

# **Historical Case Review Principles**

*Developed in accordance with Recommendation 14 of the  
Commission of Inquiry into Forensic DNA Testing in  
Queensland final report*



## INTRODUCTION

On 13 December 2022, the *Commission of Inquiry into Forensic DNA testing in Queensland* handed down its final report. Recommendation 14 of the final report required the Queensland Government to develop a publicly available set of principles for the review of cases impugned by the report's other recommendations, with the principles to have the following characteristics:

- a) *identification, both internally and to parties in the criminal justice system (the QPS, the ODPP or the accused person's lawyers (or the accused person if self-represented)) as to which cases fall into the categories for which retrospective review is to be conducted;*
- b) *the creation of a mechanism by which parties in the criminal justice system (the QPS, the ODPP or the accused person's lawyers (or the accused person if self-represented)) may identify a case in which they submit further testing, analysis or interpretation should be undertaken, and provide information and reasons for that submission;*
- c) *consultation with victims should be conducted in a trauma-informed way and be by the QPS and ODPP in accordance with their procedures for consulting with, and the providing information to, victims in criminal proceedings where appropriate, or through some other mechanism;*
- d) *a review of individual cases which includes consideration of:*
  - i) *importance of the DNA evidence that has been obtained, or may be able to be obtained, in the context of the case, the real issues and the stage which the case has reached in the criminal justice system; and*
  - ii) *what further testing, analysis or interpretation may be appropriate to provide valuable evidence to the criminal justice system, including considering testing not available in Queensland.*
- e) *prioritisation of those cases in which prosecutions or investigations are current, and in which persons accused or convicted are in custody, and those identified by parties in the criminal justice system;*
- f) *any further testing, analysis or interpretation to be conducted and results released to the QPS promptly;*
- g) *involve a written explanation being provided on the Forensic Register file, and notification to the parties in the case, to indicate that the case has been reviewed, the decisions made and the reasons for those decisions.*

These case review principles are intended to implement Recommendation 14 and to guide Forensic Science Queensland ('**FSQ**'), the Office of the Director of Public Prosecutions ('**ODPP**') and the Queensland Police Service ('**QPS**') in their reviews of historical criminal cases impugned by both the *Commission of Inquiry into Forensic DNA testing in Queensland* and the *Commission of Inquiry to examine DNA Project 13 concerns ('the COIs')*.

## GUIDING PRINCIPLES

As far as is reasonably possible, the historical case review of criminal cases impugned by the COIs' recommendations will be carried out in accordance with the following principles:

### **Administration of criminal justice**

Parties to the historical case review process will work together to facilitate the provision of accurate DNA evidence and ensure that this evidence has not, or will not, result in a miscarriage of justice.

### **Restoring public confidence in DNA testing**

To restore the confidence of courts and the public, it is critical that the criminal justice system in Queensland is serviced by a best-practice approach to DNA testing that consistently produces



reliable and accurate results. By considering the importance of DNA evidence within the context of each case to determine whether further testing, analysis or interpretation is required, the historical case review process will endeavour to consistently provide the best possible evidence to the criminal justice system.

**Trauma-informed approach**

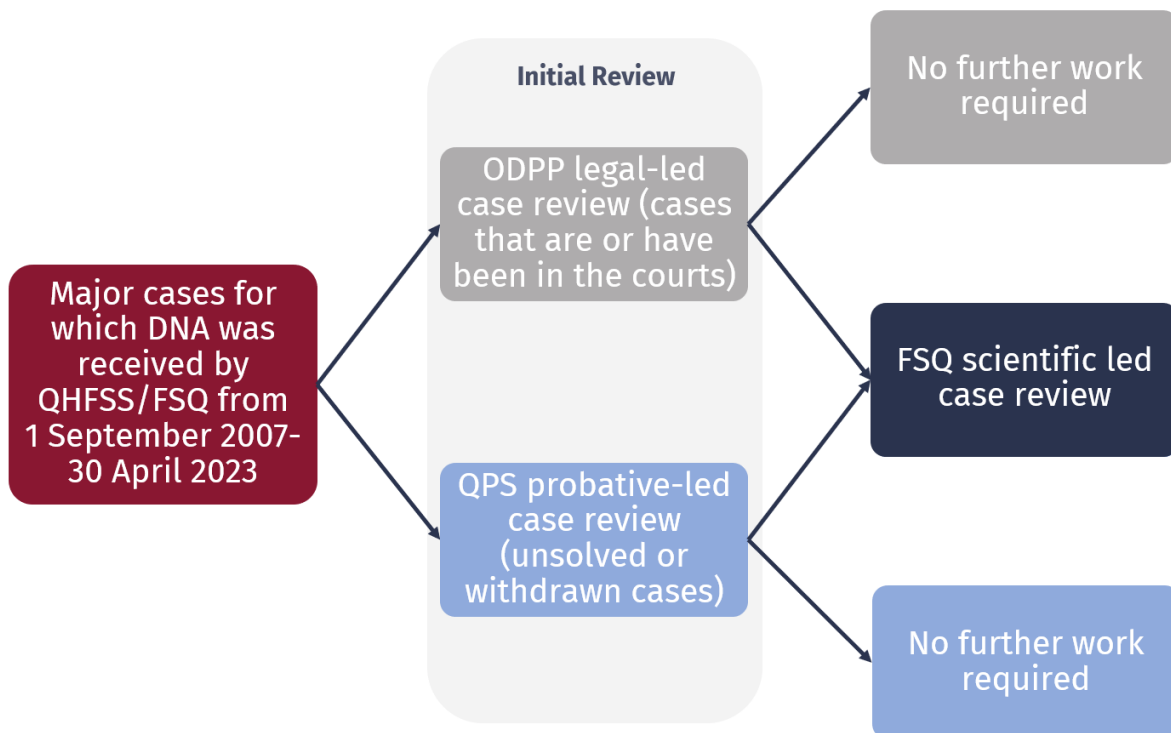
Where it is appropriate to do so, historical case reviews will proactively involve victims and members of their support networks in a manner that is safe, collaborative, accessible and compassionate. Consultation with victims will be carried out in accordance with any relevant QPS or ODPP policies and procedures.

**Reasonable use of government resources**

Further testing, analysis or interpretation of DNA samples will only be pursued where it is determined by the parties to a case that DNA evidence is relevant in the context of that case. In this manner, historical case reviews will balance the need to implement the COIs’ recommendations with the responsible use of government resources.

**THE HISTORICAL CASE REVIEW PROCESS**

It is intended that every case impugned by the COIs will be subject to the historical case review process. These reviews will apply to all major crime cases for which DNA samples were received by FSQ (or its earlier iteration Queensland Health Forensic and Scientific Services) from **1 September 2007 to 30 April 2023**. The process is summarised by the following diagram, the stages of which are further explained below:



## INITIAL REVIEWS

Every case impugned by the COIs' recommendations will undergo an **Initial Review** to determine whether further DNA testing, analysis or interpretation is appropriate in the specific circumstances of that case. While it is intended that all major crime cases in which DNA samples were received by FSQ from 1 September 2007 to 30 April 2023 will be reviewed, priority will be given to matters which are active before the courts or for which the accused or convicted persons are in custody.

It is anticipated that there will be two types of Initial Reviews, with cases subject to one or the other depending on the stage that they have reached in the criminal justice system.

### 1. ODPP LEGAL-LED REVIEWS

Where a case either is active before a court or was active before a court but was discontinued or finalised, the ODPP will carry out an initial legal-led review of the case and advise FSQ if it considers that any of its DNA samples should undergo further testing, analysis or interpretation.

The decision whether or not to progress a case to FSQ for a further review of its DNA evidence will depend on whether the ODPP considers it appropriate to do so based on a holistic review of each case's specific circumstances and context.

It is anticipated that such reviews will consider, but will not be limited to consider:

- whether there is a prospect of a new charge or changes to a case's outcome as a result of new or updated DNA evidence;
- the issues or questions to be considered by the court in a case and how relevant DNA evidence is to those issues;
- the interests of any victims in a case and their support networks; and
- the stage that a case has reached in the criminal justice system.

### 2. QPS PROBATIVE-LED REVIEWS

Where DNA evidence was provided for a case that did not progress to court proceedings, the QPS will carry out an initial probative-led review of the case and advise FSQ if it considers that any of its DNA samples should undergo further testing, analysis or interpretation.

The decision whether or not to progress a case to FSQ for a further review of its DNA evidence will depend on whether the QPS considers it appropriate to do so based on a holistic review of each case's specific circumstances and context.

It is anticipated that such reviews will consider, but will not be limited to consider:

- whether there is a prospect of a new charge or changes to a case's outcome as a result of new or updated DNA evidence;
- the issues or questions that would be considered by a court in a case and how relevant DNA evidence is to those issues;
- the interests of any victims in a case and their support networks; and
- where appropriate, the input or advice of the ODPP in respect of the above matters.



## FSQ SCIENTIFIC REVIEWS

Where an Initial Review concludes that it is appropriate, a case will be progressed to FSQ to conduct a **Scientific Review**. In such cases, FSQ will endeavour to conduct a prompt review of the available DNA evidence that is independent, impartial and consistent with best scientific practice. These reviews will consider whether, and what, further testing, analysis or interpretation is appropriate in a case.

Upon completion of a Scientific Review, FSQ will promptly communicate any new DNA results to the QPS. While it is expected that new DNA results produced by Scientific Reviews will be communicated in the form of a summary of findings, results may be communicated by other appropriate means. FSQ will also ensure that any decisions about, or outcomes of, any further testing, analysis or interpretation resulting from Scientific Reviews are properly recorded in the Forensic Register.

In determining whether, and what, further testing, analysis or interpretation is appropriate as part of Scientific Reviews, FSQ's scientists will exercise their independent judgment and discretion while being guided by best scientific practice and any relevant FSQ policies or procedures. It is anticipated that Scientific Reviews will also consider, but will not be limited to consider:

- whether a case belongs to one of the classes of cases impugned by the COIs as list in **Appendix 1**; and
- relevant case-specific information appropriately communicated to FSQ by other parties to a case during the historical case review process.

## CASE IDENTIFICATION AND COLLABORATION BETWEEN STAKEHOLDERS

The historical case review process is designed to ensure that each participating party can best contribute to the review of cases and efficient administration of justice. To this end, it is anticipated that the ODPP Legal-Led Reviews and QPS Probative-Led Reviews will identify cases to undergo Scientific Review by FSQ, which will then report any new DNA results in a summary of findings.

Where an accused or convicted person considers that the DNA evidence in their case is impugned by the COIs' recommendations, they may engage with the historical case review process.

In identifying whether a case is impugned by the COIs' recommendations, all interested parties may utilise the list of case classes provided at Appendix 1.

## LEGAL EFFECT

These principles are not intended to create any new legal rights or to impose new legal obligations on any of the parties mentioned herein. Rather, they represent a commitment by the parties and stakeholders to implementing the COIs' recommendations while carrying out their existing obligations and roles within the criminal justice system.



## APPENDIX 1 – CLASSES OF CASES IMPUGNED BY THE COIs

The 2022 Commission of Inquiry into Forensic DNA Testing in Queensland and the 2023 Commission of Inquiry to examine DNA Project 13 concerns identified the following categories of samples as requiring review via the case review process:

- samples described as having “DNA Insufficient for Further Processing” from which it may be possible to obtain an interpretable DNA profile with further processing and testing;
- samples described as having “No DNA Detected” from which it may be possible to obtain an interpretable DNA profile with further processing and testing;
- mixed-profile samples in which the number of contributors to the sample have been overestimated;
- samples reported as “complex” and not suitable for interpretation where interpretation of the sample is, in fact, possible;
- samples that originated from Sexual Assault Investigation Kits (**‘SAIKs’**) and were reported as having originated from three or more people, which may either have had the number of contributors to the sample overestimated, or have been reported as not suitable for interpretation where interpretation of the sample is in fact possible;
- samples collected for sexual assault cases between 1 January 2008 and 8 August 2016 in which spermatozoa were not identified and which were not subject to further testing, from which it may be possible to obtain an interpretable DNA profile with further processing and testing;
- samples collected for sexual assault cases from 1 January 2017 to date which could be subjected to Y-Chromosome Short Tandem Repeat (**‘Y-STR’**) testing, specifically to test for the presence of male DNA;
- samples previously tested using the MultiProbe II instrument between 29 October 2007 and 21 November 2016; and
- bone or teeth samples processed since 1 July 2019 for which it was not possible to obtain a single-source DNA profile for comparison, from which it may be possible to obtain an interpretable DNA profile with further processing and testing.

