

11 August 2022

Our ref: BT-MC

Confidential

Walter Sofronoff QC
Commissioner
Commission of Inquiry into Forensic
DNA Testing in Queensland
PO Box 12028
George Street Qld 4003

By email: [REDACTED]

Dear Commissioner

Explanation of “Insufficient DNA” in Statement of a Witness

Thank you for inviting the Queensland Law Society (QLS) to provide a submission about the potential issue of an interim report on the use of the expression “insufficient DNA” in witness statements prepared by the DNA Analysis Unit of Queensland Health Forensic and Scientific Services since 2018. We appreciate being consulted on this important issue.

At the outset, we acknowledge the significance of the foreshadowed findings and potential recommendations, on the basis of material presently available to the Commission. Such findings may have very significant implications for complainants, victims, and any accused who have had their criminal proceedings finalised (whether by way of conviction or acquittal). There may also be wide ranging consequences to the administration of justice, including delay in present proceedings, and potential issues with the principle of double jeopardy.

While longer inquiries and royal commissions may decide to issue interim reports as they progress, it is customary, for example, for the Australian Law Reform Commission and Queensland Law Reform Commission (and shorter inquiries) to instead publish a consultation paper or issues paper for comment prior to publication of a final report. Such papers generally include all the information currently available to the commission and are then subject to extensive consultation with relevant stakeholders in advance of the issue of a final report.¹ At this stage, we note that we have only been provided with a short report from one expert, and the science underpinning it is complex.

Given the potential implications of the suggested findings and the relatively short length of time in which the Commission must produce a final report, the Society considers any findings and recommendations should be published by the Commission in a final report, rather than be the subject of an interim report. At a later stage, the Commission will have the benefit of its full

¹ Scott Prasser, *Royal Commissions and Public Inquiries in Australia* (LexisNexis, 2nd ed, 2021) 210-11 [8.51].

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inquiry. This will include stakeholder submissions and views furnished consequent upon disclosure of a consultation or issues paper and with more opportunity for considered response.

In the event the Commission decides to issue an interim report containing the foreshadowed findings and recommendations, it is vital that parties in affected proceedings (both pending and finalised) have access to adequate legal representation to ensure they can properly address the novel and potentially complex issues that may arise. Accordingly, we ask the Commission to consider recommending that a standalone stream of funding be allocated by the state government for Legal Aid Queensland to deal with these issues.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully



Kara Thomson
President