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Attorney-General, The Hon Mark Dreyfus MHR
Parliament House
CANBERRA ACT 2600

Australia Day 2023

Dear AG (Mark)

Civil Liberties Australia annually writes one or more 'CLA Australia Day letters' in a bid to improve justice and the legal system in Australia. In 2023 we commend this CLA-proposed initiative to you personally, to place it on the agenda of the Standing Committee of Attorneys General. **We propose you secure agreement for a major review of forensic science in Australia, including the establishment of a similar (but appropriately empowered and resourced) body in Australia to the Forensic Science Regulator for England and Wales.**

The use, misuse, abuse and failures of the forensic 'justice' system in Australia have been highlighted for decades. Cases such as Farah Jama in Victoria, Mallard in WA, Keogh in SA and of course the disturbing findings of the Sofronoff inquiry into forensic services in Queensland handed down in December 2022 illustrate some of the issues.

There are many other examples in recent years where DNA is not the solution to the legal/justice problem, but is – or has created – the problem. One only has to look at the issue of DNA in the Sue Neill-Fraser case in Tasmania to appreciate the difficulties associated with dealing with such evidence.

The Australia New Zealand Policing Advisory Agency (ANZPAA) and the current evolution of the National Institute of Forensic Science (NIFS), known as ANZPAA-NFIS, is simply not up to dealing with this complex and urgent issue. If it had been, the Queensland situation would never have reached the disastrous level of ineffectiveness that it did. The lack of independence of some forensic services from policing is also extremely problematic in Australia, and further minimises proper independent monitoring.

CLA believes Australia requires a federal regulator of forensic science activities in relation to science, the Australian courts and the justice system. CLA envisages a regulator in Australia operating similarly to the one in England and Wales, with possible improvements based on reviews in the UK and experience in overseas jurisdictions generally. Here is how the FSR for England and Wales describes itself:

The Forensic Science Regulator for England and Wales

The Forensic Science Regulator ensures that the provision of forensic science services across the criminal justice system is subject to an appropriate regime of scientific quality standards.

(Note: it also has an advisory council, and numerous specialist groups, eg contamination, medical, pathology, firearms, etc. It also devises and manages a Statutory Code of Practice).

Responsibilities

Responsibilities involve:

- identifying the requirement for new or improved quality standards
- leading on the development of new standards
- where necessary, providing advice and guidance so that providers of forensic science services can demonstrate compliance with common standards

Priorities

The regulator's priorities and aims are to see that:

1. appropriate quality standards are in place for all forensic science disciplines, which apply equally whether the services are delivered by small or large organisations, private companies, public laboratories, police forces or individuals
2. there is full compliance with the quality standards requirements across all forensic science disciplines, from crime scene to court and in all sectors, and that the quality culture has matured such that:
 - no procedures are static, but that all are continually improving
 - quality failures are appropriately reported, investigated and lead to improvements in practice
 - the benefits of fully implementing quality systems are realised, in efficiency and effectiveness of practice
3. there is a shared understanding of quality and standards by all stakeholders, including commissioners of forensic science, expert practitioners, researchers and all end users, including the police, the prosecuting authorities, defence and courts, so that:
 - practitioners who have not adopted the relevant quality standards are no longer routinely instructed
 - the work commissioned supports the overall aims of the CJS and not solely the aims of the commissioning party
 - the forensic science quality standards are integrated into the requirements for expert witnesses
 - there is an expectation in court that experts will have complied with the relevant quality standards
 - forensic science is supported by ongoing research to increase quality and capability

The regulator is a public appointee and operates ... on behalf of the criminal justice system as a whole. This independence allows us to make unbiased recommendations and decisions.

We collaborate with the authorities in Scotland and Northern Ireland who have expressed their willingness to be partners in the setting of quality standards which will be adopted within their justice systems.

The regulator is supported by a team of civil servants (5 scientists) with additional support provided by shared services.

<https://www.gov.uk/government/organisations/forensic-science-regulator/about>

Forensic Science Advisory Council

The Forensic Science Advisory Council (FSAC) supports and advises the regulator on:

- setting and monitoring compliance with quality standards in the provision of forensic science services
- arranging the accreditation of those supplying forensic science services to the police, including in-house police services
- procedures for validating and approving new technologies and applications in the field of forensic science
- setting and monitoring compliance with standards relating to national forensic science databases, including the National DNA Database
- the quality of academic and educational courses in forensic science
- international developments relevant to forensic science quality standards

<https://www.gov.uk/government/organisations/forensic-science-regulator/about/membership>

CLA believes that trust and confidence in forensic science and Australia's criminal justice system is essential.

CLA believes the broader implications of the Sofronoff Inquiry call for your immediate attention and that of your colleagues in the States and Territories to deal with issues/problems that are national, and not confined to just one State.

Dr Kristine Klugman
President

Bill Rowlings
CEO