



Forensic Science Queensland Bill 2023

**Report No. 2, 57th Parliament
Community Safety and Legal Affairs
Committee
February 2024**

Community Safety and Legal Affairs Committee¹

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All web address references are current at the time of publishing.

¹ The Community Safety and Legal Affairs Committee was established as a portfolio committee of the Legislative Assembly on 13 February 2023, at which time it took on legislative scrutiny responsibilities of the former Legal Affairs and Safety Committee, which was discharged on the same date. The committee is also aided by the fact that 5 of the 6 members of the former committee are also members of the Community Safety and Legal Affairs Committee. The former committee consisted of Mr Peter Russo MP, Member for Toohey and Chair, Ms Laura Gerber MP, Member for Currumbin and Deputy Chair, Mr Stephen Andrew MP, Member for Mirani, Ms Jonty Bush MP, Member for Cooper, Mr Jason Hunt MP, Member for Caloundra and Mr Jon Krause MP, Member for Scenic Rim.

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Chair's foreword

On 9 February 2013, Shandee Blackburn was tragically murdered on her way home from work. I want to acknowledge the ongoing advocacy of her mother Vicki who, through her courage and commitment to justice for Shandee, along with others including Dr Kirsty Wright, helped uncover breakdowns at the Queensland forensic laboratory.

During our inquiry, the committee has heard how deficiencies in Queensland's current forensic services system resulted in perpetrators of violent crime, including rape and sexual assault, escaping justice. In addition to the ongoing trauma inflicted on victim-survivors, these deficiencies have damaged public confidence in forensic DNA testing in Queensland, and in our criminal justice system as a whole.

If victim-survivors cannot be assured that forensic evidence will be processed in a professional and effective manner, they may be less inclined to report their assault to authorities, or subject themselves to intrusive and potentially re-traumatising evidence collection procedures.

This Bill will help ensure that these systemic failures never occur again. Victim-survivors should not be confronted with the trauma of seeing their rapist or attacker walk free due to bureaucratic mismanagement and technical incompetence.

This report presents a summary of the Community Safety and Legal Affairs Committee's examination of the Forensic Science Queensland Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

In formally establishing the Director, Office, and Advisory Council of Forensic Science Queensland, this Bill implements a model of forensic service delivery that is a first in any Australian jurisdiction.

I am proud to be part of a government dedicated to bringing justice to victims of crime by ensuring that Queensland's forensic services are of a world-class standard and conducted in consultation with forensic, legal, health, police, and victim support professionals, and in accordance with the latest scientific research and evidence.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and Queensland Health and the Department of Justice and Attorney-General. I also thank the former Legal Affairs and Safety Committee, and in particular, former Deputy Chair Laura Gerber MP, for their tireless efforts in conducting this inquiry.

I commend this report to the House.



Peter Russo MP

Chair

Recommendations

Recommendation 1

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The committee recommends the Forensic Science Queensland Bill 2023 be passed.

Executive Summary

On 29 November 2023, the Hon Shannon Fentiman, Minister for Health, Mental Health and Ambulance Services and Minister for Women, introduced the Forensic Science Queensland Bill 2023 (Bill) into the Queensland Parliament.

The Bill will establish a statutory framework for forensic services to support the administration of criminal justice in Queensland. The framework involves establishing:

- a statutory position of the Director of Forensic Science Queensland (Director)
- a supporting Office of the Director of Forensic Science Queensland (Forensic Science Queensland)
- the Forensic Science Queensland Advisory Council (Advisory Council).

The Bill is modelled on similar legislation that establishes statutory appointments with supporting offices, such as the *Director of Public Prosecutions Act 1984*, and the *Public Guardian Act 2014*.

The Bill implements recommendation 121 of the Final Report of the Commission of Inquiry into Forensic DNA Testing in Queensland led by Mr Walter Sofronoff KC, released on 13 December 2022.²

The committee received a written briefing on the Bill from Queensland Health on 11 December 2023. A public hearing with stakeholders was held on 29 January 2024, and a public briefing with representatives from Queensland Health and the Department of Justice and Attorney-General was held on 1 February 2024.

The key issues raised during the committee's examination of the Bill include:

- membership of the Advisory Council
- consistency with recommendation 121 of the Sofronoff Report.

The committee is satisfied that the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament as required by the *Legislative Standards Act 1992*, and that any limitations of human rights, as set out in the *Human Rights Act 2019*, are reasonable and justifiable.

The committee recommends the Bill be passed.

² Queensland Parliament, Record of Proceedings, 29 November 2023, p 3802.

1 Introduction

1.1 Referral

On 29 November 2023, the Hon Shannon Fentiman, Minister for Health, Mental Health and Ambulance Services and Minister for Women, introduced the Forensic Science Queensland Bill 2023 (Bill) into the Queensland Parliament. The Bill was referred to the former Legal Affairs and Safety Committee (former committee) for detailed consideration and to report back to the Legislative Assembly on 19 February 2024. The former committee was discharged by a motion of the House on 13 February 2024 and the Community Safety and Legal Affairs Committee (committee) was established as a portfolio committee of the Legislative Assembly on the same day. The Bill was transferred to the committee which has taken carriage of all evidence provided to the former committee.

1.2 Background

Queensland Health notes that ‘if the Bill is passed, Queensland will be the first jurisdiction in Australia that establishes, promotes and protects key elements of its forensic services delivery model through legislation’.³ Additionally:

The Bill will commence by proclamation to manage the transition of Forensic Science Queensland from Queensland Health to the Department of Justice and Attorney-General. However, it is intended that Forensic Science Queensland will be formally established within the Department of Justice and Attorney-General in July 2024.⁴

The Bill is modelled on similar legislation that establishes statutory appointments with supporting offices, such as the *Director of Public Prosecutions Act 1984*, and the *Public Guardian Act 2014*.

During August-September 2023, a draft Bill and consultation paper were sent to more than 70 stakeholders external to government to provide feedback and comments.⁵ These stakeholders included health, forensic science, criminal justice, legal, victim support, research, and university and union representatives. The members of the interim advisory board were also consulted.⁶

The explanatory notes state that ‘all stakeholder feedback was carefully considered. Stakeholders were generally supportive of the Bill or raised no concerns.’⁷

1.3 Policy objectives of the Bill

The Bill’s policy objectives are to establish a statutory framework for forensic services to support the administration of criminal justice in Queensland, ensuring high quality, reliable, independent and impartial forensic services and related advice.⁸

³ Queensland Health, correspondence, 23 November 2023, p 1.

⁴ Queensland Health, correspondence, 23 November 2023, p 5.

⁵ Explanatory notes, p 12.

⁶ Explanatory notes, p 12.

⁷ Explanatory notes, p 12.

⁸ Explanatory notes, p 1.

Policy Objectives of the Bill

To establish:



- a statutory position of the Director of Forensic Science Queensland (Director)
- a supporting Office of the Director of Forensic Science Queensland (Forensic Science Queensland)
- the Forensic Science Queensland Advisory Council (Advisory Council).⁹

As well as creating the Director, Office and Advisory Council of Forensic Services Queensland, the Bill makes consequential amendments to the:

- *Evidence Act 1977* (Evidence Act)
- *Police Powers and Responsibilities Act 2000* (Police Powers and Responsibilities Act)
- *Medicine and Poisons Act 2019* (Medicine and Poisons Act).

1.3.1 Sofronoff Report

The Bill implements recommendation 121 of the Final Report of the Commission of Inquiry into Forensic DNA Testing in Queensland (Commission) led by Mr Walter Sofronoff KC (Sofronoff Report), released on 13 December 2022.¹⁰ The Commission was conducted by former President of the Queensland Court of Appeal, Mr Walter Sofronoff KC. The Commission commenced in June 2022 to inquire into the way in which DNA collection and testing for criminal cases was done in Queensland.

The Sofronoff Report made 123 recommendations to address deficiencies identified by the Commission in the methods, systems and processes used in the collection, testing and analysis of DNA samples in Queensland by the forensic DNA laboratory.¹¹ All of the Sofronoff Report's recommendations have been accepted by the Queensland Government.¹²

Recommendation 121 of the Sofronoff Report provided for the creation of a forensic science institute for Queensland, within a statutory framework similar to that of the Office of the Director of Public Prosecutions:¹³

Sofronoff Report - Recommendation 121

The government should pass legislation creating a forensic science institute for Queensland. The legislation should provide for:

- a. The creation of the institute as an independent office within the Department of Justice and Attorney-General, similar to the Office of the Director of Public Prosecutions
- b. A Director of Forensic Science to be appointed on terms set by the Governor in Council upon advice from the Attorney-General
- c. Provisions which protect and promote the independence of the institute and the Director as a provider of expert forensic services to the criminal justice system
- d. The appointment of a Chief Operations Officer who is responsible for the administrative duties associated with operating the Institute

⁹ Explanatory notes, p 2.

¹⁰ Queensland Parliament, Record of Proceedings, 29 November 2023, p 3802.

¹¹ https://www.health.qld.gov.au/__data/assets/pdf_file/0036/1196685/final-report-coi-dna-testing-qld-dec-2022.pdf.

¹² Explanatory notes, p 1.

¹³ *Final Report Commission of Inquiry into Forensic DNA testing in Queensland*, pp 500-501; see also Queensland Parliament, Record of Proceedings, 29 November 2023, p 3802.

- e. The appointment of the senior leaders of the forensic DNA laboratory
- f. The establishment of a dedicated research and development unit within the institute
- g. The establishment of a non-executive advisory board, to be chaired by an eminent person with relevant forensic science or criminal justice expertise, which would report to the Attorney-General on the performance of the laboratory and comprise:
 - i. Two or three eminent forensic scientists from jurisdictions other than Queensland, including in the field of forensic DNA analysis
 - ii. A representative of the QPS
 - iii. A representative of the DPP
 - iv. A representative of the Public Defender
 - v. Two representatives of the private legal profession, appointed by the President of the Bar Association of Queensland and the President of the Queensland Law Society
 - vi. A representative of a victims' support organisation.

Following the release of the Sofronoff Report, the Queensland Government announced an initial funding investment of \$95 million to implement the Commission's recommendations, including a recurrent funding investment of \$10.2 million for the establishment of Forensic Science Queensland. This has now been established on an interim basis as a business unit of Queensland Health.¹⁴ Adjunct Professor Linzi Wilson-Wilde OAM, an experienced and internationally recognised forensic science leader was appointed as its interim Chief Executive Officer. An interim advisory board was also established to oversee implementation of the Sofronoff Report's recommendations.¹⁵

1.4 Legislative compliance

The committee's deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.4.1 *Legislative Standards Act 1992*

The committee's assessment of the Bill's consistency with the LSA is discussed below.



Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.¹⁶

The committee's assessment of the Bill's consistency with the LSA considered potential issues relating to the following fundamental legislative principles (FLPs) raised by the Bill:

- regarding rights and liberties of individuals:
 - new offences being appropriate and reasonable
 - penalties being proportionate to the offence
- regarding the institution of Parliament:
 - regulation-making powers
- natural justice
- delegation of power.

¹⁴ Explanatory notes, p 6.

¹⁵ Explanatory notes, p 1.

¹⁶ LSA, s 4(2).

Committee comment

The committee is of the view that the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament. Any relevant considerations of FLPs are discussed in section 2 of this report.

1.4.2 Human Rights Act 2019



A law is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable.¹⁷

The committee's assessment of the Bill's compatibility with the HAS considered the potential issues and limitations on the following human rights raised by the Bill:

- right to take part in public life
- right to privacy and reputation.

Committee comment

The committee is satisfied that any potential limitations on human rights proposed by the Bill are demonstrably justified. Any relevant considerations of human rights issues are discussed in section 2 of this report.

A Statement of Compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.5 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Forensic Science Queensland Bill 2023 be passed.

¹⁷ HRA, s 8.

2 Examination of the Bill

This section discusses key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Director of Forensic Services Queensland

The Bill establishes a statutory position of the Director and also covers the appointment, functions and powers of the Director.

2.1.1 Appointment

Clause 7 of the Bill requires the appointment of the Director by Governor in Council on the recommendation of the Minister. The Director role requires the incumbent to have a tertiary qualification in a scientific discipline relevant to forensic services and at least 10 years of practical experience in providing forensic services. The incumbent cannot have a conviction for an indictable offence or be an insolvent under administration.¹⁸

The explanatory notes state that the draft Bill was updated to require at least 10 years practical experience, which is consistent with the Director of Public Prosecutions:

Some stakeholders sought other mandatory requirements to be included for appointment of the Director, such as postgraduate qualifications or leadership and management experience. However, the qualifications and experience in the Bill are intended to be the minimum qualifications that a person could have to be appointed to the role of Director. The recruitment and selection process will set expectations and consider the most suitable person for the role to ensure that a candidate with the appropriate level of skills and experience will be selected.¹⁹

2.1.2 Conditions of appointment

The Director's appointment is made under the Forensic Science Queensland Act (Act) and not under the *Public Sector Act 2022*.²⁰ Clause 8 of the Bill provides that the Director is appointed for a term of no longer than five years, and may be reappointed.²¹ Clause 11 of the Bill requires a person appointed to the role of Director who becomes an insolvent to give immediate written notice to the Minister. Clause 16 of the Bill requires a person appointed to the role of Director who is charged with, or convicted of, an indictable offence to give immediate written notice to the Minister.

Clause 10 of the Bill provides that the office of the Director becomes vacant when the Director:

- completes a term of office and is not reappointed
- resigns from office by signed notice to the Minister at least 1 month before the resignation is to have effect
- is convicted of an indictable offence
- is an insolvent under administration
- is removed from office by the Governor in Council.

¹⁸ Bill, clause 7(4).

¹⁹ Explanatory notes, p 12.

²⁰ Explanatory notes, pp 15-16.

²¹ Explanatory notes, p 16.

The Minister may recommend to Governor in Council to remove the Director from office if the Minister is satisfied the Director:

- has engaged in misconduct²²
- is incapable of performing the Director's duties
- has neglected the Director's duties or performed duties incompetently
- is absent from duty without leave granted by the Minister
- has performed outside work beyond limitations prescribed in the Bill or has a conflict of interest.²³

The Minister can appoint an acting Director for up to six months if the office is vacant.²⁴

2.1.3 Functions and powers

Clause 13 of the Bill provides that the Director's functions are to support the administration of criminal justice in Queensland by:

- leading the provision of forensic services and advice about forensic services to the Queensland Police Service, the Director of Public Prosecutions, coroners and other entities who perform functions related to the administration of criminal justice
- ensuring forensic services and advice are reliable, independent and impartial and based on high quality processes and techniques that comply with relevant standards and accreditation requirements
- ensuring research, development and innovation activities are undertaken to inform the provision of forensic services
- developing partnerships and collaborating with other entities to inform and support the provision of forensic services.²⁵

Clause 14 of the Bill provides that the Director has the power to do all things necessary or convenient to be done in performing the Director's functions, including the power to enter into an arrangement with a person or other entity to assist in the performance of the Director's functions and the power to establish an advisory committee or subcommittee for the purpose of obtaining expert advice on the performance of the Director's functions.

The Director has the power to direct the Office of Forensic Science Queensland to provide scientific analysis in non-criminal matters in Queensland and other jurisdictions and support the administration of justice in other jurisdictions, including in coronial matters.²⁶ Clause 18 of the Bill allows the Director to delegate their functions and powers to an appropriately qualified staff member of Forensic Science Queensland. Clause 19 of the Bill provides that the Director is not subject to direction by the Minister.

Clause 41 provides that the Director and Advisory Council are not statutory bodies for the *Statutory Bodies Financial Arrangements Act 1982* or *Financial Accountability Act 2009*.²⁷ During the public

²² Misconduct is defined in Schedule 1 of the Bill to include (a) inappropriate or improper conduct in an official capacity; or (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on Forensic Science Queensland or the council.

²³ Explanatory notes, p 16.

²⁴ Bill, clause 12.

²⁵ Explanatory notes, p 2.

²⁶ Bill, clause 14(2).

²⁷ Explanatory notes, p 5.

hearing, queries were raised regarding the purpose of clause 41, and whether it is intended as a means to avoid audits.²⁸ At the public briefing, Queensland Health responded to these concerns, clarifying that clause 41 is similar to clauses in other justice portfolio statutory appointments, and ‘does not remove accountability or oversight for the forensic services director or the advisory council’.²⁹

2.1.4 Criminal history

Clause 15 of the Bill enables the Minister, with the consent of a person who is, or becomes the Director, to inquire into the criminal history of that person by requiring the Police Commissioner to provide a written report about the person’s criminal history including the circumstances of any conviction mentioned in the criminal history.³⁰ Spent convictions are excluded from the definition of criminal history contained in the Bill.³¹

Clause 16 of the Bill requires the Director, if charged or convicted of an indictable offence while in office, must immediately notify the Minister, with such notice to include specifics of the charge or conviction including date, type and sentence.³² Such criminal history information must not be disclosed by any person (whether the Minister or any public sector employee who, in administering or performing functions under the Bill, has access to that information).³³

Clause 17 of the Bill allows the person to disclose or use the criminal history information:

- to the extent the disclosure or use is necessary to perform the person’s functions under or relevant to the part of the Bill dealing with the office of Director
- to the extent the disclosure or use is required or permitted under the Act or another law, or
- with the consent of the person to whom the confidential information relates.

Any criminal history information must be destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.³⁴

2.1.5 Consistency with fundamental legislative principles

2.1.5.1 *Right to privacy*

The requirements for the:

- Director to disclose insolvency or charges and convictions for indictable offences
- Minister to obtain criminal history information about the Director
- Director to obtain permission to engage in outside paid work and disclose conflicts of interest

may impact the right to privacy, which is relevant to whether legislation has sufficient regard to the rights and liberties of individuals under section 4(2) of the LSA. The explanatory notes justify the impact:

These provisions ensure that there are protections for the integrity of Forensic Science Queensland, the impartiality and independence of its work, and transparency regarding how suitability for appointment is identified. They maintain confidence in forensic services led by the Director. This is an important contributor to ensuring the administration of criminal justice given

²⁸ Public hearing, 29 January 2024, p 9.

²⁹ Public briefing, 1 February 2024, p 3.

³⁰ Explanatory notes, p 18.

³¹ Bill, clause 15(6).

³² Explanatory notes, p 18.

³³ Bill, clause 17.

³⁴ Bill, clause 17(4).

the strategic and day-to-day oversight that the Director, as an individual, will have over forensic services in Queensland.³⁵

2.1.5.2 Delegation of power

To ensure legislation has sufficient regard to the rights and liberties of individuals, legislation should allow for the delegation of administrative power only in appropriate cases and to appropriate persons.³⁶ The Director has the power to delegate tasks and functions to staff. The explanatory notes justify this delegation of power:

Any functions and powers [the Director] delegate[s] are expected to be operational in nature. It is appropriate for the day-to-day operations of Forensic Science Queensland to be delegated to suitably qualified employees. In addition, this power will also ensure that the Director's functions are delivered by persons with the necessary expertise, and that there are suitable persons to make decisions if the Director is temporarily unavailable. It is common practice for delegation powers to be included in legislation for statutory appointments to ensure the appointee does not have to undertake all aspects of their role personally.³⁷

2.1.5.3 Natural justice

Section 4(3)(b) of the LSA states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with the principles of natural justice. Clause 10 of the Bill provides for the Director's appointment to be terminated or suspended in certain circumstances. The explanatory notes state:

While the Bill does not expressly provide the Director ... the opportunity to make a submission in relation to suspension, removal or a decision about performance of their functions, the principles of natural justice would require this to occur in practice. The provisions support a high standard of integrity. This is important because the Director's functions include providing independent and impartial forensic services to support the administration of criminal justice in Queensland... The provisions are considered to be consistent with fundamental legislative principles.³⁸

2.1.6 Compatibility with human rights

The statement of compatibility notes that the Bill, in setting eligibility criteria for appointment, providing for termination and suspension of appointment, and limiting paid outside work and conflicts of interest, may limit the right to take part in public life protected by section 23 of the HRA. These limits are necessary to ensure that the Director is a suitably qualified and experienced person, to maintain the ability and integrity required for the office, and to mitigate the risk of influence and corruption.³⁹

Section 25 of the HRA protects the right to privacy and reputation. The statement of compatibility notes that the Bill's provision for the Minister to request certain criminal history information about the Director, and the requirement for the Director to disclose charges and convictions for indictable offences and insolvency, may limit this right.⁴⁰ This limit is necessary to ensure the Director is suitable for office, can maintain the office's integrity and ability, and mitigates the risk of influence and corruption.⁴¹

³⁵ Explanatory notes, p 7.

³⁶ LSA, s4(3)(c).

³⁷ Explanatory notes, p 9.

³⁸ Explanatory notes, p 11.

³⁹ Statement of Compatibility, pp 2-3.

⁴⁰ Statement of Compatibility, p 5.

⁴¹ Statement of Compatibility, pp 2, 5-6.

2.2 Office of the Director of Forensic Services Queensland

The Bill establishes a government office called the Office of the Director of Forensic Science Queensland, referred to as Forensic Science Queensland.⁴² Its role is to help the Director perform the Director's functions.⁴³ Clause 25 of the Bill provides that Forensic Science Queensland staff are employed under the *Public Sector Act 2022*.

2.2.1 Employment terms and conditions

Clause 47 of the Bill provides employment terms and conditions of initial Forensic Science Queensland employees, defined as 'a person who is employed by the department after the commencement as a staff member of Forensic Science Queensland, including a person who was a health service employee or public service employee immediately before being transferred to the department.'⁴⁴ These terms and conditions mirror those which apply to health service or public service employees of Queensland Health under existing instruments.⁴⁵

Clause 52 of the Bill notes that transfer of health service or public service employees of Queensland Health to Forensic Science Queensland does not affect the employees' benefits, entitlements or remuneration, interrupt continuity of service or entitle the employees to a payment or other benefit from the State because the employees are no longer employed at Queensland Health.⁴⁶

2.2.2 Stakeholder feedback and department response

2.2.2.1 Dedicated research and development unit

Stakeholders raised the issue that the Bill does not provide for a dedicated research and development (R&D) unit as suggested in the Sofronoff Report.⁴⁷ The Bar Association of Queensland noted that it did not see a good reason for the recommendation for a R&D unit to be excluded from the legislation:

... the fact that there was also a recommendation that there be the establishment of a dedicated research and development unit within the institute, again a matter of the statute. I just reiterate that it was the position that the recommendations of Mr Sofronoff ought to be adhered to unless there was good reason not to or the recommendations were otherwise made redundant otherwise within the bill, and that did not seem to be the case upon our reading.⁴⁸

In their testimony, DVConnect also expressed concern regarding the lack of provisions for an R&D unit within the legislation. They further noted that the R&D should employ a 'cultural and gender lens ... so First Nations people and women and those who identify as female are able to experience a forensic system that prioritises their experience.'⁴⁹

In response to these concerns, Queensland Health noted that '[t]he bill includes research, development and innovation in the director's functions'.⁵⁰

It is also noted in this regard, that the explanatory notes provide:

It is not necessary for a separate research and development unit to be established through legislation. Research, innovation, policy and education activities are dealt with through functions

⁴² Bill, clause 23.

⁴³ Bill, clause 24.

⁴⁴ Explanatory notes, p 24.

⁴⁵ Bill, clauses 47(2)-(3).

⁴⁶ Bill, clause 52.

⁴⁷ Public hearing, 29 January 2024, pp 6, 9.

⁴⁸ Public hearing, 29 January 2024, p 6.

⁴⁹ Public hearing, 29 January 2024, p 6.

⁵⁰ Public briefing, 1 February 2024, p 2.

given to organisations or positions in legislation. The Bill gives the Director functions relating to research, development, innovation, partnerships and collaboration (clause 13). It is intended that a research development unit will be established within Forensic Science Queensland operationally.⁵¹

2.2.2.2 Transfer from Queensland Health to Department of Justice and Attorney-General

In the public hearing, DVConnect sought clarity regarding ‘changes in the oversight of [Forensic Science Queensland] moving to DJAG and outside the health system and that that does not negatively impact ethical approval processes that are currently managed under the *Public Health Act 2005*’.⁵²

In response to these concerns, DJAG noted that provisions are in the Bill to ensure a smooth transition:

... the transitional provisions within the bill are there to ensure that, for the staff who are transferred, through whatever mechanism of transfer we use to have staff moving from Queensland Health into the Department of Justice and Attorney-General, there are transitional provisions to ensure there will not be any prejudice suffered by any of the employees with respect to their rights and entitlements. There are preservation clauses in quite some detail, as people may have noticed, just to ensure we do not have any prejudice to employment conditions.⁵³

2.3 Forensic Science Queensland Advisory Council

Part 4 of the Bill establishes the Forensic Science Queensland Advisory Council.⁵⁴

2.3.1 Functions and powers

Clause 27 of the Bill provides that 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 Minister and Director.⁵⁵

The Bill provides that the Advisory Council may give advice or make recommendations:

- to the Minister on its own initiative or on request of the Attorney-General
- to the Director on its own initiative.⁵⁶

Clause 28 of the Bill confers the Advisory Council with the power to do anything necessary or convenient to be done in performing its functions. Clause 39 of the Bill requires the Advisory Council to include a fair summary of any dissenting member views in any advice or recommendation it makes about a matter to the Minister or Director.

Queensland Health provides further information on the Advisory Council’s functions:

... are broader than the function recommended in recommendation 121, which related to the performance of the DNA laboratory. These broader functions reflect that forensic science covers multiple fields and disciplines beyond DNA analysis. They allow the Advisory Council to engage more broadly with any policy or procedure, written or unwritten, that may affect the administration of criminal justice. The functions are also broad enough to ensure that policies and procedures relevant to current issues relating to the administration of criminal justice can be considered, such as policies and procedures relating to resolving the testing backlog and

⁵¹ Explanatory notes, p 14.

⁵² Public hearing, 29 January 2024, p 11.

⁵³ Public briefing, 1 February 2024, p 8.

⁵⁴ Bill, clause 26.

⁵⁵ Explanatory notes, p 4.

⁵⁶ Bill, clause 27.

conducting case reviews. The Advisory Council is therefore an ongoing oversight mechanism for the key operations of Forensic Science Queensland.⁵⁷

2.3.2 Membership

Clause 29 of the Bill provides that the Advisory Council consists of up to 11 members appointed by the Minister.

Six of the members are prescribed by the Bill as follows:

- A representative of the Queensland Police Service
- A representative of the Office of the Director of Public Prosecutions
- A representative of Legal Aid Queensland
- A person who holds qualifications or has experience in supporting victims of crime
- A person who holds qualifications or has experience relating to forensic services who is not employed by the state
- A practicing lawyer who is not employed by the state.⁵⁸

The 5 remaining council members must hold qualifications or have experience in at least one of the following fields:

- forensic services
- policing
- law
- support for victims of crime
- another field the Minister is satisfied is necessary or relevant to support the council's functions.⁵⁹

Council members hold office for up to 3 years, and can be reappointed.⁶⁰ Vacancy in office of council members occurs when the member is not reappointed, resigns or is removed by the Minister by way of written notice if:

- the member is absent from three consecutive meetings of council members without the council's permission and without reasonable excuse
- the member is convicted of an indictable offence
- the Minister is satisfied the member has engaged in misconduct
- the member becomes an insolvent under administration
- the Minister is satisfied the member is incapable of satisfactorily performing the member's duties.⁶¹

Clause 30 of the Bill requires the Minister to appoint a council member to be chairperson. Clause 31 of the Bill requires the Advisory Council to appoint one of its members to be deputy chairperson.

⁵⁷ Queensland Health, correspondence, 23 November 2023, p 4.

⁵⁸ Bill, clause 29.

⁵⁹ Bill, clause 29; Explanatory notes, p 21.

⁶⁰ Bill, clause 31.

⁶¹ Explanatory notes, p 22.

In relation to the chairperson, the explanatory notes provide:

The Bill requires the Attorney-General to appoint one of the members of the Advisory Council as the chairperson (clause 30). The Attorney-General will consider the candidate best suited to chair the Council, based on the appointment process.⁶²

2.3.3 Stakeholder feedback

Several stakeholders drew attention to the proposed composition of the Advisory Council.

Gold Coast Hospital and Health Service (GCHHS) submitted that there should be a dedicated position on the Advisory Council for a Queensland clinical forensic medicine examiner, given the role clinical forensic medicine examiners play in the criminal justice system, and their demonstrated clinical expertise.⁶³ GCHHS reiterated the necessity of the inclusion of a forensic clinician in their hearing testimony:

We acknowledge that there is room for a member from forensic services and this, I believe, was amended to include a member who represents forensic services with appropriate qualifications and expertise, but we felt uncertain, given the broad nature of the term ‘forensic services’, that that might not result in the inclusion of a clinician, and we thought that it was worth us helping you to understand why we feel that is important.

...

We felt strongly that without the term ‘clinician’ there may be the potential for clinicians to not be involved in the process or to not be connected with the scientists in such a way that we were allowed to feed back any problems that might arise and receive information about analysis and the ability to collate results that would lead to an ability to review trends or patterns—just another pair of eyes from another group that might be able to detect a problem

...

I think the inclusion of a clinician on the advisory council will ensure that that culture can be changed—that involvement of forensic clinicians. I am not talking about any medical practitioner. We want forensic clinicians with a wealth of frontline experience and qualifications—appropriate qualifications—to enable them to engage with the scientists to improve the kits.⁶⁴

In relation to the composition of the Advisory Council, the Bar Association of Queensland suggested that the Bill should provide for the appointment of two representatives from the private legal profession, appointed by the Bar Association of Queensland, and the Queensland Law Society. They note that the Bill currently provides for only a single private legal representative.⁶⁵

In their testimony, DVConnect recommended that victim-survivors be included on the Advisory Council:

Victim-survivors need to be part of the advisory group and that is already acknowledged. It needs to be so in a way where voices can be heard from these two perhaps most impacted cohorts, one of those cohorts being people who have experienced sexual violence and the other one those who have been impacted by homicide. These groups have to be represented distinctly. We have to have those two voices at the table, not just one. That is why we are arguing for a specific specialised sexual violence person at the table.⁶⁶

⁶² Explanatory notes, p 14.

⁶³ Submission 1, p 1.

⁶⁴ Public hearing, 29 January 2024, pp 1-2, 4.

⁶⁵ Public hearing, 29 January 2024, p 6.

⁶⁶ Public hearing, 29 January 2024, p 11.

2.3.4 Department response

In their written briefing, Queensland Health outlined their general rationale for the composition of the Advisory Council:

The Bill strikes a balance between ensuring the Advisory Council has representatives from key stakeholder groups in the criminal justice system and allowing administrative flexibility to appoint a broad range of members whose experience and skills are complementary. This will ensure the Advisory Council operates effectively. If legislation is too prescriptive about membership of a government body it can limit the proper constitution of the body, for example, if a particular member is absent or unable to be appointed during a vacancy. The Bill reflects all categories of members recommended in recommendation 121.

The appointment process for the Advisory Council will carefully consider the balance of skills, experience, qualifications and diversity needed to ensure well-rounded and effective membership. It is anticipated an open expression of interest process will be conducted in order to identify the most suitable membership mix and to ensure broad, equitable and independent criminal justice system stakeholder representation.⁶⁷

In response to the recommendation by GCHHS that the Advisory Council include a clinical forensic medicine examiner, Queensland Health stated:

Queensland Health acknowledges the important role of clinical forensic medicine examiners in the criminal justice system. There are multiple avenues for clinical forensic medicine examiners to be appointed, or to contribute, to the Advisory Council. Clinical forensic medicine examiners could be appointed under clauses 29(2)(e) or 29(3)(a) of the Bill, which provide for the appointment of persons with qualifications or experience in or relating to forensic services. Clinical forensic medicine examiners could also be appointed under clause 29(3)(e) of the Bill, which allows the Attorney-General to appoint a person with qualifications or experience in a field not listed in clause 29 if satisfied the field is necessary or relevant to support the Council's functions.⁶⁸

Queensland Health elaborated on this position in their hearing testimony:

I echo Dr Lincoln's advice that forensic services require a multidisciplinary effort. The definition of 'forensic services' is intentionally purpose-based rather than capturing specific disciplines, stages or procedures of forensic services, which are numerous and subject to change over time. The definition is broad enough to capture work relating to clinical forensic medicine. This means that forensic clinicians and examiners could be appointed to the advisory council because they have qualifications or experience in or relating to forensic services.⁶⁹

Regarding the Bar Association of Queensland comments, Queensland Health acknowledged the Bill does not directly reflect the membership outlined in the Sofronoff Report and stated:

The broad categories of members listed in recommendation 121 are all accounted for in the bill and Mr Walter Sofronoff KC was consulted on the draft bill. The bill allows all members suggested at the public hearing to be appointed as advisory council members. While clause 29(2) of the bill requires at least one person with the relevant qualifications to be appointed, nothing prevents the Attorney-General from appointing more than one person with these qualifications. The appointment process for the advisory council will carefully consider the balance of skills and experience needed to ensure well-rounded and effective membership. It will involve an open call for expressions of interest, and applications from people interested could detail whether the expression of interest is supported by a peak body such as the Bar Association or the Law Society of Queensland, whether a person's experience is lived, professional or both, and the value that the

⁶⁷ Queensland Health, correspondence, 23 November 2023, pp 4-5.

⁶⁸ Queensland Health, correspondence, 8 January 2024, Attachment p 2.

⁶⁹ Public briefing transcript, 1 February 2024, Brisbane, p 2.

experience can bring to the advisory council at this critical point in time when the commission of inquiry's findings are being implemented.⁷⁰

2.3.5 Compatibility with human rights

The Statement of Compatibility notes that the Bill, in setting eligibility criteria for the appointment for certain Advisory Council members, and providing for termination and suspension of appointment, may limit the right to take part in public life protected by section 23 of the HRA. These limits are necessary to ensure that Advisory Council members are suitably qualified and experienced, to maintain the ability and integrity required for members, and to mitigate the risk of influence and corruption.⁷¹

2.3.6 Consistency with fundamental legislative principles

Section 4(3)(b) of the LSA states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with the principles of natural justice. Clause 34 of the Bill provides for Advisory Council member appointments to be terminated in certain circumstances. The explanatory notes state:

While the Bill does not expressly provide the ... Advisory Council members the opportunity to make a submission in relation to suspension, removal or a decision about performance of their functions, the principles of natural justice would require this to occur in practice. The provisions support a high standard of integrity ... Advisory Council members also play an important role in providing advice and recommendations to the Director and Attorney-General. The provisions are considered to be consistent with fundamental legislative principles.⁷²

Committee comment

The committee notes the issues raised by stakeholders regarding the membership of the Advisory Council. The committee recognises that a diverse council membership will most effectively address the deficiencies in the current forensic services system in Queensland identified in the Sofronoff Report, and acknowledges the importance of including representatives from the medical, forensic, and legal professions, as well those with lived experience. The committee also notes the advice from Queensland Health that the Bill strikes a balance between ensuring the Advisory Council has representatives from the key stakeholder groups but also allows flexibility to appoint members from a broader range of categories as required. The committee also notes advice from Queensland Health that while the Bill does not expressly provide for certain representatives mentioned by the Gold Coast Hospital and Health Service and the Queensland Bar Association, the current provisions are broad enough to accommodate these persons on the Advisory Council. Overall, the committee is satisfied with the Advisory Council membership provisions as set out in the Bill.

2.4 Offence provisions

2.4.1 Examples of offence provisions

Various offences are set out in the Bill. For example, an offence arises:

- under clause 11, if the Director becomes insolvent and does not immediately advise the Minister (maximum 100 penalty units)
- under clause 16, if the Director is charged or convicted of an indictable offence and does not immediately advise the Minister (maximum 100 penalty units)

⁷⁰ Public briefing transcript, 1 February 2024, Brisbane, p 2.

⁷¹ Statement of Compatibility, pp 2-3.

⁷² Explanatory notes, p 11.

- under clause 17, if a person discloses criminal history information relating to the Director in contravention of the Act (maximum penalty of 200 penalty units).

2.4.2 Consistency with fundamental legislative principles

Whether legislation has sufficient regard to the rights and liberties of individuals under section 4(2)(a) of the LSA requires penalties for offences to be proportionate and relevant to the offence. The explanatory notes state the offences under clauses 11 and 16 ‘reinforce the expectation that the [Minister] be made aware of matters that may affect integrity, suitability for appointment and ability of the Director to perform their role or functions.’⁷³ The maximum penalties for these offences are consistent with equivalent offences in Queensland legislation, and are considered ‘necessary to ensure the disclosure of relevant information.’⁷⁴

Clauses 11 and 16 also place an evidential and legal onus on the Director. Section 4(3)(d) of the LSA provides that whether legislation reverses the onus of proof in criminal proceedings without adequate justification is relevant to whether the legislation has sufficient regard to the rights and liberties of individuals. The explanatory notes justify this reversal as appropriate:

... because the Director will be best placed to provide the relevant information that would support the reasonable excuse defence. Reasonable excuse defences are common across Queensland legislation. In these circumstances and given the notifiable information is relevant to integrity, suitability for appointment and ability to perform the role, reversing the onus of proof is considered appropriate and reasonable.⁷⁵

2.5 Confidentiality requirements

In addition to the breach of confidentiality offence created under clause 17 of the Bill, clause 40 provides that if a person involved in the administration of the Act (such as the Director, an Advisory Council member, a staff member, or any other person assisting the Director or Advisory Council) discloses confidential information in a way not permitted by the Act, that person commits an offence which carries a maximum 200 penalty units.

Confidential information includes information about a person’s affairs but does not include statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.⁷⁶

Confidential information may be disclosed or used:⁷⁷

- to the extent the disclosure or use is necessary to perform the person’s functions under or relating to the Act
- to the extent the disclosure or use is required or permitted by the Act or another law
- if the disclosure is made under an arrangement for the provision of forensic services to the person or other entity that has requested the forensic services under the arrangement
- for a proceeding in a court or tribunal
- if authorised by a court or tribunal in the interests of justice
- with the consent of the person to whom the confidential information relates.

⁷³ Explanatory notes, p 9.

⁷⁴ Explanatory notes, p 10.

⁷⁵ Explanatory notes, p 10.

⁷⁶ Explanatory notes, p 23.

⁷⁷ Bill, clause 40(3).

2.5.1 Stakeholder feedback and department response

In relation to confidentiality, the Office of Information Commissioner (OIC) suggested that the definition of confidential information in clause 40(4) of the Bill which restricts the disclosure of confidential information should include a reference to personal information as defined in section 12 of the *Information Privacy Act 2009*. OIC noted that incorporating personal information into the definition would promote legislative consistency.⁷⁸

In response to this concern, Queensland Health responded:

The definition of confidential information at clause 40(4) of the Bill is intentionally broad to ensure that sensitive information is not unintentionally left unprotected. This is important because Forensic Science Queensland and the persons captured by the confidentiality clause will be dealing with information which may not be personal information, such as DNA and associated genetic information from which a person's identity cannot reasonably be ascertained. In addition, the nature of information that needs to be protected may change over time due to advances in forensic science.

As personal information is a subset of confidential information, including a reference to personal information in the definition in the Bill would not change the scope of the definition.⁷⁹

2.5.2 Consistency with fundamental legislative principles

The disclosure of confidential information in the ways permitted by the Act and explained above, may impact the right to privacy, which is relevant to whether legislation has sufficient regard to the rights and liberties of individuals under section 4(2) of the LSA. The explanatory notes state:

These provisions are considered justified, as appropriate protections are in place to minimise the disclosure of confidential information and deter unauthorised disclosure. The provisions are necessary to ensure Forensic Science Queensland and the Advisory Council can perform their functions under the Bill.⁸⁰

2.5.3 Compatibility with human rights

Section 25 of the HRA protects the right to privacy and reputation. The statement of compatibility notes that the Bill's provision to allow the disclosure and use of confidential information in certain circumstances as noted above, as well as to ensure the Advisory Council has sufficient information to perform its functions of monitoring and reviewing policies and procedures of Forensic Science Queensland and providing advice and recommendations to the Minister and Director.⁸¹ The statement of compatibility notes the circumstances in which confidential information can be disclosed and used are as narrow as possible and cannot be narrowed further.⁸²

2.6 Regulation making power

Clause 44 of the Bill provides a general head of power for making regulations. Clause 13 provides that a regulation may prescribe another function for the Director and whether a matter is captured within or excluded from the definition of forensic services as defined in Schedule 1 of the Act.

In terms of consistency with fundamental legislative principles, Section 4(4)(a) of the LSA states that whether legislation has sufficient regard to the institution of Parliament depends on whether the legislation allows for the delegation of legislative power only in appropriate cases and to appropriate persons. The explanatory notes state:

⁷⁸ Submission 2, p 1.

⁷⁹ Queensland Health, correspondence, 8 January 2024, Attachment p 2.

⁸⁰ Explanatory notes, p 7.

⁸¹ Statement of Compatibility, p 5.

⁸² Statement of Compatibility, pp 6-7.

Forensic science is an evolving field, due to advances in underlying scientific knowledge, changes in service delivery models and the adoption of new technology. As new practices emerge and technology changes, there could be changes in the forensic services provided by Forensic Science Queensland. Allowing a regulation to prescribe another function for the Director ensures that there is flexibility to add further functions to the Director's existing key functions. Similarly, the ability to prescribe matters as being within or outside the definition of forensic services will ensure flexibility for Forensic Science Queensland to adapt its practices over time. If a regulation is made for any of these matters, it will be tabled in Parliament and subject to disallowance, ensuring Parliament has appropriate oversight of the matters dealt with by regulation.⁸³

2.7 Consequential amendments

2.7.1 Evidence Act 1977

Clause 56 of the Bill amends section 133A of the Evidence Act regarding DNA Analysts, to provide that the Director of Forensic Science Queensland may appoint a staff member of Forensic Science Queensland as a DNA analyst, if satisfied the staff member has the necessary qualifications and experience to be a DNA analyst.

Clause 57 of the Bill inserts a new section 160 into the Evidence Act to ensure that any person appointed as a DNA analyst by Forensic Services Queensland holds office under the Evidence Act as a DNA analyst.

2.7.2 Police Powers and Responsibilities Act 2000

Clause 69 of the Bill allows the Police Commissioner to enter into a DNA arrangement with the Director of Forensic Science Queensland. The Bill also makes definitional amendments to existing accreditation standards under the Police Powers and Responsibilities Act regarding the testing and calibration laboratory standards adopted by Forensic Science Queensland to facilitate cooperation between laboratories and other bodies by generating wider acceptance of results between countries and allowing for contemporary best practice.⁸⁴

2.7.3 Medicine and Poisons Act 2019

Clause 60 of the Bill amends section 189 of the *Medicines and Poisons Act 2019* (Medicine and Poisons Act) regarding State analysts, to provide that the Director of Forensic Science Queensland may appoint a staff member of Forensic Science Queensland as a State analyst, if satisfied the staff member has the necessary qualifications and experience to be a State analyst.

Clause 66 of the Bill inserts a new Section 282 into the Medicines and Poisons Act to ensure that any person appointed as a State analyst by Forensic Services Queensland holds office under the Medicines and Poisons Act as a State analyst.

Committee comment

Given recent events relating to the administration of criminal justice in Queensland, it is clear that an overhaul of forensic services was required in Queensland. After its inquiry into the Bill, the committee is satisfied that the new statutory framework set out in the Bill to deal with forensic services is a positive step forward in remedying the issues identified in the Sofronoff Report. The committee also considers that the statutory framework largely accords with the recommended approach set out in recommendation 121 of the Sofronoff Report.

⁸³ Explanatory notes, p.9.

⁸⁴ Explanatory notes, p 29.

Appendix A – Submitters

Sub #	Submitter
1	Gold Coast Hospital & Health Service
2	Office of the Information Commissioner
3	Name withheld & supplementary submission

Appendix B – Officials at public departmental briefing

1 February 2024

Queensland Health

- Mr Michael Walsh, Director-General
- Mr David Sinclair, A/Associate Director-General, Strategy, Policy and Reform Division
- Ms Kirsten Law, Director, Legislative Policy Unit
- Ms Rachana Rajan, A/Manager, Legislative Policy Unit

Department of Justice and Attorney-General

- Mr Aaron Suthers, Executive Director, Forensic Science Queensland Implementation Project

Appendix C – Witnesses at public hearing

29 January 2024

Gold Coast Hospital and Health Service

- Dr Cathy Lincoln, Medical Director, Forensic Medicine

Bar Association of Queensland

- Mr Andrew Hoare KC, Chair, Criminal Law Committee
- Ms Anna Cappellano, Member of the Criminal Law Committee

DV Connect

- Ms Michelle Royes, Director Clinical Governance
- Mrs Rhea Mohenoa, Director of Client Services – Recovery and Healing

Statement of Reservation

STATEMENT OF RESERVATION

As Opposition Members of the Committee, we would like to place on record our Statement of Reservation in relation to the *Forensic Science Queensland Bill 2023*.

At the outset, we would like to acknowledge the tireless advocacy of Vicki Blackburn in the search for justice for her daughter, Shandee. We also acknowledge the courageous advocacy by Dr Kirsty Wright who relentlessly shone a light on the failures of Forensic Services in Queensland. Without their respective voices this legislation would not exist and the failings of the state's DNA Laboratory would never be known.

It is a fundamental tenet of our legal system that justice to be done, it must be seen to be done. As Opposition members of the Committee, we sought to question the respective authorities on issues like:

- The number of cases which would require forensic re-testing; and,
- How many cases had, or were likely to be, re-litigated or re-opened as a result previous sub-standard testing;

Given that our line of questioning on these issues were regularly dismissed or shut down by Government Members of the Committee, we question whether the seminal lessons of two Commissions of Inquiry into Forensic DNA Testing in Queensland around transparency and accountability have been heeded. Queenslanders deserve to know that justice is being done, and if this type of information is not forthcoming, they can rightly question if justice is being served.

We would also like to note that the Government has moved to alter the formation of an Advisory Board, as outlined by Commissioner Sofronoff in recommendation 121 of the Commission of Inquiry. We do question the Government's decision to deviate from the Commission of Inquiry recommendation in relation to the make up of the Advisory Council.

It must be noted that repeated and increasingly desperate calls for a Commission of Inquiry into the DNA Laboratory by the sections of the media, experts, victims of crime and the Opposition were repeatedly ignored, and at times even mocked, by the Government. The failings of the Forensic Services Laboratory marked one of the most significant cases of government maladministration in living memory. It has fundamentally shaken the foundations of the criminal justice system in Queensland, with the long-term ramifications still largely unknown.

From the moment concerns about failing forensic services were raised, the State Government has been at best slow to act, and at worst dismissive. It is deeply regrettable that it took so long for the issue to be properly acknowledged by the State Government, and for changes to be made.

We acknowledge that the *Forensic Science Queensland Bill 2023* seeks to repair the damage and issues uncovered by through the two Commissions of Inquiry. A properly functioning Forensic Laboratory is a fundamental pillar of our state's criminal justice system. All those who work across it, and who rely on it for justice, deserve no less.



Mark Boothman MP
Deputy Chair
Member for Theodore



Jon Krause MP
Member for Scenic Rim

