to render the practice ineffectual. This was replaced by a peri-oral swab and oral rinse option, tested in a combined Forensic Scientist / Forensic Examiner research project (2016).¹ Sperm recovery rates from the latter two processes increased, in the 0-6 hour period, sperm recovery rate by a factor of 6-7 times. As a direct result, oral swabs are no longer collected in NSW, Queensland or Victoria.

In the UK the Forensic Science Subcommittee was established in 2006. It publishes twice yearly guidelines for forensic collections for complainants and suspects. A similar sub-committee was introduced into NSW in 2011. In both locations the laboratory collated all forensic results collected by their clinical forensic examiners from the previous 12 months to look for patterns or trends or areas requiring further research. This information is considered alongside international research and used to provide evidence based guidelines. These guidelines have resulted in improved consistency of collections and an evidence-based approach to using limited resources i.e., not undertaking invasive

¹ Maria Nittis, Michele Franco, Clint Cochrane. New oral cut-off time limits in NSW. Journal of Forensic and Legal Medicine 44 (2016) 92-97

sampling when the time period from assault is extended and unlikely to yield positive results. The NSW committee was established by a clinical forensic examiner.

In NSW, based on these regularly collated results and some independent research by NSW forensic laboratories, wet and dry sampling was also discontinued, replaced by a single moistened swab. Both Victoria and Queensland have since adopted this process.

Queensland recently released a Forensic Medical Examination Handbook on 31st July 2023. Their table (“Sampling Decisions – Biology”) is referenced to the Royal College of Pathologists – “Evidence Based Forensic Sample Standards”. This RCPA document was compiled by forensic examiners – not forensic scientists. It is a general overview of the samples that can be collected but it is not state specific. Some of the guidelines may not be appropriate for Queensland.

New kits

A NSW DNA-free ISO compliant forensic examination kit for sexual assault complainants was created / designed by clinical forensic examiners as a response to the wrongful conviction of Mr Farah Jama (Victoria) in 2011. The Victorian Forensic Medical Examination Kit (FMEK) was updated to be DNA free and ISO compliant in 2023. This also was clinician-led. The design of the new Queensland FMEK was clinician led.

Working in Isolation

A recent Queensland example of poor outcomes resulting from the exclusion of clinicians from the decision-making process relates to the decision to change the numbering of bar codes on the adhesive labels that are included in the new FMEK. The numbering had been changed to assist the laboratories track samples (which removed the need for this tracking process to be undertaken by reception staff upon arrival of specimens in the laboratory). The new numbering system was so complicated for clinical forensic examiners, and the changes not well explained, resulting in a much higher risk for the wrong labels being inadvertently attached to the wrong specimens. It has possibly been the most complained about aspect of the new kit.

Summary

If the aim of the Forensic Science Queensland can is to give advice or make recommendations about policies and procedures relating to the administration of criminal justice, it would be hard to envisage this working in a holistic way without all key stake holders at the table. The practicalities and clinical considerations, especially in relation to sexual assault cases, can only be brought to the table by Clinical Forensic Examiners.