

15-3-22

Kylie Rika

- Check in i Kylie after her recent mtg i me & disclosure re DNA Lab
- Advised her that I would need to submit the docs she had given me to ESU.
- Asked her how she felt about that.
- She said she was scared after 'what happened to Amanda'. I said all I really knew was that Amanda had left on unhappy terms.
- Kylie said that Amanda had raised concerns about missed sperm in samples, done a PIP & was the subject of retribution.
- Kylie said there was a HR investigation & Paul Cosban was involved. She said there'd been a whole of staff mtg which was awful & people felt threatened.

- She said she felt it was the right thing to do.
  - I said this was confidential
  - I said I would submit the docs  
→ Did this.
  - I said she could talk to me if she needed to.
- 

We spoke about her email to Justin re case review.

She said Justin called her about it & asked her to do an 'admin review' of the case & that he would raise a job in FR.

Not done to date despite Kylie checking twice.

## Lara Keller

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**From:** Jess M Byrne  
**Sent:** Friday, 18 March 2022 5:45 PM  
**To:** Lara Keller  
**Cc:** CO\_Complaints  
**Subject:** CONFIDENTIAL - outcome of assessments

RIK A  
 MOELLER

Hi Lara

Thank you for your referrals on 15 March 2022 and 17 March 2022 regarding information provided to you by Ms Kylie Rika, Reporting Scientist, FSS and Ms Ingrid Moeller, Reporting Scientist, FSS. We have had the opportunity to consider both sets of information and the concerns raised by both individuals.

### Concerns raised

In relation to Ms Rika, her concerns centred around feedback she provided as part of an options paper from 2018 titled '*Evaluation of the Efficacy of a Post-Extraction Concentration Step Using the Microcon® Centrifugal Filter Devices in Yielding DNA Profile Intelligence.*'. Ms Rika advised she provided feedback as part of this process about the threshold limits being applied for DNA analysis, concerned they may be too high. Ms Rika claims her feedback was not incorporated and her name was removed from the signatory list for the final version. Further, she went on to question the science on a couple of other occasions, without success.

As part of our assessment, we identified every second page was missing from the paper that was provided by Ms Rika. This included page 3 where her name was listed. When all pages were provided, it appears her name was still on the signatory list. Also of note, all involved in the document sign off have been removed in the final copy. From this information, it doesn't appear as though Ms Rika's name has been removed from the list or that she has been singled out in this process.

In relation to whether her feedback was considered, it is noted the threshold limits weren't changed. However the final 'conclusion and recommendations' section appears to be quite different to that contained in previous drafts. The ESU does not possess the specialist expertise in relation to the content to understand if any of the original feedback by Ms Rika was considered and/or implemented. There is also no information provided to determine whether any feedback was provided to Ms Rika at the time regarding her concerns.

In relation to Ms Moeller, the information she provided centred around a paper she was involved in in August 2015 titled '*Assessment of results obtained from 'automatic-microcon' samples*'. A number of options were put forward at that time outlining the benefits and risks. Overall, the paper recommended the project be finalised at that point and a new project commence in 6 months-time after the introduction of the Forensic Register. It is unclear from the information as to whether that recommendation was accepted or one of the other options were progressed. In addition to this paper, Ms Moeller provided examples of cases where samples within the 0.002 – 0.0088 range were further tested and elicited a result.

We considered Ms Moeller's concerns as further evidence or examples of the concerns already raised by Ms Rika.

### ESU assessment

I am the authorised delegate pursuant to the Department of Health Human Resources Delegations Manual to assess the information and determine whether the information may constitute corrupt conduct pursuant to the *Crime and Corruption Act 2001* (CC Act) or a public interest disclosure pursuant to the *Public Interest Disclosure Act 2010* (PID Act).

### 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.

### **Action required**

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.

I apologise for the length of the email – I just felt it was important to explain the reasoning for the outcome on this one. I'm more than happy to talk this through with you further if you like. Please don't hesitate to reach out at any time for further advice or guidance.

Kind regards  
Jess



**Jess Byrne**

**Director**

Ethical Standards Unit | Human Resources Branch

Corporate Services Division | Queensland Health

Working hours Monday to Friday

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Queensland Health acknowledges the Traditional Custodians of the land across Queensland, and pays respect to First Nations Elders past, present and future.

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