COMMISSION OF INQUIRY

INTO FORENSIC DNA TESTING IN QUEENSLAND

Brisbane Magistrates Court
Level 8/363 George Street, Brisbane

On Tuesday, 4 October 2022 at 9.30am

Before: The Hon Walter Sofronoff KC, Commissioner

Counsel Assisting: Mr Michael Hodge KC
Ms Laura Reece
Mr Joshua Jones
Ms Susan Hedge

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: We are now not going to continue with Ms Brisotto's evidence this morning. We will recall her at a later date. I think she is in the back of the courtroom at the moment.

THE COMMISSIONER: Yes.

THE COMMISSIONER: Mr Dean?

MR J N DEAN: Commissioner I seek leave to appear with my learned junior Ms Goldie, initials JN. We are instructed by Ashurst and seek leave to appear for Ms Paula Brisotto.

THE COMMISSIONER: You have leave. So, Mr Dean, as I understand it, and you heard Mr Hodge say that your client will be recalled at a later date.

MR DEAN: Yes.

THE COMMISSIONER: Do you have everything you need so far?

MR DEAN: We do. Thank you.

THE COMMISSIONER: Mr Hodge? Ms Hedge? One of you, Hodge/Hedge?

MS HEDGE: Thank you, your Honour. I call Mr Shaun Drummond.

<MR SHAUN DRUMMOND, AFFIRMED

<EXAMINATION-IN-CHIEF BY MS HEDGE

THE COMMISSIONER: Ms Hedge?

MS HEDGE: Q. Your name is Shaun Drummond?
A. Yes, it is.

Q. You are the acting Director-General of Queensland Health?
A. Yes, I am.

Q. For how long have you held that position?
A. From March this year. 14 March.

Q. Previously to that, you have worked as the chief executive officer and chief operations officer roles in public sector health systems in Queensland, New South Wales, Victoria and New Zealand; is that right?
A. Yes.

Q. You have provided a statement to the Commission. It is [WIT.0039.0002.0001_R]. That will be put on the screen.
A. Yes, that's my statement.

Q. I tender that statement, Commissioner.

THE COMMISSIONER: Exhibit 55.

EXHIBIT #55 - STATEMENT OF SHAUN DRUMMOND DATED 21 SEPTEMBER 2022

MS HEDGE: Q. You have had a chance to look at that statement before coming to the hearing?
A. Yes.

Q. Do you have any corrections or concerns about it?
A. No.

Q. I turn to page 3 [WIT.0039.0002.0001_R at 0003]. At paragraph 12, you say you have no DNA testing or analysis experience?
A. Yes, that's right.

Q. But you do have some knowledge of DNA testing and analysis?
A. Yes.

Q. Has that knowledge all arisen from your current role as acting Director-General or did you have some previous knowledge or exposure?
A. So, previous exposure in other health systems, both in New Zealand and in New South Wales.

Q. What was the context of that?
A. In New Zealand, that was to do with the National Gene Testing Facility was part of Capital & Coast District Health Board, of which I was the chief operating officer and in the chief executive. So certainly around the gene sequencing and the DNA testing, but not in a forensic sense.

Q. That was for, perhaps, testing for genetic disorders?
A. Yes. So, scientifically, around the process of DNA testing.

Q. You mentioned another jurisdiction. Was that New South Wales?
A. New South Wales as well and Western Sydney Local Health District, which again did a similar clinical role around DNA testing and analysis.

Q. So prior to coming into the role Of Acting Director-General, did you have exposure to or interaction with a forensic DNA laboratory?
A. (No audible response).

Q. Now, you identify in your statement that - can we turn to the next page, please, [WIT.0039.0002.0001_R at 0004] - that on 8 March, which is about a week before you became the acting Director-General, you were involved in a meeting. You were an ad hoc attendee at a meeting?
A. Yes.

Q. That had a relationship to the Forensic laboratory in Queensland?
A. Yes.

Q. Could I just ask you, in the middle of that paragraph, do you see the sentence starting:

Professor McNeil advised that the FSS laboratory was accredited by the National Association of Testing Authorities (NATA) and this amounted to external valuation of the FSS systems and processes.

A. Yes.

Q. And was that the basis for the next sentence:

He did not consider an independent review was necessary.

A. Absolutely.

Q. Was there any other basis for his view that he told you that he didn't consider any independent review was necessary?

A. So the advice that had been provided up to that point, both to my understanding, to both the minister's office and to the Director-General, was that this was the result of a disaffected employee and that their scientific processes had been continuously validated through this period of time.

Q. When you say "this", are you referring to the media interest?
A. Yes.

Q. Arising out of a podcast?
A. Yes.

Q. But also media interest in relation to thresholds?
A. Yes.

Q. Were those the two topics you were talking about in terms of what was in play?
A. Yes.

Q. I understand. Did you at that time have an appreciation or familiarity with what NATA does?
A. Yes. In my role as chief executive of the Metro North Hospital and Health Service, that is a number of NATA accredited services that come in periodically and evaluate the soundness of our scientific processes.

Q. That general understanding, was that your understanding about what accreditations the Forensic laboratory held?
A. Yes.

Q. In the sense of you might not have not known the specific ISO standard or Australian Standard which NATA was accrediting for?
A. Yes, that's right. So I would be aware around the accreditation process, not what was specific to that type of scientific area with regards to the components of their scientific process.

Q. Can I just ask in the hospital sphere, do you consider a NATA accreditation to be sufficient as the only type of external review of scientific processes, or in the hospital sphere, do you personally believe that other external reviews are necessary as well?
A. So NATA accreditation is one component of what we do

for accreditation and health services. So we will do NATA accreditation, particularly where we produce a therapeutic good. We have also got oversight by the Therapeutic Goods Administration, so that was one of the areas that was being NATA accredited, was the production of radio-pharmaceuticals inside Metro North Hospital and Health Services, and then also hospital accreditation, which actually has a look at all of the basket of clinical services and scientific services you provide as a hospital and health service.

Q. Did you understand in this conversation whether NATA was the only external review of the forensic laboratory or whether it was just part of the system?
A. So my understanding or what was put forward was that it was "the", or the singular accreditation.

Q. And what did you think of that?
A. So my view of NATA accreditation, having been experienced with it in the past, is it provides a high-level overview of scientific process. It doesn't go into the absolute minutia of that, but it does have a look at do you have sound policy around that governance, management of the service that was actually being provided, and it will use content experts to actually have a look at that, but it doesn't go down to an exceptionally fine detail.

THE COMMISSIONER: Q. Is it your understanding that NATA will look at whether there are appropriate rules and regulations and procedures in place, but does not examine whether those rules, regulations and procedures are being followed?
A. So part of accreditation should be adherence, testing on whether they are being adhered to.

Q. Yes.
A. And all our standard forms of scientific and clinical accreditation. But, again, a lot of that is by observation or documentation. So if there isn't documentation around non-compliance with those policies at a high level, they will be assuming that they are complied with.

Q. That's what I mean. So if there are, as there are at FSS, of course, documents in place to record problems that arise and failures to follow processes that arise, but apart from the scrutiny of the record, does NATA go in and

actually see what's actually being done?
A. So they will do - as part of accreditation they do on-site visit to actually explore whether there is compliance with the processes/policies inside that area, but what they are doing is they're not making a determination on whether they should be - you know, whether the scientific process should be applied. They are testing on: are we adhering to that scientific process that we have the policy and the operational protocols around do we have compliance with that.

Q. Yes.
A. And so, one of the issues that, I suppose, paragraph 14 is trying to highlight and was my concern out of that meeting of 8 March, is the issue in contention was at that point in time not that there was a problem with the scientific process, it was whether we were applying it --

Q. Yes.
A. -- in the right circumstances. And that was the issue that was effectively in the public arena, and so saying NATA accreditation is an answer is to that is fundamentally flawed. It's fundamentally flawed, because NATA accreditation is saying we have good processes and protocols around the scientific process, not whether we were applying those thresholds or where we were applying - making the decisions to apply that scientific process.

Q. Yes.
A. That is not the role of NATA.

Q. Yes, I understand.

MS HEDGE: Q. Thank you. You say at the bottom of that paragraph that your view, coming out of that meeting, was that the issue was far more significant than had been presented at that point in time?
A. Yes.

Q. And you thought the Minister needed to be briefed?
A. Yes. And that comes to the point I just made. NATA accreditation is about the scientific process, but the issue that we were being challenged on was not that. It was whether we were applying it in the circumstances that we should.

Q. Yes. Effectively, a mixed science and policy

decision, is that fair?
A. Yes.

Q. If we can scroll down to paragraph 15 now. 14 March 2022, that would have been your first day as acting Director-General; is that right?
A. Yes, it was.

Q. So this issue, which ended up here in a Commission of Inquiry, was front and centre of your mind from - well, I am sure with many other issues, but one of the issues from the start of your time as acting Director-General?
A. Absolutely.

Q. On that meeting you had a meeting about the independent systems and processes review, what I might call an "internal review". Are you content with that phraseology?
A. Absolutely.

Q. In the middle of that paragraph, it indicates that:

Professor McNeil continued to reflect the perspective of the FSS scientific leadership that the system and process review was not necessary as the laboratory held NATA accreditation.

That was the same point made in the previous paragraph?
A. Yes.

Q. And Professor McNeil was one of your Deputy Director-Generals?
A. Yes.

Q. Were you told who the FSS scientific leadership were who were expressing that view?
A. Certainly that was put forward that it was Cathie Allen, and through Cathie to Lara Keller as Executive Director. And as put there, what was being put forward to us, that it was a slightly over 1 per cent issue with regards to what would benefit on this issue of testing threshold. And subsequently from the 8 March meeting, we then started to get documentation which put forward that the 1 per cent might actually be 5 per cent, and so - but certainly at that time what we were being told and the advice that we were giving the Minister was we were NATA

accredited and it affected a very small amount of samples that would benefit from any additional process.

Q. All right. You said in that answer, "From 8 March meeting", but I perceive you might have meant 2 June?
A. Sorry, the 2 June meeting, yes.

Q. Just from your statement. At the bottom of this page, we see that there was another meeting on 2 June. And if we turn to the top of the next page, [WIT.0039.0002.0001_R at 0005], we see those numbers of 1 per cent and 5 per cent about 10 lines down? That's what you were referring to there?
A. That's right. Absolutely. And so at that point in time in both those March meetings, we were being very clearly told this was a 1 per cent issue.

Q. Yes. I am sorry, just one moment. In that meeting, do you see about five lines down from the top where it starts:

> *Lara Keller discussed variances ...*

A. Yes.

Q. Now, Lara Keller was the executive director of FSS at that time?
A. Yes.

Q. Acting executive director. And she discussed:

> *... variances in laboratory data about samples that would benefit from further testing, including concentration, being 1% on one hand and 5% on the other ...*

A. Yes.

Q. Where did you understand - did you understand those numbers came from a 2018 study and an updated 2022 study?
A. Yes, so 1 per cent from the 2018 and then the 5 per cent from what they put forward was a small sample in the 2022 review.

Q. Yes. And Lara Keller also mentioned that NATA accreditation was a reason not to be concerned scientifically?

A. Yes.

Q. Would it be right that you would have told Lara your view that you have just expressed here today that NATA doesn't relate to policies and decisions, but only to scientific processes?
A. Yes.

Q. Was she convinced by that?
A. There was certainly still the view that a review was not operationally necessary --

Q. All right.
A. -- but accepting of that it is the decision of the system manager, the Director-General of Queensland Health to make a call.

Q. Yes. I understand. In the next paragraph at the bottom of that page, please, operator, you identify that after that meeting there was an email sent to you that attached the first Options Paper from 2018?
A. Yes.

Q. And a 2022 Review Paper?
A. Yes.

Q. As well as an email from a QPS officer Dale Frieberg?
A. Yes.

Q. Did you understand at that time the Options Paper and the email from Dale Frieberg was the "decision-making process", if I can put it like that, in 2018?
A. Yes.

Q. And then 2022 was an updated data analysis?
A. Yes.

Q. All right.
A. That was triggered by some concerns being raised by QPS. Now, the review was in response to that there was now starting to be noise from Queensland Police.

Q. When you say "noise", do you mean the Queensland Police submission to the Women's Safety and Justice Taskforce?
A. No, because when they started asking for that information, you know, the noise was before the submission

to the task force, by the nature of the request that they were asking for information to actually look into this.

Q. Were you told that the police had internally been requesting information from the laboratory about the percentage of samples that might benefit from testing that are under the threshold?
A. Yeah. So when we were advised about the Review Paper --

Q. Yes?
A. -- we were told that Queensland Police had asked for a wide range of information around testing thresholds.

Q. Were you told that the update paper, the 2022 paper, was only done to respond to the police questions?
A. No, but it was the environment of the fact that that information had started to be asked by Queensland Police.

Q. All right.
A. Cynically, you could believe that - well, actually not necessarily cynically - that once those questions were starting being raised, that it was appropriate to start looking at the same information internally.

Q. Did you read the Options Paper and the 2022 Update Paper?
A. Yes, I did.

Q. When you read them, did you understand that the 1 per cent figure was the important figure from the Options Paper and that the 5 per cent figure was the important figure from the Update Paper?
A. Yes, that was constantly the numbers that were referred to us of what was in contention.

Q. All right.
A. Sorry. At that time, that's what I understood.

Q. All right. Do you have a different view now?
A. Absolutely.

Q. Right. Tell us what your view is now.
A. So it was never highlighted to myself or the advice that we gave to the Minister that the 1 per cent only related to where it was effectively cold link cases. And the conversation I had at the time was to say even

1 per cent on a cold link case did not sit comfortably with me; I didn't agree with that as a policy decision. But when you consider that there was a 10 per cent where there's a potential person of interest, and that had been put forward to us in March, we would have had a very different response. That is a fundamentally huge difference in proportionate matters that would have benefited from this.

Q. Right. You now understand that there is a 10 per cent figure, 10.6 per cent in the Options Paper?
A. Yes.

Q. Which is about overall success --
A. Yes.

Q. -- to compare a DNA profile from a crime scene sample to a reference sample?
A. Yeah. You know, I find it is disingenuous to constantly put to us that it is 1 per cent but it is only what is referred as a cold link to the National Database, because that is a significantly different position that we would have had in front of us.

Q. Do you say it's disingenuous on the basis that the person saying that would have known that that was not the only relevant figure?
A. Absolutely. Yes.

Q. Who was the person who put forward the 1 per cent in a way that you consider to be disingenuous?
A. Well, that was effectively both Dr McNeil and Lara Keller on the information that had been provided to them, which was actually through Cathie Allen. So I believe they were representing a position that either had not been explained to them, to understand that 10 per cent is a relevant number. So somewhere in that line somebody was not representing the correct facts to us.

Q. Since you became aware that this 10 per cent number is a relevant number, have you made any investigation into what Professor McNeil or Lara Keller knew?
A. No, because very clearly, with the Commission of Inquiry going on, we did not want to do anything that is at odds or that could actually cross into the area of the Commission, but subsequently this will be a matter for Queensland Health to address.

Q. I presume you mean subsequently to the Commission of Inquiry?
A. Yes.

Q. So at this time you are not aware of who knew that the 10 per cent number mattered?
A. Yes.

Q. Speaking of that 10 percent number and the comparison for reference sample, are you aware that in the majority of major crime cases, which are offences against a person, that that is the number that matters?
A. I am now, but at that time, no.

Q. All right. Do you know what the equivalent number is in the 2022 paper? I think was about 25 per cent?
A. Look, I don't want to quote that off the top of my head, but it was significantly higher than the 10 per cent, many times that. So at that point in time in the Review Paper again what was not highlighted to us - and I believe it was about a quarter of the cases would have been benefited. And, again, if that had been highlighted to us as the relevant number, there would have been a very different response even then.

Q. All right. When did you become aware that the 10 per cent number in the Options Paper was a relevant, highly relevant, number? .
A. Actually, once the Police had put their submission through to the task force and they were very clear in the number that they were highlighting was not the 1 per cent or the 5 per cent number, it was all of the cases. At that point in time, it started to dawn on myself that, in fact, there's two relevant numbers here, and the second one we were not getting put forward.

Q. The submission to the task force, can we turn forward to page 0006 of the statement [WIT.0039.0002.0001_R at 0006]. In paragraph 19, you indicated that that submission to the task force was discussed in the meeting of 2 June.
A. Yes.

Q. I understood that you just said you found out about the 10 per cent number from the submission, but that was before this meeting of 2 June. I'm just clarifying was this in fact a later time that you found out about the

10 per cent number?
A. So the 10 per cent was later, right? But at that point in time was the first time that we started to become aware of that there's two different numbers here.

Q. I understand. So you were saying in the meeting of 2 June --
A. Yes.

Q. -- you had the 1 per cent and 5 per cent being provided to you by FSS?
A. Yes.

Q. The Police were providing a very different number?
A. Absolutely.

Q. In fact, 30 per cent for all samples and 66 per cent for sexual assaults?
A. Yes.

Q. But you understood those numbers weren't directly comparable, because Police had chosen which samples to retest?
A. They were part of a subset of the activity.

Q. Yes. So to come back to my question, when did you become aware that the 10 per cent number mattered?
A. That would be - oh, probably when we started the conversation around re-instituting the previous thresholds. So in response to the initiation of a Commission of Inquiry, obviously not in a position to make a decision around what we should be testing now.

Q. Yes.
A. And at that point in time were the observations made internally to say there is two different numbers here that were actually going to benefit from this.

Q. When you say that, that's around 6 June that you made that decision?
A. Yes.

Q. Is it right that you had an interview with the Commission?
A. Yes.

Q. Myself?

A. Yes.

Q. That was about mid-August?
A. Yes.

Q. Did you know about the 10 per cent number at that time?
A. We hadn't pulled the 10 per cent at that point in time, but started knowing that there's actually different numbers that we're talking about, and that none of our briefing material had it provided clarity or in the conversation between the different numbers.

Q. Yes.
A. And so that's - it started to raise this issue of what was the number that we're actually talking about in grey, prior to that.

Q. Yes.
A. Then when I did my interview, it was absolutely clear at that point in time around what was the difference between the two numbers.

Q. I see. So it was sometime after the interview in mid-August, between then and now --
A. Yeah.

Q. -- that really it clarified in your mind that the 10.6 per cent number mattered?
A. Absolutely.

Q. All right. So when you say, you know, "Going back, we would have done quite different things", it's quite a long time afterwards that you were advised of that?
A. Absolutely.

Q. All right. And were you advised of the 10 per cent by someone or did you discover that reading material or --
A. Yes, so I then went back and had a look at the material that we had.

Q. Yes.
A. And it is in there. Even in the 2018 paper it is in there.

Q. Yes.
A. And it is in the review paper. And it's not the

highlighted figure. And so, it was subsequent to my interview that I went and actually had a look at the percentages. And that's when, I suppose, the penny dropped that this is a significantly different percentage.

Q. I understand. Just going back to something you answered a few minutes ago, you said even if it was 1 per cent would you have had a problem with that or a concern about that. I'm sorry, I can't remember the exact words you used.
A. Yes.

Q. Could you just explain that?
A. For a resourcing decision, which against the whole of the Queensland Health budget, which is just shy of $24 billion, that we have made a resourcing decision that meant that 1 per cent of cases could have been supported by better evidence, it is my opinion that we should have been doing that. The financial impact of resourcing to that level against the size of that entity is an insignificant amount of funding. You know, subsequently it's worked out it's less than $1 million per annum to have been able to carry on the testing at the pre-2018 threshold.

Q. Less than $1 million per annum?
A. Less than $1 million per annum for us to be able to support that level of work. And if we couldn't cover that internally, we would have been in a position to put a budget request through the budget process. But we would have been able to support that internally.

Q. Is that true of 2018? You were aware of the budget position in 2018?
A. Absolutely. As a Chief Executive inside Queensland Health at that time, absolutely. We were still running a surpluses system. We were carrying forward budget underspends from year to year.

Q. And so hypothetically, had you been the Director-General and had you been asked to make a decision on the Options Paper and told the number was 1.45 per cent, the key number --
A. Yes.

Q. -- what do you say your decision would have been?
A. I would have said to resource that and to do the testing at that threshold. As the majority of my career

has been in clinical service provision, we would not accept a 1 per cent failure rate where it's a small amount of resourcing that could support, you know - appropriate whether it was clinical outcome or screening, you wouldn't accept that.

Q. Perhaps the answer is obvious, but what about if you were told it was 10 per cent?
A. If it was 10 per cent on that first meeting that we'd had in March, when I was DD on the 14,th I would have actually done it then. Or even historically if I was told it was 10 per cent in 2018 and I was Director-General, I would have absolutely made the decision to say, "We must support this." Whether we were funded through a treasury submission or not, we had the means to do that, and that is a significant impact in our role in supporting the justice system.

Q. What considerations are you drawing into that view in terms of the criminal justice system?
A. Well, two-fold. For, effectively, justice for a victim, but also the potential that somebody may have been found guilty of a crime, that that evidence might have put, you know, reasonable doubt on that. And so, in those circumstances, it is absolutely important that we are providing the best strength and the science that we do in support of our system to actually make sure that nobody is convicted incorrectly or where somebody - it would have provided clear evidence, that we should have done that.

Q. Right.
A. It's a community obligation.

Q. Yes. Can we deal with a few questions about what happened in 2018. You're aware that it was a Superintendent of Police who was the decision-maker for the Options Paper in 2018?
A. Yes. That was provided as part of an email saying, "Yes, I support that option".

Q. Yes. Could we turn to paragraph 78 of your statement [WIT.0039.0002.0001_R at 0020] --

THE COMMISSIONER: Q. Just before you go there - no, you deal with that, Ms Hedge, and then I'll come back.

MS HEDGE: Q. You say that in your view, the decision

should have been passed up for resourcing and support to both the Deputy Director-General and the Director-General for consultation?
A. Absolutely.

Q. On the next page, the top of page 21, [WIT.0039.0002.0001_R at 0021] you identify the Deputy Director-General or equivalent was the person who should have made the decision?
A. Yes.

Q. You say there:

> *It had a significant impact on the department fulfilling their responsibility for the services to the criminal justice system.*

And you do not regard this as an "officer level" decision?
A. This is both - the resourcing on this is the smaller part of this decision. It's a policy decision that fundamentally impacts on our role as a scientific support for Queensland Police. And that is a policy decision, not a resourcing decision first. And that's why it needs to be passed up to either a Deputy Director-General level or Director-General level.

Q. When you say "policy", are you referring to a policy of having the highest quality science prepared for courts?
A. Absolutely.

Q. Right.
A. Yes.

Q. That is what you are saying is more important than resourcing?
A. Absolutely.

Q. You say there you don't regard this as an officer level decision. What is officer level?
A. That would be, for example, a director of a clinical unit or, in this case, the director of a DNA Analysis area. I would not have put it at that level or at the Executive Director of FSS level. So an officer would be, effectively, a manager or director of a service.

Q. Right.

THE COMMISSIONER: Q. Sorry, Ms Hedge.

Q. Mr Drummond, you mentioned a figure of $1 million before?
A. Yes.

Q. How did you arrive at that figure? How do you know it's that?
A. So when I made the request to resume the pre-2018 thresholds --

Q. Yes.
A. -- I asked around what was the resourcing necessary to support that level of activity, and when that came back to me that had an estimation of the clinical or scientific consumables we would use and the number of staff, that represented under $1 million recurrent to have supported that threshold.

Q. Was that in writing somewhere, in an email?
A. It came through as a brief.

Q. Yes.
A. I requested that after the meeting in the beginning of June, but the brief didn't come through until many weeks later. But --

Q. No, that's all right.
A. -- I think there was an email - there may have been an email, I think. I will just have to go and check that. But it was discussed that it required approximately 6 FTE and under 100,000 consumables. Actually, it's in the Option 1 and 2.

THE COMMISSIONER: Have you got that, Ms Hedge? Have you seen that?

MS HEDGE: We do. The briefing note, we do.

THE COMMISSIONER: With that estimate?

MS HEDGE: As I understand it.

THE COMMISSIONER: Yes, all right, thanks.

MS HEDGE: I will look it up.

A. Sorry, when I was told the number of FTE, I know what the costing is of that FTE.

Q. What is FTE?
A. Oh, sorry, full-time equivalent. So when they talked about - because we may use more head count to fill the establishment than what the full-time equivalent is, so we might use 10 people to fill six full-time equivalents.

THE COMMISSIONER: Q. The Options Paper, of course, was directed towards a solution to - was directed towards saving resources?
A. Yes.

Q. But it didn't contain any data at all about resources?
A. Absolutely. It didn't cost what it would have been, which should ultimately have been part of the decision-making, not the determinant, but contributing to what the decision should have been made. What would it have cost us to support that? And then, even though we didn't have a current MOU with Police, the only one that we did have signed on record actually put forward that if we needed more resourcing --

Q. That's right?
A. -- then we could put that to Police, and the Police could actually take that through to the budget process.

Q. Yes, that's right.
A. But we never availed ourselves of that pathway.

Q. Yes. Nobody asked for more money?
A. Yes.

Q. Or said they needed more money?
A. Not that came through the formal channels of the process. I can't say whether there was conversation that had gone on, and there was overall global requests for increased budget for Health Support Queensland, but this issue within it was not one of the highlighted issues.

Q. Yes, thank you. Yes, Ms Hedge.

MS HEDGE: Thank you.

Q. Just focusing here on the Deputy Director-General or equivalent being the appropriate decision-maker, would a

Deputy Director-General in Queensland Health have the ability to balance Queensland Health risks and benefits and criminal justice system risks and benefits?
A. As a senior public servant, yes. I would expect that they can. Now, they may seek advice from the Director-General who sits on the leisure board of all of the agencies across Queensland, and therefore has that opportunity to have discussion, whether it is the Director-General of Justice and Attorney Generals or whether it's a Commissioner of Police. That, at the DG level, could have that conversation. But they are - all of the Deputy Director-Generals are required to consider what we operate inside the wider public system. That is part of their requirements for their role.

Q. Is the DNA Analysis Unit - it's a fairly small part of Queensland Health in total, is that fair?
A. Yes. Very fair to say that.

Q. Both in terms of staff and funding and in location/buildings?
A. I mean, to put it into perspective, it's got about 60 staff. That's not the exact number, but approximately 60 staff against today Queensland Health has 125,000 people in it.

Q. There is also the Clinical Forensic Medical Unit?
A. Yes.

Q. And it is also a small part of Queensland Health?
A. Yes.

Q. Other than those two, are there other parts of Queensland Health that primarily serve the criminal justice system?
A. Well, so the coronial components of what we provide.

Q. Yes.
A. Absolutely as well, which is part of FSS.

Q. FSS as a whole?
A. So FSS is about 300 staff --

Q. Yes.
A. -- all up. With regards to the other parts, some of the health services provide a component with collection.

Q. Yes.
A. So they have some role outside of FSS, but that is a very small part --

Q. Yes.
A. -- of the overall components.

Q. All right. For example, a nurse taking a blood sample after a car accident where it is expected that there might be blood in the system, for example?
A. Yes.

Q. The reason I ask that --

THE COMMISSIONER: You mean where it is expected there might be alcohol in the system?

MS HEDGE: Yes. Did I say blood?

THE COMMISSIONER: Mm.

MS HEDGE: Yes, blood and alcohol in those veins.

Q. The reason I ask, is it true that most Deputy Director-Generals are unlikely to have come from a forensic part of Queensland Health, if they have worked in Queensland Health before their appointment, but are more likely to have come from hospital services?
A. Absolutely.

Q. And so, they would not have personal experience with the criminal justice system?
A. Yes.

Q. Generally?
A. Yes.

Q. That's probably true of Directors-General as well?
A. Yes.

Q. You believe that can be mitigated or assisted by advice?
A. Yes.

Q. You mentioned the Queensland Police?
A. Yes.

Q. Who else should such a person seek advice from or consult with if they were going to make this sort of decision that affects a multi-disciplinary area?
A. Well, Justice and Attorney-Generals as well. The two primary partners in that are going to be Queensland Police and Justice.

Q. Thank you. Can we move on then from the Options Paper to come back to 2022 when you were making decisions, and can we turn back to page 4 of the statement, the bottom of page 5 [WIT.0039.0002.0001_R at 0005]. This is paragraph 16b. You received two emails from Lara Keller; we have dealt with the first one.

The second one was a forward of documents, timeline and number of requests, and can we turn on to the next page, which included an email from Cathie Allen attaching a timeline of communications and an Excel spreadsheet?
A. Yes.

Q. Can we look at that. If you turn to [WIT.0039.0007.0001]. Do you recognise that email as one from Lara Keller to yourself, Simon Zanatta and Matthew Rigby?
A. Yes.

Q. Matthew Rigby is in your office?
A. Yes, he is the executive director of the Office of the Director-General.

Q. And Simon Zanatta is in the ministerial office, is that right?
A. Yes.

Q. If we turn to [WIT.0039.0008.0001] --

THE COMMISSIONER: What exhibit is that to Mr Drummond's statement?

MS HEDGE: It's SD-02.

Q. This is the timeline that you were sent of contact with the QPS regarding DNA insufficient process?
A. Yes.

Q. All right. This is in order of date. So the first

thing we see there, 1 December 2021, is the first date in this document?
A. Yes.

Q. You weren't advised of any contact pre-1 December 2021 regarding the DNA insufficient process?
A. No.

Q. Are you now aware that there was issues raised right back to the end of 2018 by the Police?
A. Yes.

Q. All right. And that that wasn't explained to you when this was sent to you?
A. No.

Q. Can we turn to the last page - sorry, I have a document that doesn't have a number on it. Does that document have four pages? Could we try [WIT.0039.0009.0001]. Does that document have two pages? Sorry, Mr Drummond. I am sorry, that's not it.

Do you have your statement in front of you?
A. Yes, I do.

Q. I believe all the parties here have it. I am sorry, Commissioner, it doesn't have a number, but I am sure I will be assisted with one if possible, but it is the last page of SD-02, and on my copy, it has - it is an Excel spreadsheet with a barcode number on the far left and some coloured rows.
A. Yes.

Q. Do you see that?
A. Yes.

Q. [WIT.0039.0010.0001]?
A. Yes.

THE COMMISSIONER: This is part of exhibit 2 to Mr Drummond's statement?

MS HEDGE: Could we redact column A and also column C? Thank you.

Q. We just removed the barcode numbers and case numbers because that's confidential information, but otherwise that

is how you saw it?
A. Yes.

Q. This is the spreadsheet that Ms Allen prepared and provided on 2 June 2022, and do we see there that there is a number of - that in what is column B now, the second column on the original, is:

New / No new DNA profiles

Do you see that?
A. Yes.

Q. And when one looks down that column, there are no samples of new DNA profiles being obtained in this subset of cases?
A. Yes.

Q. Are you aware that from about November 2021, other staff in the laboratory were preparing a spreadsheet of cases where a new DNA profile was obtained from a retesting of a DIFP sample?
A. No, I wasn't aware.

Q. Was this spreadsheet where all of the examples resulted in no new DNA profiles, was that sold to you or - I shouldn't use that word - described to you as the whole of data analysis that had been done by the laboratory at that time?
A. Yes, so I was provided that, again, as an example, that these thresholds were appropriate because where that further testing was occurring, we were not getting new evidence.

Q. Did anyone directly say that this was all of the samples that they had retested in DIFP, or was that the impression you were left with?
A. That was the impression.

Q. Thank you. In your statement, you deal at length with a decision you made on 6 June 2022 to remove the thresholds --

THE COMMISSIONER: Could you just pause for a moment, Ms Hedge? Sorry.

Q. I see, Mr Drummond's impression is based upon what we

see at the foot of document [WIT.0039.0007.0001], the email from Ms Allen of 2 June 2022. The Excel spreadsheet was a review of whether processing DNA insufficient samples gave a new DNA profile that hadn't been seen before, and she hadn't finished, but that's what she had so far. Is that the point about the impression, Ms Hedge?
A. Yes, because --

Q. Mr Drummond?
A. -- it is putting forward that when we've examined that again internally we're not going back --

Q. With any --
A. -- with this proportion of problem that is being identified.

Q. Thank you. I understand. Yes, Ms Hedge.

MS HEDGE: Q. And it was stated there that it wasn't finished, so it wasn't comprehensive yet?
A. But the fact there had been no - none in that sample - while it might not have been statistically significant, because of the small number of them against the total volume, you know, the inference is that there's again nothing to see here.

Q. But you understood it was comprehensive at least to the extent of what had been done so far?
A. Yes.

Q. Thank you. If we can turn to paragraph 30 of your statement, which is [WIT.0039.0002.0001_R at 0008] --

THE COMMISSIONER: What is the exhibit?

MS HEDGE: Part of his statement.

THE COMMISSIONER: What paragraph?

MS HEDGE: Paragraph 30, page 8.

MS HEDGE: Q. Could we just scroll up slightly, operator, so we've got the question there. In bold are the questions the Commissioner asked you to respond to?
A. Yes.

Q. And in question 7 it splits what happened on 6 June

into two decisions: One, the removal of the DIFP threshold - are you comfortable with me calling it the DIFP threshold?
A. Yes.

Q. And secondly, what will happen with those samples in terms of their process directly for amplification rather than for concentration. Did you consider that as two separate decisions or did you see that as one decision?
A. So one decision, yes.

Q. What was that decision?
A. So the decision was to go with Option 1, which was put forward as the return to the pre-2018 threshold where we would exhaust scientifically what was possible with regards to our concentration and amplification, but if the concentration - sorry, I've just got to make sure I get this right. If the concentration would result in using up all of the sample, which was what is actually put into Option 2 under those, we would not do that.

Q. So that's the second one, the choice between Option 1 and 2. What I'm just seeking --
A. Oh, sorry. On 6 June, all I was asking was return to the pre-2018 threshold.

Q. And process?
A. Yes.

Q. All right. So did you view this as return to 2018 --
A. Yes.

Q. -- with all the falls?
A. Yes.

Q. Everything?
A. Yes.

Q. Everything they did then, we want to do now?
A. Yes.

Q. So there might have been two decisions but they were part, in your mind, of one consideration?
A. Of one consideration, yes.

Q. Is that a fair summary?
A. Yes.

Q. The primary basis of that decision that you made came from an email dated 3 June 2022?
A. Yes.

Q. That was sent to you. Can we look at that. It is SD-06, and it is [WIT.0039.0015.0001_R]. This was an email sent from Ms Keller to yourself on 3 June at 5:09 pm. You asked Ms Keller to provide to you options for returning to the pre-2018 process; is that right?
A. Yes.

Q. Why did you ask for options? By that, I mean if your plan was simply to return to the pre-2018 process, would there not have only been one way of doing that because there would have only been one process in place pre-2018?
A. Well, that's what I was expecting when I asked that. When it came back, what was thrown in is that issue around the risks around if we were going to concentrate and process. So my understanding from the pre-2018 was that we were effectively processing to the best of our ability everything between 0.001 and 0.0088. So where we could concentrate, we were actually concentrating.

Option 2 then greyed that by saying that if you do revert to that, that there is an issue that didn't exist in 2018 with regards to what our decision-making was, that at that point in time we were doing everything that we could, and in that we hadn't considered those risks if we revert back to that. And that is what was being put forward.

Q. All right. So on 3 June, is your evidence that you told Lara Keller you just wanted to be advised what the pre-2018 process was?
A. Yes.

Q. And were you expecting just, "This was the process"?
A. Yes.

Q. You didn't ask for options?
A. I didn't ask for options. I asked for a return to the pre-2018 testing regime.

Q. But then you received this email which had options in it?
A. Yes.

Q. And you understood the reason for that was because of a change in concentration methods since 2018? Or what was the reason that there would be options?
A. So what was put forward was that there was an inherent risk that QPS were no longer comfortable with, which is the second point under the "Risks", that pre-2018 we might have been automatically concentrating, but QPS now did not support that.

Q. So the thing that was said to you to have changed since 2018 was a QPS approach to exhaustion of samples?
A. Yes.

Q. You weren't advised of any change to concentration process?
A. No.

Q. You weren't advised of any change to instruments in the laboratory?
A. No.

Q. Or any change to other processes being conducted in the laboratory that might influence concentration?
A. No.

Q. That's not specifically written in here, and I understand in your statement you say that you spoke to Ms Keller over the weekend.
A. Yes.

Q. So this is a Friday. Monday, 6 June is when you make the decision. Does that mean she told you over the weekend?
A. Yes.

Q. Did you have that information from anywhere else or just from Ms Keller?
A. No.

Q. You explain concentration in your statement and you say that that came from conversations with Ms Keller also and Professor McNeil?
A. Yes.

Q. Do you remember which of them explained concentration to you?
A. I don't.

Q. All right. I'll just take you to that, just to confirm. If we turn to page 12 of the statement [WIT.0039.0002.0001_R at 0012]. Paragraph 48, at the bottom of the page, the second sentence.

THE COMMISSIONER: Sorry, I am not with you yet. Paragraph 48? Yes

MS HEDGE: So you say there that:

> *[You were] advised for option 2, there may not be an opportunity after testing to do additional testing.*

That's the point you just made.
A. Yes.

Q. You say:

> *My preference would have been to concentration everything if that was considered to improve the chances of a DNA profile being obtained, however, I was influenced by the advice about completely using the sample which is what option 2 presented.*

A. Yes.

Q. So you did understand that the concentration step would generally improve the chances of getting a usable DNA profile?
A. Yes.

Q. So that was a benefit of the concentration step?
A. Yes.

Q. And Ms Keller was the one who explained that to you or Mr McNeil?
A. It was probably Lara, but I can't hand-on-heart say which explained that to me.

Q. Okay. From your previous experience with gene testing, did you have any familiarity with what a concentration step was and why it mattered in DNA testing?
A. So generally in clinical, we might do amplification.

You don't tend to do concentration.

Q. All right. But I suppose it is a scientific word that you would be familiar with?
A. Yes.

Q. The idea of concentrating something?
A. Absolutely. I understood what they were talking about, that post-amplification, the concentration by, you know - well, concentrating the sample to give it a greater strength.

Q. Can we go back to that email which is [WIT.0039.0014.0001 _R], SD.06. This is the email. This is the primary basis of your decision on 6 June?
A. Yes.

Q. These options. Can I ask about some things that are not in this email.
A. Yes.

Q. Firstly, there's no reference in the email about some quantification of the level of benefit from concentrating in Option 2 versus Option 1? For example, 50 per cent better chance of a good profile or even a higher or, you know, a significant chance of a better profile, or anything of that nature; is that fair?
A. Yes, that's correct.

Q. So although you understood concentration in Option 2 to have some benefit, you weren't advised of the level of that benefit?
A. No, I was not.

Q. Is that true also of the conversations that you had with Ms Keller and Professor McNeil? They also didn't advise you of the level of benefit?
A. Yes.

Q. Similarly, for the risk number 2 that you have identified or made reference to, the sample exhaustion risk?
A. Yes.

Q. Similarly, you weren't told the level of risk that existed?
A. No, I was not.

Q. Or the percentage of cases in which that risk matters, for example?
A. No, I was not.

Q. All right. Were you aware at that time that it is possible to concentrate to different levels?
A. No, I was not.

Q. Are you aware of that now?
A. Yes.

Q. And that some might exhaust and others not?
A. Yes.

Q. There was also no advice in that email about changes that had been made since 2018; is that right?
A. That's right.

Q. You were advised orally about the QPS position?
A. Yes.

Q. But you were not advised either in this email or orally about the introduction of a machine called the 3500?
A. No.

Q. Which has a higher sensitivity than previous machines, including the one used in 2017; is that fair?
A. No, I was not advised.

Q. Could you speak a little bit louder?
A. Sorry. No, I was not advised.

Q. Thank you. Are you now aware of the introduction of that machine?
A. Yes, I am.

Q. All right. And do you think - let's go through those three things in turn. Do you think you should have been told?
A. Yes, I do, because it comes to the heart of what's going to happen in the concentration step. The higher sensitivity machine, then the benefits of concentration improve.

Q. The second - I should say the first thing that isn't in here that I identified to you was the level of

improvement seen by concentration. Do you think you should have been told some figures or some quantification around that?
A. Yes, I should.

Q. All right. And the second thing was the level of risk of exhaustion. Do you think you should have been told the level of that?
A. Yes.

Q. And so, is that a hindsight view that you should have been told those things?
A. Yes, it is, because subsequently in the decision-making that Dr David Rosengren was involved with, these issues started getting highlighted to him.

Q. Did either of those three questions; that is, level of benefit of concentration; level of risk of exhaustion; new instruments - if I can put it like that - those three things, would you have asked those questions of the people advising you to find out those things?
A. In hindsight, probably. I took the advice at face value. What I didn't want to do was to procrastinate around the decision-making and exacerbate the fault in what we were doing.

Q. Looking at this email, you noticed - did you notice at the time that the risks and the benefits are all - putting exhaustion to one side, the rest of the risks and benefits are about turnaround times, backlog, cost, staff?
A. Yes.

Q. The focus is on resourcing and output, is that fair?
A. Yes.

Q. There's little focus on the benefit of the scientific process or of the quality of results in this email?
A. Yes.

Q. Is that something you have noticed in hindsight also, that - would you have asked about that --
A. So in hindsight, bearing in mind that my decision-making was - effectively, the algorithm in a clinical service is pretty straightforward: do we have a problem? Yes, we have an identified problem. Are we able to revert to the process before that problem? And what was then being put forward to me was to say, well, process 1 is

an appropriate end match to what we were doing previously. And then option 3: can we resource it?

And by "resource it", that is actually not about funding. I was not concerned about the funding. The conversation I had with Lara was to say, "Can we recruit the scientists to do this work?" Because that will most often be our rate limiting step, not funding, are the people available to conduct this process.

Q. All right.

THE COMMISSIONER: Q. It is odd, isn't it, Mr Drummond, because in 2018 they were doing this with the same number of people that they have, and now they say they need more people to do the thing that they were doing?
A. Though volume over time may have been creating that pressure.

Q. Yes, yes. The work might have increased, you mean?
A. Yes.

Q. Quite right.

MS HEDGE: Q. So you say you probably should have asked, but could I ask from the other perspective: would you have expected to have been told by Ms Keller those things that we have just discussed: level of risk; level of benefit; and changes to process since 2018?
A. I would have expected that if it was relevant to the decision-making, they should have put that forward. That's their obligation. Right. Queensland Health is an absolutely mammoth entity, and you will never know every question that you need to ask on a particular topic in front of you. You must rely on the officers and the advice that they are giving the comprehensive picture for you, and you can't afford to go and get a second and third opinion on every piece of advice that's provided to you to say, "Is there something missing?", because the paralysis that that would actually create in decision-making would be phenomenal in our system.

Q. You mentioned the methodology of decision-making. Can we look at that. It is in your statement at [WIT.0039.0002.0001_R at 0009] at paragraph 35. These are the three questions you have just lined?
A. Yes.

Q. And the first one, you had a view from March that that there was an issue there; is that fair?
A. Yes.

Q. The second one, I wanted to understand if we were able to revert the testing workflow in place immediately before the identified issue arose.

Is it fair to say that you asked Ms Keller for what the pre-2018 process was?
A. Yes.

Q. And then you got options back?
A. Yes.

Q. And you understood that option 1 was the reversion to the pre-2018 process?
A. Well --

Q. Perhaps if I can --
A. So at that time, that's what I had asked. And I hadn't asked for options; I had asked to revert to the pre-2018 work flow.

Q. Yes.
A. And when the two options were put to me, there was a variance between those options. And what was put forward, that I probably wasn't cognisant of at the time, was - that subsequently came out and then went to David - I understood we were concentrating everything we could at that point at 0.001 to .0088 range. If we could concentrate it, we were. And this was actually saying, "Well, no. We shouldn't do that anymore." And in that, there were those two bullet points. So I did understand that it was offering some variation against that, that there might be a technological platform that could actually test where we wouldn't before and that QPS had a concern around the exhaustion of a sample, which is that sort of 1 and 2. So I understood there was a variance, but a small variation on that.

Q. I see. Just going back to the email [WIT.0039.0014.0001 _R], zooming in on those two options, it says there immediately under Option 1:

Revert to pre 2018 workflow ...

But is it the case that you understood that it was not exactly the pre-2018 work flow?
A. So I thought Option 1 was exactly that.

Q. All right.
A. And Option 2 was a different one to that.

Q. I see. So you understood --
A. Sorry, Option 2 was exactly it; Option 1 was not exactly it. Sorry, I am getting them round the wrong way. So Option 2 was concentrating everything, which is what we were doing, and Option 1 was not to concentrate everything. Now I'm getting myself confused.

Q. So under Option 1 where it says:

Revert to pre-2018 work flow.

Are you saying you knew that was wrong on 3 June when you got this email?
A. No. Sorry, I am confusing myself here. So Option 1 which, as you said, was to revert to the 2018 profile, and that's what we were going to do. And Option 2 - because I had actually put to them, "just concentrate everything", right? But there were some they were not concentrating in under Option 1.

Q. All right.
A. In the pre-2018 work flow, there were a small range of samples that we weren't concentrating, and I had put forward to them, "Why don't we just concentrate everything given to us?" Even it was a quant value of zero, let's concentrate everything. That's the best thing that we could actually do for them scientifically.

That's when then in Option 2 was put forward to say, well, that was more than what was the 2018 workflow and that would create a problem of exhausting samples. And so Option 1, which is the 2018 work profile, I had asked, "Why don't we concentrate everything?", right? That's the best that we could actually do. And then it was put back to me under Option 2 that if we did that, these things would be a problem.

THE COMMISSIONER: Q. It seems from this email that, as I understand it, you said, "Why don't we concentrate everything"?

A. Yep.

Q. And, "I want to revert to" - but you also said, "I want to revert to the pre-2018 process" --
A. Yes.

Q. -- because we will just go back to the position that existed before this problem arose, until we sort out the problem?
A. Yes.

Q. So you are given this. Option 1, "revert to pre-2018 workflow" suggests that they're describing what you asked to be done, go back to the pre-2018 process?
A. Yeah.

Q. And that's a process in which all samples within the range, the relevant range, are processed; that is, a profile - they try to get a profile from all of them, but they will only concentrate those that are identified as worthy of concentration?
A. Yes.

Q. So that's the pre-2018 process you are being told. You now know that the pre-2018 process was actually called the auto-microcon process. Namely, they're all processed fully to try and get a profile, and in the course of it, they are all micro-concentrated?
A. Yes, which is --

Q. So Option 1 as represented doesn't appear to be true?
A. No. So I had asked for - I had put to them that we should concentrate everything, and which was - their response on that was the Option 2, to say that was a problem.

Q. We could do that, but we haven't - that's right.
A. And then in fact Option 1 was the pre-workflow where it wasn't all concentrated. Now, subsequently I then found out, well, we were concentrating. And --

Q. We see under Option 2, paragraph 2:

> *2. in previous discussions, the QPS did not support an automatic concentration process ...*

Do you recall what you understood by that?
A. That was really the last part of that, and the issue around they owned the evidence and the sample, and if it was exhausted, it is their property.

Q. Yes, but your understanding was that QPS - I shouldn't put these things to you.
A. Yes.

Q. You tell me what your understanding is. When did they represent this attitude, QPS? Did you have any impression about that?
A. So during this conversation --

Q. Yes.
A. -- that they had been engaging with Police.

Q. Yes. To resolve this issue?
A. To resolve this issue.

Q. Did you understand that the discussions that are referred to in paragraph 2 under Option 2 are discussions with QPS during the currency of seeking a solution to the then-problem?
A. Yes.

Q. Thank you.

MS HEDGE: Q. Can I just put things in the timeline?
A. Yes.

Q. So you had a conversation before this email --
A. Yes.

Q. -- where you said, "I want to know what the pre-2018 process is"?
A. Yes.

Q. Then you got the email. And was it then conversations after that, over the weekend, where you said, "what about just concentrating everything"?
A. So in fact I'd said concentrating - so when I asked Lara to submit around this, I had said to her, "Revert to the pre-2018 workflow; that we should concentrate everything".

Q. So you said that in your conversation before this

email?
A. Yes. So when I requested this, I put forward that we should just concentrate everything, not realising that that was the pre-2018 workflow till afterwards.

Q. All right.
A. So what I put forward I thought was going beyond or at an increased level of threshold for us, and - which was that concentrate and process under Option 2. But when I received this, it was put forward that that was not what we were doing in 2018 and there's a reason I shouldn't support that.

Q. All right. When you first suggested that, you understood you were suggesting a change to the pre-2018 process?
A. Yes.

Q. Had you already been told what the pre-2018 process was?
A. No.

Q. How did you know about the change?
A. No, that was only subsequent that I found out that proposing - sorry. I didn't - at that point in time, it was put forward to me that we were not concentrating everything.

Q. All right.
A. In that conversation.

Q. Before this email?
A. Yes.

Q. So before the email, you were told - you said, "What was the process pre-2018?"?
A. Yes.

Q. You were told, "We're not concentrating everything"?
A. Yes.

Q. And then you said, "What about concentrating everything"?
A. Yes.

Q. Then you get the email?
A. Yes.

Q. I understand. So before you got this email, would you have been content to make a change to the pre-2018 process if it was a positive change?
A. Yes.

Q. In your mind?
A. Yes.

Q. So you didn't feel confined by what had been happening back then; you were open to changes?
A. Yes.

Q. All right.
A. And --

Q. I'm sorry?
A. And I put forward as a minimum we should revert to the 2018, but I also put forward: can we do better, which was "concentrate everything".

Q. Did you ask whether there were other ways to do better?
A. No, that's what I put forward.

Q. Did you ask whether the pre-2018 process was best practice in the area of forensic science?
A. No.

Q. Did you ask whether your suggestion of concentrating everything that was best practice in forensic science?
A. So I asked whether that was possible, as opposed to saying, you know, is that what we should be doing? I posed it as a question.

Q. All right. Can we turn to paragraph 57 of your statement which appears at page 15 of the statement [WIT.0039.0002.0001_R at 0015]. You say here:

> *The scientific debate was not a factor in my decisions. The question to answer was whether I could reinstate the pre-2018 testing workflow while the issue is considered by the Commission of Inquiry ...*

Do you see that?
A. Yes.

Q. But you are content to add to that, or a better workflow if one had been suggested to you?
A. Yes.

Q. When you say the "scientific debate", what are you referring to, though?
A. Around when the threshold should be applied. I did not need the question answered whether it should be testing at the .001 to .0088, whether that was right or wrong, which was obviously in dispute between the scientists inside the service. What I needed to know was could we return to the point before this argument started occurring, which is the pre-2018 workflow, because we had already agreed that there would be a Commission of Inquiry and it would explore - it, effectively, would explore what is the scientific debate in this matter.

Q. When you said, "within the scientists" - "between the scientists there is debate between scientists in the service" --
A. Yes.

Q. -- you mean with the scientists working in the lab?
A. Well, no. Sorry, we had external plus the Police that were putting forward that we were, by applying a different threshold, impacting the number of profiles that we were able to develop. What was then subsequently clear, as this rolled on, is that there was significant debate internal to the service over that as well.

Q. Just focussing on 3 June, did you know about any of the internal debate then?
A. No.

Q. So you understood there to be debate between the management of the lab, say, Cathie Allen?
A. Yes.

Q. And scientists who might be speaking to the media?
A. Yes.

Q. And QPS?
A. Yes.

Q. But not any views about what internal staff working in the lab thought?

A. No.

Q. All right.
A. That had not been put forward to us.

Q. In paragraph 58 immediately below that, which is on the screen, Ms Keller told you that there were discussions with FSS DNA Analysis Unit management and scientific staff?
A. Yes.

Q. And that was about whether the - you can see the question there?
A. Yes.

Q. Prior to the announcement of the decisions on 6 June, the options were communicated or discussed?
A. Yes.

Q. Did you understand that had been discussed with scientific staff at levels below - well, perhaps I should rephrase it that way. Did you understand there was Cathie Allen and below that two team leaders, Paula Brisotto and Justin Howes?
A. My understanding was at that manager and senior scientists level. So those two senior scientists that sit below Cathie.

Q. So Justin Howes and Paula Brisotto?
A. Yes.

Q. I think their title is team leader, though?
A. Yes.

Q. I understand who you mean. So you understand those three were consulted or discussed?
A. Yes.

Q. After - do you understand, have you ever been told, that after the decision you made on 6 June that there was a variety of opinions expressed by staff within the lab, including people who disagreed with whether your decision was best practice?
A. Yes.

Q. When were you told about that?
A. Probably David was the first person who highlighted that to me when I spoke to him when I was on leave, where

he said there's significant view on this within the broader scientific staff.

Q. David Rosengren?
A. Yes.

THE COMMISSIONER: Q. He said that there was significant what?
A. Well, difference of opinion in the broader scientific staff.

MS HEDGE: Q. So at this time you understood there was no controversy within the lab about the threshold?
A. Absolutely. Sorry, yes.

Q. Either - I'm sorry?
A. Yes.

Q. Either between 2018 and 2022 or after your decision had 2022?
A. Both.

Q. Yes. After you made that decision on 6 June, and assume for me that some of those scientists expressed disquiet with your decision immediately to Justin Howes, Cathie Allen, Lara Keller - when I say "immediately", in the couple of weeks after, perhaps - would you expect that to have been briefed back to you, that there was that disquiet?
A. Yes, particularly because we hadn't received the resourcing brief. We'd said, "Go ahead with it, but prepare the resourcing brief and put that in there", and that would be part of any normal briefing. You would put in what's the consultation going on and whether there was a difference of opinion.

Q. All right. Now it is probably convenient to come back to that resourcing brief that you mentioned earlier to the Commissioner. Could we have this document [FSS.0001.0051.7337]. You read this Briefing Note?
A. Sorry, I am just waiting for it to come up to make sure it is the right one. If it's the brief that came to me, yes.

Q. Does it come to you like that as a draft?
A. I can't remember whether that first came as a draft or whether it was the final version, but that's the brief that

I received.

Q. All right. Under that "RECOMMENDATION", I assume, given you have given that number of $1 million, that these numbers aren't confidential?
A. No.

Q. So in that, we see the recommendation and we see that number, the over $500,000 --
A. Yes.

Q. -- for the temporary HP3 scientists; $55,000 for consumables; $78,000, approximately, to meet overtime costs. That's the numbers you were speaking about earlier?
A. Yes, though that represents to 31 March, so you just have to extrapolate that to a full-year impact. And it still comes in under $1 million.

Q. I see. That is to 31 March, speaking in financial years?
A. Yes, sorry, financial years. Our financial year is to end of June, so you have to add another three months on to that in cost.

Q. Yes. I tender that draft briefing note, Commissioner.

THE COMMISSIONER: Yes, exhibit 56.

EXHIBIT #56 DRAFT BRIEFING NOTE ON ADDITIONAL RESOURCES TO SUPPORT DNA ANALYSIS

MS HEDGE: Q. Can we go back to your statement, page 15, where we were [WIT.0039.0002.0001_r at 0015]. At paragraph 59 at the bottom of that page, you were asked about consultation or discussion. Could we just have the question too there, please, operator. Thank you.

You were asked about consultation, explanations, discussion with the Queensland Police Service, and you said it was Ms Keller's responsibility to communicate with internal and external partners such as the FSS team and the Queensland Police?
A. Yes.

Q. Are you aware that the Queensland Police weren't advised of the change in process from 6 June until 21 June 2022?

A. I am now, yes.

Q. Now, as I say that question to you?
A. Yes.

Q. Or "now" as in previously it was?
A. No, it previously hasn't been put to me that the first discussion wasn't until 21 June.

Q. All right. If that is the case - obviously there will be more evidence before the Commission, but if that is the case, that it wasn't advised until 21 June, do you think that is an acceptable level of explanation and discussion with the Queensland Police?
A. No.

Q. What would you have expected to happen?
A. I would have expected in that period while we were establishing what should be the resourcing for this, that that conversation would have been going on for police to say, "We're going to revert to our 2018 workflow," so that the issue in contention between us is temporarily resolved.

Q. So you would have expected there to be consultation between, say, 2 June and 6 June?
A. Yes.

Q. All right.
A. Given what was going on then, around 6 June when the decision was being made, I would have absolutely expected that, so that if there was a problem highlighted from Police, given that we were talking about the end of the week and beginning of the new week, there would have been that opportunity at any time to come back and say there is a problem, because it would take us a while to get resources in place to do this.

Q. I should clarify my question and what I said. This was, as I understand it, formal communication to the Queensland Police. They were, of course, aware of a decision because of a press conference held by the Minister and the Premier?
A. Yes.

Q. As you explained in your statement, you advised Ms Keller, and others, of your decision before that press conference?

A. Yes.

Q. And that was by videoconference on 6 June?
A. Yes.

Q. And that was the way that you advised of your decision, in that teleconference? There was no formal memorandum or email?
A. So it was an instruction issued verbally by myself with a requirement for them to provide the brief for that resourcing, and then that would be the formal sign-off as soon as the brief had arrived, but they were instructed to proceed on that basis now.

MS HEDGE: I am about to move on to a difference topic, Commissioner?

THE COMMISSIONER: Yes.

MS HEDGE: Is now a convenient time for a break?

THE COMMISSIONER: Yes. We will adjourn for 20 minutes.

SHORT ADJOURNMENT [10.58am]

THE COMMISSIONER: Ms Hedge.

MS HEDGE: Q. I am moving, Mr Drummond, to the 19 August decision made by Dr Rosengren?
A. Yes.

Q. You say in your statement that you had some conversations with Dr Rosengren immediately before and after, but you did not make the decision or tell him to make the decision?
A. That's correct.

Q. Could we look at the memorandum that he sent on 19 August 2022. It is [WIT.0032.0062.0001_R].

THE COMMISSIONER: Exhibit? Is it part of Mr Drummond's statement?

MS HEDGE: No, it is not, I'm sorry. It is part of Dr Rosengren's statement.

THE COMMISSIONER: I don't have that yet. But that's all

right. I'll look at the screen.

MS HEDGE: Thank you.

Q. You've read this memorandum?
A. Yes, I have.

Q. Did you understand that the impetus for this was a recognition that what had been written in that email of 3 June about what was a reversion to the pre-2018 process was wrong?
A. Yes.

Q. You had been given - you had been told you have been given inaccurate advice back on 3 June 2022?
A. Yes.

Q. Did you understand that the purpose of this was to correct that?
A. Yes.

Q. And so did you - is your understanding that the purpose of this memo was to revert, truly revert, to the pre-2018 process?
A. Yes.

Q. Can we just zoom in on the paragraph:

If further amplification is considered ...

Just below the bold:

... and if this process will exhaust the remaining sample volume, then written approval must be obtained from the Queensland Police Service (QPS) prior to this process being initiated.

A. Yes.

Q. Are you aware that that was not part of the pre-2018 process?
A. No.

Q. Are you aware that that idea, "written approval from the Queensland Police Service to exhaust a sample", has in fact, to the current knowledge of the Commission, never

been part of a process at the lab?
A. No.

Q. Can we take off that zoom-in, please, operator. I should ask, if that is true - assume that what I have told you is true, that that was not part of the process - do you expect someone should have told you that when you returned from leave, that there had actually been a change to the pre-2018 process by this memorandum?
A. Yes.

Q. Who should have told you that?
A. Well, at that point in time, I would expect it coming through Keith or Lara rather than David.

Q. Is that because he went back to his other roles?
A. Yes.

Q. And is his other role - he's chief opening officer?
A. Yes, and Prevention Division, which has pathology and FSS under it, does not sit under the chief operating officer's portfolio. It sits - that DDG reports directly to the Director-General.

Q. That is Dr Rosengren in his role?
A. So - sorry. So Professor McNeil, who is the DDG of Prevention Division, which PQ and FSS sits under, reports directly to the Director-General. It doesn't go through David's role at this point in time. On 17 October it changes, but at that point in time, my expectation would be that that issue should come through Keith or Lara to me.

Q. If they are aware of it, I assume?
A. Yes.

Q. Are you aware that scientists within the lab have expressed concerns about this process that's been put in place by this memorandum in terms of their view that it does not maximise the chances of getting a useful profile?
A. I suppose through conversation, I am now aware that there is ongoing debate with regards to this as an alternative as well.

Q. When you say "conversation", conversation with who?
A. So that has occurred with, well, David and Matt Rigby subsequently.

Q. After 19 August?
A. Yes.

Q. And before, is that fair?
A. Before 19th? Yes, because the initiator for revising this was the fact that there was disharmony amongst the scientists inside our service around what we were doing, and so that's why David had to review that and effectively reverse the earlier memorandum, my one.

Q. I understood you to say a few minutes ago that the impetus for this was because you were provided inaccurate advice --
A. Yes.

Q. -- about what the pre-2018 process was.
A. Yes, but then David got - so David got that corrected advice, which came up through the scientific ranks, at that point in time, yes.

Q. All right. How does the disharmony fit into that?
A. Well, because again we've got dispute between, effectively, the people that have previously given us advice, which was to say this was the process. And now the scientists that were involved in doing the process now saying that's different.

Q. I see. So the disharmony you are referring to is scientists saying, "That is not in fact a pre-2018 process"?
A. Yes.

Q. All right. You are not referring to disharmony about whether there should be an automatic or discretionary concentration process?
A. So now I am aware, subsequently, around - since 19 August - around the view that there should be scientific discretion around the concentration process, yes.

Q. How did you find out about that?
A. Oh, gosh. It is in one of the conversations that I've had, and it was probably - that would be with, probably, the task force, in conversations with our task force in responding to this.

Q. This is the task force that responds to the Commission of Inquiry?

A. Yes.

Q. Are you aware that professor Linzi Wilson-Wilde and Dr Bruce Budowle are two experts, one interstate and one international, who gave evidence at the Commission last week?
A. Yes.

Q. Are you aware they gave evidence that best practice is to have a discretion in whether things are concentrated?
A. Yes.

Q. Did you become aware of that through the hearings or were you aware of that from material provided in advance?
A. So I was advised that through the briefing on what had come out during the hearings.

Q. Sorry, say --
A. So I was advised that through the summary that I get of what's come up during the hearings.

Q. Okay. Those two pieces of information that the scientists in the lab, some believe that there should be discretion, and that these two experts have talked about discretion, do you have any current plan or intention to consider that issue?
A. So at this point in time, we have supported the requests that police have put to us with regards to our testing regime, and so we will, at this point in time, given that we've had, effectively, a cascading change in the advice that we were giving the scientific services, it's not our intention to change that again other than to comply with the requests that we've got from Queensland Police Service.

Q. When you say, "to comply with the requests", do you mean when they request to exhaust - when they have given their approval to exhaust a sample?
A. Yes.

Q. Could we just zoom in on that paragraph again about the QPS. Yes. I am sorry, operator, could we have the paragraph above it as well, with the bold. The bolded paragraph, it identifies what samples this memo relates to?
A. Yes.

Q. Is it your understanding that this memorandum only

relates to those samples, that is Priority 1 and 2 with a quantitation result within that certain range?
A. Yes.

Q. Are you aware that, given that to be true, that the lab may exhaust samples that are P1 and P2 outside of that range without approval from the QPS?
A. No, I wasn't really cognisant of it, but that makes sense because we're actually saying that within this range, that that can't happen without their approval. So we have not commented on samples outside that. So, yes, it could be exhausted.

Q. But then at the moment there's two different regimes for when approval is obtained from QPS to exhaust a sample, depending on the quant range?
A. Yes.

Q. Do you think that's a good process?
A. Well, the likelihood of a profile above the 0.0088 is so significantly different, then I would have to consider that. I'd like to know what the percentage difference is.

THE COMMISSIONER: I don't know that that is a question to ask Mr Drummond, Ms Hedge, because while he might give an opinion that in general there ought to be the same regime in relation to exhaustion of samples for all samples, whatever the range, whatever the quant, it may be, as we keep discovering, that there are different ramifications depending upon a quant and other considerations, and he wouldn't be expected to have a grip on those things without seeking advice.

MS HEDGE: I am happy to move on from it. Thank you.

Q. Could I ask about something that occurred last week, I understand on Friday, that you ordered a pause in testing?
A. Yes.

Q. At the laboratory?
A. Yes.

Q. I will just see if we have that document available. I think it was emailed to the operator and provided to the parties this morning. If we could just redact that phone number under, "Inquiries to." Thank you.

This is the memorandum that you - there should be a second page. Could we scroll to the second page, so we can see - can we redact that signature and email. Thank you. But we see this is a memorandum signed by you last Friday, 30 September?
A. Yes.

Q. Back to the first page, please. It says in the first line:

It has been brought to my attention that Queensland Police Service (QPS) have formally requested, by email on 20 September 2020, that FSS temporarily pause testing.

A. Yes.

Q. Is the email you're referring to an email from Inspector David Neville?
A. Yes.

Q. You have seen that email?
A. Yes.

Q. How did you become aware of that email?
A. Through my office.

Q. What date last week? Well, what date did you become aware of that email?
A. It was probably the day after 20 September.

Q. The day after the 20th, so the 21st?
A. Is the 21st a weekend or a - honestly, I --
Q. 26th was a Monday, so 25th and 24th were a weekend?
A. Yes, yep. So it was the day after that email.

Q. That email went to Ms Keller; is that correct?
A. Look, I can't remember who that was addressed to. It was not Ms Keller who brought it to my attention.

Q. All right.
A. It was Matthew Rigby.

Q. Do you know how Matthew Rigby had the email?
A. I believe that it might have been supplied by Lara.

Q. To him?
A. To him.

Q. All right. So it was briefed up through Queensland Health, to your understanding?
A. Yes.

Q. What did you do between 21 September and 30 September to assist in making this decision to acquiesce to the request to pause?
A. So I sought advice again from our task force responding to this to say, "Is this appropriate to issue an instruction?", to that effect. After I received that advice from them, which was to say, "Yes, you must", I did.

Q. So advice from people in the task force within Queensland Health responding to the Commission?
A. Yes.

Q. Are they lawyers? So I don't ask you anything that is privileged.
A. Yes.

Q. Okay. Did you seek scientific advice about what a pause in testing might mean?
A. So what was very clear in their advice to me was that it was their property. And so, regardless of the scientific process, if they had issued a formal instruction to us, it is their evidence and we can't process it without their authority.

THE COMMISSIONER: Q. I guess that's right, isn't it, in that Queensland Police ask you to test things and it's the duty of FSS to test them, according to proper scientific principles and processes, when asked. But unless you're asked, you've got no business taking samples and doing anything with them?
A. It is a situation where we're damned if we do, damned if we don't.

Q. I don't know that you are damned at all. What I mean is I am agreeing with you that, rather than talk in terms of whose property something is, the samples are things that Police ask you to test or they don't ask you to test.
A. Yes.

Q. And without a request --

A. Yes.

Q. -- there's nothing for you to do, is there?
A. Yes. Absolutely. But that comes to that difference in that 2018 threshold where there was this environment where they could still request them to be concentrated and tested, but the argument from Police is that, effectively, that was discouraged.

Q. Yes. But that's a different thing?
A. No --

Q. And that becomes - anyway, I was just remarking on your answer that you felt that you were obliged to stop testing if Police asked you to stop testing.
A. Yes.

Q. And at the moment, I don't see how you could test something unless police asked you.
A. Our role is to support them as their scientific service, where they request us to do so.

MS HEDGE: Q. You say in the second paragraph there:

> *Before resuming testing, QPS are seeking advice from FSS as to whether these concerns are valid.*

Do you understand the scope of that advice?
A. Yes, sorry, my understanding is they're going to independent expert scientific opinion with regards to that, and then that will be provided to us once they've had that advice. Sorry, the outcome of that. Not necessarily the specific advice.

Q. That is, FSS are seeking that advice?
A. No, no. Queensland Police Service are looking at - so my understanding is that Police are now going to seek expert independent scientific advice as well as advice from FSS.

Q. Okay. So the QPS independent expert advice is not referenced in this memorandum?
A. No.

Q. I am not suggesting it should be --
A. No.

Q. -- but it's just not. So do you know what advice they are seeking from the FSS?
A. Yes. So around what's the likelihood of lost samples and therefore the impact on evidence if we've done a blanket volume of concentration.

Q. But is the two hypotheses then considered a blanket volume of X and a blanket volume of Y?
A. Yes.

Q. So there's no consideration in this of discretion being given to scientists as to what concentration might happen?
A. Yes.

Q. It is all about just different blanket volumes?
A. Yes.

Q. From the FSS perspective, how long do you expect that advice to take to be given?
A. I think it should be happening immediately. So that we should - within the week, if it's possible, we should be providing that advice.

Q. Have you been told how long it will take?
A. No, I haven't at this point in time.

Q. All right. Are you aware that Ms Gregg, who was acting in Ms Keller's role, indicated prior to the pause that it might take months to look at different blanket volumes?
A. Yes, but I don't think we have the luxury of taking months, because the backlog at that point in time and, therefore, the impact on timely testing, is significant. And given that other jurisdictions have different testing and concentration thresholds, I would have thought that we'd be able to go to some of those laboratories and say, "Well, what is the proportion of samples that are used?" That might be naive, and that's why, I suppose, I am assuming that we should be able to give an answer at least to initially advise Police sooner than months, which might be a thorough analysis of our own work, but we've got laboratories in Australia that are concentrated at different thresholds, and without going to the specific outcomes of those, we must know what proportion, we must be able to ask them what proportion would be exhausted.

Q. Have you told those ideas of how they might go about providing this advice to Ms Keller or to Ms Allen?
A. I haven't had that direct conversation with the quants.

Q. -- or - not Ms Allen. Ms Keller? No, all right. Or to anyone down the chain towards the lab?
A. I just talked within my office to say, "Surely we must be able to get advice without having to have done a complete scientific review," because that at least gives us an indication whether there is an absolute need to spend months making this decision or whether there is an ability to make a decision earlier.

Q. All right.
A. So it doesn't necessarily give us a definitive answer, but it might give us the ability to say, "Can we make a definitive evidence answer on the evidence of other laboratories?" And if we can't, then we have to spend the months. But if we can, then that's what we should do, because I am concerned around the backlog and, therefore, the delay in testing with any new matter.

Q. Are you going to be involved in determining how FSS give advice? Or is that for people at a lower level than you?
A. People at a lower level.

Q. Okay. So these are your ideas, but you're not going to give a direction about that? All right.

Can I ask about something else in terms of funding. As part of your inquiries into the DNA Analysis Unit since this Commission started, is it right that you asked some of your staff to look into historical records as to what funding requests have been made?
A. Yes, I have.

Q. That was mentioned briefly with the Commissioner earlier, and you said that there had been no requests through formal channels for extra funding for the DNA Analysis Unit?
A. That's correct.

Q. All right. How far back do those records go that you were able to --

A. So I asked them to check back to the financial year of 2017-18, whether there had been any requests at any time before that or after.

Q. If the laboratory is underfunded to provide a quality service or quality profiles, would there be any proper reason not to request funding?
A. No.

Q. Can I go back a little to the time of about March this year. Were you told around that time - you had those two meetings we discussed, 8 and 14 March. Were you advised by anyone at that time that individual scientists had taken concerns about the DIFP threshold to Ms Keller directly?
A. No.

Q. Were you advised that on behalf of --

THE COMMISSIONER: When are you speaking about, Ms Hedge?

MS HEDGE: March this year.

THE COMMISSIONER: Yes, thank you.

MS HEDGE: 2022.

Q. Were you advised that Ms Keller had passed on, or on behalf of those scientists, made a submission to the Ethical Standards Unit for a public interest disclosure?
A. So, I became aware of that last week.

Q. All right. Have you had the chance to look at the documentation around that?
A. So, I've seen a summary from the Ethical Standards Unit with regards to the matter raised.

Q. Can we put that on the screen. It is [FSS.0001.0067.2677].

MS HEDGE: I don't believe it's attached, Commissioner, to any of the statements you have.

Q. While that is coming up, so you were told last week --
A. Yes.

Q. -- that that existed?
A. And I was given this summary from the Director of

Ethical Standards Unit and what had happened.

Q. So you were told then that the Public Interest Disclosure was refused --
A. Yes.

Q. -- and referred back to Ms Keller?
A. Yes.

Q. Could we scroll down to page 2, please [FSS..0067.2677 at 2678]. Is this the document that you were shown last week, or something in a different form?
A. No, that - that looks like it, yes.

Q. In the second paragraph there, we see the concerns raised that:

- Their feedback was not incorporated, and their name was removed from the signatory list for the final version.

- They went on to question the science on two other occasions, but without success.

And then:

Complainant 2 has provided examples of criminal cases requiring DNA testing ... that [have] elicited results.

Do you see that?
A. Yes.

Q. You were told about this last week?
A. Yes.

Q. You previously have never been told about this by anyone? Sorry, you will have to say out loud for the transcript.
A. Sorry, no.

Q. If we scroll down a little bit, operator, do you see that paragraph there:

The ESU also considered if the concerns would amount to a PID [Public Interest Disclosure] ...

Do you see that?
A. Yes, I do.

Q. In the five, the fifth dot point down, do you see the one that says:

- Developments since the process change have highlighted that, in hindsight, the feedback provided by Complainant 1 (and others) may have been valid.

Do you see that?
A. Yes, I do.

Q. So the Ethical Standards Unit considered that the feedback provided on - did you understand that this was the feedback provided on Project #184, which led to the Options Paper?
A. Yes. Well, I believe so.

Q. That might be too much detail, so --
A. Again, I was provided this as a summary last week.

Q. Yes. ?
A. You know, part of my role is to not interfere in the evaluation by our Ethical Standards Unit on the nature of these, because in fact that is inappropriate. That has to be independent of any direction by officers. So when this is provided to me, I've looked at that, I've read it. But, you know, I don't - I am not involved in the process of assessment of these matters.

THE COMMISSIONER: Q. I guess we can look at the legislation and sort it out, and we'll do that, but I am interested in your understanding. Your understanding is that, in terms of good management from the position you occupy, you don't have standing to raise questions about this process? Other people may have standing, but you're not one of them?
A. Sorry, yes. I don't have the ability to, you know, change the decision on whether this is a PID or not or whether this is a matter of conduct. That is for the officers and that role. And so while the head of Ethical Standards Unit does have a reporting relationship with myself, that is on operation of the function --

Q. Yes.
A. -- not on the evaluation and the PID status of individuals inside any matter raised with them.

Q. I understand.

MS HEDGE: Q. Could I direct you to the second-last dot point:

> *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.*

A. Yes.

Q. Do you agree with that statement?
A. No, I don't.

Q. Are you aware of cases in which the DNA evidence is the only piece of evidence that might implicate a person in a crime?
A. Absolutely.

Q. Taking into account those last four dot points, as well as tell us if you shouldn't answer this because of what you have said about not overseeing the Ethical Standards Unit, but do you think those last four dot points are an appropriate response?

THE COMMISSIONER: I don't think it is fair to ask Mr Drummond that, because what's the use of his opinion to me? He is a man who occupies a position where if he had read that at any relevant time and had come to the view that those four dot points, or anything in there, is wrong, there's nothing he can do about it. I guess he could raise it informally with somebody, but what are you seeking to do with this that assists me in my task?

MS HEDGE: The purpose would be that Mr Drummond is in a position where he has sufficient knowledge of the Health impacts and the criminal justice impacts to be drawing those high-level policy decisions. So he may have a view about whether this balancing that appears to have occurred

in these dot points is appropriate or not. But I am happy to move on.

THE COMMISSIONER: I think you should move on, Ms Hedge.

MS HEDGE: Thank you. We can take that down from the screen.

Q. Can I ask about the culture inside the forensic DNA laboratory. Have you been briefed on cultural issues existing at the DNA Analysis Unit?
A. So I have had not a formal briefing but conversations, certainly with both Keith McNeil and Lara, around the problems that exist between staff.

Q. Between staff?
A. That have been ongoing, yes.

Q. All right. Do you see that - could you explain that answer further. Do you see that just as individual problems or a widespread cultural problem?
A. So it's widespread, and that there have been interventions in the past. Obviously not particularly successful, because the disharmony continues and the cultural problems between that.

Inside the Health system, where we have highly educated, highly specialised people, we often see personality conflicts and cultural conflicts occur between people in very specialised areas, and their strength of belief around differences around how service should be conducted, or when, often results in a cultural conflict. This area is one of many examples that occur inside the Health system.

Q. From your understanding of this lab and other areas, do you say the cultural problems are on par with other areas or worse there? Or you can't judge that?
A. So against the continuum of what we see, it's on the serious end, but it's not the worst. That's not saying that we aren't intervening in those other areas, because by the time they come to me, it's because there is a significant intervention happening because most of these services and issues - and in amongst 125,000 staff, the majority of them are within the system within Hospital and Health Services, and so by the time it comes to the Department, it is a very serious issue. So on the spectrum

of things I tend to see the very serious. And the same as the chief executive in the Health service. You see the very serious end; you don't see the lower end. So it sits in that basket around, you know, significant disharmony that is impacting on the ability to work well together.

Q. When was it briefed to you that there were cultural issues inside this laboratory?
A. So probably in that conversation post 8 March, the first meeting that we had, subsequently I talked to the Chief Human Resources officer, Theresa Hodges, who had highlighted that they had had ongoing cultural issues and that they, over time, had been supporting the service and trying to resolve those.

Q. And are you aware that a number of previous executive directors have attempted to put programs in place or make changes to try and improve the culture?
A. So, yes, Theresa highlighted that with me.

Q. You understood the cultural problems existed over a long period, is that fair?
A. Yes.

Q. And now there is some extra pressure, perhaps, from the Commission of Inquiry?
A. Absolutely. It's going to be exacerbated in these heightened circumstances.

Q. What do you understand - do you understand whether particular steps are being taken now to deal with the cultural problems as you see it?
A. So there is a range of activities that have been supported post that - Theresa gave me a highlight for. I can't remember what they all are off the top of my head; I'd have to go back and have a look at what she told me at the time. But during this period, during this year, there has been continuing work to try and support, during this calendar year.

Q. All right. But you don't know the specific details of that? I am not suggesting you should, but that's for people slightly below you?
A. Yes.

Q. Do you think that a cultural issue in a workplace like the forensic laboratory might be slightly different to some

other areas because of the ever-evolving nature of the science in that area?
A. No more than a clinical area where - you know, clinical science evolves every year and we do see this disharmony between, you know, what might be traditional practice and what's contemporary practice. That creates conflict in a clinical environment as well as a scientific environment.

Q. In both of those environments, the scientific and the clinical, do you believe that a good culture is necessary to create robust discussion around scientific issues?
A. Absolutely.

Q. And that a lack of robust and open discussion about issues might actually result in degradation of the science or the clinical environment?

THE COMMISSIONER: Ms Hedge, I don't know if this is helpful. These are questions which the answer must be "yes." I don't know that Mr Drummond has greater expertise to answer that question than, for example, I do. It must be the case that a good culture will promote robust discussion.

MS HEDGE: I don't disagree with you, Commissioner, but Ms Drummond does have experience of a scientific environment that might assist the Commission --

THE COMMISSIONER: All right. You go ahead.

MS HEDGE: -- rather than a legal environment. But I am content to move on.

THE COMMISSIONER: No, I just mean these are - you go ahead if you think these will help me. I will trust your judgment.

THE WITNESS: So if I can answer: yes. It takes, from light bulb moment of invention of, effectively, new process or new opportunity, about 15 years in the Health system to implement something so that it's normal practice, right? If we don't have good communication, good culture, good discussion around that, that's why it takes 15 years, on average, because those clinical areas or scientific areas that have good robust internal communication, resolution of that, change to latest contemporary practice at a far

faster rate for that.

So there is absolutely a benefit in a clinical area or scientific area in Health in having that good culture of discussion, because it allows the change process to occur.

MS HEDGE: Q. And from what you have been advised about this lab, have you seen evidence that a culture has resulted in degradation of quality of outcomes or of the science?
A. Yes, evidence by what has been - you know, why we are in a Commission of Inquiry now, and the constant debate over every decision that's made, there is not harmony with regards to the decision-making or the way forward that is resulting in everybody going in the same direction, and a good culture would be not everybody has to agree with the individual merits of the decision-making, but they support what is the decision made.

What we find here is, you know, constant argument over the decisions that are made. There's not that ability to coalesce people under the same direction.

Q. What do you think is the management responsibility at the level of Ms Cathie Allen, and the managing scientists level, to ensure or propagate good culture?
A. That's a primary responsibility of any director or manager and so the system.

Q. And how should that be done?
A. That is engagement with people, transparency around decision-making, honesty, engagement. You know, fundamentally it comes down to the conversations that you have within the team around the decisions that you are making, how, and their ability to participate in good decision-making.

Q. And that is that the staff members who might be described as lower down are able to participate?
A. Yes, absolutely. The grassroots of the organisation needs to actually understand the decisions that we are making, the directions that we're going and participate in how we make those decisions.

Q. What about at the level of Mr Howes and Ms Brisotto, that team leader level? Is it the same or is it a different responsibility?

A. The obligation is still there, but it's on a different scale. I mean, that's within the harmonisation within their teams and then the harmonisation between themselves and their peers. So if we think about, you know, in a complex diagram, they need to be able to be supporting their teams so their participation and understanding is high, but then they need to be able to operate with their peers and the harmonisation around what they are doing as a peer group that then leads up to, effectively, you know, the managing scientists and then through to the Executive Director. Everybody has got a cascading responsibility of not just working with their teams but also working across the organisation to their peers and then also working up, in a hierarchy sense. It is up, down and sideways.

Q. And at the Executive Director level, does that all apply also?
A. Absolutely.

Q. If an Executive Director is not involved in the scientific decisions within the lab, how should they be involved in managing the culture?
A. So, they don't have to be involved in the decision-making. What they need to do is to be very clear that the people that they report to them are behaving in that way around the behaviours that lead to good engagement; good consultation. That's their responsibility, effectively, in their human resource management responsibilities as a director, to ensure that that leadership is behaving in the way that actually builds to the strongest decision-making or culture.

Q. Have you, as of yet, had any consideration of whether the people in those positions, Ms Keller, Ms Allen, Mr Howes, Ms Brisotto, are meeting their obligations or responsibilities as you have outlined them?
A. I have my concerns.

Q. Can you tell us what those concerns are?
A. I mean, obviously what's evidenced through this is, as this has developed, clarity around the removal of people from some of the decision-making, the removal of people from - you know, that were signatories that would otherwise have been a signatory if they didn't have a dissenting opinion. That's in the evidence that we have recently been given. That leads me to significant questions around how do we find ourselves in that circumstance, and what's the

role of the managers and those senior people in that.

Q. So that's relating to that ESU brief that we looked at earlier?
A. Yes, absolutely.

Q. Have you investigated other aspects of management's dealing with the culture issues?
A. So, other than the briefing that I'd had with Theresa Hodges, who did come and talk to me around what we had actually been doing.

Q. I see. But did that briefing go into the details of particular specific instances in which there was a failure to comply or failure to manage those obligations?
A. No. No, it doesn't. No, it doesn't.

Q. It was more general than that?
A. And I would not get involved in that level of detail, you know, 125,000 people inside our system, and sad - I don't know whether I should say "sadly", but the Director-General is the employer of all bar the senior medical officers and the executive service, so you have to work in a distributed fashion with that many people you are responsible for who are over the detail. You can't get involved with that because of the sheer volume of employees we have.

Q. Can we go back to that ESU brief. It doesn't need to be on the screen, but is it your understanding whether there was any other process? I'll start again.

Once the Ethical Standards Unit said that it wasn't a public interest disclosure, that was communicated to the scientists, you understand?
A. Yes.

Q. All right. Are you aware of any other process that those scientists could have taken to escalate those concerns after being told it was not a Public Interest Disclosure?
A. So the fact that it might not be a Public Interest Disclosure doesn't mean that there isn't an issue that needs investigation and resolution, because there are things that are not CCC matters that we are required to respond and act on.

Q. Yes. And so, Ms Keller was in possession of the information that led to that?
A. Yes.

Q. So was it her responsibility to investigate that?
A. Yes. Yes, it is.

Q. Have you made any investigation into whether Ms Keller did investigate those issues?
A. So I've literally had this shared with me last week. And, again, at this point in time with everything going on, if advice was sought from me, I'd say, "What do you need to do to ensure no further damage?" But if you tried to investigate the issue while we have a Commission of Inquiry on, that could be prejudicial.

Q. Right. Can we deal with what Ms Keller should have done to investigate. Should she have briefed up the chain to Professor McNeil or to yourself?
A. Well, it wouldn't be to myself because every human resource matter going on where there might be a conduct issue that is not a corrupt conduct issue - sorry, a misconduct issue - doesn't get briefed to the Director-General, nor would it necessarily be briefed to a Deputy Director-General. In this case, because of what is going on and the nature of what is publicly going on, there should be at least conversation if not formal brief with the Deputy Director-General.

Q. What about investigating? Should Ms Keller, in your view, should she have conducted some investigation to interview people or gather other information about the issue after the Ethical Standards Unit said it wasn't a PID?
A. Given that, I believe, March they got that - is it March that they got the answer back from Ethical Standards Unit, and we weren't in a Commission of Inquiry at that point in time. Yes.

Q. Is it anyone else's responsibility other than Ms Keller's?
A. Well, the complaint went to her.

Q. Yes.
A. So it is her responsibility to resolve that. As to whether there is something further that should happen that is outside the CCC process to resolve. She may need advice

from it from the human resources branch inside the Department and support for that, but it is the required to - if I think about my career, I have had a number of things which are behavioural problems that are not corrupt conduct that we still actually had to investigate and answer.

Q. Yes. Now, this issue, the one raised with Ms Keller and the Ethical Standards Unit, was a mixed issue, wasn't it, not just of behaviour or conduct but also of science?
A. Yes.

Q. In the sense that the scientists were saying that the DIFP threshold was inappropriate for obtaining quality results; is that fair?
A. Yes.

Q. And so, we have dealt with the behaviour conduct, but should Ms Keller have been investigating whether that threshold was appropriate?
A. I believe so, once it was raised internally.

Q. Right.
A. And the reason - the reason why I am making that statement is we should always trust our staff until we have reason, you know, not to. And then that's when you get a second opinion, third opinion, to say, "If we've now got conflicting evidence within the group, then you need to do some verification on that."

Q. Yes.
A. When you don't have conflicting evidence, there is no reason why you would be going and getting a second or a third opinion, but given that this was actually raising up, the obligation then becomes, as a Director, to say, you know, you need to have that answered for yourself.

Q. All right. And would you understand - you understand Ms Keller's scientific experience is not in DNA analysis?
A. Yes. So she would have to go to another person to actually get that supported.

Q. Yes. And would that other person be outside the laboratory?
A. Yes, because the difference of opinion is within the laboratory.

Q. So your expectation, having received this information, would be that an external independent opinion was sought about it?
A. Yes.

Q. Are you aware that Ms Keller has been told a number of things by different staff about different topics, which I won't go into in detail now? But are you aware it's not just this one?
A. Yes.

Q. And so is that your view for any scientific issue that came up to Ms Keller, that there should be some investigation and consideration, at least, of an external report?
A. So I think that comes down to why I certainly initially supported a review, because some of this, there needs to be that independent advice, given that we've got a difference of opinion. Now, originally, that was based on that that difference of opinion was external. As it has developed, through this, we now find there is significant difference internally, and that sort of doubles down on the need to have brought in independence to give view and surety for us on what we should be doing.

Q. Do you perceive there's some difficulty with the structure of the FSS that above the managing scientists, there is no one in the structure that has deep DNA analysis knowledge?
A. No. No, I don't. I'm not a clinician, but I've been a chief executive for more than 20 years. You can make the decision and get advice. Your ability to be able to understand and interpret the advice that you're given is what is important, and where it's not clear, you continue to pull a thread.

Q. Right. So the scientists who took this matter to Ms Keller, that was the appropriate way to raise the issue?
A. Yes.

Q. All right.
A. But given that where they - the difference of opinion was with their managers, and so staff or any employee needs that ability to escalate above that level where they have, effectively, a difference of opinion.

Q. Thank you.

MS HEDGE: Those are my questions.

THE COMMISSIONER: Thank you. Who is next? Does anybody want to ask any questions? Mr Rice?

MR RICE: I do. I would prefer to go last.

THE COMMISSIONER: You'd like to go last? Yes.

MR HICKEY: I have a few questions.

THE COMMISSIONER: Yes, Mr Hickey.

<EXAMINATION BY MR HICKEY

MR HICKEY: Mr Drummond, you gave some evidence a few moments ago in response to some questions from my learned friend about Ms Keller, and in particular you said that it would have been prejudicial to have initiated investigations into what steps, if any, Ms Keller did or ought to have taken in response to the things she came to know in March. Do you recall what I'm talking about?
A. Yes. Sorry, to just clarify, once we had a Commission of investigation - you know, a Commission of Inquiry started. Not before that, when we were actually considering a review. Then, absolutely, we were in a position at that point in time that we wouldn't be effecting another process.

Q. All right. When you say, "when the Commission of Inquiry started", do you mean when the Commissioner was appointed and the Terms of Reference were published in the Gazette? Is that what you mean?
A. Yes.

Q. You don't mean when the hearing started, you mean when the Commission had started it work?
A. Yes.

Q. And that's because you accept, do you, that to interfere with internal processes, once the Commission had got going, would inevitably be prejudicial to the work of the Commission?
A. That the ability for people to actually respond while they're going through a Commission of Inquiry is impacted significantly, and so their ability to have fair

opportunity to respond to what might be a conduct issue through a normal Human Resource management pathway, while they're also involved in responding to the Commission of Inquiry, it is not fair, I believe, to draw on both of those things at once.

THE COMMISSIONER: Mr Hickey, why would it interfere with my work if they changed scientific processes?

MR HICKEY: I am not putting that as a proposition. I am asking him was that his concern in not initiating those investigations.

THE COMMISSIONER: I thought you said "would you agree" that that's so? Anyway, are you not putting to him.

MR HICKEY: I am not suggesting it.

THE COMMISSIONER: That's fine.

MR HICKEY: I'm trying --

THE COMMISSIONER: No, no. You go ahead. I understand, thank you.

MR HICKEY: Q. Without identifying them, because I don't believe it is in evidence at the moment, you are aware, aren't you, that two senior scientists within the lab were suspended the week before these hearings of this Commission commenced?
A. Yes.

Q. Were you involved in that decision?
A. Yes.

Q. Were you the person who --
A. No, I was not the person who took the decision. I was involved in the discussion around it. I was not the decision-maker. That is the delegate, the Human Resources - you know, the delegate under that, and I believe the delegate at that time was Mick Steele.

THE COMMISSIONER: Q. The Commissioner of Police?
A. Mick Steele, who was acting for the - as the - I don't know, I might - so sorry. I was not the delegate. I would need to go back and check who was the delegate at that time. It might not have been Mick.

MR HICKEY: Q. Whose idea was it to initiate that process?
A. I think that was probably quite a general conversation amongst the leadership in the team at that point in time, that where there was identified issues going on. Bearing in mind that, you know, this is subject to a process. I'm not quite sure what I am or aren't allowed to answer with regards to that, but there was a discussion with the leadership team around that. But ultimately, that was the delegate. And it was - actually, it would have been Lara Keller who was the delegate for suspension.

Q. All right. So was it Ms Keller's idea?

THE COMMISSIONER: What do you mean by "idea"?

MR HICKEY: Q. Who initiated the decision to suspend those two senior scientists?
A. So that was a --

THE COMMISSIONER: You mean who first proposed --

MR HICKEY: Yes.

THE COMMISSIONER: -- that that ought be considered?

MR HICKEY: That's right. That's what I'm after. Thank you, Commissioner.

THE COMMISSIONER: Q. To your knowledge, Mr Drummond?
A. To the best of my knowledge? Look, I was involved in that discussion, around whether or not that should be considered, and I was probably the first person to say that that needs to be considered. Not the decision to actually suspend, but that it must be considered, given the issues that were now being raised.

MR HICKEY: Q. Was that Mr Drummond because that was suggested to you by the Minister?
A. No. The Minister did not have anything to do with that decision, but given that it was going to be a significant, you know, public matter, the Minister was informed that the Department had taken that decision.

Q. After the decision had been taken?
A. As it was happening, because it would have got into

the media immediately.

Q. All right. Did you hold the view at the time the decision was being considered that it might be prejudicial to the ability of those two people to respond to the Commission about a decision to be taken?
A. No. In fact, I believed that it provided, probably, a space for them to be able to answer, because at that point in time they were still holding other responsibilities and they were having to give significant input and responding to the Commission of Inquiry. Having them having to perform other tasks during this time must have a significant impact on them.

Q. Did you, or anybody else, raise those issues with those two people before they were suspended?
A. I can't say what conversation - I wasn't party to a conversation with them.

Q. Were you aware that those two people were in fact involved in meetings to respond to inquiries by the Commission of Inquiry at the moment they were informed that their employment had been suspended?
A. No.

Q. And were you aware that they were given five minutes to leave the premises, notwithstanding the fact that they were involved in those meetings, at that time?
A. No.

Q. All right. Do you agree that if Ms Keller was aware of the matters that she was aware in March 2022 about the concerns that had been raised about culture and science, those are things which ought to have been escalated to you then?
A. No.

Q. You don't think Ms Keller ought to have raised those issues with you in March?
A. So, not directly.

Q. All right. With whom should shy have raised?
A. As I have already said, with her Deputy Director-General around the complexities of those, because often she might need some advice on what's the pathway to navigate there. One of the reasons that I'm not involved in that decision-making is I'm the final right of appeal

inside the system if somebody wants to challenge a decision. Above myself, you know, we have the Minister or the Premier. So in fact, that's one of the reasons that it's very clear that I don't get involved in those decisions, because if an employee needs the right to challenge that, they need to be able to go to the Director-General.

Q. In 2018, when the Options Paper was provided to the Queensland Police, the Commission has received evidence that Mr Paul Csoban knew about the contents of the Options Paper. Were you aware of that?
A. No.

Q. Well, is this the first time you've heard it suggested that Mr Csoban was aware of the Options Paper?
A. Look, I've had summaries of that. I just - you're asking me. I can't comment on that at the moment. That may have been in a piece of information that I've read.

Q. All right.
A. But I don't want to answer around a specific name, a specific role, to say yes. Was I aware of that before this, before these hearings? No.

Q. You know who I mean when I refer to Paul Csoban?
A. You'd have to tell me what his position was for me to --

Q. Paul Csoban was the person to whom, at the relevant time, Cathie Allen reported.
A. Okay.

Q. He held that position.
A. I've vaguely seen something with regards to that.

Q. Could I ask you to assume then that Mr Csoban was in that position at that time, at that time the Options Paper was provided to Queensland Police?
A. Sorry, can I just check. I've got a --

THE COMMISSIONER: Q. We are just asking you to assume he was in that position.
A. Sorry, yes. So we will assume that he was in that position.

MR HICKEY: Q. Assume he was in that position --

A. Yes.

Q. -- and he attended a meeting with the person within Queensland Police who was considering what was within the Options Paper?
A. Yes.

Q. I want you to assume he knew --
A. Yes.

Q. -- what was in the Options Paper and he was in a meeting where it was explained to Queensland Police.
A. Yes.

Q. Is that something that, in your view, he ought to have briefed up to somebody senior to him?
A. Yes.

Q. All right. And to whom would he have briefed that?
A. Ultimately, through to the Deputy Director-General in that area.

Q. Thank you.
A. Or chief executive, I think, of Health Support Queensland, it would have been at that time.

THE COMMISSIONER: Thank you, Mr Hickey. Yes, Ms Cartledge.

<EXAMINATION BY MS CARTLEDGE

MS CARTLEDGE: Q. You've given evidence that your first awareness around the issue of thresholds and concentration came about around March in this year; is that correct?
A. Yes.

Q. At that point in time, you were aware there was some discrepancy between FSS and QPS as to the actual percentage of samples that would benefit from micro-concentration; is that correct?
A. That was raised in the first meeting of 8 March --

Q. Yes.
A. -- that there was disagreement.

Q. You mentioned in your evidence earlier that QPS were "making noise" before that, for their in my submission to

the task force. Do you recall talking about that?
A. Yes, because they had requested the information to be able to do some analysis themselves.

Q. When you are referring to that QPS were making noise, when did you first become aware of that?
A. I can't give you an exact date.

Q. But your understanding is, or your evidence, that the making noise was in relation specifically to this threshold issue?
A. Yes.

Q. At that stage, that is in around March of this year, you haven't seen the Options Paper?
A. Yes.

Q. You ended up receiving that from Lara Keller?
A. Yes.

Q. And she had forwarded you correspondence from Cathie Allen?
A. Yes.

Q. And it was Lara Keller who drew your attention to that 1 per cent figure?
A. Yes.

Q. And she had previously drawn your attention to it prior to that email; is that the case?
A. So it was both herself and Professor McNeil.

Q. Yes.
A. I am not saying it was only Lara, because it was in conversation with both of them.

Q. I understand. So you had a conversation with both of them, which was followed up by an email from Lara Keller --
A. Yes.

Q. -- where she again outlines that 1 per cent figure. Okay. And so your understanding around the science and the figures related to thresholds really came from Lara Keller; is that correct?
A. Yes.

Q. And it's the case, is it, that your attention was

never drawn to the significance of the 10 per cent figure from the Options Paper?
A. Yes.

Q. And that's despite knowing that QPS were making noise at that point in time about the figures? Okay. So your understanding that the noise they were making was in relation to this 1 per cent --
A. Yes.

Q. -- and potentially the 5 per cent figure from the Review Paper? Okay. Now, turning to the 3 June email which led to your decision on 6 June, your understanding of the process all came from that email from Lara Keller; is that correct?
A. Yes.

Q. And you had expressed - you said in your evidence you expressed to her that you wanted to revert back to 2018 --
A. Yes.

Q. -- of what was happening prior to that threshold Options Paper?
A. Yes.

Q. And you had also mentioned that you wanted to possibly concentrate everything; is that correct?
A. Yes. Could we do better.

Q. And not knowing at that time that that was the pre-2018 process; is that correct?
A. Yes. That's right.

Q. The email response you received back, we have gone through, that has those two options there, I just want to clarify your view at least at that time about those options. Is it the case that at that time Option 1 was firstly your understanding of how things were prior to 2018?
A. Because it does have an in-bracket, like, "(pre-2018 workflow)".

Q. That's right.
A. Yes

Q. Yes, so your understanding is Option 1 was how things were pre-2018?

A. Yes.

Q. And secondly, was it your view at that time that that was a process that QPS were supportive of?
A. Yes.

Q. And Option 2 at that time you were presented with it, you were of the view that that was a step further than what was happening in pre-2018?
A. Yes.

Q. And also was it your view that QPS did not support that further process?
A. Yes, because in one of the bullet points in there, it does say around the concerns around the consumption of a sample.

Q. Is it accurate to say that your decision that you made on 6 June was based on, firstly, what had already been happening prior to 2018 and, secondly, an understanding that police were supportive of that? Okay.

Would you have expected Lara Keller to be in contact with the QPS surrounding this decision to change the process back?
A. If not personally, verified with her that the conversations had actually happened. So it's one of those things where, you know, depending on what's going on, and her responsibilities isn't purely for the DNA Analysis Lab, either ensure that the conversation had occurred or her to conduct them herself.

Q. So not necessarily that she was the person responsible, but at least that she had made sure --
A. Verified that it occurred.

Q. Yes. So your understanding was the two options presented to you in your email were done so with at least the knowledge of QPS?
A. Yes.

Q. Now, had you known that Option 1 in that email was not in fact what occurred prior to 2018, would you have made the decision you did regarding it?
A. No, I would have gone - I would have taken Option 2, which was closer to, if not exactly the pre-2018 workflow.

Q. And had you known that QPS had not been consulted regarding the options at all, would you have been comfortable making the decision to move forward using Option 1?
A. I would have expected the conversation had occurred with them.

Q. Just to clarify, moving on to that point in time --
A. Sorry, can I just add on that? Even if a conversation had taken three or four days, as long as we weren't delaying, you know, months, then we could have had the time to have that conversation with them. If it hadn't occurred on that day, it still could have happened in a few days.

Q. I understand. Just turning to the memo you were taken to, which was dated Friday, most recently Friday, in relation to pausing the testing in relation to those threshold samples, you gave some evidence that QPS were seeking independent advice in addition to FSS providing advice. Is that an assumption that you have made?
A. No, so I - it was put to me that they would be seeking some independent advice as well. Now, I don't know where that came from. Oh, gosh, I can't remember. Sorry, you know, often in these conversations we might have three or four people and somebody said that they will be seeking their own independent advice as well as ours on this.

Q. But you have no direct recollection of that?
A. No.

Q. But you did understand that QPS were seeking advice from FSS about that issue?
A. Yes.

Q. And just finally, as part of your evidence, you said that in your view the original Options Paper, having now read it, and of course with the benefit of hindsight, is something that went beyond the office level of decision making?
A. Yes.

Q. And it should have been briefed up; is that the case?
A. Yes.

Q. And you have given evidence that your view is that even with the low percentages that were presented in that Options Paper, you would have sought the resourcing

necessary to continue with micro-concentrating; is that correct?
A. Yes.

Q. Because in your view, that was a small amount of resourcing; is that correct?
A. Yes.

Q. Is it the case then that your view is that the Options Paper should never have gone to QPS for a decision?
A. I think it should have gone for consultation and after the Department had made a decision that that is, effectively, a policy position that we want to put forward to them. Then it would have been appropriate to put to them.

Q. And is that because, essentially, Queensland Health had the ability to resource to continue the threshold --
A. Yes.

Q. -- and testing at that point and, at least on that basis, that part of it was the internal matter for resolving before going to the QPS?
A. Absolutely.

THE COMMISSIONER: Thank you, Ms Cartledge.

Mr Rice? There was nobody else before Mr Rice? No, thank you.

<EXAMINATION BY MR RICE

MR RICE: Q. Just a couple of things, Mr Drummond. You were referred to your most recent memorandum concerning the temporary pause to testing?
A. Yes.

Q. Which you issued to staff on - or at least issued to Ms Keller on 30 September. Just to complete the picture on that, you also had some communication with Queensland Police concerning that outcome?
A. Yes.

Q. Did you in fact personally write a letter to the Queensland Police Service Commissioner on 29 September --
A. Yes.

Q. -- in which you notified or made reference to Inspector Neville's request --
A. Yes.

Q. -- to pause testing?
A. Yes.

Q. And in acknowledgement of that, you notified her you had agreed to do that?
A. Yes.

Q. And directed staff to proceed accordingly?
A. Yes.

Q. You were asked, in terms of the timing of the underlying communication from Mr Neville, as to when that was brought to your attention?
A. Yes.

Q. See if this assists you. In your correspondence, can I suggest you said:

Correspondence has been brought to my attention today that Inspector Neville has requested via emails on 20 September to request pause [et cetera].

Your letter suggest that that was the day on which these underlining emails were brought to your attention. Does that help you with the timing?
A. Well, it does because - and it will be a matter of, effectively, email record of when it was actually sent to me. I suppose what I'm referring to is Matthew Rigby had talked to me around that there were still underlying concerns from Police that he had had contact from and then had referred Inspector Neville back to the Forensic and Scientific Services. So that is probably what I was referring to, not the specific issue of ceasing then, because if that's what I put in the letter, that would have been the day that I was notified.

Q. When you refer in your letter to correspondence having been brought to your attention that day concerning this matter, is that likely then the occasion on which the emails --
A. That would be the day that I was actually given it to read.

Q. Thank you. Did you also tell the Commissioner words to the effect that you would have Queensland Health staff liaise with Queensland Police to determine a suitable way forward?
A. Yes.

Q. And is it your expectation that that will be occurring if it's not occurring already?
A. Yes.

Q. Thank you.

MR RICE: Thank you, Commissioner.

THE COMMISSIONER: Thank you. Ms Hedge?

MS HEDGE: I just have one question

<FURTHER EXAMINATION BY MS HEDGE

MS HEDGE: Q. Mr Rice just indicated that in the letter you've said that you first became aware of Inspector Neville's correspondence on 30 September 2022. Does that assist with who brought it to your attention now that that has been refreshed as to when it was?
A. So absolutely I think at that point in time it would have been Jasmina Joldic, who is Associate Director-General of Strategy, Policy and Reform, who the task force responds to. She is the DDG responsible for our response, and she brought that to my attention and to say that we need to have a response, and that I would get advice on that response, which then resulted in the letter.

Q. Are you aware that Inspector Neville gave evidence about that email in a public hearing on the Wednesday, 28 September?
A. His email?

Q. Yes. His email requesting the pause.
A. On the following day when I got a summary?

Q. Yes.
A. Yes, yeah.

Q. So you were told on the 29th by virtue of a summary of public hearings that Inspector Neville had requested a

pause?
A. That he raised some issues around that.

Q. Okay.
A. I might not have - see, again, I get a summary the following day. Depending on what my day is, I may have read that the day after.

Q. I understand.
A. Not the day I actually got that.

Q. So was Jasmina Joldic, was she telling you about the summary or was she bringing it totally separately?
A. So she was sending the summary to me.

Q. Okay.
A. At the end of each day, I get a summary sent to me. That doesn't mean that I read that on that day.

Q. Yes.
A. And she brought the issue of needing a response to Police on this for my decision.

Q. But that's how it was raised, through a summary of the public hearings to the Commission?
A. No, no, no. It was separate to that. No, no. It was a separate conversation to that.

Q. Okay.
A. I am just saying that it would have appeared in that summary on that day as well.

Q. But it was raised separately to that?
A. It was raised separately to that.

Q. And do you know --
A. And this was part of the fact that Matthew had raised with me over a few days that he'd had Inspector Neville contact him with regards to testing thresholds and he'd redirected that to Lara.

Q. Okay. And when Jasmina Joldic raised it with you on the 30th, do you know whether Lara Keller was involved in raising it with her? Or do you know how she came to be aware of it?
A. No, I don't know how she became aware of it.

Q. Right. Thank you.

MS HEDGE: Commissioner, I failed to tender two of the documents that I showed Mr Drummond. There was the ESU Summary. Could I tender that document.

THE COMMISSIONER: Yes, exhibit 57.

EXHIBIT #57 - ESU SUMMARY

MS HEDGE: And can I tender Mr Drummond's memorandum of 30 September 2022 regarding pausing testing.

THE COMMISSIONER: Exhibit 58.

EXHIBIT #58 - MEMORANDUM BY SHAUN DRUMMOND REGARDING PAUSING DNA TESTING, DATED 30/09/2022

MS HEDGE: May Mr Drummond be excused?

THE COMMISSIONER: Yes. Thank you, Mr Drummond, for your assistance. You are free to go.

<THE WITNESS WAS RELEASED

MS HEDGE: I call Helen Gregg.

<MS HELEN GREGG, AFFIRMED

<EXAMINATION BY MS HEDGE

MS HEDGE: Q. Your name is Helen Gregg?
A. Yes.

Q. You are the quality manager of Forensic and Scientific Services within Queensland Health?
A. Yes.

Q. You provided a statement to the Commission, which is [WIT.0032.0002.0001 _R].
A. Yes.

Q. Do you recognise that statement?
A. Yes, I do.

Q. Can we turn to page --

THE COMMISSIONER: Do you want to tender that?

MS HEDGE: Yes. I will just clarify one aspect of it before I tender it. On page 15, [WIT.0032.0002.0001_R at 0015], do you see in that, "TAKEN AND DECLARED before me" section that there is no date there? It just says "##". Do you know when you signed that?
A. I can just refer to it here, I would have thought?

Q. Yes.
A. No, I'm sorry, I can't remember. I'd have to look at my diary.

MS HEDGE: All right. I tender that.

THE WITNESS: My apologies for that.

THE COMMISSIONER: Exhibit 59. .

EXHIBIT #59 - STATEMENT BY HELEN GREGG

THE COMMISSIONER: Q. You might send an email later, Ms Gregg, and let somebody know. Thanks.
A. Yes, I can.

Q. We'll note it.

MS HEDGE: Q. In paragraph 5 of your statement on the first page there, you have a bachelor of science and a Masters in Applied Science (Medical Laboratory Science) and a Diploma of Management?
A. Correct.

Q. And over the page, you set out your work history in paragraphs 9 to 12 [WIT.0032.0002.0001_R at 0002]?
A. Yes.

Q. In paragraph 13, you say you have no previous experience with no DNA testing or analysis?
A. Correct.

Q. Can I take that statement to be personal experience performing those tasks of testing and analysis; is that fair?
A. Correct.

Q. Because you have had exposure to forensic DNA testing

analysis since you became a quality manager; is that fair?
A. Yes, yes. People have talked to me about their methodology, but I haven't actually done the work myself.

Q. I understand. But you're responsible for quality management of that section?
A. So the quality management system, I am responsible for --

Q. Yes.
A. -- which is the policies and responsibilities and procedures throughout the whole of the organisation to comply with ISO:17025 for forensic DNA. So forensic DNA has a quality officer, and she is very knowledgeable in her - of the requirements of 17025. So I work sort of more an advisor to the forensic DNA analysis. So when they ask me for advice about the requirements, I can give it to them. If I'm asked to provide clarification or anything like that, that's what I do. I also assist with external accreditation assessments and things like that, so that's my role.

Q. So you consider outside of your role is ensuring that the systems in place are best practice as to the science, which is a slightly higher level, isn't it, than ISO:17025?
A. It is ensuring that our procedures reflect the current processes that they have in place, so I can't actually answer whether they are best practice.

Q. I see. So 17025, correct me if I am wrong, is a generic forensic laboratory standard that doesn't set out specifics of processes and how they should be done, but sets out having processes and complying with them and having a quality management system and having an information management system, and so on?
A. Yes.

Q. So in that standard, it doesn't say, "This is how you should do concentration", "This is how you should do amplification", or "This is how you should work out an elution volume"; is that fair?
A. Correct.

Q. And it doesn't say how you should do validations or the level of qualification of staff to do a valuation, for example?
A. No. There is some --

Q. At a high level?
A. No, it doesn't say the level of qualification.

Q. Or even how to do a validation?
A. No.

Q. What it says is you should have a validation?
A. Correct.

Q. And when NATA comes to accredit against 17025, is it right they come and check you've got a process, a standard operating procedure, for each of these things that matter, like amplification, and so on?
A. Yes.

Q. And then they check that you're following it?
A. Yes, and they'll also bring along a technical assessor every second assessment.

Q. Yes.
A. And they will do a sampling exercise to not just ensure that we're following our procedures, but they're also the technical - they're technical experts in their field and can advise us on the appropriateness of what we're doing as well.

Q. And so they do a sampling exercise where they pick maybe - well, you tell me how many processes would a NATA accreditor pick to cover in that sampling exercise?
A. They do try and cover the whole of the scope. So - sorry. They do try and cover all of the types of methods that we do. So over the years, they would look at all of the processes that we have in place.

Q. I see. But would they not sample, say, three to five processes?
A. I can't actually answer. It would vary, depending on the amount of time that they've got. And it depends on the complexity of the testing that's done as well.

THE COMMISSIONER: Q. It varies depending on how much time they have. What do you mean?
A. Sometimes a technical assessor is only available for one day instead of two days, because they have other work commitments. The technical assessors are volunteers. So a technical assessor may only be available for that one day,

for example, so they will assess what they can in that one day. And if NATA believes that they need to stay longer or whatever, then they might ask them to, but they may not be able to for work reasons.

Q. I see. Thanks.

MS HEDGE: Q. Are you involved in the process of sending to the NATA assessors, both technical and general, the information that they request in advance of the visit?
A. Yes. So NATA asks for various documents. I send that out to the labs that are being assessed, they give it to me, and then I give it to NATA.

Q. So the most recent NATA accreditation was in July of this year?
A. Correct.

Q. So how many processes did they sample, did they ask for documentation about in advance?
A. So they asked for all of the methodology.

Q. Right.
A. As to how many methods they actually looked at, I can't answer off the top of my head, and I was also not the quality manager at that stage. I was acting as the Executive Director.

Q. I understand. So they asked for every standard operating procedure, did they?
A. For Forensic DNA.

Q. And you send them the 112-odd standard operating procedures?
A. All of them. Mmm-hmm.

Q. But which ones they sampled and looked at, you don't know?
A. No.

Q. So coming back to your role as Quality Manager, are you saying that Dr Scott, Dr Kirsten Scott, who is the Quality Manager within Forensic DNA, is she responsible for ensuring the processes in the lab are best practice? Or is she also just responsible for compliance with ISO:17025?
A. I would have said that all of the scientists are responsible for ensuring best practice in the laboratory.

THE COMMISSIONER: Q. Well, yes, but you've got a quality manager, so how are they different from all the scientists?
A. I'm looking - I'm probably thinking about the expertise and knowledge of Dr Scott in that she would have, just like me, knowledge in some areas but not in all. So being able to determine what is best practice, she may be relying on other scientists to advise her what that is.

Q. And who are the other scientists? The people working in the lab?
A. In the lab, yeah.

Q. So if she is checking whether a particular scientist is working appropriately, she asks that scientists, who tells her whether that she thinks she is working appropriately?
A. And she will check it against the standard operating procedures, which should reflect what they're doing.

Q. Okay. Thanks.

MS HEDGE: Q. What about when new processes are coming in place in other laboratories, for example? Whose job is it to find out whether they should be implemented in Queensland?
A. So as part of the quality management system, if somebody has update responsibility for a document, which describes the process, we have, in our quality information system, a review period set out which may be 12 months, 18 months. So when that document comes up for review, it is that person's responsibility to look at what has been happening, what advances there have been in other jurisdictions or in publications, for example, and consider whether that needs to be taken into account and adopted as a standard operating procedure in the laboratory.

Q. Okay. So that might be 12 or 18 months after the time that it's implemented elsewhere, depending on if you are unlucky with the timing?
A. And they also have an opportunity to make those changes at any time as well.

Q. Okay. What about something totally new that is not in any standard operating procedure? Who is going to look at that?

A. Totally new? So say, for example, they wanted to introduce a new method within the laboratory?

Q. Yes?
A. Okay. So that would be, I assume, they could bring that up as - and it would, according to the DNA procedures, they would create a project is my understanding.

Q. Who is "they"? Whose responsibility is it to identify that new thing and considering it? Is that not a quality function?
A. If it came to my attention that there was a new technique out there, yes, but I would bring that to the attention of the management of the laboratory.

As for whether I am the expert in that area, definitely not. So I would be raising it to say, "Have you seen this article that's been published?", or whatever, and it's then for them to consider.

Q. When you first became Quality Manager, which was 2006, it says there in paragraph 11 [WIT.0032.0002.0001_R at 0002]?
A. Correct.

Q. You previous to that had had no exposure to DNA analysis?
A. Correct.

Q. And that's now 16 years. So what did you do when you became the Quality Manager to understand what Forensic DNA Analysis were doing, so you could perform your role?
A. I became familiar with the Standards that were required of them to comply with, and also sitting under that is NATA publishes requirements as well, so I became familiar with those. I've read their SOPs as to what their processes are at the time to make sure that I understood those as well. If I had any questions, obviously I reached out to somebody. And I also, if I had any - wanted to have a look at some of those processes in place, I could. So I had a tour of the laboratory so that I could try and understand what they did as well.

Q. Have you updated that knowledge periodically since 2006?
A. Yes, I believe I have.

Q. Do you say you have developed a good understanding of what they do in there? Obviously different to someone literally being in there working on the benches, but --
A. I still find that there are parts of all of the science conducted at Forensic and Scientific Services, because it is quite specialised, that is new to me. When you get down into the details, you realise the complexities of what they do on that campus.

Q. So, for example, you know, in 2018 we have heard that the Options Paper was accepted and there was a threshold introduced for "DNA insufficient for further processing". Are you aware of that?
A. I am aware of it now.

Q. Were you aware about it at the time?
A. No.

Q. No-one sought your advice about it?
A. No.

Q. You were the Quality Manager then?
A. Correct.

Q. Was it never mentioned until this year to you?

THE COMMISSIONER: What wasn't mentioned, Ms Hedge?

MS HEDGE: The acceptance of the Options Paper and the DIFP threshold.

THE COMMISSIONER: Q. Yes, thank you.
A. It may have been mentioned to me but I can't recall it.

MS HEDGE: Q. Never said to you in a way that stuck in your memory, you know, as a big thing that was happening in the laboratory?
A. No.

Q. That was a pretty big change, wasn't it, how the laboratory functioned?
A. I suppose I would have - if it had come to my attention, it's a change that happens across all laboratories, a change in the way that they process their samples.

Q. Are you surprised that you weren't told about such a big change in the laboratory?
A. No, because, as I said, I'm more of an advisory role. So if required, and if they ask me for my input, I will give them my input.

Q. Yes.
A. But I wasn't asked, so I didn't provide it.

Q. So even right up to today, wouldn't expect to be told of a change of that magnitude in the laboratory?
A. No.

Q. Unless they wanted your advice?
A. Yes. And it would become apparent as part of, you know, a NATA assessment or something like that. We would include that in the documentation that was brought to NATA's attention.

Q. And that's a point, isn't it, because you have an obligation under NATA accreditation to tell them of significant changes in the laboratory?
A. Correct.

Q. So did the lab tell them about the change in 2018?
A. I believe so.

Q. All right. And you weren't even cc'd on that correspondence?
A. It would have been - sorry, no. It would have been part of the normal documentation that we provided --

Q. Yes.
A. -- prior to an assessment.

Q. So the assessment following, when it was accepted, would have said in that documentation, "We have changed this. We have this new threshold, this is what we are doing"? So if you --
A. I can't recall if the documentation says that.

THE COMMISSIONER: Q. But isn't it - I take it it's now part of your job to make sure that the documentation matches reality?
A. Yes. So I would be looking at the scope of accreditation to make sure that that --

Q. No, no, my question is different. If they change what they're doing in the lab, they are deciding that they will not process a certain category of samples, is that not reflected in a standard opening procedure somewhere?
A. Yes.

Q. Go ahead, Ms Hedge.

MS HEDGE: Q. So to your memory, you weren't aware of that change in procedure until this year?
A. Correct.

Q. In the context of media issues --
A. Yes.

Q. -- consideration of the internal review and so on?
A. Yes.

Q. Were you consulted about having that internal review in about March this year?
A. No.

THE COMMISSIONER: Q. So you weren't aware that that change had been made in early 2018 until this year?
A. Not in to my memory.

Q. Yes.
A. No.

Q. Thank you.

MS HEDGE: Q. You mentioned you consider your role an advisor. So do I take it from that that you are reactive to their requests for assistance?
A. Yes.

Q. You don't take a proactive role in quality management?
A. Sometimes.

Q. All right.
A. It depends on the situation. A difficult question to answer.

Q. Well, let's do an example. Can you give me an example, not this year, so before 2022, when you proactively asked for a report or advice from DNA Analysis about something they were doing?

A. I was considering looking - sorry, I'll take that back. I'll rephrase that. When the standard changed to a less prescriptive manner, to a more risk-based manner, I asked for their input into how we could look at adopting that across the whole of the FSS campus. Does that answer your question?

Q. That's when ISO:17025 changed?
A. Yes.

Q. Is that what you mean when you say the standard changed?
A. Yes.

Q. So it changed and you asked everyone across FSS how they might adapt to that change?
A. Well, I started with approaching Forensic DNA Analysis because I believed that they had a good approach to it, and sort of discussed that with the rest of the Quality contacts across the organisation.

Q. Is it fair to say that was reactive to the change in ISO:17025?
A. Yes. Yes, you're probably right.

Q. Do you have another example? Look, if there's none, you just tell us. We are just trying to understand your role. But do you have an example where you proactively went to the lab and said, "What are you doing about that? Let's find out whether that's best practice"?
A. I can't remember a situation.

Q. Right back to 2006 --
A. I can't remember.

Q. -- when you started there?
A. Yeah.

THE COMMISSIONER: Q. Ms Gregg, have you got your statement in front of you?
A. Yes, I to.

Q. If you look at paragraph 8 [WIT.0032.0002.0001_R at 0002], you describe your role there as being responsible:

> *... responsible for maintaining and improving the organisation's quality*

management system and managing the activities of the Scientific Support Services unit.

What is the Scientific Support Services unit?
A. It's five units that I see actually providing support to the laboratories. It's probably easier, Commissioner, if I explain who they are.

Q. Yes.
A. So there is the library, there is the forensic property point, the public health property point, the training unit, and our liaison unit.

Q. So you manage those and you maintain and improve FSS's quality management system; is that right?
A. Yes.

Q. Is there a role description somewhere?
A. Yes.

Q. Where would we find that? I am not pressing you for it now, but where would we find it?
A. I can provide one.

Q. That would be convenient, if you can provide it to Ms Hedge.

MS HEDGE: We do have - we have required all of the role descriptions, so we can provide one to you.

THE COMMISSIONER: Thanks. Don't trouble then, Ms Gregg. Thanks. Anything further, Ms Hedge?

MS HEDGE: Q. Yes, just one quick question. Just on that last topic I was asking about, you said you can't remember one. Would it be fair to say there hasn't been one? Do you want to think about that over lunch?
A. I don't know.

Q. Right.
A. I don't know if that would be fair or not.

Q. Well, do you think if you had done that in the last five years you would remember? So we could --
A. It is possible that I would remember.

Q. And also possible you would not remember --
A. Mmm-hmm.

Q. -- proactively taking an interest in something the DNA lab in the last five years?
A. It's possible, yep.

Q. All right.

MS HEDGE: I see the time, Commissioner.

Q. Maybe you can think about that over lunch, to see if you can provide an example.

THE COMMISSIONER: Does that conclude your examination or not?

MS HEDGE: No. I was about to move on to a new topic.

THE COMMISSIONER: No, go ahead, yes. We've got a few minutes. Or did you want to adjourn now?

MS HEDGE: I am happy to take a few minutes. I was just looking at that clock over there that says 1 o'clock.

THE COMMISSIONER: Oh, I see. All right. It's 12.58, close enough for government work.

Q. Ms Gregg, we will see you after lunch.
A. Yes.

THE COMMISSIONER: What time, Mr Hodge?

MR HODGE: 2.15, please.

THE COMMISSIONER: We will adjourn until 2.15 pm, then, please.

LUNCHEON ADJOURNMENT **[12.58pm]**

THE COMMISSIONER: Yes, Ms Hedge.

MS HEDGE: Q. Have you had a chance to think over the break to think of an example where you proactively asked the lab to tell you about a quality issue?
A. Yes, and I decided that I have probably got more of a reactive style than a proactive style. There is a broad

spectrum that I need to look after, so a reactive style is the approach I've taken.

Q. Should I take that to mean that you haven't proactively raised an issue with them, say, in the last five years?
A. Yes, you may.

Q. Can we move then to the decision made on 19 August 2022 by Dr Rosengren --
A. Mmm-hmm.

Q. -- to change the process for sample, P1, P2 samples, in the range that used to be the DIFP range?
A. Yes.

Q. Are you comfortable with that terminology?
A. Please.

Q. You were the Acting Executive Director at that time?
A. Yes.

Q. Could I bring up your statement and can we turn to page 4 of the statement, [WIT.0032.0002.0001_R at 0004]. The operator is ahead of me. In paragraph 22, you say that you received a phone call from Dr Rosengren advising of a risk of confusion, and that the advice provided was not accurate. Do you see that?
A. Yes, I do.

Q. And the advice that was not accurate was the advice given by Ms Keller to Mr Drummond on 3 June 2022; is that right?
A. Well, the email that I received from Cathie Allen said it was advice from her.

Q. That's later on, but in this phone call - so you didn't have any emails from Cathie Allen at the time of this phone call?
A. No.

Q. In this phone call did Dr Rosengren tell you what advice was inaccurate?
A. No, he didn't.

Q. As you say, you received an email from Ms Allen advising that there was a correction she wished to make to

her advice?
A. Yes.

Q. Is that right? Let's have a look at that. It is HG-05. It is [WIT.0032.0007.0001_R]. So this is the email you received?
A. Yes.

Q. She referred to an email that she had sent to Ms Keller on 3 June; is that right? If you look at the second paragraph:

I was completing a Hot Issues Brief ... on 3rd of June ... when I was asked by [Ms Keller] to [do things].

And then in the fourth paragraph:

I drafted some options and emailed them to [Ms] Keller and [Ms] Slade.

Do you see that?
A. Yes, I do.

Q. At the bottom of the page, those are the options, with the yellow parts being the parts Ms Allen considered required clarification?
A. Yes, I believe that was the wording that she wanted to add.

Q. And change; is that fair?
A. Yes.

Q. Because there was wording underneath some of those yellowed sections, wasn't there?
A. Yes, I believe so.

Q. For example, under Option 1 previously it said, "Revert to the 2018 workflow", and now it says, "Discontinue the 2018 workflow"; is that fair?
A. Yes.

Q. So then there are changes; not just additions?
A. Yes.

Q. Do you accept that? Now, did you speak to Cathie Allen around the time of this email or did you just receive

the written correspondence?
A. I spoke to Cathie as well.

Q. Did she add any information to what's in her email when she spoke to you?
A. No, not really.

Q. Then can we have a look at an email that you then sent to Dr Rosengren on 17 August. So is it fair to say you received this on the 16th, you spent some time clarifying what the wording should be that you sent to Dr Rosengren?
A. Yes.

Q. You always expected to send something to him, because he is the one who has raised this issue with you?
A. Yes.

Q. Can we look at that email, [WIT.0032.0016.0001_R]. And this is HG-14. This is a two-page email and this is the only major piece of advice you gave Dr Rosengren, isn't it?
A. Yes.

Q. Later on you reviewed some drafts of the memorandum, but this the is the point where you are giving the advice about what might be done?
A. Yes.

Q. You, under the heading:

Information about DNA testing prior to 2018.

Included some information about DNA analysis?
A. Mmm-hmm.

Q. Could you just say "yes" for the transcript?
A. Yes.

Q. And to do that, I understand you spoke to Mr Howes and Ms Brisotto?
A. Yes.

Q. To clarify your understanding of what that process was?
A. Yes.

Q. And then you put it in here for Dr Rosengren?
A. Yes. I also reviewed the SOPs at the time.

Q. In the third-last - sorry, just one moment. In the second-last paragraph of that page, do you see on the last line, you said:

> *... which included 'microcon' to maximum my the chances of a DNA result being obtained after processing through stages 3 and 4 of the profiling process.*

Do you see that?
A. Yes.

Q. You understood, in writing this email, that that is one purpose of concentration, is to maximise the chances of getting a DNA profile?
A. Yes.

Q. But you didn't provide to him the level of the benefit? That is, the percentage of samples which might obtain a profile after concentration that was not before concentration; is that fair?
A. Yes, that's fair.

Q. And did you know --
A. No.

Q. -- what percentage that is?
A. No, I didn't.

Q. Did you ask anyone?
A. No.

Q. So you knew there was a benefit, but do you know the level of the benefit?
A. No. No, I don't.

Q. In this email, you also didn't give any advice about whether the pre-2018 process was still considered best practice in DNA analysis in Australia?
A. I didn't give that advice, no.

Q. Do you know?
A. No.

Q. Did you ask anyone?
A. No.

Q. And --
A. Sorry, my understanding was that we were to return to the pre-2018 process.

Q. I see. So you weren't considering considerations of best practice?
A. No.

Q. I understand. There is also nothing in this email which indicates whether there would be any difficulty in reverting to the pre-2018 process because of new instruments or new processes or anything of that nature?
A. No, there's nothing in that email.

Q. Did anyone tell you about new instruments or processes that might mean that it wasn't optimal to return to the pre-2018 process?
A. I believe that I had read an email from Cathie Allen that may have alluded to that, and post this I became aware of it, but not at the point of writing this email.

Q. And even the email you read from Cathie Allen that alluded to it, was that also after writing this email?
A. I think it might have been beforehand.

Q. So there might have been some allusion to it?
A. Yes.

Q. But you didn't ask anyone specifically whether the pre-2018 process was appropriate?
A. No.

Q. Or was optimal?
A. No.

Q. And in writing this email, you had access to Ms Allen, Mr Howes, Ms Brisotto?
A. Yes, I did.

Q. Did they understand why you were speaking to them?
A. Oh, I don't believe that Cathie - sorry, I believe that Cathie did, because she knew that I was providing this advice to Dr Rosengren.

Q. Yes.
A. But I don't believe that Justin or Paula knew about that.

Q. I see. Ms Allen didn't suggest to you that there was some change in process that might mean reverting to pre-2018 was not optimal?
A. No, she didn't.

Q. Can we go to page 2 of that email. See the first sentence on that page [WIT.0032.0016.0001_R at 0002]:

> *The two options provided in the email from Lara Keller to the Acting Director-General on 3 June 2022 were intended to differentiate that volume crime ... samples would not be included in any recommendation for returning to the microcon process.*

A. Yes.

Q. Who gave you - or where did that opinion come from, that that was the intention of the email on 3 June from Lara Keller to the Acting Director-General?
A. I can't remember. I believe that Cathie Allen may have suggested that wording to me.

Q. If we look at that email, the one that was sent on 3 June, that is [WIT.0032.0056.0001_R]. Is this the email that you are referring to? No mention of P3 samples in that email, is there?
A. No.

Q. Or P1 or P2, in fact?
A. No, that's - no, that wasn't the email I was referring to.

Q. Well, this is the email of Lara Keller on 3 June to the Acting Director-General. Did you understand that there was some other email?
A. Sorry, I thought you were asking me a question about the paragraph that talks about the P3 samples.

Q. I am. Let's go back to that, so that we can be clear [WIT.0032.0016.0001_R at 0002].

THE COMMISSIONER: What exhibit number is that?

MS HEDGE: That is HG-14.

Q. So do you see in the first sentence on that page --
A. Yes.

Q. -- you are referring to an email from Lara Keller to Acting Director-General on 3 June.
A. Yes.

Q. And saying what the intent of that other email is?
A. Yes.

Q. What I was trying to show you then was that other email.
A. So I perhaps should have been clearer in my statement to you earlier, in that the sentence that you're alluding or pointing to here about the two options provided in the email from Lara Keller to the Acting DG on 3 June regarding the P3 samples, that wording, I believe, was suggested by Cathie Allen in her email to me on the 16th, I think.

Q. The email we just looked at a few moments ago?
A. Yes.

Q. Let's have a look at that again.
A. I think, without referring to it.

Q. So it is [WIT.0032.0007.0001_R]. Do you have your statement there with you?
A. Yes, I do.

Q. It is HG-05.
A. I don't have my exhibits with me.

Q. I see. Right. Well, have a read on the screen, and we can turn to the second page, but I don't see any reference to P3 --
A. No, you're right.

Q. -- in that email either?
A. No, you're right.

Q. Can we show you the second page just so you can be confident. I might have missed something. [WIT.0032.0007.0001_R at 0002].
A. No, that's correct, you're right.

Q. So going back to your email, then [WIT.0032.0016.0001_R at 0002]. Page 2, please. And if you could zoom in on the top of the page.

If that was the intention of that email, it was not achieved by the email; it doesn't mention P3. Is that fair?
A. Yes, that's fair.

Q. Do you understand Ms Allen suggested to you that you write that; is that what you're saying?
A. No. Now that I've seen that email from the original email from her --

Q. Right?
A. -- perhaps she did not suggest that to me. It may have been somebody else.

Q. So someone suggested that to you. You didn't think of it yourself?
A. I don't think so.

Q. So who suggested it to you? This is only six weeks ago.
A. Yeah. It could have been Alison Slade, who is also a person in the Executive Director's office.

Q. Do you not remember who suggested that to you just six weeks ago?
A. No, I don't.

Q. Right. Who else was involved in helping you draft this email? In your office, I mean. I don't mean lawyers or anyone of that nature.
A. Just Alison and myself and Cathie.

Q. Ms Allen was involved in assisting you to draft this email?
A. Yes.

Q. But you're confident she didn't suggest that?
A. I don't have any evidence to show you that she suggested that to me.

THE COMMISSIONER: Q. That's not the question?
A. Sorry?

Q. It was you, Ms Allen and --
A. Ms Slade.

Q. Sorry?
A. Ms Slade.

Q. Yes, Ms Slade. You three worked to settle - draft and settle this email. So you could not have known what Ms Keller intended to do by her email, so I would think that it wasn't you who suggested what Ms Keller's intent was, so it must have been one of the other two. And that's certain so far, isn't it, that one of the other two ladies must have suggested that you include that paragraph?
A. Yes.

Q. But you can't remember which of them it was?
A. No.

Q. All right.

THE COMMISSIONER: Yes, Ms Hedge.

MS HEDGE: Thank you.

Q. Do you accept that must be wrong, that that was the intention, if it's not mentioned at all in that email? Or it was an unachieved intention, do you think?
A. I can understand that it could be not an intention of that email. I can't actually show evidence that it was an intention of that email, but I do know that, looking at the workflow from that time, that Priority 3 samples were not micro-concentrated.

Q. Right. Can we move on to something else, and that's about what involvement the QPS had on 19 August 2022. You were told by Megan Fairweather that the QPS wanted you to do everything possible but leave some sample for future testing; is that right?
A. That's correct.

THE COMMISSIONER: I am sorry, Ms Hedge, just before you move on.

Q. The email that we have just been looking at, HG-14, if you could put it on the screen, please. WIT.0032.0016.0001_R]. Yes, that's the one. If you go to

the preceding page, the purpose of this email, from you at least we know, was to correct an error that appeared in the earlier email?
A. Yes.

Q. So the email was written by you?
A. Yes.

Q. It's from you. And at the top of page 2 is this passage that Ms Hedge took you to, by which you are seeking to explain, give an explanation, for the error, I gather. The two options provided in the wrong way in which they were provided, the reason they were provided, you say, or one of the reasons is that they're intended to differentiate between - to point out that volume crime would not be included in any recommendation to return to the pre-2018 process. But how did that earlier email do that, in your opinion?
A. The earlier email from Cathie Allen? Or from --
Q. Yes, the incorrect one from Lara Keller, sent on the basis of Ms Allen's email to Lara Keller. How did that email from Lara Keller seek to differentiate or point out that volume crime would not be included in automatic micro-concentration?
A. My understanding is that they were just providing - so Lara was just providing options for Priority 1 and 2 samples --

Q. Yes.
A. -- and that she hadn't provided options for Priority 3 samples because they had never been involved in a micro-concentration process.

Q. But how could that email be read as intending to point out that volume crime was not included, since it doesn't say anything about volume crime?
A. Yes, I think it was by omitting "volume crime", they were - they were just focusing on Priority 1 and 2 samples and didn't expressly state that they were talking about volume - Priority 3 samples.

Q. You go ahead, Ms Hedge.

MS HEDGE: Leading on from that question the Commissioner asked you about, can we go back to that email of 3 June, [WIT.0032.0056.0001_R]. This is that email again from Ms Keller to Mr Drummond. You just said, as you understand

it, these were all options for P1 and P2, leaving out entirely anything that happened in P3; is that right?
A. That's my understanding.

Q. In fact, Option 1 is what happened to P3 in 2018, isn't it? That it went straight to amplification and then there was concentration on a discretionary basis by reporting scientists?
A. Yes, that's correct.

Q. So Option 1 is what happened to P3 pre-2018? So it did have the P3 process, but here in this email it is suggested it was a P1 and P2 process.
A. That's what they were trying to put forward. This was an option for P1s and P2s.

Q. That's right, but it is the P3 process, isn't it?
A. "All samples are processed through" - yes, that is the P3 sample - P3 process pre-2018.

Q. That's right. So when you said to the Commissioner just then that none of these options were what happened to P3 in the past, that was a mistake?
A. What I meant to be conveying was that the options when this email was written, the options were only - they were only referring to what they were proposing for P1 and P2 samples.

Q. Yes, all right. Let's move on to the Police. Can you go to HG-18, which is [WIT.0032.0020.0001]. This is your file note?
A. Yes.

Q. Can we zoom in on the main part of that. Thank you. 19 August 2022, attendees: Justin - I am going to say people's last names, so let me know if I get any of them wrong: Justin Howes, Paula Brisotto, Cathie Allen, Megan Fairweather, Alison Slade?
A. Correct.

Q. And yourself?
A. Yes.

Q. And it says:

QPS email -> David Neville
(dictated by Megan)

Then it says above there:

can't forward.

Is that what it says?
A. Correct.

Q. Did Ms Fairweather tell you that she couldn't forward you the email?
A. Yes.

Q. So you have never seen the email from the QPS?
A. I saw it later.

Q. Okay. Not before you advised Dr Rosengren and before he made his decision?
A. Correct.

Q. Can we return to your statement in paragraph 36 [WIT.0032.0002.0001_R at 0007]. At the top of page 7, actually. So this is the same meeting that we just saw the notes of?
A. Yes.

Q. In the last line you say:

At this meeting I suggested getting QPS approval to do the second amp.

A. Yes.

Q. You suggested that based on what Ms Fairweather had told you?
A. Yes, we - when Ms Fairweather told us that the scientists got quite concerned, and so by that stage, I was aware that it was only when we were thinking about doing a second amp that we might exhaust the sample, so that's when I thought it would be a good compromise.

Q. When you say the "the scientists", do you mean Ms Allen, Ms Brisotto and Mr Howes?
A. Yes.

Q. So these people in the meeting?
A. Yes.

Q. Not other scientists?
A. Correct.

Q. Other scientists didn't know about this happening, did they?
A. No.

Q. All right. So you suggested that as a compromise?
A. Yes.

Q. You have now seen that email from the QPS, so you would understand that they didn't directly ask for what you suggested, did they?
A. No, they didn't.

Q. They just wrote what their interest was, that things would not be exhausted "as a matter of routine" is how they said it?
A. Okay.

Q. Is that right?
A. I - without the email in front of me, I can't say exactly what words they used.

Q. All right. But you thought of this option?
A. Yes.

Q. Did you know then that obtaining QPS approval for exhaustion of a sample was not part of the pre-2018 process?
A. Yes.

Q. And did you know that in fact it was not part of any process --
A. Yes.

Q. -- that the lab had ever done --
A. Yes.

Q. -- for any sort of priority sample?
A. Yes.

Q. All right. So this was a significant change to the Forensic lab process; do you accept that?
A. It is a change, yes.

Q. You don't think that's significant, requiring approval

by Police to exhaust a sample which scientists had been doing at their own discretion for many years?
A. I don't think it's particularly significant, but I - I understand that it's a change that has an effect on the lab, yes.

THE COMMISSIONER: Q. Well, of course it is a change that has an effect on the lab, because it is a change. What you are being asked is whether you agree whether - that it is significant or not, and your answer is not?
A. Yeah.

Q. What would you regard as a significant change?
A. A complete change in methodology, for example.

Q. Well, this is a complete change in methodology, isn't it, where you decide --
A. Sorry, I'm --

Q. -- that you are going to treat samples in an a completely different way?
A. I should have probably clarified. I meant analytical.

Q. I see. You mean a scientific change?
A. Yes.

Q. And why is a change to the technology significant and a change to processes not significant?
A. I don't think I've really considered that. From a scientific point of view, I put the science first and we have our processes that to me are secondary.

Q. But in terms of quality control, which is what your job is concerned with, why would you regard a change to process as not warranting the adjective "significant" when what's being discussed is how you are going to treat a large number of samples coming through the lab?
A. So I suppose I would look at a significant change as something that affects the actual science itself as opposed to an administrative process change.

Q. And in your role as carrying out your duties, are you limited to an interest in scientific processes?
A. No.

THE COMMISSIONER: Yes, Ms Hedge.

MS HEDGE: Q. Now, these decisions made about whether to do a second amp or to concentrate to full, you understand those two things are things that can exhaust samples?
A. I do now, yes.

Q. Those decisions are made by Reporting scientists?
A. Yes.

Q. Based on their scientific qualifications and expertise in this area?
A. Yes.

Q. It takes a lot of training to be a Reporting scientist, doesn't it?
A. Yes, so I've been told.

Q. So they are scientific decisions, aren't they? A Reporting scientist deciding whether to do a second amp or to concentrate to full, they are scientific decisions; they are not administrative decisions?
A. Yes, but the process of requesting QPS approval to do the second amp is an administrative decision.

Q. You would understand, though, that requiring people to get approval might change how they make the initial decision?
A. I would have thought not. I would have thought that they would look at the science in exactly the same way and would say, "I'd like to do a second amp, I'd need to get approval, I will go ahead," and ask for approval to exhaust the sample and go ahead.

Q. Your view is the need to seek approval from anyone, whether it be internal or external, has no influence on how staff do their jobs?
A. It shouldn't have any influence on - on the scientific decision-making behind that, no.

Q. Right. What if the QPS refuse approval? Then it has influenced the scientific decision, hasn't it?
A. Yes, it has.

Q. If a Reporting scientist says, "I have decided this should have a second amp", QPS say, "No", that is a significant interference with their scientific discretion that existed before 19 August; is that fair?

A. Yes, that the QPS have requested. Because they would like --

Q. Well, did they request it? Really, you decided it was a compromised option. Didn't you say that just before?
A. Yes, and they also sort of - I was advised that they would like to keep a sample for additional testing that's outside the scope of our laboratory, and that that's a decision for the - well, that was something that the QPS wanted to make sure they didn't - we didn't exhaust the sample.

Q. Would you accept generally, just putting aside this issue for a moment, but generally there is sometimes a tension between scientific quality and perhaps requests from the QPS?
A. I don't know.

Q. In your role as the Quality Manager, you have never identified a tension between QPS requests and quality of outcome?
A. Not since I have been involved in this particular issue around the Commission, no.

Q. Oh, on any issue. You have been Quality Manager for 16 years.
A. Mmm-hmm.

Q. So for example, if Police requested a one-day turnaround, surely you would accept that that might affect the quality of what is produced in the one day?
A. Depending on the resources that we have available to us, it may affect the quality, requesting a turnaround time of one day.

Q. So do you accept generally that sometimes there can be a tension between QPS requests and scientific quality? Or you don't think those things ever come into tension?
A. I think they can come into tension, but I think there are three aspects that play a role in the - well, there's two that have an effect on the quality of a result, and that being the turnaround time requested and the resources available. If we've got lots and lots of resources, we can potentially create a very fast turnaround time with a good quality. But you can't get all three together.

Q. There's a lot of other things that affect quality as

well, isn't there? Like what instruments you have?
A. Yes.

Q. The processes?
A. I was just sort of --

Q. Okay.
A. -- simplifying it.

Q. All right. So you accept then that this decision on the 19th to introduce this idea, your idea, that you get QPS approval to do the second amp, do you accept that that could have an influence on scientific decisions in the lab?
A. No.

Q. Because we just went through that if they refuse it, then the lab will do something different to what the scientists think is the most appropriate thing to do for that sample. So do you accept that, at least in that circumstance, it has affected the scientific decisions of the lab?
A. It hasn't affected the scientific decisions of the lab. The QPS have asked us not to exhaust the sample. They want us to keep - they want us to keep some leftover sample so that they can request other analysis. So, you know, we have said, "We'd like to do a second amp", and they've said, "No", that's at their discretion.

THE COMMISSIONER: Q. So your evidence is that when a scientist makes a judgment, a professional judgment, that the best quality will be achieved by doing particular things within the technical processes, and that scientist is vetoed on that process by a police officer with no scientific training, that that is not an interference with the scientific process or decision-making?
A. I think that we are doing what the QPS have requested us to do, and they may request us to do a second amp or they may request us to keep the sample.

Q. No. No, that won't do, Ms Gregg, because QPS did not ask or did not instruct the lab to seek the approval of QPS, did they; that was your idea?
A. Yes, that's my idea.

Q. So what you proposed is that if they don't give approval; that is, they veto the process that's suggested, then the process won't be undertaken?

A. That's correct.

Q. So you don't think that's a quality issue, speaking as a quality controller?
A. It could be seen that way, I suppose, but I --

Q. How do you see it? I'm asking you.
A. I think we're making the best of a difficult situation where we have been asked to not exhaust the sample by the QPS and we are trying to satisfy that as well as produce a result for them, and it's not an ideal situation.

THE COMMISSIONER: Yes, Ms Hedge.

MS HEDGE: Q. What investigations did you make into whether introducing that step into the process was an appropriate step?
A. So it was discussed at that teams meeting where Cathie, Paula and Justin attended, and they agreed that that was a good idea, and that it should be something that we support.

Q. Did they say that immediately?
A. Yes.

Q. Knowing now - well, knowing - did you know then that that was a step that had never been introduced in the lab for any purpose?
A. The approval, yes, I did know that.

Q. So you knew then that there could be no data on that and how it would influence anything, because it's never been done before?
A. Yes.

Q. So you knew Mr Howes, Ms Allen, Ms Brisotto weren't speaking from a place of data analysis?
A. That's correct.

Q. They were just speaking --
A. We were just speaking of a place from the request from the QPS not to exhaust the sample.

Q. And you know the change management standard operating procedure?
A. Yes.

Q. And it is your view that this process where you suggested that and people in the meeting agreed was consistent with that standard operating procedure?
A. No, it's not.

Q. What was the urgency?
A. To provide advice for the Director-General.

Q. Why did that have to be done that day?
A. I believe it was the Director-General's last day. We were also aware that it had been brought to our attention on the 16th, and this was the 19th, and there was a need to try and rectify this as soon as possible.

Q. Who told you that there was a need to rectify it as soon as possible?
A. That's an assumption I've made.

Q. Okay. Who told you that the Acting Director-General's last day meant that this had to be done quickly?
A. It was a communication, I suppose, from his office. He would like to get it done today.

Q. Did that happen? Did someone tell you that or are you guessing?
A. I believe so, yes.

Q. Do you remember that? It was only six weeks ago. Do you remember that? Were you told that?
A. Yes.

Q. Do you remember who told you that?
A. I think it was Matthew Rigby.

Q. Did you tell Matthew Rigby or Dr Rosengren that you were not following the standard operating procedures for change management?
A. No.

Q. Did you tell them, either of them, that you had not made any investigation into whether that was an acceptable step other than asking the three people who you have described?
A. I did not tell them, no.

Q. Did you tell them that that is a step that had never been in place at the laboratory for any reason?

A. No.

Q. All right. Do you think in hindsight you should have told them those things?
A. Ah, yes, I think I could have told them those things. It would have been advisable to tell them those things.

Q. All right. In a quality managed situation like a forensic lab, change management really matters, doesn't it?
A. Yes.

Q. Deciding things quickly and without full consideration isn't a great idea, is it?
A. For me, the processes - if it's an administrative process that the laboratory can do, it requires less regard than a scientific change.

THE COMMISSIONER: Q. I guess to be clear, the reason you were comfortable proposing this as a step in the process was because you regarded it as an administrative step that you were introducing that had no bearing upon any of the technical processes or on any of the science?
A. Yes, that's a good summary. Thank you, Commissioner.

THE COMMISSIONER: Thanks.

MS HEDGE: Q. Do you consider it something that would need to be advised to NATA at the next accreditation?
A. It will be - if we still have this process in place --

Q. Yes.
A. -- it would be in the SOP.

Q. Yes.
A. I'm - so normally we wouldn't bring an administrative change like that to the attention of NATA. We would bring to their attention more technical changes such as instrumentation or change in a methodology. And I know that that's a method, but hope --

Q. Have you brought that change to the attention of NATA yet?
A. No.

Q. Do you think it's necessary the next time there is an accreditation?
A. I probably wouldn't - normally, I wouldn't highlight

it to them as a change because, as I said, it's just an administrative change.

Q. Okay. But not normally. I am asking you about this one. Are you going to tell them about this one, next time they come and accredit the lab?
A. If it's still in play, yes.

Q. All right. So you are going to tell them about it? So it's significant enough to tell NATA?
A. I think it's significant enough in the context that we're in now.

Q. Do you mean this Commission of Inquiry?
A. Yes, I do.

Q. Can I ask about another aspect of the QPS. You received an email from David Neville on 17 August. I will just show you that [WIT.0032.0029.0001_R]. Let's look at this one first. That's you telling Inspector Neville and others in the Police about the decision made by the Acting Director-General after it was made; is that right?
A. Yes.

Q. Can we go down to page 2 [WIT.0032.0029.0001_R at 0002]. Do you see that email at the bottom there, 17 August, 8.19 am?
A. Yes.

Q. Can we look at that email. Do you remember that email?
A. Yes.

Q. And in the middle of it, Inspector Neville says:

> *Is there a risk of profiles being missed if samples below this concentration, particularly at the lower range, are run through without micro-concentration?*

A. Yes, I see that.

Q. So Inspector Neville was raising - and this was raised with you because you were the Acting Executive Director?
A. Yes.

Q. That's right. Not because of your quality management

role?
A. Yes.

Q. And he is raising the issue of concentrating P1 and P2 samples?
A. Yes.

Q. Is that your understanding? All right. Can we go back to the email which you sent to Dr Rosengren, [WIT.0032.0016.0001_R]. Do you remember this email that you described as the primary piece of advice given to Dr Rosengren? Or I described it and you agreed?
A. Yes.

Q. There's no mention in this email, is there, of that correspondence from Inspector Neville?
A. No.

Q. In fact, there's no mention of concern being raised by the Police with the lack of micro-concentration?
A. No.

Q. But if we go to page 2, under the options [WIT.0032.0029.0001_R at 0002]:

If option 2 is preferred, it may be prudent to consult with QPS ...

Do you see that?
A. Yes.

Q. So you thought consultation with QPS was appropriate but didn't tell him about the consultation that you were engaged with where you were being written to by them?
A. Yes, I did not tell him that I had received an email from David Neville.

Q. Can we go back to page 1. Remember the date Neville emailed we got before was 17 August, 8.19 am, so it is about two hours before this email?
A. Yes, that's correct.

Q. I suggest to you that it would have been helpful to tell Dr Rosengren what the Police were saying at that stage. Do you accept that?
A. It may have been helpful to him. I don't know.

Q. You were then only told on 19th at 11.30 am that there had been consultation with QPS; is that right? That's the Teams meeting we just looked at?
A. Yes.

Q. So in the intervening two days you didn't know whether anyone was consulting with QPS; is that right? And you also didn't respond to Inspector Neville to tell him that this was all under consideration, did you?
A. No, I didn't.

Q. Do you know now that Dr Rosengren consulted with Inspector Neville?
A. No, I don't. Well, except for that Teams meeting. Didn't know it was Dr Rosengren who had spoken to Inspector Neville.

Q. All right.

Q. Why didn't you tell Dr Rosengren that Inspector Neville had written you with that concern when he was reconsidering that exact process?
A. I don't know. I probably - it was probably an oversight to say that the QPS had written to me.

Q. Did you speak to Ms Allen or Ms Slade about it, about whether you should include that detail?
A. No, I didn't speak to them about that.

Q. All right. Can I move onto the - after the decision made by the Director-General, it was your responsibility, I understand, to communicate that to the staff of the DNA forensic lab. And you did that by email?
A. Yes, I forwarded the email from Dr Rosengren.

Q. And then you received many questions and emails; is that fair?
A. I did get some, yes.

Q. And you had two Zoom meetings with staff to talk to them and explain?
A. Teams meetings, yes.

Q. Yes, Teams meetings.
A. Yep.

Q. All right. Can I ask you about two of the issues that

were raised with you. Scientists raised with you an issue about microconning to full, to 15 microlitres, and whether they would be prevented from doing that by the automatic microcon to 35. Do you remember that issue?
A. Yes, I do. Yes.

Q. Some scientists had that view; other scientists had a different view. I am not suggesting it was uniform, but some scientists were concerned about that; is that right?
A. Yes.

Q. Did you brief up those concerns to Dr Rosengren or to Mr Drummond, who by then was back in the Acting Director-General's seat?
A. No, I did not.

Q. You were still the Acting Executive Director?
A. Yes.

Q. All right. So immediately above you in the chain was the chief pathologist; is that right?
A. No. The Executive Director reports to the Deputy Director-General of the Prevention Division, Professor Keith McNeil.

Q. My apologies.
A. That's all right.

Q. Did you brief up those concerns to him?
A. No.

Q. A second concern that was raised with you was whether the new approval before exhaustion process should apply to other samples; is that right?
A. Yes.

Q. If scientists said to you, "Well, can we still exhaust P1 and P2 outside the range"? The DIFP range.
A. Yes.

Q. Do you remember that issue?
A. Yeah - yes.

Q. Okay.
A. I was concentrating more on the DIFP range.

Q. But you understood the memo to only relate to the DIFP

range?
A. Yes.

Q. P1 and P2?
A. Yes.

Q. So in that range approval is required before exhaustion?
A. Yes.

Q. But if the memo only applies to that, do you accept that approval is not required to exhaust lots of other samples?
A. So the - I would err on the side of caution, and I would be getting approval from the QPS to exhaust samples.

Q. Is this the advice you gave to the scientists in the lab?
A. I believe so, yes.

Q. That they should get approval from the QPS to exhaust any sample?
A. I decided, yes, to err on the side of caution.

Q. That is a significant change to all samples across all quant ranges; is that fair?
A. Yes, but as I said I was focused on the DIFP range.

Q. Okay. But you've made that other change?
A. Yes.

Q. Was that put into force by changes to the standard operating procedures?
A. I don't know.

Q. Okay.
A. I'm not aware that there has been a change to the SOPs.

Q. You just don't know either way?
A. I don't know either way. Sorry.

Q. Did you bring up that concern and your response to it to Professor McNeil?
A. No.

Q. Or to Mr Drummond?

A. No.

Q. All right. So did you unilaterally make a change to the procedures for these other samples to insert the QPS approval before exhaustion step?
A. All - all - what I said to the scientists was, "If you are going to exhaust the sample, you need to get QPS approval."

Q. But that's not what the memo says, is it?
A. The P1s and the P2s in the DIFP range.

Q. That's what the memo said?
A. Yes.

Q. But you told them that for everything?
A. If they're concerned then they need to get approval from the QPS, yes.

Q. "If they're concerned"? Don't they need certainty of procedure, not - why would the responsibility for deciding whether approval was required be on individual scientists?
A. Could you say that again? Sorry.

Q. You just said that your advice to the scientist was if they were concerned about samples that are not P1 or P2 inside the range, so other things - if they were concerned, they should get approval. And I said, and I suggested to you, that it's not a good process to have individual scientists trying to determine whether or not they need approval, but a good process would be one where it was very clear whether approval was required or not?
A. Yes.

Q. Do you agree with that?
A. Yeah, I would agree with that.

Q. Okay. But your advice to them did set up this situation where they had to decide whether they were concerned before they sought approval?
A. Yes, and I said to - yes, and I said to err on the side of caution and get approval.

Q. All right. Now, I assume your decision to give that advice also didn't comply with the change management procedures, standard operating procedure?
A. Correct.

Q. Are you going to tell NATA about that change as well?
A. Yes.

Q. And --
A. If it's still in play at the time.

Q. Yes. And what was the scientific basis to include all of those other samples with the P1, P2, in-the-range samples?
A. There wasn't a scientific basis. There was a - as I said, there was a wish to comply with the QPS's request to not exhaust the sample.

Q. And you understood that view of QPS to be ranging across all samples, not just ones in the range P1 and P2?
A. I knew that it was about the ones that were P1, P2 in the range, but when I was questioned by the scientists, I said that they needed to err on the side of caution.

Q. Did you consult with the QPS before you changed that process?
A. No.

THE COMMISSIONER: Q. What does "err on the side of caution" mean in scientific terms?
A. I suppose --

Q. What is the benchmark a scientist uses to determine whether she should err on the side of caution?
A. I suppose it was - for me, it was just that you should seek approval to exhaust the sample.

Q. And what was the procedure that you envisaged would be used to seek that approval?
A. There had been - I didn't envisage anything. There had been discussions about how that could happen through the Forensic Register, and I think it was by adding a task. And so, they were working - they were in the process of working out the best way to do that.

THE COMMISSIONER: Yes, Ms Hedge.

MS HEDGE: Q. When did you finish your Acting Executive Director role?
A. At the end of August. The 31st.

Q. All right. So your second meeting, I believe, was 30 August, so that was quite at the end of your time?
A. Yes.

Q. Did you understand through those meetings that there was significant controversy in the lab about whether the decision made on 19 August was best practice?
A. No, I didn't understand that.

Q. So you didn't think from the scientists saying to you, "This is stopping us maximising a profile", that they were saying this is not best practice?
A. They didn't put it to me in the terms that it wasn't best practice.

Q. But did they put it to you in the terms that they believed they could not maximise the chances of getting the best DNA profile out of the sample?
A. Yes, and it was more put in the terms that they had had - they had had the discretion previously and they didn't anymore.

THE COMMISSIONER: Q. When a scientist - would you accept that the scientists who work as case managers, who perform the interpretation of the profiles, are in a position to know the best way to process a sample in order to give the best prospect of obtaining a usable profile?
A. I would, yes.

Q. So when one of them says to you, asks you, whether QPS and the Director-General are aware that conserving a sample reduces the ability of the scientist to get the best results of the case now, what did that mean to you? This is Ms Moeller writing to you on 25 August. What did you do with that information? What did you think you ought to do with that information?
A. So I was getting a lot of emails at that time from staff, and so that's why I decided that it would be best to have a Teams meeting to try and understand what their concerns were.

THE COMMISSIONER: Yes. Go ahead, Ms Hedge.

MS HEDGE: Thank you.

Q. Now, these issues were raised also with Ms Brisotto and Mr Howes?

A. I don't know.

Q. Well, they forwarded some of them to you, didn't they?
A. Mr Howes did, yes.

Q. Can I show you this document [WIT.0014.0076.0001]. This is Mr Howes and Ms Brisotto raising - we just need the top of the email, so you might zoom on the top, if that assists with the redaction. We see you writing to them. There was a thread on MS Teams where people were - where Reporting scientists were suggesting other ways that one might exercise discretion about concentration and so on. Do you remember that?
A. Yes.

Q. And then you said this:

Let's stick to the memo.

I assume you mean the 19 August memo?
A. Yes.

Q.

Happy to consider ideas for the future, that is backed up by robust data and proper consideration.

A. Yes.

Q. So you understood when you received this MS Teams discussion that there was ongoing controversy amongst Reporting scientists about whether the 19 August decision was a good decision or the best decision? Do you accept that?
A. I don't know if "controversy" - I don't know if that's - but there was concern and there was discussion around it.

Q. Differing opinions?
A. Differing opinions, yes.

Q. Some people perhaps thought it was a good decision; other people disagreed?
A. Yeah.

Q. You said you were happy to consider ideas backed up by

robust data. Did you suggest to anyone that they might collect some data so that these differing opinions might be resolved?
A. I was hoping that the scientists might initiate that themselves.

Q. Did you suggest that to anyone?
A. No, I didn't, until later.

Q. When you say, "the scientists", do you mean the Reporting scientists?
A. Yes.

Q. They're not --

THE COMMISSIONER: Q. How were they going to do that? What was your hope?
A. I was hoping they might put a change proposal together or following, you know, their SOP or whatever that they have in DNA, to say, "It would be good if we could investigate this, and this is my proposal for doing this. This is how I propose that we do it."

MS HEDGE: Q. But you didn't suggest that to anyone?
A. I didn't overtly suggest it to anybody.

Q. Did you covertly suggest it to someone?

THE COMMISSIONER: I think the obverse is "implicitly" here.

MS HEDGE: Q. Did you implicitly suggest it to someone?
A. I suggested in the Teams meeting that we needed data to be collected and that that data should undergo proper consideration.

Q. Did anyone in the Teams meeting say they would do that?
A. No.

Q. Are you aware that to obtain data like that would require requests to bdna, the owner of the Forensic Register?
A. So there was - there's other ways that we can get data. We can actually collect - do the experiment ourselves and collect the data ourselves. So there's other ways, but, yes, one of the ways is to request from bdna

that data.

THE COMMISSIONER: Q. What was the difference between what they were proposing and what you were proposing so that your proposal did not need any data and theirs did?
A. As I said, I thought my proposal was an administrative change as opposed to a change in the technical, analytical process.

Q. I am talking about their concern, Ms Moeller's concern, for example, about excluding the prospect of a full microcon and the consequences of that. Those are the sorts of issues they had, aren't they?
A. Yes.

Q. Yes. So those are issues you say couldn't be looked at seriously without getting some data. Why could you implement your proposal to microcon to half without data?
A. So my - it's not a wish. I want - I knew that we needed - that the - that the direction from the Director-General was to return to the pre-2018 processes, and the documented process was a micro-concentration of 35 ng/µL. When the scientists brought to my attention they would like some discretion around that and would like to be able to micro concentrate to full, I looked into the SOPs to see whether that was an option, but it was only a rework option. It wasn't an initial process option. And given that the QPS had said, "We don't want you to exhaust the sample", there is - I felt that there was a need to collect data around the advantages and the likelihood of getting a profile from that first pass-through and now concentration to full.

Q. So the Director-General, who is not a scientist experienced in this field, wants something. Police, who are equally inexperienced in this field, want something. And you thought your job was to ensure that what they wanted got done, whether or not scientists within FSS, who are the experts, whether or not they had qualms about it or concerns about it? That was to be left to another day; is that right?
A. Yes. I wanted to collect data to make sure that we were providing advice to the QPS around the advantages of microconning to full.

Q. Yes. And so why did you think the Director-General wanted the pre-2018 process to be adopted, even if that was

not the best way to go?
A. I understand that he wanted us to return to the pre-2018 process.

Q. This wasn't my question.
A. I don't know about whether he thought about whether it was the best process.

MS HEDGE: Thank you.

Q. Last question. You are aware of a pause in testing that was ordered by the Acting Director-General last Friday, 30 September 2022?
A. Yes.

Q. And you are back in your Quality Manager role, assume?
A. Yes - sorry, no. I have been taken offline to assist Forensic DNA with the Commission of Inquiry.

Q. To assist them from a quality perspective, or from what perspective?
A. Just providing scientific support in any way I can. So I am doing both roles at the moment. I am also the Quality Manager until that role gets filled.

Q. You had that quality role then on last Friday?
A. Yes.

Q. Were you consulted before that decision was made?
A. I knew that there had been requests made by Inspector Neville to pause the testing, but I wasn't consulted.

Q. And to your knowledge was anyone in the Forensic lab consulted --
A. Not to my knowledge.

Q. -- about that decision?
A. Not to my knowledge.

Q. In particular, Lara Keller? Do you know whether Lara Keller was consulted?
A. I don't know. She was briefing up about it.

Q. Did you see that, did you? You saw an email where she briefed it up?
A. I saw the draft brief and we were advised - sorry, I

take that back. We were advised from one of the Commissioner of Inquiry legal team that they had also provided some advice as well to the Director-General about the pause, and he told us that in a Teams meeting. I can't remember the date.

Q. When you say Commission of Inquiry legal team, do you mean the legal team advising Queensland Health in relates to this Commission of inquiry --
A. Correct, yes.

Q. -- not anyone inside the Commission of Inquiry?
A. Correct.

Q. I understand.

MS HEDGE: Yes. Thank you. Those are my questions.

THE COMMISSIONER: Thank you

<EXAMINATION BY MR HYNES

MR HYNES: Thank you, Commissioner.

Q. Ms Gregg, I only have a few questions and it concerns your terminology of events.

Can I take you back to 15 July 2022, and Mr Operator can I please have on the screen [WIT.0032.0029.0001_R at 0003]. There is an email there which is from you on the - that you can see the large portion of that which is from you, dated 12 July 2020?
A. Yes.

Q. It is at 12.32 pm that day?
A. Yes.

Q. If we just follow that thread through, Mr Operator, to its beginning onto the next page, please, and down to the bottom of that. We can see that it commenced there at 15 July 2022 at midday from a person called Darren Pobar who is with the Police. You understand that?
A. Yes.

Q. In that email that he sent there on 15 July, he was asking you in that second paragraph towards the bottom starting with:

I understand ...

He was asking you about a change in process and the impact it would have on turnaround times; is that right?
A. Yes.

Q. Now, you are aware then from that email, and that was a Friday, we can see from the "Sent" item there. You were aware from that email, weren't you, that Police were concerned about that aspect of the change in process?
A. Yes.

Q. Also just out of an abundance of caution with your chronology, you didn't actually start as the ED until the Monday?
A. Yes.

Q. Is that right?
A. That's correct.

Q. If we fast-forward and go up the page, please, Mr Operator, to this email here which starts a little bit higher up, Mr Operator, please. On 20 July 2022 at 9:51 am. It is Mr Pobar again emailing you, isn't it?
A. Yes.

Q. You hadn't yet, between the 15th and 20th, responded to that first email, I take it?
A. That's correct.

Q. And in this email here, Mr Pobar is asking you whether or not there's been concentration involved in the testing of these samples in the DIFP range?
A. Yes.

Q. Now, he talks there at the very end of that passage in that second paragraph, which is at the bottom of the page, about the DIFP range potentially benefiting from concentration. You see that?
A. Yes.

Q. You did understand from your involvement in the lab for many years as a quality manager that concentration would benefit a sample?
A. Yes.

Q. Okay. And your response that we started with then is a little later that day. If we could scroll up, please, Mr Operator, and go to the start of that email, please. [WIT.0032.0029.0001_R at 0003]. This is your email in response, 12:36 pm; is that right?
A. Yes.

Q. I just want to ask a few questions about it. Firstly, you say:

Hi Darren,

I have reached out to my colleagues ...

Who are we talking about here?
A. Cathie Allen.

Q. So this email here, was that, in essence, scribed by her and you have relayed that information?
A. It was pretty much a cut and paste from an email that Cathie Allen sent me.

Q. Okay. With respect then to that email, what you informed him of in all of that was that concentration was not occurring; it was going straight to amplification when they're in that DIFP range. That was the new process post 6 June?
A. Yes.

Q. You understood that, from the earlier email from Mr Pobar, that Police thought there could be benefits to concentration; yes?
A. Yes.

Q. You agree with that?
A. Yes.

Q. So Police's concerns then at this point in time when you are writing this email are time frames, turnaround?
A. Yes.

Q. You didn't answer them in this email about turnaround times?
A. Not unless Cathie had in her email, but no.

Q. And Police were also concerned about concentration and the benefits that could be obtained from it?

A. Yes.

Q. Knowing those concerns then, did you take them anywhere?
A. So at this point in time, and it was day two and a half of being the Acting Executive Director, I didn't understand the importance of the email that I was sending to Darren Pobar, that it was saying, "We're not concentrating".

Q. If we fast-forward then to the next significant event as it relates to the DIFP process, it was a phone call you got from Dr Rosengren on 16 August 2022?
A. Correct, yes.

Q. And in that phone call, he raises some issues with you?
A. He just said there's been some - that Cathie would let me know what those issues were.

Q. So between 20 July and 16 August, you were faced with information but you didn't think there was any significance to it; is that what you are saying?
A. I didn't understand the importance of it, no.

Q. But with Mr Rosengren when he called and said there were issues, did you raise these concerns with Police? That is, the turnaround times or the concentrate issue with him?
A. No, I did not.

MR HYNES: Thank you, Commissioner.

THE COMMISSIONER: Yes. Yes, Mr Dean?

<EXAMINATION BY MR DEAN

Q. Concerning the meeting on 19 August which you made a diary note about, 19 of August this year?
A. Yes.

Q. And you said that present at that meeting in your diary note shows --

THE COMMISSIONER: What exhibit is that, Mr Dean?

MR DEAN: I am sorry. I didn't have a note of the number.

It was one taken by counsel assisting.

MS HEDGE: HG-18.

MR DEAN: HG-18.

THE COMMISSIONER: Thank you.

MR DEAN: Q. If you need to put it up on the screen, please say so and I'll ask for it. But you have may recall the handwritten note I am talking about, the file note?
A. Yes.

Q. You recorded there that present at the meeting amongst others was Cathie Allen, Justin Howes and my client, Paula Brisotto?
A. Yes.

Q. You described them as being the scientists who were present at the meeting?
A. Yes.

Q. You said, in answer to questions from Counsel Assisting, that when you raised this compromise proposal about not proceeding to exhaust a sample without going first to the QPS and asking for their permission, that the scientists were in agreement with that proposal?
A. That's my understanding, yes.

Q. Is it right to say that the way in which that unfolded was that there was this identification by Ms Fairweather that the QPS didn't want samples exhausted?
A. Yes.

Q. And that that presented a problem because sometimes ordinarily the practice of the laboratory would be to exhaust the sample with testing?
A. Yes.

Q. You then identify that maybe one way to solve this problem that was emerging was to have this compromise that you mentioned where you would go to QPS first, the scientists would go to the QPS first and seek permission before exhausting the sample?
A. Yes.

Q. And that the response of the scientists collectively

in that sense was that, "Well, if the QPS won't permit us to exhaust a sample, then we do have to have some solution to that problem"?
A. That's not my recollection. It was just that they favoured the suggestion that I had to approach the QPS to request exhaustion of the sample.

Q. Was there also some discussion that there needed to be some inquiry made to find out what other laboratories did to deal with this same sort of problem that existed elsewhere?
A. My recollection is that there was a desire to contact other laboratories to determine what volume of sample they needed for the additional testing, should QPS want to send the remaining sample to another jurisdiction.

Q. And so that sort of inquiry was what is needed to be made before one could finally resolve this problem that seemed to be thrown up by the QPS's desire as communicated to you in that meeting?
A. I think they're separate in that the QPS requested a pause, and so we didn't want - sorry, requested us to not exhaust the sample. We wanted to make sure that if we did do one amp and we had approximately 15 microlitres remaining, that that was enough volume for another jurisdiction to be able to process if they're requested by QPS. So to me, they're separate issues. One is not exhaust, but also make sure that the volume that we've got is enough for the other jurisdictions.

Q. Because if the volume that you have got left over is not enough for the other jurisdictions, you have exhausted the sample, haven't you?
A. To all intents and purposes, yes. It would be enough for us to do a second amp if we wanted to, but it may not be enough for the other jurisdictions to do the testing that they wanted to do.

Q. All right. And that was the point of the request by the QPS, wasn't it, as you understood it had been made?
A. It was part of - yes, yes.

Q. So whilst you can split them into those differentiated issues, they're related?
A. Yes, absolutely.

Q. And so from the scientists' point of view there were

further enquiries that needed to be made?
A. Yes, we wanted to make sure that we had enough volume for the other jurisdictions.

Q. All right. But that, in the meantime, because of what was understood by those present at the meeting, the scientists, in particular, and yourself, the compromise was the only way you could see forward until the matter was further resolved?
A. Without adversely affecting the processing in the laboratory even more.

Q. Thank you.

MR DEAN: Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Dean. Mr Hickey? Ms Mckenzie? Anybody?

MS MCKENZIE: No, thank you.

THE COMMISSIONER: Q. Ms Gregg, just one thing. Operator, would you put up [WIT.0032.0022.0001_R], please. Just have a look at that, would you, Ms Gregg.
A. Yes.

Q. You see in the paragraph under the subtitle, "Background", you say that a sample of 35 mL, after concentration, is enough for one quantitation and two amplifications. Why would you be quantifying it after concentrating it?
A. I don't know, but that's my understanding of the workflow, that after they concentrate it, they then do another quant.

Q. I see. Thanks. Anything arising out of that?

THE COMMISSIONER: Yes, Mr Rice?

MR RICE: I just have a couple of questions.

THE COMMISSIONER: Yes, certainly. Go ahead, Mr Rice

<EXAMINATION BY MR RICE

MR RICE: Q. Ms Gregg, after being issued with the Director-General's memorandum of 19 August, it is right to

say, isn't it, you were tasked to both inform the staff and to also implement that direction?
A. Yes.

Q. Okay. And that led to, in due course, to the conduct of two Teams meetings at which you fielded questions and attempted to explain?
A. Yes.

Q. I just want to summarise what criteria you were working with at that time. Having been given the Director-General's memo, did you feel obliged that it had to be complied with?
A. Yes.

Q. Did you also feel obliged to give effect to what you understood the prevailing QPS view to be, that the sample was not to be exhausted?
A. Yes.

Q. Was that a guiding consideration in your interaction with staff concerning this memorandum?
A. Yes.

Q. Were you also guided by the content of SOPs that you had accessed from pre-2018 to determine what the workflow was at that time?
A. Yes.

Q. And did your explanation of those SOPs form part of your explanation to the staff in these Teams meetings?
A. Yes, it did. Yes, I said that I referred to the SOPs, yes.

Q. Were they effectively the three things that were guiding you: The need to comply with the DG's memo, the need to comply with the prevailing QPS view about exhausting a sample irrespective of what prior policy there was and, thirdly, the content of the SOPs?
A. Yes.

Q. Does that sum it up?
A. Yes, it does.

MR RICE: Thank you, Commissioner.

THE COMMISSIONER: Thank you. Any re-examination,

Ms Hedge?

MS HEDGE: Just one matter.

<FURTHER EXAMINATION BY MS HEDGE

MS HEDGE: Q. If we could put up [WIT.0032.0027.0001_R]. Mr Dean, who was sitting over there, if you don't know who I am referring to, asked you some questions about asking other jurisdictions what they did. And if we can just scroll down to the top of the next page, do you see at the bottom of that page, page 2, [WIT.0032.0027.0001_R at 0002] that you said:

My reading is that we are OK with 15uL.
Can you please confirm?

This is at 2.07 pm. Do you see that?
A. Yes.

Q. And then Mr Howes said at the top of the page:

I think we need to ask about Minifiler and
Y-Filer Plus ...

Do you see that?
A. Yes.

Q. Now we go to the next page. Sorry, backwards to page one. Thank you [WIT.0032.0027.0001_R]. In the middle of the page is you writing:

Minifiler: max amp volume is 10ul
Y-Filer Plus: Same as ID+ which is 5ul

Do you see that?

Full email trail attached

A. Yes.

Q. So between those two emails, you had some correspondence with ESR, the lab in New Zealand?
A. Yes.

Q. To get that information?
A. Yes.

Q. All right. And so you passed that information on at 4:57 pm?
A. Yes.

Q. Was that after you received it from the ESR?
A. Yes, very close.

Q. So you didn't have the information from ESR when Dr Rosengren sent out his memo?
A. That's correct.

Q. So you didn't tell him you were waiting on information from other labs?
A. No.

Q. So he sent out the memo and at that time you weren't sure whether or not there was going to be sufficient volume to send to other labs for retesting and only found out later in that afternoon; is that fair?
A. So I had had some verbal advice and I can't remember who from, but it was from Paula, Justin or Cathie, that said, "We're pretty sure that it's less than that 15 microlitres, but it would be wise to check", so --

Q. You were relying on that verbal advice?
A. Yes, I was.

Q. To allow the Director-General to send out his memo?
A. Yes.

Q. Thank you.

THE COMMISSIONER: Anything arising out of that, Mr Rice?

MS HEDGE: No, thank you.

THE COMMISSIONER: Thank you, Ms Gregg. You are free to go. Thank you for your assistance.

THE WITNESS: Thank you very much.

MS HEDGE: Mr Hodge has the next witness.

THE COMMISSIONER: Yes.

<DR DAVID ROSENGREN, SWORN

<EXAMINATION BY MR HODGE

MR HODGE: Q. Your name is David Rosengren?
A. That's correct.

Q. And you are the Chief Operating Officer at Queensland Health?
A. That's correct.

Q. And you have got a Bachelor of Medicine and a Bachelor of Surgery from the University of Queensland?
A. I do, yes.

Q. And, Doctor, I think, is that one degree?
A. It is one degree, yes.

Q. Bachelor of Medicine/Bachelor of Surgery. And you, as I understand it, have more than 20 years in public and private hospital emergency departments?
A. Sadly, that's correct. Yes.

Q. And you continue to provide clinical services?
A. I do.

Q. And you were the Acting Director-General of Queensland Health for two weeks from Monday, 8 August 2022 to Sunday, 22 August 2022?
A. That's correct.

Q. And I take it from your background that you don't have any experience in relation to DNA testing?
A. I do not, no.

Q. Have you acted as the Acting Director-General before other than for this short period?
A. No, I have not.

Q. How long have you held the position of Chief Operating Officer in Queensland Health?
A. I was the Acting Chief Operating Officer for some date in early March, and I was substantively appointed to the role in early August. I don't have those exact dates at hand, but approximately.

Q. Thank you. I will just bring up your witness statement. It is [QHE.0106.0001.0001_R]. That is the

statement you have given to the Commission?
A. That's correct.

Q. If we go to [QHE.0106.0001.0001_R at 0015]. You affirmed that on 16 September 2022?
A. That's correct.

Q. Do you have any corrections to that statement?
A. No.

MR HODGE: I tender the statement.

THE COMMISSIONER: Exhibit 60.

EXHIBIT #60 - STATEMENT OF DAVID ROSENGREN DATED 16 SEPTEMBER 2022

MR HODGE: Q. I want to ask you about some aspects of the statement, Dr Rosengren. The first thing I just want to understand is if we go to paragraph 19 of the statement, which is on [QHE.0106.0001.0001_R at 0003], just to put this in context, you were asked a number of questions about the decision on 6 June 2022, made by Mr Drummond?
A. Correct.

Q. This question, subparagraph c here is in relation to that question. And you see in the last three lines of paragraph 19 you say:

> *This was to be an interim measure pending further consideration of the question of thresholds by the Commission of Inquiry, and I believe the intention was to revert, so far as possible, to the workflow in place for such samples pre-2018.*

I just wanted you to explain to us how you came by your understanding as to the intention behind the decision made on 6 June 2022?
A. So when this was brought to my attention during my brief period as the Acting Director-General, I would have asked to be brief on the background behind the process, in particular the decision that we were reviewing, with regards to the 6 June decision that's referenced.

And so the advice that I was provided in speaking to the staff in the Office of the Director-General and also

legal counsel was that the intention of the Director-General had been to return the processing to the pre-2018 workflows because it was the workflows introduced in 2018 that were significantly in question through the Commission of Inquiry, and so, therefore, I understood it to be a logic decision that we would revert to the pre-existing process which was not in question up until that time, until we could get further advice around a pathway forward as a result of this particular process of investigation.

Q. So when you commenced as the Acting Director-General on 8 August 2022, you weren't familiar with the decision that had been made on 6 June?
A. At that particular time, I would have had a very high-level understanding of the particulars related to the Commission of Inquiry and the specific issues with the DNA lab with Forensic and Scientific Services, but as the Chief Operating Officer, the issue didn't sit within my portfolio as such, and so detailed understanding of specifics and specific decisions would not have been part of my normal working activity. So I very rapidly brought myself up to speed when this issue was first raised with me during that period of time.

Q. I see. And in your understanding of what the intention of Mr Drummond was, that was something that you formed based on what you were told by the people who were briefing you during the time when you were Acting Director-General?
A. That's correct, yes.

Q. I know you have had some conversations with Mr Drummond. It wasn't based on those conversations; it was based on the briefings you were given?
A. No. So at the time Mr Drummond left to go on leave, this particular decision had not been identified as being in question, so I don't recall there being any specific handover on this particular item or the particular decision related to 6 June.

Q. I understand. But also while you were the Director-General, as I understood your statement, you spoke to Mr Drummond, I think, on two occasions whilst you were still the Acting Director-General. Your understanding of what his intention was wasn't based on what he said to you during that period in reference to what was said to you?

A. Yes. No - no, my - that's correct. Yeah.

Q. And then the way in which the issue then was first brought to your attention, as I read your statement, was on 12 August 2022. That's a Friday?
A. Friday evening. That's correct.

Q. As I understand, it you were at a function on that Friday evening?
A. Yes, I was a school event and received a phone call - I'd have to read the statement to work out exactly what time. It was about 5.00 or 6.00pm at night, I think.

Q. It is paragraph 24. Maybe if we can blow up that paragraph, it is at the bottom of [QHE.0106.0001.001_R at 0004] and the top of - continues over to the top of page 0005?
A. Yes, 6.15 pm roughly on Friday 12 August when it was first brought to my attention.

Q. The time that is set out in that statement, is that going back and checking your telephone records or the records of Mr Rigby or Ms Fairweather?
A. Without going into micro-detail, I have a new phone. I don't have access to the records of the specific timeframes, but because I was at a school event, I knew exactly what time the event started. So it's an approximation, not an exact time when that phone call occurred.

Q. You got a call then, as I understand it, from the Executive Director and also the acting Chief Legal Counsel?
A. Yes.

Q. On a Friday evening at a school function?
A. Yes, at 6.15 pm.

Q. Was it an urgent call?
A. It was considered by then to be an urgent call that required a conversation with myself as the Acting Director-General.

Q. In the call, you say that they advised you about a potential inaccuracy that had been identified in the options provided to Shaun Drummond?
A. That's correct.

Q. And then over the page, you say:

I understood the potential inaccuracy was related to the fact that it was not strictly possible to revert strictly to the pre-2018 workflow due to the introduction of new technology since that time.

A. That's the advice that was presented to me at that point in time.

Q. What was the new technology they told you about?
A. I don't understand, and at that point in time we didn't have sufficient exact information to be able to answer that, but I was informed, or the way I interpreted the information, was that new technology had been introduced to the lab with regards to the types of machines and the types of workflows, and so that there was no longer a possibility for us to revert exactly to the pre-2018 workflows, so that a form of a modification was required to provide explicit clarity. That's the advice that we - that I received on that Friday evening.

Q. And you go on in that paragraph, I think, to pick up that part you're talking about, which is you say:

The effect of the discussion on 12 August 2022 was whether there was sufficient clarity in the memorandum to ensure the intention to revert to pre-2018 testing workflows for 'DNA insufficient for further processing' results had been effectively achieved.

So I think that is what you just said to us orally?
A. Yes. I was aware from the - my very high level of visibility before taking on the Acting Director-General position for that time period, I was aware that there was a significant amount of anxiety or tension within the workplace related to the scrutiny associated with the Commission of Inquiry, and that it was very important for all parties to make sure that there was not an opportunity for confusion or room for ambiguity about what was the intention of the Director-General, which was to revert to the pre-2018 process.

So I was very keen to have clarification on, if there

was an ambiguity or an opportunity for confusion, then it was an imperative for me as the Acting Director-General to close that out and to provide explicit clarity so that there was no confusion in that space.

Q. For the moment we will just focus on 12 August 2022. When you talk about clarity in the memorandum, what is the memorandum that you're talking about?
A. So in fact in retrospect, it was a verbal direction from the Director-General from - I think I discovered subsequently - at the time I had the conversation on the Friday, I had understood that the D - the Director-General - had provided the instruction to the staff in the Forensic DNA lab through a written memo. Subsequently, as the week progressed, I discovered that in fact that had been a verbal instruction from the Director-General and there wasn't an original memo, but at the time I had the conversation that was what I understood.

Q. Tell me if I have understood correctly, though, you had been told inaccurate or potentially inaccurate information had been provided to Shaun Drummond?
A. That's correct.

Q. And then you understood that the inaccuracy was about, or somehow arose from, the introduction of new technology since 2018?
A. That was the original advice in that phone conversation on the Friday evening.

Q. But you didn't know what the new technology was?
A. I did not know that, and the Executive Director of the Director-General's Office and the Chief Legal Counsel were not able to explicitly provide me with that specifics. And so I think I subsequently asked for them to go away and work through the exact details to allow a decision. I made a decision that at that point in time, at that time on a Friday night, there was no material requirement for us to do anything there and then. There was no ongoing risk between Friday night and return to normal business hours the following week. So I acknowledged the information, made a decision on what was made available to me - there was no immediate decision required at that point in time - and requested that further information be gathered so that we could consider it in detail and make an informed decision subsequently.

Q. What I then want to try and understand is how that fits into the last part, which is about sufficient clarity, because it seems like what you had been told was Mr Drummond had been provided with inaccurate information or potentially inaccurate information and made a decision based on inaccurate information, but then the last part of what you are saying seems to suggest the issue was that something about the communication of his decision was perhaps being misunderstood?
A. No. So the Director-General, the intention of the Director-General's - as I was advised - instruction was to revert to the pre-2018 workflows. I was given the information that staff had identified on that Friday that in fact as a result of changes in technology, it was not possible to revert to the 2018 workflow because that workflow was no longer an option, and so that we needed to provide clarification of what was the closest workflow that would deliver on the pre-2018 processing of those specimens through the lab.

Q. I understand. So that was your understanding --
A. That was my understanding --

Q. -- on the Friday night?
A. -- on the Friday. It was very limited information without being able to speak to the experts.

Q. And then on Monday - this is paragraph 26 of your statement - you attended a telephone call with the same two people, Matt Rigby and Megan Fairweather?
A. That's correct.

Q. By then, or within that call, did they tell you that the situation was that the information that had been provided to Mr Drummond as to the two options was incorrect and, to put it bluntly, he had chosen one option, not realising that he should have chosen the other option?
A. So at that point in time, I don't think that that was on my level of awareness. At that point in time, on the information that I had available, the issue was more directed to the potential of confusion amongst lab staff, because they had understood the direction to be to revert to the pre-2018 workflows and they weren't able to do that strictly.

And so that, at this point in time with information I had available, my intention was to provide a more explicit

level of clarity around what we wanted that workflow to precisely be so that all members of the lab would have a consistent understanding of what we were expecting of them with the management of those or the processing of those specimens, until further advice from the Commission would potentially provide us with other direction.

Q. I see. And then if we come to paragraph 28 which is on page 0006, [QHE.0106.0001.0001_R at 0006], we see you say:

> *As a result of the discussions, I asked that further information be obtained from Cathie Allen ... about the ... position of the pre-2018 threshold workflow and for them to update the options available to revert to that process.*

A. Yes, so what I was needing to do was to get direction or advice from the experts in DNA processing to the question around the lack of clarity had been raised by the lab staff. And so, I was asking for the lab staff to provide suggestions as to what the clarification needed to be to ensure that they would be able to implement a consistent approach to those specimens for all people in the lab.

Q. So this is what you say you had understood on Monday evening when talking to Ms Fairweather and Mr Rigby?
A. Yep.

Q. That the lab staff were confused because they couldn't revert to the pre-2018 workflow because of some technological issue?
A. The advice that was provided to me that initiated this question was members of the lab team had identified that there was a - they had a sense of confusion around the explicit process they were expected to follow. So that's the advice that was provided to me as the Acting Director-General, and so the logical response - or at least I thought it was logical - was to seek advice from the lab around what was going to be the most appropriate workflow, in explicit detail, that would deliver on the intention, which was to revert as best as possible to the pre-2018 workflow.

Q. I see. So in that call on the evening of Monday,

15 August, you asked for them to go back to Cathie Allen and Helen Gregg to get clarification around the workflow?
A. So on Monday - did you say it was the 15th? I had been away in Fraser Coast and I had just returned to Brisbane late that afternoon. And so, the phone call was just checking in, because we'd had the conversation on the Friday night, just for an update on where we were at. And I still didn't at that point in time have enough clarity in my mind what the explicit issues were, and so I asked them to get specific advice from the experts to give me that better understanding of what the underlying issue was.

Q. I see. I may have misunderstood your statement - it was a bit tricky to figure out - in paragraph 28. When you say here "as a result of the discussions", this seems to be actually happening on Tuesday, 16 August. You say:

> *As a result of the discussions, I asked that further information be obtained from Cathie Allen ...*

Who did you ask?
A. Well, I would have asked Matthew Rigby, who was the Executive Director of the Office of the Director-General, to chase that down on my behalf. But, in fact, I then made a decision subsequently that in order to ensure there was no lack of clarity around what I was asking for, I phoned Helen Gregg directly myself to have that conversation.

THE COMMISSIONER: Q. You rang her yourself?
A. I rang her myself because I decided that the best way to get clarity around what I was asking for was to speak directly to Helen myself and let her know what I had been - what had been raised with me as a specific concern so I could give her better guidance on what I was specifically asking her to clarify for me.

MR HODGE: Q. And then this, I think, is what you are talking about in paragraph 29. You say at about 12:45pm, so that's on the Tuesday, you telephoned Helen Gregg and indicated that you that you required advice from FSS on a technological level regarding strengthening clarification of the forensic DNA analysis workflows to revert as closely as possible to the workflows in place before the introduction of the thresholds in early 2018?
A. That's a perfect description of what I was trying to explain just previously, yes.

Q. I have to be honest; I don't know what it means. What is "advice from FSS on a technological level"?

THE COMMISSIONER: Q. Did you just say it was a perfect description of what you meant?
A. Well, for me it was.

Q. Well, you had better tell us what you meant.
A. So I had been given a summary of a concern that was second and third-hand to me through the acting Head of Legal Services, the Executive Director of the Office I was currently in, around a complexity around a lab workflow that none of us had any understanding of. And so, I needed advice from the experts. The technological level is about the workflow.

The question that was raised to me as a potential ambiguity related to a technical workflow of how specimens were processed in the lab. I had no - I had no, and now have some, visibility of the process. But at that point in time I had none, and so I needed expert advice from people who worked in the lab, knew exactly what was going on, to give me an understanding of what it was I was trying to clarify.

Q. At a sufficiently detailed level to allow you to make an informed decision rather than acting upon conclusions?
A. That's correct.

Q. Yes.
A. Yes.

MR HODGE: Q. And at some point in time - and tell me if I am right - at some point in time you realised that this had nothing to do with some technological change since 2018?
A. So my understanding still was that there were differences in - there was new technology, new machines, changes to workflows. So I still understand that that was a contributor to confusion. It then subsequently - when I received the correspondence, a copy of the correspondence that had been provided to Shaun Drummond, it was then that the lab staff identified to me in that correspondence that there had been some errors in that advice put forward to the Director-General. But until I received that correspondence, I was not aware of that being a primary

issue. Up until that point in time, I thought it was simply just a technical issue in the lab around new machines and new technology advances that were causing confusion.

Q. Just so I understand it, because I will come in a moment to that email, but at this point in time, having spoken on a couple of occasions to Mr Rigby and Ms Fairweather and having spoken directly to Ms Gregg, your understanding remained that there was some issue about technological issues impeding the ability to revert to the 2018 workflow?
A. That's correct.

Q. And what I then want to press you on is you understand now that that was not the issue?
A. Well, I'm not absolutely certain that it wasn't an issue, but subsequently the issues around the wording of that email to the Director-General that made the instruction were brought to my attention to be potentially confused. However, that was not an issue for me at the time as the Acting DG because my understanding was that the intention was to return to the pre-2018 workflows as best as possible, and so I focused on that particular issue about that clarification to ensure that the lab had a clear understanding of what we were asking them to do around the processing of the samples.

Q. Can I --
A. Those other issues were not as materially important to me in that time period as the Acting DG for a period of two weeks.

Q. Let me skip forward and go backwards. If we go forward to page 0011 [QHE.0106.0001.0001_R at 0011], in paragraph 49, you say:

> *I did not reconsider the decision but rather provided specific clarification to ensure that there was no ambiguity or confusion arising from the options relied upon in the decision of 6 June 2022, and thus allowing the decision to be consistently implemented by all staff.*

A. That's correct.

Q. Just tell us what that means?
A. So, as I have just previously referenced, I was focusing on the intention of the original decision by the Director-General. And the intention, irrespective of the way the advice was worded, the intention was to revert the lab to a pre-2018 workflow.

Q. Can I attempt to simplify it to see if you agree with this?
A. Yes.

Q. You know now that the Director-General was presented with two options?
A. Correct.

Q. And you know now that the option that he was told reflected the pre-2018 workflow did not reflect the pre-2018 workflow?
A. I do understand that, yes.

Q. And that the other option that he was told did not reflect the 2018 workflow or pre-2018 workflow in fact did reflect the pre-2018 workflow?
A. Well, it reflected, from my understanding, a 2012 workflow. So at the time I was making these decisions, the only focus for me in the interim Acting Director-General role for a two-week period of time was to provide clarity on what I had understood to be the intention of the Director-General's instruction to revert to the work flows of 2018.

THE COMMISSIONER: Q. But you understood that the Director-General wanted to revert to a process that existed at a particular time?
A. That's correct.

Q. You were told at first, or you understood at first, that an issue had an arisen because that reversion might not be possible because of technical changes that had occurred in the interim?
A. That's correct.

Q. And then you were told that in fact, the problem wasn't so much that, it was that what the Director-General had been told by way of information was in some degree inaccurate?
A. That's correct.

Q. And you were going to be given the accurate information?
A. I'd sought the accurate information so that I could then make sure that in delivering the intention of the Director-General, I had a much clearer pathway for the lab staff to follow.

Q. Yes. And so then you got an email or a couple of emails - I think Mr Hodge will take you to them.
A. Yep.

Q. And you acted upon those emails to effectuate Mr Drummond's decision to revert to the pre-2018 process?
A. That was my intention, yes.

MR HODGE: Q. And just tell us - maybe I will take you to one of the emails you refer to. Can we go to [QHE.0106.0004.0001_R]. Do you have a copy of your statement with you?
A. No, I don't.

Q. What I might do is if we can just have that on one side of the screen, and on the other side of the screen can we just bring up from Dr Rosengren's statement the page which is [QHE.0106.0001.0001_R at 0006]. If you blow up paragraph 30 of your statement, you say in preparing this statement, you have been provided with an email:

> *... dated 16 August 2022, sent by Cathie Allen at 1.06pm to Helen Gregg.*

A. That's correct.

Q. And if we then look at the document on the other side of the page, that seems to be that email that you're referring to?
A. That's correct, yes.

Q. You see in the first paragraph, Ms Allen says:

> *Yesterday afternoon I had a meeting with Mr Glen Rice QC, Megan Fairweather, Chief Legal Counsel, and Karen Watson, Crown Law. During this meeting, it was highlighted that I had not been clear in an explanation regarding options that had been put forward*

as alternative workflows to the one currently in place ...

A. Yep.

Q. And just pausing for a moment on that, were you aware of this meeting that had occurred between Mr Rice and Ms Fairweather and Ms Watson?
A. No.

Q. Okay. I accept that, but just doing the best you can for us, you see this was sent on Tuesday, 16 August and it's referring to a conversation "yesterday afternoon", which would be Monday, 15 August. And you recall you then spoke to Megan Fairweather at 5.00 pm on Monday, 15 August. You don't recall having been told about a meeting that had occurred within the preceding few hours between Ms Fairweather and Ms Allen?
A. Not specifically. I wouldn't - you know, I don't have any explicit notes of that meeting - of that conversation, but I don't have any explicit recollection of that level of detail in our conversation.

Q. But you must at some stage have been told about the meeting between Mr Rice and Ms Fairweather and Ms Watson and Ms Allen?
A. As the Acting Director-General, I would not be told every specific. I would be expecting that these sorts of meetings, because I had already asked for them to go away and provide me with clarification and expert advice. So when I asked that, I am assuming that there will be various forms of communications and discussions between the team and the clinical experts to be able to provide that advice back to me.

Q. Is I think I framed my question badly, and it might have seemed like a trap. It's not a trap. You were told in writing, an email was sent to you, telling you about the meeting. If we go to [QHE.0106.0002.0001_R], this is the first exhibit to your statement?
A. If that is the case, then yes.

Q. We'll just bring - sorry.
A. But I don't recall explicitly having a phone conversation.

THE COMMISSIONER: But that is the next day?

MR HODGE: Q. Yes. So you got an email from Ms Gregg telling you about it, yes?
A. Subsequently, yes.

Q. I see. It's not - sorry, I might have misunderstood you. You were told at some stage about this meeting, you were just told on the Wednesday not necessarily Monday.
A. Yeah, you asked me about the Monday evening --

Q. I understand?
A. -- and I don't have a recollection of the Monday evening.

Q. I understand. And then in this email that we have got up on the screen, if we go to the second page [QHE.0106.0002.0001_R at 0002], this is what is described as the clarification about the 3 June 2022 options.
A. Yes.

Q. And you would have read this?
A. Yes.

Q. And this is the part that reflects the understanding that you developed about what was pre-2012 and 2018?
A. That's correct.

Q. And just if you can explain to us, on the face of it, reading this, it looks like what is now described as Option 2, concentration of all samples in range, is being said to be the workflow that was in fact in place pre-2018.
A. That's how I understood the way it was presented to me, yes.

Q. Yes. And you see that the strike-outs indicate that Option 2 has gone from being described as "least preferred" in the 3 June 2022 email to now not having those kind of descriptives?
A. That's correct, yes.

Q. Okay. So is it - again, I just want to clarify. Is it the case that this is what happened: You at some point were told and understood Option 2 reflected the pre-2018 workflow, and it hadn't been what had been selected by Mr Drummond because he had been misinformed, and you clarified his decision in the sense that you understood he wanted to revert to the situation as it had been pre-2018,

and, therefore, you made clear that Option 2 was what was being selected?
A. So the answer to the question is yes. But, again, I was less interested in Option 1 or Option 2. I was more interested in the intention of the decision and the clarification of that. So I was - that's what I was focusing on in my analysis of the information provided to me.

Q. I understand. All you wanted to do was to make sure what you understood to be Mr Drummond's intention, which was to undo everything that had been done in 2018, would be done?
A. That was my intention, correct.

Q. And why it was that Mr Drummond had been misinformed, that was something that, from your perspective, could be left to Mr Drummond to deal with? You were only in the acting role for two weeks?
A. I was very happy to leave that to Mr Drummond to deal with.

Q. And you expected that would be something he would deal with in due course?
A. I didn't believe there was any urgency for us to address that in that time period, but I felt there was an urgency in clarifying the workflow for the team in the lab.

Q. I understand. And so, against that background, you know that the other thing that you added was to prohibit concentration without - or prohibit testing without QPS consent, if it would exhaust all of the sample?
A. So that is correct.

Q. And that you didn't understand to be part of the pre-2018 workflow?
A. I can't specifically answer that. That was a clarification that we included based on the consultation we had with the Queensland Police Service in the drafting of this recommendation, of this memo, for the staff.

Q. I understand, but what I am just trying to test with you is: your intention was, the thing you were fixed on doing, was ensuring that whatever was the pre-2018 workflow was what would be re-introduced?
A. That's correct.

Q. And it can't be that nobody - you tell me if I am wrong, but nobody suggested to you that adding this qualification which was needing QPS consent to certain testing was something that was part of the pre-2018 workflow?
A. So I understood from the advice that I was given, and I'm going back in my recollection now, that there had at that time been a discretionary element to decision-making based on scientist preference at the time as to whether or not that would be done. And, in my conversations and the feedback from the Queensland Police Service, I felt that in the context of what we were trying to achieve and deliver, that we needed to have a higher level of explicit expectation around that.

I was also led to believe through - I can't remember whether it was conversations or through the email chain that follows - that there had been changes in the technology around the amplification micro-concentration processing that allowed them to undertake those processes with less impact on the residual sample, but the Queensland Police Service had been quite explicit that they had significant reservations around a mandatory workflow that might consume samples without them having the opportunity to participate in that decision-making. So that's why that qualifier was introduced to the memo.

Q. So let me just focus on that part then, what the Queensland Police Service said to you. Can we bring up [QHE.0106.0010.0001_R]. You see this is an email that Mr Rigby is forwarding to you and Ms Fairweather on 19 August at 9:29 am?
A. Correct.

Q. And this is forwarding an email from, at that stage, Inspector Neville?
A. Correct.

Q. You read that email?
A. I did.

Q. If we go down to the bottom of the first page, we see that Inspector Neville is talking about how it was that the QPS agreed to removal of the process in 2018.
A. That's correct.

Q. And then if we go over the page [QHE.0106.0010.0001_R

at 0002] you see at the top of the page you see Inspector Neville says:

> *In November 2018 the QPS first raised concern with the Managing Scientist that the removal of the automatic micro-concentration process may have resulted in evidence being missed.*

And do you see about halfway through the next sentence it says:

> *... and that 'automatic progression of samples through the Microcon process means that all available DNA extract will be consumed, so no further testing can be conducted on these samples of this step'. Based on this advice, the QPS continued with the arrangement.*

A. That's what it says, yep.

Q. And then further into the next paragraph, see the second sentence:

> *If the advice from the Managing Scientist is correct, the automatic concentration of all samples in the ranged of .001-.0088ng/µL could result in the opportunity being lost to use another service provider to obtain important probative evidence. This is a consequence that the QPS is unable to accept as a matter of routine.*

A. That's correct.

Q. Just so I understand it, you at some point must have come to realise that using automatic micro-concentration or the automatic micro-concentration process didn't result in the whole of the sample being consumed?
A. So this was on the Friday. At some stage - and I don't know the exact sequence of timing, but at some stage on the Friday we then received clarifying information from the lab around the 35 microlitre volume and the reassurance that a single amplification could be undertaken with the technology that was available in the lab, and it was only a

second high level of amplification that would actually delete the sample to a point where there would be a risk of there being no residual DNA for alternative testing.

And that's why we, in the memorandum, propose the initial process, but that if a second process was required, there would then introduce a risk of depletion of the sample, that that could only be done, based on this feedback from the Queensland Police Service, with their explicit consent, so that at least there was an engagement with the Queensland Police Service, who were the purchaser of the activity from us.

Q. Yes, I understand. But just tell me if you agree with these propositions. At some stage on 19 August 2022, you realised that the information that the QPS had been given, which was that automatic micro-concentration meant that the whole of the sample would be consumed, was incorrect?
A. That's what he describes in that email. I understood that the differentiation in that was related to different technology now being available in the lab compared to at the time that this decision was made in 2018. That's how I interpreted the information that I was getting from the lab and from the Queensland Police Service.

Q. I understand. I understand. But if you would just listen to my question --

THE COMMISSIONER: No, I think Dr Rosengren answered the question.

Q. Do you mean you noticed that Inspector Neville was acting upon the basis that auto-concentration; that is, concentrating every sample within the range, he was told would exhaust the sample --
A. That's correct.

Q. -- but that you learned that that is not so, that it is possible to have a second amp.
A. That's correct.

Q. And you thought that the reason for the inconsistency between what Inspector Neville believed and what you knew was due to this new technology that you heard about earlier.
A. That was the advice I was provided from the lab when they updated me on the 35 microlitre threshold.

Q. I see. You were told that by the lab?
A. Well, secondhand. I wasn't speaking to the lab directly, but that was the advice that came to me, that the lab had updated that information to say that it was reasonable to do an initial process, but it was only if a second amplification was required that we would deplete the sample to the point where it would become a concern to the Queensland Police Service.

Q. Was the point in that communication, ultimately from the lab, in response to your concern about using up the sample if concentration is used at all?
A. So originally the advice was that even a single concentration as an automatic would run the risk of depletion, to have no residual DNA left.

Q. When you say the advice was, you were given that advice or Neville was telling you that was the advice?
A. Neville was telling me that advice. That then the advice --

Q. So did you raise that with somebody?
A. So I then drafted, or we had a draft memo, but then, in the process of that, further information was inputted from the lab --

Q. Yes.
A. -- to suggest that, actually, it was reasonable to do an initial concentration because with the technology that they were using, it didn't take up as much of a volume as previously historically had -- this is how I understood the information --

Q. No, I understand, and so --
A. -- and so that, therefore, we were - I was comfortable in the memorandum of expecting that there would be an amplification done on all of them. It was only if we were going beyond the level of 35 microlitres of residual DNA sample that we would not progress further until Queensland Police Service had given us direction.

Q. But it's your - sorry, Mr Hodge. Your recollection is that you were given to understand that this possibility only arose since 2018.
A. That's correct. That's my understanding. That's how I interpreted the advice provided.

MR HODGE: Q. Can I try and put your decision-making process back to you to see if I can summarise it accurately. The first step was: you understood that Mr Drummond's intention was to revert to the pre-2018 workflow?
A. That's correct.

Q. Subject to any qualification from the QPS, that was what you wanted to do?
A. That's correct.

Q. Then you received this feedback from Inspector Neville, the effect of which you understood to be that the QPS was concerned about reverting to a pre-2018 workflow if it was going to consume all of the sample?
A. Correct.

Q. Then after that, you then received further information to the effect that whatever it was that Inspector Neville had been told - it doesn't matter whether it was wrong but it was not current --
A. Correct.

Q. -- and then no one, as far as you know, went back to Inspector Neville, but what you did was inform yourself, or others informed you, that it was possible to perform concentration and one amplification without consuming all of the sample?
A. Correct.

Q. So the judgment you made was if we have a process that provides for automatic micro-concentration to 35 microlitres and a single amplification, that will be the balance between, on the one hand, reverting to the pre-2018 workflow and, on the other hand, meeting what you understood to be the concern from QPS about consuming all of the sample.
A. Correct.

Q. And that was how you came to formulate the final form of the memorandum that you issued on 19 August.
A. Correct.

Q. You can probably see an obvious question would be what is the process for decision-making that will then occur as to whether a second amplification or any further testing

should occur in relation to a sample.
A. So my understanding was that if an initial amplification had been undertaken, and that the lab felt that a further amplification would be necessary in order to determine a result, but if that would deplete the sample beyond the minimum threshold for residual testing in another lab, then that could only be done after consultation with the Queensland Police Service on assessment of the value of that particular specimen in the context of the case. That's how I understood it.

Q. Yes. My point is just there's obviously then got to be some process, a new process, because it's not something that has been done before, for how that type of consultation will work.
A. So I had been led to believe that there already was a pre-existing discretionary process where either the Queensland Police Service could request additional testing, based on the significance of the sample, if it hadn't already been - my understanding was the existing post-2018 process was that the specimens that weren't tested were held available and the Queensland Police Service could request that analysis to be undertaken if they felt it relevant in the context of their case. So I understood that that process already existed around the interaction between the lab and the Queensland Police Service around seeking that advice or providing the request.

THE COMMISSIONER: Q. You acted upon the basis that the process for getting QPS's consent would be taken care of, otherwise they wouldn't have raised it with you at all.
A. I understood that that was an existing process that already was in place.

MR HODGE: Q. And tell me, this may have just not been something that you turned your mind to, but did you regard it as a decision from the scientists in the lab to form a view as to whether it would be appropriate to undertake a second amplification, and then they would need to initiate a process of consultation with QPS, or was that not a detail that you thought about?
A. It was not a detail that I specifically put my mind to. I made an assumption based on my understanding that that would be managed between Forensic Scientific Services and Queensland Police Service.

Q. Am I right in thinking, from your perspective, the

thing that you wanted to get done, before the conclusion of your term as Acting Director-General, was to rectify this issue of the problem that had arisen in relation to the 6 June 2022 decision, whilst addressing the concern raised by the QPS, and then you would be finishing the role as Acting Director-General, and it would be for others to then deal with the further issues that might arise from that?
A. Well, I'm not quite sure how to answer the question. I continued to work through the issues in the timeframe that I had. If I had continued on in the Acting Director-General's role, I would have continued to process it --

Q. Yes.
A. -- but that was the timeframe it took for us to address that issue, and then Shaun Drummond was returning to the role and so it would be then for him to pick up those ongoing issues to work them through as the Director-General.

Q. I understand. One other question I just wanted to ask about. Were you aware, Dr Rosengren, that there were other samples outside of that range of 0.001 to 0.0088 that were concentrated and could potentially be entirely used up?
A. No.

Q. Okay. Insofar as anyone within the lab or associated with FSS was using your memorandum to apply the samples outside of that range, that wasn't something that you intended?
A. The only issue that had been raised to me were the samples between the range of 0.001 and 0.0088.

MR HODGE: I don't have any further questions.

THE COMMISSIONER: Ladies and gentlemen, those of you who want to ask Dr Rosengren questions, do you think we could finish this afternoon so that he doesn't have to come back tomorrow?

MR RICE: Well, I don't have anything, Commissioner.

MS MCKENZIE: Nothing.

MR DEAN: I have nothing.

MR HICKEY: Nor do I, Commissioner.

MR HYNES: Nor I, Commissioner.

THE COMMISSIONER: Thank you. Then, thank you for your assistance, Dr Rosengren, you are free to go.

THE WITNESS: Thank you very much.

<THE WITNESS WAS RELEASED

THE COMMISSIONER: Mr Hodge?

MR HODGE: Commissioner, that is the last witness for module 1.

THE COMMISSIONER: Yes.

MR HODGE: If it is convenient, I might just say something very briefly about where to from here.

THE COMMISSIONER: Yes.

MR HODGE: Some of the witnesses who we originally scheduled to appear in this module have now been referred to later modules and at least two of the witnesses who gave some evidence during this module will return in later modules. What I will do is just briefly outline what we propose over the coming month for hearings.

THE COMMISSIONER: Yes.

MR HODGE: The first thing I should say is we have broken what had previously been described as a single module, and the single large topic of general operation of DNA testing in Queensland, into three modules.

Module 2, which will commence next week on 10 October, will be on the identification and addressing of technical issues. This is both in relation to the operation of the lab and collection measures undertaken by the QPS in Queensland Health.

The witnesses in that module will include scientists from the lab and some experts. Part of the evidence, both from scientists and also possibly some other witnesses, will concern the culture of the lab in addressing and responding to technical issues, and I want to just say, at

the outset, our look at the culture of the lab is not about workplace conflict in a general sense. Many workplaces, as everyone is aware, have conflicts to some degree. Our concern is about understanding to what extent the culture of the lab facilitates scientific best practices.

As a simple example, Commissioner, we are interested in understanding whether problems of the kind that Dr Budowle identified in relation to elution volumes to the DNA IQ system, why it is that they were or were not picked up or challenged at an earlier time.

The Commission has retained experts to review some specific aspects of the technical operation of the lab and collection measures, and these experts will also give evidence during the course of this module. And I expect that given the number of witnesses, this module will continue through the week of 17 October.

Module 3, which I presently expect will commence in the week of 24 October, will be on management and, in this module, we will call only a few witnesses who have been involved in the management of the lab to examine aspects of that management as it intersects with the issues that they then will have considered in module 1 in relation to the Options Paper and module 2 related more generally to identification and addressing of technical issues.

Module 4 will be a concluding module on the general operation of the lab, and it will be concerned with the present and the future of DNA testing at QHFSS. As you, Commissioner, and some of the parties know, the Commission has engaged two independent experts, each very experienced and each from a different lab, to review the overall operation of the Queensland lab, and they will be the witnesses for module 4. My present expectation is that they will commence their evidence at some time in the week of 31 October.

I think I should add, as is often the case with a Commission of Inquiry, our timetable is flexible and it may be that some of the timeline changes depending upon how long particular witnesses are required or how much time parties need.

There are two further sets of hearings which we are presently anticipating beyond what I have just outlined.

The first is, I understand that you wish, Commissioner, to have oral submissions from interested parties. And so, I anticipate at some stage after the conclusion of what I have termed module 4, we'll have oral submissions. And, secondly, we are conscious that it is a matter of particular importance to you that there be an examination as thoroughly as possible of the DNA testing in the investigation of the murder of Shandee Blackburn, and we will have another module separately and later on the outcomes of the Commission's investigations of that testing.

THE COMMISSIONER: Yes.

MR HODGE: Commissioner, that is all I wish to say.

THE COMMISSIONER: Yes. Does anybody else want to raise anything this afternoon before we adjourn till Monday?

Thank you everyone, then. We will adjourn till Monday, 10 October at 9.30, Mr Hodge?

MR HODGE: I am content with 10.00am, Commissioner. I won't be calling the first witness.

THE COMMISSIONER: 10.00 am then. Would that make it better for you? Anyway, it won't make it worse. So 10.00 am on 10 October. Thank you. Adjourned.

THE HEARING WAS ADJOURNED TO 10.00AM ON MONDAY, 10 OCTOBER 2022

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