

ESU Case			
Case number:	██████████	Opened:	21-03-2022 10:12:46
Case Type:	Issue	Opened by:	Ashley MACFARLANE (macfarad)
ESU File Number:	██████████	Assignment group:	Ethical Standards Unit
CCC Reference number:		Assigned to:	Jess BYRNE (byrneje)
CCC category:		State:	Inactive
CCC notified date:		Sensitive:	false
Source of complaint:	Employee	Sensitive Watchlist:	
Unknown subject officer:	false	Business Watchlist:	
Subject officer's name:	Cathie ALLEN, Justin HOWES, Unknown	Processing Unit:	Prevention Division
Subject Officer's status:		Referred to: Organisation:	
HHS/Division:	Prevention Division	Referred to Organisation: Other:	
Work Unit:	Forensic and Scientific Services	Referred to: Contact:	Lara KELLER
Concerned Party:	Kylie RIKA, (complainant) Emma CAUNT, (complainant) Ingrid MOELLER, (complainant) Lara KELLER, (informant)	Referred to: Date:	18-03-2022
Relationship to Subject Officer:	subordinate	PID:	false
ESU Notified:	15-03-2022	PID Assessment Date:	
Assessment:	Issue - referred to Division	Follow up:	
Legal or other representation engaged by employee:	false	Case closed:	21-03-2022
Extra Information:		Parent case:	
Legal advice engaged:	false	Linked Case:	
Extra Information:		Outcome:	
		Comments on Outcome:	
Precis of Complaint:			

In 2018, a change management project proposal was conducted in relation to the process for validating DNA samples. This assessment included the Managing Scientist, Team Leaders, Quality and Projects, Senior Scientists of the Forensic DNA Analysis team as well as consultation with QPS. The complainants were given an opportunity to provide feedback and this was received by the Team Leader. The complainants feedback related to concerns and risks to the exact figure to be used in determining if a DNA sample could reliably validate DNA (with further testing/assessment) or if it was considered 'Insufficient for further processing'.

Concerns have been raised by complainant 1 that:

- Their feedback was not incorporated, and their name was removed from the signatory list for the final version
- They went on to question the science on two other occasions, but without success

Complainant 2 has provided examples of criminal cases requiring DNA testing since this process change that identifies DNA samples that were re-worked after their initial result of 'insufficient for further processing' that elicited results. This appears to raise questions about the threshold set and tends to support the initial concerns raised by complainant 1 through the consultation process for the 2018 change.

The information does not amount to suspected corrupt conduct under section 15(1) of the Crime and Corruption Act 2001 as there is no information to suggest that the matter:

- results, directly or indirectly, in the improper performance of duties in a way that would be considered dishonest, a breach of trust, or a misuse of information
- would not, if proven, be a criminal offence or serious enough to warrant dismissal.

The ESU also considered if the concerns would amount to a PID under section 13(1)(a)(ii) maladministration that adversely affects a person's interests in a substantial and specific way, or section 13(1)(c) being a substantial and specific danger to public health or safety. The ESU considered:

- The scientific process was subject to a change management project proposal which included the Managing Scientist, Team Leaders, Quality and Projects, Senior Scientists of the Forensic DNA Analysis team and also involved consultation with QPS.
- Complainant 1 was given an opportunity to provide feedback and this was received by the Team Leader. It remains unclear how much consideration was given to this feedback which identified possible risks/impacts in the process. There appeared to be a difference in scientific opinion regarding the exact threshold limit to be used by FSS in determining if a DNA sample could reliably validate DNA (with further testing/assessment) or if it was considered 'DNA Insufficient for further processing'.
- While relevant staff were provided an opportunity to provide feedback for consideration, the ESU is not aware of any requirement that the quorum involved with reviewing the process must unanimously agree to the changes.
- The documentation did not tend to support that Complaint 1's name was removed from the endorser list, as suggested.
- Developments since the process change have highlighted that, in hindsight, the feedback provided by Complainant 1 (and others) may have been valid.
- The ESU considered that this was insufficient to suggest that maladministration that adversely affects a person's interests in a substantial and specific way had occurred.
- Examples of criminal cases requiring DNA testing since this change process have raised questions about the thresholds set by FSS and whether it may be limiting the ability to successfully validate samples.
- Nevertheless, the results themselves are used as circumstantial evidence only. The results in isolation, do not themselves prove guilt, they are simply used (in some circumstances) in conjunction with additional evidence as part of an overall justice process.
- In the instance the results were able to secure a conviction through a prosecution process does not necessarily prove the offender would pose a substantial and specific danger to public health and safety.

After considering these factors, the ESU determined the information does not amount to a public interest disclosure (PID) under the Public Interest Disclosure Act 2010 as the information disclosed was not considered to satisfy the types of public interest information as outlined in sections 12 or 13 of the PID Act.

Further Particulars:

The SOPs applicable in January 2018 stated:

Forensic DNA Analysis Management Team – Consideration of Project Proposal

The Forensic DNA Analysis Management team will consider the change management project proposal documents as outlined in section 4.3. It is not necessary for all Management Team members to read and approve every proposal; however, a quorum of the Management Team must approve the proposal. The quorum must include the Managing Scientist, Team Leaders, Quality and Projects Senior Scientist/s of the areas significantly affected by the project.

In January 2018, Mr Justin Howes and Ms Cathie Allen drafted the 'Evaluation of the Efficacy of a Post-Extraction Concentration Step Using the Microcon® Centrifugal Filter Devices in Yielding DNA Profile Intelligence.'

Abstract: All samples that underwent a Microcon® process were evaluated and categorised into whether there was meaningful information obtained or not. This evaluation primarily focussed on samples that underwent an 'auto-micron' process in 2016. The results suggest there to be arguably minimal value in performing the 'auto-micron' process due to the limited meaningful DNA Intelligence obtained from these samples. Given this, further streamlining of workflow processes could be implemented that would provide significant efficiencies such that these efforts could be better placed in processing higher DNA-yielding samples.

On 9 January 2018 feedback was provided by Amanda Reeves, Senior Reporting Scientist and Ms Kylie Rika, Reporting Scientist to Justin Howes. The feedback noted that there was a short turn around time to allow for full consideration e.g. "note that there seems to be urgency around this proposal being implemented, which might not allow time for full consideration of all potential risks/impacts."

The feedback from Ms Reeves and Ms Rika also stated "... I conclude that setting the cut-off for no processing at 0.0088ng/uL is probably too high." The feedback was provided as track changes to the original document which had been recorded on the feedback table.

Complainant 1 has alleged:

- They provided the feedback on a draft paper (above) for which they were listed as a signatory/reviewer
- The feedback was not incorporated, and their name was removed from the signatory list for the final version
- They went on to question the science on two other occasions, but without success

The complainant has provided a pdf copy of a report in support of her claims, however every second page has been missed in the scanned document. This includes page 3 which is where her name was included in the original word document draft paper. Another copy of the draft options paper which was provided to QPS does not appear to incorporate their feedback. A further final copy of the options paper sent to QPS has been obtained. It should be noted that in this version, all involved in the document sign off have been removed in the final copy and the final options for consideration appear to be quite different to the 'conclusion and recommendations' section in previous drafts. The ESU does not possess the specialist expertise in relation to the content to understand if any original feedback by the complainant has been considered and implemented. The complainant is of the view their feedback was not incorporated which appears to be consistent with recent concerns raised further below.

On 5 February 2018, Ms Cathie Allen emailed numerous parties, including the complainant to state:

- On Friday, Paul Csoban and I met with Superintendent of Forensic Services Group, Dale Frieberg and other QPS officers that the Supt requested to attend. We discussed the Options Paper which I had provided to the Supt earlier in the week. The Supt has indicated verbally and by email that the QPS' preferred option is Option 2 – no automatic concentration of Priority 1 or Priority 2 samples.

On 7 February 2018, Mr Justin Howes emailed numerous parties, including the complainant to state:

- On the back of the case manager's anecdotal feedback and our lab's second round of datamining of samples that underwent the automicron process, an Options Paper was presented to QPS Superintendent of Forensic Services Dale Frieberg on ways forward for QPS to consider – continue with auto-micron process, or cease auto-microcrons.
- QPS have advised the laboratory that they do not wish for our efforts to be put to the auto-micron process (including the efforts in interpretation) for Priority 1 or 2 samples.
- This means samples in the range 0.001ng/uL (LOD) – 0.0088ng/uL will be reported at Quant stage as 'DNA Insufficient for Further Processing'. This is consistent with the process in place for P3 samples. The manual Microcon process may be performed upon QPS Request.
- To report in a statement the following wording could be used "Low levels of DNA were detected in this sample and it was not submitted for further DNA profiling."
- This is slightly different to the wording written in 2012/13 for these samples (P3) but after some consultation, appears to be a good starting pointy.
- An enhancement has been requested to enable this to occur from 112 February. Reactivating samples for further post-extraction processing, if requested from QPS, will be directed to Luke via an FR Request. If there are changes to the 12 February date, I will let you know. As usual, appropriate comments to

SOP will follow.

In response to this advice, there is further correspondence between Justin Howes, Kylie Rika and Emma Caunt. Ms Caunt flags the statement in relation to DNA Insufficient for further processing was inaccurate for 10% samples.

On 7 February 2018, Mr Howes replies that

- "Yes, I will be changing the expanded comment as I know it is not exactly what we mean. The wording will be similar to the statement wording and making it clear that requests can be actioned.
- QPS will have their processes expanded to enable this as well including how to request further work. The expanded comment change will be added to the current SOP as a comment."

On 8 February 2018, Ms Caunt replies:

- I've been thinking about this a bit more. I want to say from the outset that I am not necessarily opposed to stopping the automicron process, but do think that there is a risk that we are able to manage.
- I am assuming that the 'DNA Insuff for processing' line will be added automatically and that it will be added to a list for validation. My question is, how will the validation process be managed?
- My personal opinion is that the line should not be validated until the whole case has been assessed to see if processing of this sample would be of benefit, particularly as the quant value reaches the upper range. Obviously at the statement stage, the reported can assess these samples, but the gap will be if no statement is requested. Since we case manage on a sample by sample basis, the 'DNA insuff' results wont be monitored during the normal case management process.

Ms Caunt later provided an example to Ms Rika in which a rape case relied on the auto-micron which gave the only evidence to substantiate the claims of the complainant.

On 9 February 2018, Ms Rika escalates this example to Mr Howes as a concern stating "I guess it's one thing for QPS to understand the risk (if they do) but its not full testing/disclosure for the case from our lab. Perhaps the process needs to be reassessed."

On 23 February 2018, Ms Rika follows up for a response from Mr Howes. Mr Howes advises that "I do want to catch you up on this, and will catch you when I return next Thurs". It is unclear based on the information provided whether a meeting did in fact take place and what any outcomes may have been.

The issue has been brought into focus more recently following the coverage in the media and through the podcast [REDACTED]. In February 2022, an article was published in the Australian titled ' [REDACTED]' which claimed that the Queensland lab requires crime scene samples to have the equivalent of at least 22 cells to be fully tested, otherwise they are deemed to have insufficient DNA. It claims that the threshold is double the 11 cells required in NSW, and almost three times the eight cells that the product manufacturer has used to obtain good quality DNA profiles.

Related matter:

In assessing this matter, ESU considered previous advice obtained in ESU# 133036 / ETHU003047. In this matter, the complainant raised concerns relating to a potentially flawed scientific process which they believed may fail to assist in criminal proceedings for examining sexual assault evidence. The complainant alleged the management team had failed to resolve the issue despite it being brought to their attention in March 2016.

Assessment:

The ESU also considered if the concerns would amount to a PID under section 13(1)(ii) maladministration that adversely affects a person's interests in a substantial and specific way, or section 13 (1)(c) being a substantial and specific danger to public health or safety. The ESU considered:

- The scientific process was subject to a change management project proposal which included the Managing Scientist, Team Leaders, Quality and Projects, Senior Scientists of Forensic DNA Analysis team and also involved consultation with QPS.
- The complainant was given an opportunity to provide feedback and this was received by the Team Leader. It remains unclear how much consideration was given to this feedback which did identify possible risks/impacts in the process. The disagreement appears to relate to an exact figure to be used by FSS in determining if a DNA sample could reliably validate DNA (with further testing/assessment) or if it was considered 'DNA Insufficient for further processing'.
- While relevant staff were provided an opportunity to provide feedback for consideration, the ESU is not aware of any requirement that the quorum involved with reviewing the process must unanimously agree to the changes. Developments since the process change have highlighted that, in hindsight, further consideration should have been given to implementing the proposed feedback provided by the complainant in 2018.
- Criminal cases requiring DNA testing since this change in process have identified the possibility that the threshold set by FSS, may be inaccurate and limiting the ability to successfully validate samples.
- Regardless of any flaws in the testing process, the results themselves are used as circumstantial evidence only. The results in isolation, do not themselves prove guilt, they are simply used (in some circumstances) in conjunction with additional evidence as part of an overall justice process.
- In the instance the results were able to secure a conviction through a prosecution process does not necessarily prove the offender would pose a

substantial and specific danger to public health and safety.

Information relied upon

- Email referral from Lara Keller dated 15 March 2022
- Notes and complaint material, including original draft consultation provided by Kylie Rika
- Review of Microcon Options Paper (Final Report)
- Email referral from Lara Keller dated 17 March 2022
- Documentation provided to Ms Keller by complainant 2 (examples of cases where further testing elicited results)

Notes

Work notes:

21-03-2022 11:59:13 - Jess BYRNE (Work notes)

██████████ has been updated with a new work notes:

21-03-2022 11:59:12 - Jess BYRNE (Work notes)

Considered the information specifically in relation to section 13(1)(a)(ii) maladministration that adversely affects a person's interests in a substantial and specific way, or section 13(1)(c) being a substantial and specific danger to public health or safety.

In respect of maladministration:

- The scientific process was subject to a change management project proposal which included the Managing Scientist, Team Leaders, Quality and Projects, Senior Scientists of the Forensic DNA Analysis team and also involved consultation with QPS.
- Complainant 1 was given an opportunity to provide feedback and this was received by the Team Leader. It remains unclear how much consideration was given to this feedback which identified possible risks/impacts in the process. There appeared to be a difference in scientific opinion regarding the exact threshold limit to be used by FSS in determining if a DNA sample could reliably validate DNA (with further testing/assessment) or if it was considered 'DNA Insufficient for further processing'.
- While relevant staff were provided an opportunity to provide feedback for consideration, the ESU is not aware of any requirement that the quorum involved with reviewing the process must unanimously agree to the changes.
- The documentation did not tend to support that Complainant 1's name was removed from the endorser list, as suggested.
- Developments since the process change have highlighted that, in hindsight, the feedback provided by Complainant 1 (and others) may have been valid.
- The ESU considered that this was insufficient to suggest that maladministration that adversely affects a person's interests in a substantial and specific way had occurred.

In respect of substantial and specific danger to public health and safety:

- Examples of criminal cases requiring DNA testing since this change process have raised questions about the thresholds set by FSS and whether it may be limiting the ability to successfully validate samples.
- Nevertheless, the results themselves are used as circumstantial evidence only. The results in isolation, do not themselves prove guilt, they are simply used (in some circumstances) in conjunction with additional evidence as part of an overall justice process.
- In the instance the results were able to secure a conviction through a prosecution process does not necessarily prove the offender would pose a substantial and specific danger to public health and safety.

[see attached word document for how each element was broken down]

21-03-2022 11:55:17 - Jess BYRNE (Work notes)

Assessment undertaken on 17/03/2022. Reasons for decision are outlined in worknotes below. Not considered to meet the definition of corrupt conduct - therefore no reporting obligation to CCC. While it was an appropriate disclosure, made to a proper authority, the information disclosed was not considered to be public interest information as outlined in sections 12 or 13 of the PID Act. Assessment endorsed by Jess Byrne 17/03/2022.

21-03-2022 10:21:00 - Ashley MACFARLANE (Work notes)

18 March 2022 - FSS (Lara Keller) advised of assessment outcome. Also provided advice in referral regarding protection and support of complainants:

"As this matter has not been identified as possible corrupt conduct or a public interest disclosure, the ESU don't have jurisdiction over the matter and it is referred back to the division for any necessary action that may be required (noting this will likely fall into the broader work that is being considered in this space at present). Should additional information come to light that may alter the assessment decision, please contact the ESU for advice.

I realise this may not be the outcome Ms Rika and Ms Moeller were after and I understand they were both concerned about the ramifications in coming forward. While the information hasn't met the threshold of a PID in this circumstance and therefore the specific protections under the PID Act are not enlivened, I would strongly encourage that support provisions (similar to those afforded under the PID Act) are provided to both employees. Given they were comfortable raising their concerns with you in the first instance, you might like to consider continuing the support you have already provided, checking in with them on a regular basis, keeping them updated (to the extent possible) about the progress of actions being taken; and monitoring the workplace for any signs they are being treated differently etc.

To demonstrate the value in employees coming forward with information, it will be vital to ensure the employees concerns are heard; appropriate action is taken in response to the concerns; they are kept updated throughout the process; and ongoing support is provided."

21-03-2022 10:20:03 - Ashley MACFARLANE (Work notes)

Matter assessed on 17 March 2022. Assessment outcome as detailed in referral:

Corrupt conduct assessment

In determining corrupt conduct, all three elements of s15(1) of the CC Act must be satisfied. That is, we need to look at the relationship of the conduct to the Department's functions; the outcome of the conduct; and the seriousness of the conduct.

Based on the information provided, I have determined the concerns do not meet the definition of corrupt conduct pursuant to s15(1) of the CC Act. This decision was reached as there is no information to suggest the alleged conduct:

- results, directly or indirectly, in the improper performance of duties in a way that would be considered dishonest, a breach of trust, or a misuse of information; and
- would, if proven, be a criminal offence or serious enough to warrant dismissal.

As such, there is no requirement for the matter to be reported to the Crime and Corruption Commission (CCC).

PID assessment

In determining whether the information is a public interest disclosure pursuant to Chapter 2 of the PID Act, it needs to be an appropriate disclosure; of public interest information; made to a proper authority.

I considered the information was an appropriate disclosure – in that a public officer has an honest belief, on reasonable grounds that the conduct occurred, and in some cases has provided evidence to support their concerns. I also considered the information was disclosed to a proper authority (you). However I didn't consider the information that was disclosed met the types of information that would be public interest information under sections 12 or 13 of the PID Act. As such I determined the information was not a public interest disclosure pursuant to Chapter 2 of the PID Act.

I gave specific consideration to whether the information would amount to maladministration that adversely affects a person's interests in a substantial and specific way [s13(1)(a)(ii) of the PID Act] or whether the information would amount to a substantial and specific danger to public health and safety [s13(1)(c) of the PID Act].

In relation to maladministration (as defined in the PID Act) the following considerations were made in this regard:

- The scientific process was subject to a change management project proposal which included the Managing Scientist, Team Leaders, Quality and Projects, Senior Scientists of the Forensic DNA Analysis team and also involved consultation with QPS.
- Relevant employees were given an opportunity to provide feedback and this was received by the Team Leader. It remains unclear how much consideration was given to this feedback which identified possible risks/impacts in the process.
- There appeared to be a difference in scientific opinion regarding the exact threshold limit to be used by FSS in determining if a DNA sample could reliably validate DNA (with further testing/assessment) or if it was considered 'DNA Insufficient for further processing'.
- The ESU is not aware of any requirement that the quorum involved with reviewing the process must unanimously agree to the changes.
- The documentation did not tend to support that Ms Rika's name was removed from the endorser list, as suggested.
- Developments since the process change have highlighted that, in hindsight, the feedback provided by Ms Rika (and others) may have been valid.

However, based on the information available, there is insufficient information to suggest that maladministration has occurred, particularly maladministration that would adversely affects a person's interests in a substantial and specific way.

In relation to substantial and specific danger to public health and safety, the following considerations were made in this regard:

- Examples of criminal cases requiring DNA testing since the change process in 2018 have raised questions about the thresholds set by FSS and whether it may be limiting the ability to successfully validate samples.
- Nevertheless, the results themselves are used as circumstantial evidence only. The results in isolation, do not themselves prove guilt, they are simply used (in some circumstances) in conjunction with additional evidence as part of an overall justice process.
- In the instance the results were able to secure a conviction through a prosecution process does not necessarily prove the offender would pose a substantial and specific danger to public health and safety.

This is consistent with other assessments that have been done on similar matters in the past with respect of the application of substantial and specific danger to public health and safety as it relates to scientific processes.

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In respect of maladministration:

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[see attached word document for how each element was broken down]

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I realise this may not be the outcome Ms Rika and Ms Moeller were after and I understand they were both concerned about the ramifications in coming forward. While the information hasn't met the threshold of a PID in this circumstance and therefore the specific protections under the PID Act are not enlivened, I would strongly encourage that support provisions (similar to those afforded under the PID Act) are provided to both employees. Given they were comfortable raising their concerns with you in the first instance, you might like to consider continuing the support you have already provided, checking in with them on a regular basis, keeping them updated (to the extent possible) about the progress of actions being taken; and monitoring the workplace for any signs they are being treated differently etc.

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Based on the information provided, I have determined the concerns do not meet the definition of corrupt conduct pursuant to s15(1) of the CC Act. This decision was reached as there is no information to suggest the alleged conduct:

- results, directly or indirectly, in the improper performance of duties in a way that would be considered dishonest, a breach of trust, or a misuse of information; and
- would, if proven, be a criminal offence or serious enough to warrant dismissal.

As such, there is no requirement for the matter to be reported to the Crime and Corruption Commission (CCC).

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- The scientific process was subject to a change management project proposal which included the Managing Scientist, Team Leaders, Quality and Projects, Senior Scientists of the Forensic DNA Analysis team and also involved consultation with QPS.
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- The documentation did not tend to support that Ms Rika's name was removed from the endorser list, as suggested.
- Developments since the process change have highlighted that, in hindsight, the feedback provided by Ms Rika (and others) may have been valid.

However, based on the information available, there is insufficient information to suggest that maladministration has occurred, particularly maladministration that would adversely affects a person's interests in a substantial and specific way.

In relation to substantial and specific danger to public health and safety, the following considerations were made in this regard:

- Examples of criminal cases requiring DNA testing since the change process in 2018 have raised questions about the thresholds set by FSS and whether it may be limiting the ability to successfully validate samples.
- Nevertheless, the results themselves are used as circumstantial evidence only. The results in isolation, do not themselves prove guilt, they are simply used (in some circumstances) in conjunction with additional evidence as part of an overall justice process.
- In the instance the results were able to secure a conviction through a prosecution process does not necessarily prove the offender would pose a substantial and specific danger to public health and safety.

This is consistent with other assessments that have been done on similar matters in the past with respect of the application of substantial and specific danger to public health and safety as it relates to scientific processes.

Activities

Legacy Worknotes

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- In the instance the results were able to secure a conviction through a prosecution process does not necessarily prove the offender would pose a substantial and specific danger to public health and safety.

[see attached word document for how each element was broken down]

21-03-2022 11:55:17 - Jess BYRNE (Work notes)

Assessment undertaken on 17/03/2022. Reasons for decision are outlined in worknotes below. Not considered to meet the definition of corrupt conduct - therefore no reporting obligation to CCC. While it was an appropriate disclosure, made to a proper authority, the information disclosed was not considered to be public interest information as outlined in sections 12 or 13 of the PID Act. Assessment endorsed by Jess Byrne 17/03/2022.

21-03-2022 10:21:00 - Ashley MACFARLANE (Work notes)

18 March 2022 - FSS (Lara Keller) advised of assessment outcome. Also provided advice in referral regarding protection and support of complainants:

"As this matter has not been identified as possible corrupt conduct or a public interest disclosure, the ESU don't have jurisdiction over the matter and it is referred back to the division for any necessary action that may be required (noting this will likely fall into the broader work that is being considered in this space at present). Should additional information come to light that may alter the assessment decision, please contact the ESU for advice.

I realise this may not be the outcome Ms Rika and Ms Moeller were after and I understand they were both concerned about the ramifications in coming forward. While the information hasn't met the threshold of a PID in this circumstance and therefore the specific protections under the PID Act are not enlivened, I would strongly encourage that support provisions (similar to those afforded under the PID Act) are provided to both employees. Given they were comfortable raising their concerns with you in the first instance, you might like to consider continuing the support you have already provided, checking in with them on a regular basis, keeping them updated (to the extent possible) about the progress of actions being taken; and monitoring the workplace for any signs they are being treated differently etc.

To demonstrate the value in employees coming forward with information, it will be vital to ensure the employees concerns are heard; appropriate action is taken in response to the concerns; they are kept updated throughout the process; and ongoing support is provided."

21-03-2022 10:20:03 - Ashley MACFARLANE (Work notes)

Matter assessed on 17 March 2022. Assessment outcome as detailed in referral:

Corrupt conduct assessment

In determining corrupt conduct, all three elements of s15(1) of the CC Act must be satisfied. That is, we need to look at the relationship of the conduct to the Department's functions; the outcome of the conduct; and the seriousness of the conduct.

Based on the information provided, I have determined the concerns do not meet the definition of corrupt conduct pursuant to s15(1) of the CC Act. This decision was reached as there is no information to suggest the alleged conduct:

- results, directly or indirectly, in the improper performance of duties in a way that would be considered dishonest, a breach of trust, or a misuse of information; and
- would, if proven, be a criminal offence or serious enough to warrant dismissal.

As such, there is no requirement for the matter to be reported to the Crime and Corruption Commission (CCC).

PID assessment

In determining whether the information is a public interest disclosure pursuant to Chapter 2 of the PID Act, it needs to be an appropriate disclosure; of public interest information; made to a proper authority.

I considered the information was an appropriate disclosure – in that a public officer has an honest belief, on reasonable grounds that the conduct occurred, and in some cases has provided evidence to support their concerns. I also considered the information was disclosed to a proper authority (you). However I didn't consider the information that was disclosed met the types of information that would be public interest information under sections 12 or 13 of the PID Act. As such I determined the information was not a public interest disclosure pursuant to Chapter 2 of the PID Act.

I gave specific consideration to whether the information would amount to maladministration that adversely affects a person's interests in a substantial and specific way [s13(1)(a)(ii) of the PID Act] or whether the information would amount to a substantial and specific danger to public health and safety [s13(1)(c) of the PID Act].

In relation to maladministration (as defined in the PID Act) the following considerations were made in this regard:

- The scientific process was subject to a change management project proposal which included the Managing Scientist, Team Leaders, Quality and Projects, Senior Scientists of the Forensic DNA Analysis team and also involved consultation with QPS.
- Relevant employees were given an opportunity to provide feedback and this was received by the Team Leader. It remains unclear how much consideration was given to this feedback which identified possible risks/impacts in the process.
- There appeared to be a difference in scientific opinion regarding the exact threshold limit to be used by FSS in determining if a DNA sample could reliably validate DNA (with further testing/assessment) or if it was considered 'DNA Insufficient for further processing'.
- The ESU is not aware of any requirement that the quorum involved with reviewing the process must unanimously agree to the changes.
- The documentation did not tend to support that Ms Rika's name was removed from the endorser list, as suggested.
- Developments since the process change have highlighted that, in hindsight, the feedback provided by Ms Rika (and others) may have been valid.

However, based on the information available, there is insufficient information to suggest that maladministration has occurred, particularly maladministration that would adversely affects a person's interests in a substantial and specific way.

In relation to substantial and specific danger to public health and safety, the following considerations were made in this regard:

- Examples of criminal cases requiring DNA testing since the change process in 2018 have raised questions about the thresholds set by FSS and whether it may be limiting the ability to successfully validate samples.
- Nevertheless, the results themselves are used as circumstantial evidence only. The results in isolation, do not themselves prove guilt, they are simply used (in some circumstances) in conjunction with additional evidence as part of an overall justice process.
- In the instance the results were able to secure a conviction through a prosecution process does not necessarily prove the offender would pose a substantial and specific danger to public health and safety.

This is consistent with other assessments that have been done on similar matters in the past with respect of the application of substantial and specific danger to public health and safety as it relates to scientific processes.

Related List Title: ESU PID Assessment List
Table name: x_qhhsi_qld_hlth_e_esu_pid_assessment
Query Condition: Case = [REDACTED]
Sort Order: Number in ascending order

1 ESU PID Assessments

• Number	Case	Allegation	State	Assignment group	Assigned to
[REDACTED]	[REDACTED]	Concerns in relation to change in scientific process at FSS	Inactive	Ethical Standards Unit	Jess BYRNE (byrneje)