

21 March 2023

By email: csjs@parliament.tas.gov.au

Mr Simon Scott

Secretary

Legislative Council Government Administration Committee 'B'

Hobart

Dear Secretary,

Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters

I am writing in response to a call for submissions by Legislative Council Sessional Committee Government Administration B into *Tasmanian Adult Imprisonment and Youth Detention Matters*, in particular in relation to terms of reference Number 1 and Number 2.

Number 1: - Factors influencing increases in Tasmania's prison population

It is obvious that the procedures of the **Forensic Science Services in Tasmania** are woefully inadequate, and could increase the prison population because of flawed evidence. The case of Sue Neill-Fraser is a good example. A considerable number of exhibits went missing or were minimised (*see letter of Dr Bob Moles attached*). If these items had not disappeared, it may well be that this case would have been resolved long ago and a large amount of money would have been saved.

Dr Bob Moles mentions the blue towel (item 9) that went missing, and items 98, 99, 157 and 158 went missing as well and possible vomit rags (items 93 and 94) were minimised.

The DNA of 2 unidentified men also went missing. I became personally interested when I heard about the missing DNA, because during the trial I had seen two very nervous young men coming in late. They ended up standing on either side of a young woman at the back of the court, close to me. They looked rough and especially dressed up for the occasion. The young woman was called forward to the witness box and the 2 men followed each word she said intently. I later learned that the young woman was Meaghan Vass. Could someone have removed the DNA of the two unidentified men? What are the procedures in place?

Number 2 – The use of evidence-based strategies to reduce contact with the justice system and recidivism

Because of questionable police investigation many cases make it to court that are not based on evidence-based strategies. In the case of Sue Neill-Fraser the evidence was not reliable (e.g. the luminol test was incomplete and should have never made it to court; evidence was lost; the red jacket was contaminated; police displayed tunnel vision from very early on; yachts around the crime scene were not investigated and police denied that other boats were broken into). Because of a verdict based on unreliable evidence 3 other people were dragged through the courts for years. Jeff Thomson, a lawyer, lost his job and eventually, after about 5 years, his case was dismissed. A lot of court time was used unnecessarily.

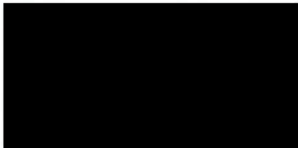
Questions in Parliament in relation to the recent O'Farrell Review prove that the public is not assured that the Tasmania Police acted lawfully and in accordance with all requirements of the *Police Powers (Surveillance Devices) Act 2006* in relation to the Jeff Thomson matter or the Sue Neill-Fraser matter.

There needs to be an independent body like the **National Criminal Case Review Commission** that can investigate the police so that they can become more efficient. At the moment no such body exists and the Police Force in Tasmania is basically investigating itself.

If the Police Force in Tasmania cannot be investigated independently it becomes an ineffective Police Force, plagued by malpractices, coverups and perversion of the course of justice, unable to serve the court system successfully.

Lastly I would like to draw your attention to the fact that Sue Neill Fraser has spent 13 years in prison and she was in a unique position to watch the prison system from the inside. The job assigned to her was that of a quasi social worker. Many prisoners turned to her for help and she gained the trust of many of them. She is passionate about reducing recidivism and could give the Committee valuable information in this regard.

Yours sincerely,

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Wilhelmina Haynes

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9 March 2023

Mr Matthew Osborn
Director
FSST
Hobart Tasmania 7000

Dear Director

Forensic Science Services Tasmania – the case of Susan Neill-Fraser

I am a leading legal researcher in Australia, specialising in issues related to criminal appeals and wrongful convictions. I have published a series of leading texts on these issues, and provide extensive materials on a wide range of legal and forensic issues through my website '[Networked Knowledge](#)'. I have been instrumental in developing new rights of appeal in [South Australia](#), [Tasmania](#), [Victoria](#) and [Western Australia](#), which is soon to be followed by the [ACT](#).

Some years ago, I was asked to review the [trial transcript](#) in the case of Susan Neill-Fraser. In doing so, it immediately became apparent that serious and significant errors had occurred in the presentation of the forensic science issues in the case.

I prepared a report setting out those concerns. [This is a link to that report](#). A copy of that report is also attached.

On 9 September 2014 that report was forwarded to the Director FSST by Barbara Etter, the solicitor acting for Ms Neill-Fraser at the time.

On 18 September 2014 a letter was received by Ms Etter from the then Assistant Commissioner, Crime and Operations of Tasmania Police. The letter advised that the

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police had confidence in the FSST and that Tasmania Police would not be responding to any further correspondence in respect of this matter.

I was surprised by this response because I had been aware of the findings of both the [Edward Splatt](#) Royal Commission and the Morling Royal Commission into the case of [Lindy Chamberlain](#). Both of those commissions had recommended the necessity for forensic science services to be operationally independent of the police. Indeed, the [webpage for FSST](#) states “FSST is impartial and is operationally independent of Tasmania Police” [Emphasis added]. However, the same webpage also states that “the Director of FSST reports to the Secretary of the Department of Police and Emergency Management”.

There appears to be an inconsistency between your declared independence and your operational practice.

A new and important issue has now arisen and I write to put you on notice and seek your assistance given your claimed operational independence and clear ethical obligations to rectify any errors. **The matter concerns the critical issue of exhibit management, continuity and security in serious crimes.**

In this regard, I draw your attention to the Forensic Biology Report (FBR) in the Sue Neill-Fraser case dated 1 July 2009 (authored by Deborah McHoul, Chris McKenzie and Carl Grosser) (#P61 at the 2010 trial – annexed to Further Agreed Facts – see T 627) and the issue of missing or “minimised” exhibits. Of particular concern is the **small blue towel or face washer** seized by former scientist, Deborah McHoul, (found on the deck of the yacht not far from the large volume DNA sample of Meaghan Vass) and logged as Item 9 (and mentioned in McHoul’s 12 June 2009 crime scene report), which disappeared from the FBR without any explanation in the document or at any of the subsequent court proceedings (see only mention of blue towel at T 640 at trial), even when specifically raised as an issue in the leave to appeal application on 22 August 2018 (T 378-379). The possible vomit rags (Items 93 and 94) found below decks have been minimised and not separately reported on (listed as Items 87-94 “gloves, clothing, mask and rags” in the FBR of 1 July 2009 and as “Not examined”) and there are a number of other missing

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items such as 98, 99, 157 and 158 which have also disappeared without mention in the crime scene report or any explanation.

This situation is totally unacceptable and most concerning particularly if testing occurred on any of these items (but particularly the small blue towel) and results which may have been helpful to Ms Neill-Fraser have not been disclosed.

The relevant legal principles require the Crown (which includes the prosecutors, police and any other agencies of the state (expert witnesses)) in support of a prosecution, to disclose any materials which are relevant to the case presented by the prosecution. It is particularly important that any material or information which might undermine the prosecution case or the integrity of an expert witness be disclosed.

The duty of disclosure is continuing – it continues after the trial and after all appeals have been concluded. The FSST has a continuing duty to make disclosure of the true state of affairs in relation to this case in time for any further appeal hearing or possible Inquiry.

Ms Neill-Fraser has already spent 13 years in gaol and is subject to stringent parole conditions for the next 10 years.

You will see that in my attached report (at p.7), I have mentioned the recommendations of the Splatt Royal Commission and the Morin Judicial Inquiry in Canada. Those reports made it clear that where forensic errors at trial have occurred, the responsibility for the correction of those errors lies with ‘the scientist’ concerned. **This is an obligation which also applies to the organisation which employs that scientist.**

The obligation is to inform the Crown lawyers (the DPP’s office) of the errors which have occurred. This enlivens an immediate disclosure obligation on the part of those Crown lawyers. I think this gives rise to a constructive possibility for moving forward in these types of cases.

As the Splatt and Morin reports make clear, where error has occurred all those involved have an ethical obligation to ensure that it is corrected. That obligation is continuing until the error is corrected.

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[REDACTED]

There is no reason why those acting for the FSST would be unable to provide timely notice to the DPP of the failures relating to the forensic evidence and exhibits in this case, including any relevant unreported testing results or the loss or destruction of potentially valuable exhibits.

If I can assist you any further in your consideration of this matter, please do not hesitate to get back to me.

[REDACTED]

Dr Robert Moles ACII (UK) LLB (Hons) (Belf) PhD (Edin)
Adjunct Associate Professor, Government, Business and Law, Flinders University,
Networked Knowledge

References: The law relating to the issues referred to above are covered as follows:

Bibi Sangha and Robert Moles, [*Miscarriages of Justice: Criminal Appeals and the Rule of Law in Australia*](#) (2015) LexisNexis, Sydney:

The role of expert witnesses in criminal cases - chapter nine

Prosecutorial duties and the duty of disclosure – chapter eight.