

COMMISSION OF INQUIRY
INTO FORENSIC DNA TESTING IN QUEENSLAND

Brisbane Magistrates Court
Level 1/363 George Street, Brisbane

On Tuesday, 1 November 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

1 <CATHERINE JANET ALLEN, recalled, on former oath:
2

3 <EXAMINATION BY MR HUNTER:
4

5 THE COMMISSIONER: Mr Hunter.
6

7 MR HUNTER: Ms Allen, can you hear me and see me?
8

9 A. Yes, I can.
10

11 Q. I'm going to return to the topic of the re-works on
12 mixtures. Could we please have brought up on the screen,
13 Mr Woolridge, [FSS.0001.0085.4217]. You were asked some
14 questions about this email yesterday; correct?
15

16 A. Yes.
17

18 Q. And this was an email drafted by you in response to
19 the problem of mixtures being reported in one way initially
20 only for the reported conclusion to be withdrawn and a
21 different opinion substituted; correct?
22

23 A. That's right. Yes. That had been a topic of
24 discussion with QPS, yes.
25

26 Q. Sure. I accept that you say in that email that
27 there's an ability for people to seek authorisation from
28 you, but do you accept that the terms of that email are to
29 effectively discourage scientists from re-working mixtures?
30

31 A. I understand that that may be the way that it's read
32 now. However, as Mr Howse and Ms Brisotto were aware of
33 the lead-up to this particular email and the context around
34 reviewing the spreadsheet, to provide confidence to the QPS
35 that particular mixtures, you know, wouldn't change, they
36 were aware of QPS's position on this, and so that was one
37 of the things that I was saying to them, is that how can
38 we - which we talked about, how can we ensure that the
39 results that we're putting out to QPS won't necessarily
40 change and how can we make that process better rather than
41 thinking that the first option might be to re-work.
42

43 Q. My question to you was do you accept that the terms of
44 that email are to effectively discourage people from
45 re-working mixtures?
46

47 A. If you read that email on face value without the
context, yes, that's how it appears.
48

49 Q. All right. So do I understand that the solution you
50 devised was one that would avoid the issue of a result
51 being withdrawn; correct?
52

1 A. No, because I couldn't guarantee the QPS that we
2 wouldn't still amend results. So it was to try to ensure
3 that we had better processes in the lead-up and then for me
4 to be aware - an administrative process for me to be aware
5 that results had been amended due to re-work so that I was
6 across that and I was able to advise the QPS regarding why
7 particular amendments had been made.

8

9 Q. But you accept, don't you, that if a result is
10 withdrawn then it's withdrawn because it's been detected by
11 another scientist that an error has been made?

12 A. Not necessarily. So there were - there could be a
13 human error within there. There was also other categories
14 where additional reference samples had been submitted for
15 the case after that particular mixture had been assessed,
16 and also because there's a number of different staff
17 members that may have reviewed or undertaken mixture
18 interpretation within a particular case then there's also
19 looking at the case as a whole and ensuring that all the
20 mixtures were interpreted in a similar way, so from a case
21 context perspective.

22

23 Q. All right, let's forget about the word "error". If a
24 result is withdrawn it's withdrawn because it's
25 subsequently been found to be wrong?

26 A. As I say, not necessarily --

27

28 Q. To be --

29 A. Sorry, what was the --

30

31 Q. If a result is withdrawn it's withdrawn because
32 someone subsequently looked at it and found that what had
33 previously been reported was incorrect?

34 A. As I say, not --

35

36 Q. Surely you'd agree with that?

37 A. Not necessarily, because of additional information
38 that may have been provided.

39

40 Q. Yes, but the additional information that's been
41 provided has shown the earlier result to be incorrect;
42 isn't it as simple as that?

43 A. That's not necessarily the way that it's viewed. It's
44 that additional information was provided which provides a
45 different context to that particular mixture.

46

47 Q. Do you understand I'm not necessarily being critical

1 of the scientists who arrived at the first opinion?

2

3 THE COMMISSIONER: Can we put it this way, Ms Allen: if a
4 result is to be re-worked it's because, first, there's some
5 doubt for some reason about the original result, and if the
6 re-work results in a different result then that is because
7 the first result is to be regarded as replaced by the
8 second result; is that right?

9 A. Yes.

10

11 MR HUNTER: Thank you, Commissioner. Well, do you accept
12 that, if your approach to this issue had the effect of
13 discouraging scientists from undertaking re-works, you
14 created a situation whereby incorrect results have gone
15 undetected?

16 A. No, because a reporting scientist would put forward
17 the requests and the requests were always accepted, and
18 they were able to undertake their re-work and provide
19 information back to the QPS.

20

21 Q. That assumes that the scientists ask you for
22 permission to re-work in the first place. My question is
23 premised upon the proposition that your attitude to
24 re-works had the effect of discouraging scientists from
25 doing them, and my question is: if it had that effect, do
26 you accept that that created a situation whereby errors may
27 have gone undetected?

28 A. In a hypothetical situation as you've described, that
29 could be true.

30

31 Q. All right. And you understood of course that the
32 police would want to know if there were errors in the
33 scientific opinions that had been provided to them?

34 A. Yes.

35

36 Q. And in terms of a change in opinion having an adverse
37 effect on a prosecution case do you accept that the police
38 would want to know?

39 A. Yes.

40

41 Q. That the police would want to know if they had acted
42 on a scientific opinion that might not have been correct?

43 A. Yes. So that's why this process was put in place so
44 that we could advise QPS at the earliest possible time
45 regarding that.

46

47 Q. And isn't it the case that what the police were

1 seeking from you was that the initial advice perhaps be
2 couched in provisional terms, that is this is a provisional
3 opinion?

4 A. I'm not sure I quite understand what you mean by that.
5

6 Q. So when a mixture was first interpreted perhaps by one
7 of the level 1 scientists that we know existed at the time
8 isn't it the case that what the police asked is whether or
9 not that report could be reported in a - sorry, that
10 opinion could be reported in a cautionary way or a
11 provisional way; that is, to effectively say to the police,
12 "Here's a preliminary opinion, but if this is all you've
13 got you shouldn't act on it"?

14 A. That wasn't my understanding of the direction of QPS,
15 that they were seeking assurances regarding the results
16 wouldn't be amended so that they could act on those
17 results.
18

19 Q. Did you see the EBN that went to the Police
20 Commissioner?

21 A. No.
22

23 Q. I showed you - you saw an extract from it yesterday?

24 A. I think I only saw the extract. I don't remember
25 seeing the EBN.
26

27 Q. See, it wasn't really possible for you to guarantee
28 that results wouldn't change, was it?

29 A. No, and that was part of the discussion that we had
30 with the QPS, that they were wanting to tighten up that so
31 that there were minimal amendments.
32

33 Q. And so what the police wanted then, can I suggest, was
34 that there be some moderation to the terms of the initial
35 report so that they didn't go and lock someone up, to use
36 the vernacular, on the basis of a DNA opinion that might
37 subsequently change?

38 A. Yes, that's what they were seeking, yes.
39

40 Q. All right. Thanks, Mr Woolridge. I was asking you
41 yesterday about the Options Paper, and I think we had got
42 to the point where you agreed that the Options Paper might
43 have been better if it had been worded differently, but
44 nonetheless you are of the view that it placed before the
45 police in a transparent way the pros and cons of what I'll
46 call the DIFP process; that's your evidence? Yes?
47

A. That's what I remember. Yes, that's what I remember

1 we got to yesterday.

2

3 Q. Your evidence is that the Options Paper enabled the
4 QPS to make an informed decision about whether to adopt the
5 DIFP process?

6 A. Yes.

7

8 Q. What do you say to the proposition that the Options
9 Paper was designed to induce the police to accept Option 2?

10 A. That's not the way that it was put forward to them.
11 It was put forward to them as, "We can continue to do the
12 process we're doing or there is another option should you
13 wish to undertake the other option."

14

15 Q. But you were very keen, can I suggest, for the
16 decision to be made by the police; correct?

17 A. Yes, because it had an impact on the QPS.

18

19 Q. You wanted to make certain that if there were any
20 adverse consequences from adopting the DIFP process they'd
21 be on the QPS, not you?

22 A. No, that's not - that's not true.

23

24 Q. All right. Well, you knew when this inquiry commenced
25 that the decision making around the Options Paper in DIFP
26 was going to be closely scrutinised; correct?

27 A. Yes.

28

29 Q. And your position, I take it, is today that the
30 police, having been properly informed by the Options Paper,
31 made an informed decision; correct?

32 A. Yes.

33

34 Q. This was not a decision that was effectively forced on
35 them by the laboratory?

36 A. No.

37

38 Q. There had been a decision in May of 2013 with respect
39 to volume crime, P3 crime, hadn't there?

40 A. Yes.

41

42 Q. Because initially volume crime was being processed
43 using PP21?

44 A. Yes, that's right.

45

46 Q. And a decision was made to roll bulk crime back to
47 Profiler Plus; correct?

1 A. Yes, that's right.

2

3 Q. And you in your position as managing scientist at the
4 laboratory were responsible for the collection and
5 collation of documents that were the subject of notices to
6 produce by the Commissioner?

7 A. For some of them, yes, and for ones that had been
8 given to me, yes.

9

10 Q. One of the documents that was the subject of a notice
11 to produce was a document that related to that decision;
12 correct?

13 A. Yes.

14

15 Q. And it was a document that said this, amongst other
16 things:

17

18 *In an effort to return to pre-Powerplex*
19 *results turnaround times, Forensic DNA*
20 *Analysis decided to return priority 3*
21 *volume samples to Profiler on 6 May 2013.*

22

23 Correct?

24 A. Yes.

25

26 Q. Can we perhaps put that document up on the screen,
27 [FSS.0001.0010.7078]. If you just scroll down a bit,
28 please, Mr Woolridge, you can see in that second
29 paragraph - you can see that there, "In an effort to return
30 to pre-Powerplex 21 results", in the second paragraph?

31 A. Yes. Yes.

32

33 Q. That was a document that you found?

34 A. I believe it was a document that was collated and
35 I was transferring it to MS Teams and checking that all of
36 the documents had transferred.

37

38 Q. And this was a historical document dating back to the
39 time of this decision; correct?

40 A. I'm unsure. To be honest, I can't remember what the
41 date of the document was.

42

43 Q. Well, it was created by someone other than you;
44 correct?

45 A. That's right.

46

47 THE COMMISSIONER: Mr Hunter, could you give me the number

1 of that document?

2

3 MR HUNTER: Sure. It's [FSS.0001.0010.7078].

4

5 THE COMMISSIONER: Thank you.

6

7 MR HUNTER: It was a document created by another staff
8 member, wasn't it? Didn't you look at the metadata?

9

A. Afterwards, yes.

10

11 Q. Well, you understood, didn't you, that it was an
12 historical document some years old that had been prepared
13 by --

14

A. Yes.

15

16 Q. -- someone other than you; correct? Yes?

17

A. Yes, that's right.

18

19 Q. And the version that you saw, was it in Word format?

20

A. Yes.

21

22 Q. You changed it, didn't you?

23

A. The original document was placed onto MS Teams --

24

25 Q. Answer the question, please. You changed it, didn't
26 you?

27

A. I --

28

29 THE COMMISSIONER: You'd better be more specific what you
30 mean by "change".

31

32 MR HUNTER: You changed it by adding into that sentence
33 that I've put to you - after the words "turn-around times,"
34 you added the words "the QPS requested forensic DNA
35 analysis to return to priority 3 volume samples", didn't
36 you?

37

A. The following day I amended that and provided the
38 amended document.

39

40 Q. In what universe did you think it was okay to amend a
41 document that was being asked for by this Commission?

42

A. My understanding was that putting forward an amended
43 document to Queensland Health legal, they would provide
44 legal advice around what next steps to take around that,
45 which is what I did.

46

47 Q. Why not just produce the document as you were required

1 to do so?

2 A. I had produced the original document, and then I had
3 amended the document and sent the amended document as well,
4 so both documents were held by Queensland Health legal, and
5 for me I was concerned that an error going forward in a
6 document may be - I had felt I had an ethical dilemma
7 around that because that wasn't correct.

8

9 Q. Did you think it was ethical for you to amend a
10 historical document?

11 A. I amended the document and provided it to
12 Queensland Health expecting legal advice regarding that.

13

14 Q. Did you think it was ethical for you to do that?

15 A. Given that there was the original and an amended
16 document, and I had put forward both.

17

18 THE COMMISSIONER: What legal advice did you seek and who
19 did you seek it from, and how did you seek it, orally or in
20 writing?

21 A. It was - I believe that I had contacted
22 Queensland Health legal contact - the contact person, and
23 then I had a phone call from Queensland Health legal team
24 regarding the document and the amendment.

25

26 Q. No, no, you said you asked for legal advice. What
27 legal advice did you ask for - let's stick with that for
28 the moment - or what advice did you need?

29 A. I said that I had found an error in the document and
30 that I needed to - you know, it would be better if it was
31 amended. They said, "Send the amendment." Then I was
32 contacted by --

33

34 Q. Wait a minute. Wait a minute. What advice did you
35 seek? You said you sought advice. What advice did you
36 seek?

37 A. Around the amendment and the error in the document.

38

39 Q. But what did you ask for? What was the advice you
40 asked for?

41 A. I was putting it forward that both of them were there,
42 and my expectation was that legal advice would be of what
43 I - what should go forward: the original document, the
44 amended document, both documents with explanation.

45

46 Q. So you asked advice about whether both documents
47 should go forward or only one of them; is that what you're

1 saying?

2 A. I said that I had found an error and that it should be
3 amended and sent them that, and then that's when they
4 contacted me regarding what the amendment was to discuss.

5

6 Q. Ms Allen, that's you telling them something. Your
7 evidence a moment ago was that you asked for legal advice.
8 I'm asking you what was the legal advice you asked for?

9 A. I guess that's where I'm saying that I put both of
10 them forward expecting that they would provide me with that
11 legal advice on what was the proper procedure.

12

13 Q. So you didn't ask for legal advice; is that what
14 you're now saying?

15 A. Not specifically asking for it, but putting those two
16 things to the legal team for their consideration.

17

18 Q. Mr Hunter.

19

20 MR HUNTER: Thank you. Isn't what you did was to send a
21 text message to someone who was then your - part of
22 the Queensland Health legal team to say, "I've found an
23 error in a document so I would like to fix the error and
24 then replace the document"? Isn't that what you said?

25 A. I sent an MS Teams message to her, yes.

26

27 Q. Sorry, all right, but in that MS Teams message you
28 said, "I've found an error in a document so I would like to
29 fix the error and then replace the document"?

30 A. Yes.

31

32 Q. Correct?

33 A. That's right, yes.

34

35 Q. You didn't ask for advice, did you?

36 A. From my - from what I was trying to do was to amend
37 that. The original document was already with the
38 Queensland Health legal team, provide them with the amended
39 document, and they would provide me with advice on what
40 needed to - whether both documents went forward or just the
41 original.

42

43 Q. But why wouldn't you have just told the legal team,
44 "Look, this is a document that we're required to disclose.
45 Here it is, but it's wrong"? Why not just say that?

46 A. And if I could go back and do it again that's exactly
47 what would I do. But in the stress of the situation that's

1 obviously clouded my judgment because I was concerned about
2 ensuring that we were providing accurate information to the
3 Commission, and so I should have called Queensland Health
4 legal to discuss with them before I did anything.

5

6 Q. But you weren't providing accurate information to the
7 Commission by changing the document, were you? By handing
8 over the amended document you would be representing that
9 the records of the laboratory were different from the true
10 position?

11 A. No, my understanding is that the discussion with the
12 QPS was around the turnaround times that were being --

13

14 Q. No, no, I'm not asking you about that. I'm not asking
15 you about that. What I'm saying is that you would, by
16 changing this document and providing it to the Commission,
17 be misleading the Commission because you would induce
18 people at the Commission to think that that's how the
19 document was when it was created, wouldn't you?

20 A. That was not what I was attempting to do.

21

22 Q. Is this really emblematic of your sensitivity about
23 decision making concerning DNA?

24 A. No, it is not.

25

26 Q. You're so sensitive to the idea that your laboratory
27 might be making decisions rather than the Queensland Police
28 Service that you're prepared to amend a document, the
29 production of which was compelled under notice?

30 A. No, that's not true.

31

32 Q. Ms Allen, do you accept that it's imperative that the
33 Queensland Police Service have faith in the laboratory that
34 is testing its samples?

35 A. Yes.

36

37 Q. You accept that the Police Service puts its trust in
38 the laboratory to do its best work with the samples --

39 A. Yes.

40

41 Q. -- that are provided to it?

42 A. Yes.

43

44 Q. What do you say to the proposition that the Queensland
45 Police Service cannot have any faith in the work of a
46 laboratory with which you are in any way connected?

47 A. I don't know what to say to that because the work that

1 I've done with QPS has always been in good faith. I've
2 worked with a number of different officers of different
3 ranks regarding different forensic cases over a number of
4 years. I've worked extensively with them to try to make an
5 efficient process that allows them to obtain results. So
6 from my perspective I have worked as best I can to ensure
7 the QPS get the results that they need.

8
9 Q. And along the way you have lied or misled various
10 members of the Queensland Police Service whenever it suited
11 your purposes to do so?

12 A. No, that's not true.

13

14 Q. Commissioner, I'll tender that document that's on the
15 screen entitled "Volume crime processing in P+ instead of
16 PP21".

17

18 THE COMMISSIONER: Exhibit 183

19

20 **EXHIBIT #183 DOCUMENT ENTITLED "VOLUME CRIME PROCESSING IN**
21 **P+ INSTEAD OF PP21"**

22

23 MR HUNTER: I have no further questions. Thank you.

24

25 THE COMMISSIONER: Yes. Mr Rice?

26

27 MR RICE: No, thank you.

28

29 THE COMMISSIONER: Ms McKenzie?

30

31 MS McKENZIE: No, thank you.

32

33 THE COMMISSIONER: Anybody else here?

34

35 MS FREEMAN: Yes, Commissioner.

36

37 THE COMMISSIONER: Yes.

38

39 MS FREEMAN: Thank you.

40

41 **<EXAMINATION BY MS FREEMAN:**

42

43 MS FREEMAN: Ms Allen, can you see and hear me okay?

44

45 A. Yes, I can.

46

47 Q. Great. My name is April Freeman. I act for
Mr John Doherty. I just have a couple of questions to ask

1 you in relation to exhibit 182. So if we could have that
2 on the screen, please, Mr Operator. It's
3 [FSS.0001.0085.4217], just the email that Mr Hunter took
4 you to a short time ago. So it's an email that you sent to
5 Mr Howse on 25 January 2019; can you see that on your
6 screen?

7 A. Yes, I can.

8

9 Q. All right. And in that email you indicate there that
10 John Doherty had requested that you implement a process
11 where any reported sample is not re-worked without your
12 authorisation; can you see that there?

13 A. Yes.

14

15 Q. All right. Now, Mr Doherty started in the executive
16 director role in January 2019, didn't he?

17 A. Yes.

18

19 Q. And that was executive director of the whole of FSS,
20 wasn't it?

21 A. Yes, that's right.

22

23 Q. And so that covers a broad range of areas, not just
24 the Forensic DNA Analysis Unit, doesn't it?

25 A. Yes.

26

27 Q. All right. And so you were reporting directly to
28 Mr Doherty at this particular time; is that right?

29 A. Yes.

30

31 Q. Along with a number of other people from other units
32 under the FSS banner; is that right?

33 A. Yes, yes.

34

35 Q. All right. And so in those first couple of weeks of
36 Mr Doherty starting in this role as ED in January 2019 you
37 would have had some conversations with him about particular
38 issues within your unit; is that right?

39 A. Yes.

40

41 Q. All right. And you had a conversation with him about
42 the re-working of reported samples in about his first week
43 or two in that role, didn't you?

44 A. My recollection is that he attended a meeting with
45 myself and Superintendent McNab and Inspector David Neville
46 where this was discussed.

47

1 Q. All right. And it was your suggestion that you
2 authorise any re-working of samples, wasn't it?

3 A. My recollection is that Mr Doherty came to me - to my
4 office and said that a process needed to be put in place
5 regarding authorisations for re-works.

6
7 Q. All right. You'd been in the role of managing
8 scientist for about 11 years up until this point, hadn't
9 you?

10 A. Yes.

11
12 Q. All right. I'm suggesting to you that it was your
13 suggestion to Mr Doherty that you authorise any re-working
14 of samples and he indicated he was happy for you to take
15 that approach?

16 A. My recollection is that Mr Doherty asked me to
17 implement that process.

18
19 Q. All right. There was no formal direction issued to
20 you about that, was there?

21 A. No.

22
23 Q. I have nothing further. Thank you, Commissioner.

24
25 THE COMMISSIONER: Thank you. Ms Freeman?

26
27 MS FREEMAN: Yes.

28
29 THE COMMISSIONER: Can you remind me did Mr Doherty give
30 evidence about this point?

31
32 MS FREEMAN: He did, yes.

33
34 THE COMMISSIONER: What did he say?

35
36 MS FREEMAN: His evidence was that it was a suggestion of
37 Ms Allen's.

38
39 THE COMMISSIONER: Thank you very much. Yes. Yes,
40 Mr Hickey?

41
42 MR HICKEY: Thank you, Commissioner.

43
44 **<EXAMINATION BY MR HICKEY:**

45
46 MR HICKEY: Ms Allen, I presume you can see and hear me
47 all right?

1 A. Yes, I can, thank you.

2

3 Q. Thank you. Could I ask you, first of all, why did you
4 wish to work in this field in the first place?

5 A. I liked the opportunity to be able to help the
6 community without necessarily being close to, you know,
7 offenders or victims of crime but being able to provide
8 some type of service back to the community.

9

10 Q. And you've been working in the lab for many, many
11 years now. Presumably with your skills and qualifications
12 and experience you could have sought employment elsewhere?

13 A. Yes.

14

15 Q. Why have you stayed so long?

16 A. Most people within forensics are very passionate about
17 what they do and - and I share that same passion with every
18 single person within both of my teams, and I remain
19 passionate about the service that we were delivering to the
20 community, and I wanted to keep - keep doing that role.

21

22 Q. Could I ask you, please, about the Options Paper that
23 was delivered to QPS in 2018. From your perspective, what
24 was the motivation for that process?

25 A. QPS had always advised us that they didn't want us to
26 do any unnecessary testing because they were aware that
27 then that meant that turnaround times could be longer
28 because we were spending time on items that weren't
29 required. They provide us with information saying that
30 items are no longer required for testing. So a review of a
31 particular group of samples would show that 90 per cent of
32 the time they weren't able to get any valuable information,
33 10 per cent of the time they were able to get some
34 information, and then there was a 1.45 per cent regarding
35 the NCIDD upload for that. The perspective that was put
36 forward was, 'This is what we are currently doing and this
37 is the outcome of that testing, or there can be a different
38 option where testing is paused after quantitation, you can
39 be advised of what that sample is, and then you can make
40 a" - "QPS can make a decision regarding whether that
41 sample's required, whether other samples will be submitted,
42 or whether that sample can stay paused, and they may
43 revisit it later."

44

45 Q. Was that approach consistent or inconsistent with what
46 you had understood to be the QPS preference for samples
47 going back historically? Let me try it again --

1 A. Yes, my --

2

3 Q. Your evidence was that from time to time QPS would
4 tell you which samples they wanted to have tested?

5 A. Yes.

6

7 Q. And those which they no longer required to have
8 tested; is that right?

9 A. Yes.

10

11 Q. And so did you understand that what was being proposed
12 in the Options Paper was consistent with that approach?

13 A. Yes.

14

15 Q. Now, we've heard a lot of evidence about the way in
16 which the efficiency and efficacy of the lab is measured.
17 Is it the case that there are - that in your job you're
18 required to balance quality and quantity?

19 A. Yes.

20

21 Q. Is it the case that scientists within the lab can
22 process samples at their leisure, or is there some
23 imperative to do it in an efficient way?

24 A. We try to process - staff try to process samples in
25 the most efficient way possible to maximise the resources
26 that we have. Reporting scientists can request for a
27 sample to be re-worked. If the final result hasn't gone to
28 QPS, they can undertake that at any time.

29

30 Q. All right. Now, you mentioned maximising resources.
31 Can you tell us something about the nature of the resources
32 that were available to you from time to time?

33 A. Additional funding was not forthcoming. Requests that
34 I had put forward to the executive director - each
35 executive director regarding the budget I was managing and
36 that it needed to be more than what I had, that wasn't
37 forthcoming. The Queensland Audit Office also undertook an
38 audit and showed within that document that over a period of
39 five years \$1 million had been decreased from the Forensic
40 DNA Analysis budget for that. And then we went into a debt
41 and savings strategy from a whole of government. And in
42 this current financial year I've been asked to save
43 \$1.2 million from the Police Service's stream budget.

44

45 Q. All right. So am I right then in suggesting that the
46 culture for you as a manager within which you were required
47 to work was one of maximising savings rather than looking

1 for opportunity to spend more money?

2 A. Yes, that's right.

3

4 Q. And how long has that been the prevailing situation
5 within which you've worked?

6 A. For all the time that I've been the managing
7 scientist.

8

9 Q. Now, can I ask you about the Options Paper itself.
10 Can you think of any personal benefit that flowed to you as
11 a consequence of QPS choosing one option over the other?

12 A. I gain no personal benefit whatsoever.

13

14 Q. Was your personal remuneration linked to turnaround
15 time?

16 A. No, it's not. I'm just a public servant.

17

18 Q. Was your personal remuneration linked to the volume of
19 samples that the lab processed from time to time?

20 A. No, not at all.

21

22 Q. Now, if I could ask you to turn your mind to the
23 meeting that you had in February of 2018 with Mr Csoban,
24 Superintendent Frieberg and other members of the Queensland
25 Police; do you recall that meeting?

26 A. Yes, I do.

27

28 Q. To be clear, that's the meeting at which the
29 presentation was given about the Options Paper and its
30 contents?

31 A. Yes.

32

33 Q. At the time of that meeting did you think the
34 discussion was in any way controversial?

35 A. No, I didn't.

36

37 Q. Did you have any reason at that time to believe that
38 it would become controversial in time?

39 A. No, I didn't.

40

41 Q. Did you take notes of the kind that you would have
42 taken if you had expected the meeting would be
43 controversial?

44 A. Yes, I didn't take any notes because it was a
45 free-flowing conversation; seemed positive. Yes, so I
46 didn't take any notes.

47

1 Q. Now, chronologically that arose against the background
2 of the sperm microscopy controversy; you recall being asked
3 some questions about that?

4 A. Yes.

5

6 Q. And in particular you were asked some extensive
7 questions by my learned friend Mr Hodge about the
8 engagement of ESR; do you recall that?

9 A. Yes.

10

11 Q. Now, that process included involvement by Clayton Utz,
12 an independent law firm?

13 A. They were involved at the same time, yes.

14

15 Q. And Crown Law?

16 A. Yes.

17

18 Q. And the HR department of Queensland Health?

19 A. Yes.

20

21 Q. Was that kind of body of external advice being
22 provided something that happened regularly and routinely in
23 your experience within the lab?

24 A. No, it wasn't.

25

26 Q. In all the years that you've been the managing
27 scientist of the lab have you had regular contact with
28 lawyers?

29 A. There was contact in 2008 when the automated platforms
30 had an issue and we needed to engage with Crown Law
31 regarding advice around that, and then again in 2018
32 I can't recall off the top of my head if there was any
33 other time.

34

35 Q. All right. Do you yourself have any legal training?

36 A. No, I don't.

37

38 Q. Do you regard the process of engaging with lawyers as
39 being a natural one for you?

40 A. No, not necessarily.

41

42 Q. Is it a process that you found as a manager
43 intimidating?

44 A. Yes.

45

46 Q. And why is that?

47 A. Scientists and lawyers speak different languages and

1 so I found it sometimes difficult to communicate the
2 scientific information to lawyers, and the legal process
3 and how that unfolds and the different parts of that
4 I definitely am not across. So I wouldn't necessarily know
5 what the next steps were for different parts of processes
6 because I'm not knowledgeable in that area.

7
8 Q. And in thinking about that ESR process did you hold
9 any concern about making inadvertent errors in your
10 engagement with the lawyers?

11 A. No. I provided as much information to them as
12 possible.

13
14 Q. Was your concern to be responsive to their advices?

15 A. Yes.

16
17 Q. Now, we've seen some evidence of your being involved
18 in the preparation of the terms of reference for ESR; do
19 you recall that?

20 A. Yes.

21
22 Q. Have you ever before this occasion been called upon to
23 prepare a terms of reference of this kind?

24 A. Not to my recollection, no.

25
26 Q. Were you given any assistance by people senior to you
27 within the department in the process of preparing the terms
28 of reference?

29 A. Not assistance in preparing, but Mr Csoban and
30 Mr Franklin reviewed the terms of reference that I put
31 together.

32
33 Q. Do you recall Mr Csoban or Mr Franklin telling you,
34 whether orally or in writing, that any aspect of your
35 preparation of the terms of reference was deficient in any
36 way?

37 A. No, I don't have any recollection of that.

38
39 Q. Do you recall there was a process by which Livingstons
40 were involved and engaged to provide some consultancy
41 services to the lab?

42 A. Yes.

43
44 Q. Were you involved in preparing the terms of reference
45 for them?

46 A. No, I wasn't.

47

1 Q. Now, you were asked some questions about what has been
2 described variously as the shredding party or bin gate; do
3 you recall being asked about that?

4 A. Yes.

5

6 Q. The term "shredding party", was that something that
7 you came up with or was that a term described by somebody
8 else?

9 A. That was the term that the staff member provided to
10 me.

11

12 Q. All right. Did you have responsibilities around
13 document retention within the FSS lab?

14 A. Yes.

15

16 Q. What did you understand those to be?

17 A. To ensure that the retention and destruction policy
18 was adhered to, particularly with documents that should be
19 retained either indefinitely or for specified periods of
20 time.

21

22 Q. Now, that responsibility, was it something that you
23 only bore or did you have a responsibility to ensure others
24 adhered to the document retention policy?

25 A. It's not just my responsibility. All staff members
26 have that responsibility, and so I have oversight of that.

27

28 Q. What did you think would happen if you turned a blind
29 eye to the concern that had been raised with you by that
30 staff member about the shredding party?

31 A. That I could face some discipline action because
32 I hadn't acted and ensured that documents were either
33 retained or didn't find any.

34

35 Q. And is that the reason you raised it with Mr Csoban
36 initially?

37 A. Yes.

38

39 Q. And it came to be your evidence was that HR became
40 involved in the enquiries around that issue. Did anyone
41 from HR ever tell you that they weren't interested in the
42 issue?

43 A. No, they didn't.

44

45 Q. Did anyone from HR ever say to you, "Stop providing us
46 assistance with this issue"?

47 A. No. I just didn't get any replies to my emails once

1 I had undertaken the review of what was in the confidential
2 bin.

3

4 Q. Was that experience in things going cold at the HR
5 end, was that a regular experience for you?

6 A. Yes.

7

8 Q. Did anybody from HR at the time of these matters give
9 you any reason at all to think that they regarded your
10 conduct around the shredding party issue as being mad in
11 any way?

12 A. No, they didn't provide any feedback on that, no.

13

14 Q. Did Mr Csoban give you any feedback to that effect?

15 A. No, he didn't.

16

17 Q. Did you yourself have any reason at all at the time to
18 think that your conduct was in any way aberrant in respect
19 of that issue?

20 A. No, I didn't.

21

22 Q. Now, could I ask you some questions, please, about the
23 process of Workplace Edge having been engaged to provide
24 some consultancy services around staff members in the lab;
25 do you recall that?

26 A. Yes.

27

28 Q. You attended a meeting at which their feedback was
29 delivered to team members?

30 A. Yes.

31

32 Q. Did you chair that meeting?

33 A. No, I did not.

34

35 Q. Did you have input into the manner in which the
36 feedback was delivered to the team members?

37 A. No, I did not.

38

39 Q. Were you given any opportunity to modify the feedback
40 that was to be given to team members before it was given?

41 A. There was one opportunity where Mr Csoban asked me to
42 amend a particular slide from the presentation. I don't
43 remember what the modification was, but I remember
44 supplying him with that, saying, "As discussed, amendment
45 has been made," and then it was given to Mr Csoban and
46 Mr Alan Holz from Workplace Edge.

47

1 Q. Was your amendment one which Mr Csoban had directed or
2 was it one that you yourself composed?

3 A. No, it was one that Mr Csoban or Mr Alan Holz had
4 asked to be made.

5

6 Q. There's been some suggestion that you interfered with
7 the Workplace Edge consultancy processes. What do you say
8 to that?

9 A. I did not interfere at all. I ensured that I remained
10 out of those processes so that staff could independently
11 talk with the Workplace Edge staff. Mr Alan Holz from
12 Workplace Edge spoke to me one on one regarding, you know,
13 issues that I may have had. So I spoke to him one on one.
14 But I didn't interfere with any of the work that they were
15 doing. I wanted them to be able to have free access to
16 staff so that we could build a better culture moving
17 forward.

18

19 Q. Was there any benefit to you in having a disenchanted
20 staff within the lab?

21 A. There was no benefit whatsoever to me.

22

23 Q. Were you aware that staff were feeling disenchanted
24 within the lab?

25 A. There had been discussions, and 2018 was a
26 particularly difficult year. Some staff had felt that
27 there was some low morale within their team, and the line
28 managers were working with their teams to try to increase
29 that.

30

31 Q. And that low morale, was that something that concerned
32 you?

33 A. Yes.

34

35 Q. What did you do about it?

36 A. Within the Queensland Health each year there's a
37 Working for Queensland survey. I encouraged staff to
38 undertake the survey so that we could get results from that
39 so that we could pinpoint particular areas where line
40 managers could work with their teams on how we could
41 improve particular areas that we may have low scores in to
42 try to improve the workplace.

43

44 Q. And did you discuss your concerns about the low morale
45 with the line managers?

46 A. Yes.

47

1 Q. In particular in first instance with Mr Howse and
2 Ms Brisotto?

3 A. Yes.

4

5 Q. Did you discuss with them strategies by which the
6 morale might be improved?

7 A. I don't have any independent recollection but that in
8 my normal course of discussing things with them we would
9 try to come up with strategies around how we could resolve
10 situations. So, yes, I would have.

11

12 Q. All right. Now, could I ask you to summarise, please,
13 the breadth of your responsibilities as the managing
14 scientist in the FSS lab?

15 A. So from 2008 until 2013 the only team that I managed
16 was Forensic DNA Analysis. Then from 2013 until now I now
17 manage both Forensic DNA Analysis and also Forensic
18 Chemistry. Forensic Chemistry is made up of three
19 different groups. There's the illicit drug group, which
20 test illicit drugs that are seized by QPS; there is the
21 clandestine laboratory group, who test items that come from
22 more of a manufacturing of the illicit drugs perspective;
23 and there's the trace evidence group that does a diverse
24 range of activities around chemical warfare testing,
25 explosives testing, lubrication testing from sexual assault
26 cases, those types of things. And then I still had the
27 responsibilities within Forensic DNA Analysis. So overall
28 I have responsibility for about 110 staff members within
29 that.

30

31 Q. All right. Now, Mr Howse has given some evidence that
32 his experience in performing your role in an acting
33 capacity was that your job is inherently stressful. Do you
34 agree with his assessment?

35 A. Yes. When I take leave and I ask each of my three
36 direct reports, the chief chemist or either of the two team
37 leaders from Forensic DNA Analysis, they're not overly keen
38 to undertake higher duties in my role.

39

40 Q. But, returning to you in particular, do you regard the
41 role itself as being inherently stressful?

42 A. Yes, it is.

43

44 Q. And why is that?

45 A. There's a number of different responsibilities across
46 both of the different teams that require attention, and
47 sometimes it's not just attention within one team, there's

1 attention that's required in both of the teams, and there's
2 also responsibilities within the FSS leadership group as
3 well about provision of information and meetings, meetings
4 with the QPS, and those types of things. So there is a
5 fair breadth of tasks to undertake every day.

6

7 Q. Now, has that - has the pressure of the role - I'm
8 sorry, and perhaps I should be clear about this. You do
9 agree that it's an inherently stressful role?

10 A. Yes, I do.

11

12 Q. Has the stress of the role become worse or better over
13 the years you've been performing it?

14 A. The stress has become worse.

15

16 Q. And why is that?

17 A. The difficulty with trying to obtain resources for
18 either of my two teams is extremely stressful. Trying to
19 do more with less is really difficult. Trying to put
20 forward, you know, additional - requests for additional
21 funding is difficult. I've had a change of line manager
22 over the past couple of years. From my experience within
23 Pathology Queensland, they don't necessarily understand the
24 forensic aspect of what we do, so that is difficult to
25 communicate that. And over the last number of years
26 there's been a change almost annually of the HR officer
27 that I interact with, so that becomes difficult to then
28 catch - you know, to explain the situation that may be
29 going on, what advice had been previously given, and then
30 the next lot of advice. And over the last couple of years
31 we've also had a change in a finance officer, so then
32 providing information to them around the types of
33 consumables that we purchase, how expensive they are, that
34 you can't necessarily try to reduce expenses in particular
35 areas because it's inherent in the nature of the business.

36

37 Q. Now, you've mentioned that you've had a number of line
38 managers. I presume you mean --

39

40 THE COMMISSIONER: Sorry, Mr Hickey, just so that I don't
41 forget. Ms Allen, you mentioned the finance officer.
42 What's the split of responsibilities, if there is a split
43 of responsibilities, between you as managing scientist and
44 the finance officer? What is a finance officer's role in
45 relation to you?

46 A. The finance officer provides the budget to budget
47 allocation, to police services stream. It's my

1 responsibility to manage that, and they will also review
2 that and flag where expenses have gone over what was
3 expected and help try to forecast if there are upcoming
4 expenses, whether they're known expenses - like, if there
5 was a particular police operation and there needed to be
6 overtime, if we can forecast that we can put that in as a
7 known expense. So liaising with them. They need to
8 understand the types of consumables that we purchase, so
9 why they are expensive, and, you know, the cost of those is
10 usually international, so there's the international - the
11 exchange rate, I should say, between the Australian dollar
12 and the American dollar to take into consideration.

13
14 Q. Yes, thank you. Yes, Mr Hickey.

15
16 MR HICKEY: Thank you, Commissioner. Now, you mentioned a
17 moment ago that you have responsibilities both for the DNA
18 testing lab and also for Forensic Chemistry?

19 A. Yes.

20
21 Q. Forensic - the forensic chemistry side is also
22 concerned with very serious crimes, isn't it?

23 A. Yes, that's right.

24
25 Q. Have you experienced anything like the kinds of
26 problems which seem to have beset the DNA lab in that team?

27 A. No.

28
29 Q. Now, you've given some evidence just a moment ago
30 about funding and the difficulties in seeking additional
31 funding. We've heard some evidence throughout the course
32 of the Commission from Mr Drummond to the effect that if
33 you had asked for additional funding it would have been
34 given. Is that consistent with your experience as the
35 long-time manager of the lab?

36 A. No.

37
38 Q. Because there's a process, isn't there, by which you
39 could have made a formal request for further money?

40 A. Yes, that's right.

41
42 Q. You could propose a business case?

43 A. Yes.

44
45 Q. There doesn't seem to be any evidence of that having
46 occurred; do you agree?

47 A. Yes, that's right.

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Q. And why is that?

A. In consultation with the executive director about putting forward a business case, it would require different aspects around costings and those types of aspects. I've been through a costing exercise with the finance department over the years - I think I've been through that on four different occasions - but we've never finalised that, so I don't have the costing data to be able to provide within a business case for those types of things, and at the time the executive director didn't see that it would be worthwhile putting up a business case because he didn't see that it would be approved.

Q. Now, when you say that costings weren't finalised, you didn't have those things finalised, was that something within your control or somebody else's?

A. Within the finance department, it's within their control to finalise that.

Q. And how much of your time in your job do you suppose is --

THE COMMISSIONER: Mr Hickey, I just want to be clear so I understand this. What finance department? Can you just elucidate it?

MR HICKEY: Yes, of course. When you say that sat within the finance department, who precisely or what precisely do you refer to?

A. Within Queensland Health finance department --

Q. External to --

A. -- or the - yes, external to FSS, or within the - what was previously called the health support Queensland finance group.

THE COMMISSIONER: So what stopped you asking for data that you would need to prepare a business case?

A. I had asked for that - for the data, but the actual costing around how much does it cost for a sample to go through evidence recovery, then process through - so a costing from end to end of a sample had never been completed, and that takes into account various factors, and that's what I had worked with the finance group on to actually get that so that we could see how much did it cost for a particular sample so we could base, you know, the

1 budget, et cetera moving forward on that.

2

3 Q. So why didn't you do it? Why didn't you work up the
4 costings?

5 A. I don't have the expertise to do that, which is why
6 I was working with the finance group to actually do that.

7

8 Q. Yes, Mr Hickey

9

10 MR HICKEY: Thank you, Commissioner. How much of the time
11 spent in your job is dealing with funding constraints?

12 A. It varies across the year. In the lead-up to the
13 budget being set there is a fair amount of time put into
14 reviewing what budget may be put forward, and then once the
15 budget is provided it's reviewing what has been provided,
16 and then on a monthly basis preparing a finance report for
17 the FSS leadership team meeting.

18

19 Q. Would you describe it as a significant part of your
20 role as managing scientist?

21 A. Yes.

22

23 Q. Now, you said a few moments ago that you considered
24 that the stress, the inherent stress, in your role had
25 increased, not decreased, over time. Can I ask have you
26 sought support from the department to scaffold you, given
27 that situation?

28 A. I've attempted to work with each of my line managers,
29 the executive director, regarding that. I have at times
30 sought HR support. But at different times I have gone
31 outside that and sought the advice of my own two medical
32 practitioners to assist me with that.

33

34 Q. All right. To the extent you feel comfortable telling
35 me about it, what's the nature of the assistance that
36 you've sought from external medical practitioners?

37 A. So from my GP that I've been seeing for a long time
38 I've sought advice and assistance from her both in 2018 and
39 most recently, and in 2018 and most recently I've also been
40 under the care of a psychologist.

41

42 Q. And to what extent do you regard the need for that
43 care as being a consequence of your work environment?

44 A. One hundred per cent of that care is required due to
45 work.

46

47 Q. All right. Now, you gave some evidence a few minutes

1 ago that you'd worked with a number of line managers over
2 the years. I presume you were referring specifically to
3 executive directors?

4 A. Yes, that's right.

5

6 Q. With how many executive directors have you worked?

7 A. I think it's six.

8

9 Q. And has that number of executive directors with whom
10 you've worked created a positive or a negative impact on
11 your ability to do your job?

12 A. Each of the people that I've worked with I've really
13 enjoyed working with them, but it has made it difficult
14 because some haven't come from a forensic background, so
15 there is information needed to be provided around the
16 nature of the work that's undertaken, some of the issues
17 that we may face liaising with the QPS, how we operate in
18 those two different teams. Within Forensic DNA Analysis
19 there's a single point of contact with QPS, whereas in
20 Forensic Chemistry there isn't a single point of contact,
21 so there is different arrangements within those two teams
22 and how they may - and how the executive director may be
23 involved in any of those meetings. So it's a lot of
24 information transfer to bring them up to speed on where
25 we're at at that particular time.

26

27 Q. I asked you a moment ago whether you had sought
28 support from the department to scaffold you and your work,
29 and you said that you had engaged with the EDs and with HR.
30 To the extent that you did that, has the support that
31 you've been provided been sufficient, in your mind?

32 A. No, that's why I've gone externally.

33

34 Q. And what could have been provided to you which hasn't
35 been provided to you?

36 A. I think if we had a more stable HR person available at
37 FSS rather than a number of changes, then you would be able
38 to develop a relationship with them, plus also they would
39 be across the issues and would also be working with you to
40 resolve some of those issues. I understand that the
41 executive director role, you know, can change, but that is
42 also - can be also disruptive with change for that. So
43 developing that relationship with them takes time for them
44 to understand that. And from my perspective I have engaged
45 with the employee assistance service previously, but
46 I didn't find that that was of assistance, which is why
47 I've gone outside and sought external help with that.

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Q. All right. Now, we've heard quite a lot of evidence about the suggestion that there was a pervasive toxic culture within the lab; you're aware of that?

A. Yes.

Q. Was that your experience?

A. In some teams it was, but in other teams, no, as in within Forensic DNA Analysis --

Q. In which --

A. Within Forensic DNA Analysis some of the teams had good culture and in other teams not as good culture.

Q. Is there anything that you identify as being significant as to why some teams might have a good culture and others might have a bad culture?

A. From my perspective I think there are some staff members that have a strongly held belief regarding me, and any efforts that I have made over the years to change and grow as a person and a leader haven't necessarily been noted within that.

Q. If you turn your mind to those particular people, do you regard yourself as having been supported by those staff?

A. No, not at all.

Q. Have you had any experience of being white-anted by those staff?

A. Yes.

Q. In what way?

A. If there was an issue with something that I had done, a process that was attributed to me, they wouldn't necessarily come to talk to me about it. They would go to my line manager instead. So they wouldn't approach me so that we could discuss that, or even send me an email to discuss that, or ask a HR staff member to mediate a session with me to discuss that. They would go to my line manager, and in some instances my line manager hadn't come and talked to me about what those issues were, so I felt that I didn't get an opportunity to change or provide clarification around that because I was unaware of what the issue was.

Q. And did you ask your line manager to give you clarity

1 around those complaints that had been received?

2 A. Yes. Some of those managers, yes. Most recently
3 I wasn't aware of the number of staff that had gone to my
4 most recent line manager, Ms Keller.

5

6 Q. And what difference might it have made to you if you
7 had been given detail and particulars about the nature of
8 the concerns that had been expressed to your line manager?

9 A. That I could have sought advice from my line manager
10 regarding next steps on how to handle that in the best
11 possible way. Possibly sought assistance from a coach or a
12 mentor. Work with another staff member within the wider
13 group of Queensland Health on how to tackle particular
14 issues. Work closer with the HR person. Perhaps also try
15 to have a facilitated conversation with that staff member
16 to try to reach a resolution.

17

18 Q. Did knowing that complaints had been made to your line
19 manager but not clearly articulated to you make you more or
20 less trusting of the people that you worked with?

21 A. Less trusting.

22

23 Q. And what impact, if any, did that have upon your
24 decision making and judgment as the manager of the FSS lab?

25 A. It did have an impact, particularly around the
26 Forensic DNA Analysis management team and sharing
27 information with the management team because there wasn't
28 necessarily a high level of trust within the team, and so
29 I was uncertain about where some information may go. So
30 even if I said to them that it was confidential I didn't
31 necessarily know whether it would remain confidential or
32 not.

33

34 Q. And so did that cause you to change your practice in
35 respect of the kind of information that you might or might
36 not share from time to time?

37 A. Yes, I became more guarded and was more careful about
38 sharing information and trying to share as much as I could
39 but in the best possible way so that if it was shared with
40 others my true meaning would be understood rather than, you
41 know, a different view, that I was trying to ensure that
42 they did understand what I was saying.

43

44 Q. Now, were you aware that it had been suggested that
45 you had described Ms Rika's team as "those fuckers over
46 there"?

47 A. No, I was not.

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Q. Is that the way you described them?

A. I have no recollection of that whatsoever.

Q. And did anybody ever raise that concern with you?

A. No, they didn't.

Q. And were you made aware that Ms Rika and members of her team described themselves as "the FRIT fuckers"?

A. No, I was not aware of that at all.

Q. Now, you were asked some questions about questions that you asked by email to your management team about staff members who might be contemplating becoming pregnant; do you recall that yesterday?

A. Yes.

Q. And your email said something about the consequences - and I'm paraphrasing, but if people weren't identified there might be dire consequences if they were to fall pregnant and they hadn't been identified; do you know what I'm referring to?

A. Yes, consequences on a budget, yes.

Q. Now, could I ask you some things about that. Was that funding that that email was referring to about the funding for the leave of those who might become or were pregnant, or was it funding in respect of those who would backfill their jobs while they were taking leave?

A. It was in respect to funding for the maternity leave portion that the staff member may take, because the backfill of their recreation or long-service leave could be undertaken within the budget, but it was the maternity leave portion that wouldn't be included in the budget, so therefore the position would have to remain vacant until the maternity leave period had finished.

Q. I see. Was there ever any intention on your part to suggest that members of your staff should not become pregnant?

A. No, not at all. We have a high percentage of female staff, and I was just trying to ensure that we could get budget to fill that so that the position didn't remain vacant for that period of time, which added stress to the other team members.

Q. Did you ever suggest to anybody that if they should

1 become pregnant they wouldn't be entitled to parental
2 leave?

3 A. No, not at all.

4

5 Q. Did you intend to suggest that?

6 A. No, not at all.

7

8 Q. All right. Now, you've mentioned that there's a high
9 percentage of women who work within the laboratory. Are
10 you responsible for hiring scientists who come to work in
11 the reporting side of the lab?

12 A. No. I'm not usually on a recruitment panel for a HP4
13 reporting scientist, no.

14

15 Q. All right. Who would be on a panel for those
16 positions?

17 A. It would be the senior scientist at a HP5 level or it
18 could include a team leader at a HP6 level, and would
19 usually also include an external staff member, and
20 usually - given that it's a reporting staff member, we
21 would usually ask a QPS officer to be on the panel.

22

23 Q. All right. Thank you. Now, could I ask you some
24 things about flexible work arrangements. Was it the case
25 that you had delegation to make decisions about flexible
26 work arrangements?

27 A. No, I don't.

28

29 Q. Who had that delegation?

30 A. The delegation sits with the executive director.

31

32 Q. Has that always been the case while you've been the
33 manager of the lab?

34 A. Yes.

35

36 Q. Do you provide information to assist the executive
37 director in making that decision?

38 A. Yes.

39

40 Q. Have you ever had any reason to consider that the
41 executive directors did not make those decisions
42 independently of any views you might have expressed?

43 A. No, I don't.

44

45 Q. Did you ever bring pressure to bear on executive
46 directors to make decisions that you thought were the right
47 ones?

1 A. No.

2

3 Q. Is it easy to fill roles of reporting scientists in
4 the lab generally?

5 A. No, they're more difficult to fill a reporting
6 scientist role, and the training usually takes anywhere
7 between nine months and 12 months to complete before
8 they're able to become productive and issue statement of
9 witness documents.

10

11 Q. All right. Now, if roles were left vacant for any
12 period of time would that impact the ability of the lab to
13 do its job?

14 A. Yes.

15

16 Q. And ultimately is it your responsibility to ensure
17 that the lab's roles are filled?

18 A. In conjunction with the team leaders, yes.

19

20 Q. That is to say I'm not asking you about the process of
21 interviewing for them, but if staff can't be recruited to
22 those roles is that ultimately your problem?

23 A. It is a problem that we will need to tackle, yes,
24 because if we don't have a staff member in that role then
25 there's more work for everybody else that's in the team.

26

27 Q. And so, given that, is there any benefit to you that
28 you can identify in having dissatisfied staff in the lab?

29 A. There is no benefit to me whatsoever.

30

31 Q. Now, you've been depicted, can I suggest to you,
32 through the questions you've been asked and the evidence of
33 some of the others called in this Commission, as some kind
34 of Disney villain; is that your impression?

35 A. Yes, that's how I feel, yes.

36

37 Q. What impact has that had on you?

38 A. I find it quite - quite distressing. It upsets me, as
39 you can see. I'm just trying to do the best job I can
40 because I care about the community and I want to try to
41 provide as many resources to the lab so that they can do
42 the best possible job that they can. I work really hard to
43 do that. I'm a human being and I make mistakes, and it's
44 been really - these past 12 months has been really
45 distressing, and it has had an enormous impact on my mental
46 and physical health. I am suffering mental health issues,
47 which I'm sure others can appreciate, because of

1 the stress. I've never been through a commission of
2 inquiry before. I've been through the ministerial
3 taskforce in 2005, and it was a very different experience
4 than this one has been. I've found that this one has been
5 quite personal to me, and I'm not quite sure how to take
6 that because it has had an impact on me and has definitely
7 affected my mental health.
8

9 Q. What impact has that had on your ability to give
10 assistance to the Commission in answering the questions
11 you've been asked over the last few days?

12 A. I've found it very challenging to provide information.
13 I've been open and willing to provide information. I've
14 provided as many documents as I possibly can. I've gone
15 over different notices a number of times to ensure that
16 I've provided everything. If I felt that there was
17 something that was even remotely included, I've provided
18 it. I've tried to do it in the fast possible manner that
19 I have. I've worked longer hours than required to try to
20 do that. I've worked weekends as well to ensure that I can
21 provide everything possible. I don't want to hide anything
22 from the Commission. I want to make sure that they have
23 everything that they need from me. But I have found it
24 challenging over the past couple of days.
25

26 Q. Now, you were suspended from your duties as the
27 managing scientist some weeks ago now?

28 A. Yes, that's right.
29

30 Q. At the time that occurred were you actively engaged in
31 assisting the Commission of Inquiry with its
32 investigations?

33 A. Yes, I was.
34

35 Q. Were you given any explanation for the reason for your
36 suspension at the time?

37 A. No, I wasn't.
38

39 Q. Have you been given any explanation since?

40 A. No, I haven't been.
41

42 Q. What effect did the suspension have upon you?

43 A. I went into shock when I was told. I was given five
44 minutes to leave the campus. I found it incredible that
45 I would be given such distressing news and then allowed to
46 drive a motor vehicle home. I was in shock for a good
47 portion of the day I was told. A friend was concerned

1 about me, so she came to be with me because she was
2 concerned what I might do. I lost two days from being able
3 to help the Commission because when I was stood down they
4 didn't advise me that I needed to continue working for the
5 Commission, and then the following day was a public
6 holiday, so they were the two days that I had lost to be
7 able to help, and then it - only clarity was given on the
8 Thursday night that I needed to continue to work on the
9 Commission information from home.

10
11 Q. Has the fact of your being suspended affected in any
12 way your ability to give comprehensive evidence to this
13 Commission?

14 A. Yes.

15
16 Q. How?

17 A. It has been extremely stressful to be stood down not
18 knowing why. To try to seek, you know, any information
19 about that I've been excluded from the work place. So the
20 normal support mechanism that I would have is no longer
21 there. So I'm even more isolated than before. There's
22 only limited people that I'm allowed to contact for
23 support. So that has made it more difficult. And just the
24 mechanism of working from home is difficult as well. So
25 there's two different things on my mind. There's the
26 Commission of Inquiry and the need to provide information,
27 and then there's also the suspension on my mind as well.

28
29 Q. Has anybody from the department reached out to provide
30 you employee assistance since you were suspended?

31 A. Yes. Ms Lara Keller offered a session with the
32 Queensland Ambulance Priority One service, and I've had one
33 session with that staff member.

34
35 THE COMMISSIONER: Mr Hickey, would you prefer to continue
36 or adjourn for morning tea?

37
38 MR HICKEY: No, let's adjourn, please, Commissioner.

39
40 THE COMMISSIONER: Yes. We'll adjourn for 20 minutes,
41 Mr Hickey.

42
43 **SHORT ADJOURNMENT**

44
45 THE COMMISSIONER: Mr Hickey.

46
47 MR HICKEY: Thank you, Commissioner. Ms Allen, can you

1 still see and hear me?

2 A. Yes, I can.

3

4 Q. You're aware that we're now entering the sixth week of
5 hearings in the Commission and you're aware of all of the
6 people who have been called to give evidence so far,
7 I presume?

8 A. Yes.

9

10 Q. Do you regard there as being people who ought to have
11 been called to give evidence to give the Commission the
12 complete picture who are employed by FSS but who have not
13 been called?

14 A. Yes.

15

16 Q. And who are they?

17 A. I'm aware that some of the management team members
18 have supplied statements but haven't necessarily been
19 called, and some other staff members have reached out to me
20 to let me know that they would like to have been able to
21 put something forward but they're too scared because they
22 may be stood down or they may be treated a particular way
23 by the Commission, and so from that they won't come
24 forward.

25

26 Q. And in what way do you consider their evidence might
27 have assisted the Commissioner?

28 A. I think that it would have shown a balance, that
29 there's different issues within the different teams, and
30 that there is cohesion across most of the teams and
31 provided some of the positives.

32

33 Q. Now, my learned friend Mr Hunter asked you this
34 morning about the process of re-works, and I think in one
35 of your answers you gave to him you suggested that you'd
36 never refused a request for re-work; is that so?

37 A. Yes, that's right.

38

39 Q. Did anyone ever suggest to you that they or other
40 staff held the belief that they were not permitted to carry
41 out re-works?

42 A. No.

43

44 Q. Did anyone ever suggest to you that they or other
45 staff felt as though re-works were discouraged?

46 A. No.

47

1 Q. I presume in the course of your work you spoke with
2 Ms Brisotto and Mr Howse every day?

3 A. Yes.

4

5 Q. Did either of them ever say anything to lead you to
6 conclude that they thought re-works were not permitted?

7 A. No.

8

9 Q. Or that re-works were discouraged?

10 A. No.

11

12 Q. Now, in December 2021 the media began to take interest
13 in the activities of the lab; do you recall that?

14 A. Yes.

15

16 Q. This wasn't the first time that you had experienced
17 the brutal glare of the media upon the lab's operations,
18 was it?

19 A. That's right.

20

21 Q. And so did the fact that the media were interested in
22 the lab's operations cause you any concern?

23 A. Yes.

24

25 Q. Why was that?

26 A. Because the lab operates in a fairly structured manner
27 with standard operating procedures that they adhere to.
28 All of the staff members do their very best every single
29 day to achieve good outcomes. So to have negative media
30 regarding the lab is of a concern and stressful for all
31 staff members.

32

33 Q. Did it have any effect on the stressfulness of your
34 particular role?

35 A. Yes, it increased the stress, yes.

36

37 Q. And what effect, if any, did that increased stress
38 have upon your ability to make clear decisions?

39 A. It did have an impact. Now that I review that in
40 hindsight, the level of stress was much elevated because
41 the negative media continued cyclic, so it appeared
42 never-ending.

43

44 Q. What do you say to the suggestion that you were like a
45 deer in the headlights at that point?

46 A. I don't think that that's an accurate description.
47 The first day that I returned from leave and became more

1 fully aware of what had happened while I was on leave,
2 briefings that had occurred, et cetera, I was quite
3 shocked. But then the next day I turned my mind to, well,
4 what are the types of things that we could actually do to
5 help us in this situation to try to get onto the front
6 foot.

7
8 Q. Was the fact that you had a relatively new executive
9 director to whom you answered a help or a hindrance, given
10 the unfolding situation?

11 A. Ms Keller was really trying to help, but I don't
12 necessarily think that she understood the gravity of
13 the situation because it related to forensics, and, having
14 been through this before, my best action plan was, you
15 know, to take some action to have the laboratory reviewed
16 by another jurisdiction, if that could be possible, to have
17 case files reviewed by other jurisdictions, that we try to
18 work out how we can ensure that, you know, we are the best
19 possible - we are working in the best possible way to be
20 able to keep continuing and to show staff that, you know,
21 we have faith in them.

22
23 Q. Was it business as usual from your perspective from
24 December 2021 until the time you were suspended a month or
25 so ago?

26 A. Not necessarily business as usual. There was added
27 pressure regarding the negative media. But we were trying
28 to undertake business-as-usual activities. I'm not sure
29 that those activities were able to be done at the same
30 level once the Commission of Inquiry was announced, and
31 staff required to produce statements or documents for
32 notices, et cetera, reduced their available time for
33 results or processing samples.

34
35 Q. Did you feel in June, when you were canvassed for
36 information about how to undo the DIFP process, that you
37 were obliged to make decisions quickly?

38 A. Yes, I was.

39
40 Q. And do you, with the benefit of hindsight, consider
41 you ought to have had more time to make those decisions?

42 A. Yes, and, the benefit of hindsight, have a colleague
43 from Forensic DNA Analysis review the options so that they
44 could spot my human error before it went to Ms Keller.

45
46 Q. Now, you were asked some questions yesterday about why
47 Mr Howse's Update Paper did not become a project; do you

1 recall that?

2 A. Yes.

3

4 Q. Is it the case that all investigations undertaken in
5 the lab proceed by way of project?

6 A. Not necessarily all, no.

7

8 Q. And you said that you expected that the work that
9 might be undertaken through that Update Paper might also be
10 undertaken as part of an external review?

11 A. Yes.

12

13 Q. Was it typical in the lab to duplicate work that was
14 proposed to be undertaken by an external consultant?

15 A. No.

16

17 Q. Now, you were asked some questions towards the end of
18 the day yesterday by the Commissioner about your
19 qualifications for the role you hold. Can I ask you some
20 questions about that. When you applied for the role was it
21 a process of competitive selection which led to your being
22 appointed?

23 A. Yes.

24

25 Q. Do you recall there being other applicants for the
26 role?

27 A. Yes.

28

29 Q. Do you recall who comprised the panel that interviewed
30 you?

31 A. Yes, I do. I remember two of the three people. One
32 was Greg Shaw, who was the executive director of FSS, one
33 of the other panel members was Inspector David Neville, and
34 I can't remember who the third panel member was.

35

36 Q. Did you receive any hand-over from the previous
37 managing scientist?

38 A. A small hand-over from her before she went on her
39 secondment, yes.

40

41 Q. Do you consider that that was an adequate hand-over?

42 A. Yes.

43

44 Q. Has anybody ever suggested to you before yesterday
45 afternoon that you're not properly qualified for the role
46 you hold?

47 A. No, they have not.

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Q. Has anybody ever suggested to you that your performance as the managing scientist fell well short of expectations?

A. No, they have not.

Q. From time to time you've acted up as the executive director of the lab; is that so?

A. Yes, I have.

Q. Have you ever received any negative feedback about your performance in that acting position?

A. No, I have not.

Q. Finally, Ms Allen, can I ask you this. We find ourselves here in a \$6 million Commission of Inquiry, having sat here for six weeks exploring the entrails of the lab, and of course part of the Commissioner's role is to make findings about what has happened, but, importantly, part of his role is to make recommendations about what should happen in the future, and I want to ask you this: upon reflection, upon considering all of the things you now know, how did we end up here?

A. I was given the team in 2013. That meant that I had extra responsibilities, regardless of my time and availability to do that. I think that change in 2008 when QPS changed the business model with us, that change staff didn't necessarily embrace. But from where I was standing that change was coming whether we embraced it or not. Then we went through the automated platform issues that we had, which, you know, created disharmony within the team. Moving forward, you know, trying to be innovative to assist QPS around the Options Paper, I see that staff didn't embrace that process and that more work was required within that process so that both the QPS and FSS were on the same page for that. To be really helpful, we tried to engage three different mechanisms to help with the culture, particularly within the management team, and that didn't necessarily work either. The first was with a psychologist that could help us, then with Workplace Edge, and then later with Tess Brook. But we didn't ever seem to have any success with maintaining the trust and the working relationship that we had with each other while we were going through that, and we'd gotten to a place where we weren't able to have robust scientific discussions because they would become - they turned into people taking it quite personally instead of trying to be able to discuss the

1 science. And so as a group we are not cohesive and not
2 moving in the same direction even though we may have the
3 same passion for the work that we're doing.

4
5 Q. And have you attempted to address those problems
6 you've just described in good faith?

7 A. Yes, I have. Absolutely in good faith I have tried to
8 do my best to work with everyone that I can to - because,
9 for me, the ultimate goal is to help the community. So
10 what can we do to ensure that we can provide good quality
11 results to the QPS in a turnaround time that allows them to
12 prevent and disrupt crime, that's the focus, and
13 I understand that people view that I only look at the
14 operational side of the work, but for me that's where
15 I feel that I can be of most benefit, is on the operational
16 side, to try to help the staff to actually achieve those
17 goals.

18
19 Q. Thank you, Commissioner. Those are the questions.

20
21 THE COMMISSIONER: Thank you. Ms Allen, I just wanted to
22 ask you about the change that happened in 2013 that you
23 just mentioned. I see from your curriculum vitae attached
24 to your statement that you had been the managing scientist
25 of the DNA Analysis Unit between 2008 and 2013, and then
26 you were appointed managing scientist for the Police
27 Services stream, and your responsibilities obviously
28 increased substantially both in terms of the work that was
29 being done by people under you and also a substantial
30 increase in the number of people under your supervision.
31 Can I ask you this: prior to your appointment to that
32 position in 2013 who was running the other parts of the
33 Police Services stream? What was the organisational
34 structure before you were appointed in 2013?

35 A. The Chemistry - so Forensic Chemistry had been under a
36 chemical analysis group and had been headed up by a
37 managing scientist for that chemical analysis group, and
38 they had managed Forensic Chemistry and other chemistry
39 areas within that. That managing scientist took a
40 voluntary redundancy through the Newman era, and so all of
41 the work groups within that chemical analysis group were
42 then split up and given to different managing scientists,
43 and I was given Forensic Chemistry.

44
45 Q. I understand. Yes, I understand. Thanks. Mr Hodge?

46
47 MR HODGE: Thank you. I did have some further questions.

1
2 THE COMMISSIONER: Yes. Go ahead.

3
4 <EXAMINATION BY MR HODGE:

5
6 MR HODGE: Ms Allen, Mr Hickey asked you some questions
7 about your involvement in the presentation of
8 the information that came back from Workplace Edge; do you
9 recall that?

10 A. Yes.

11
12 Q. And I just wanted to understand that and then show you
13 some documents. What was your involvement in the
14 formulation of the presentation that was provided or
15 delivered to the staff members at that meeting in January
16 of 2018?

17 A. I don't believe I was involved in the formulation, but
18 I had been given a copy to review.

19
20 Q. And tell me if you agree with this: you saw a couple
21 of versions of the presentation as it had been originally
22 done by Workplace Edge?

23 A. Yes, I think I did see a couple of versions, yes.

24
25 Q. And then you edited versions of the presentation?

26 A. I was asked to edit one version of the presentation,
27 and, as I say, I can't recall what that was, but then
28 forwarded that back to Mr Csoban and Mr Holz, and said to
29 them that, you know, I had edited it as they had requested.

30
31 Q. And then when the presentation was delivered on the
32 day you say it was just Mr Csoban who delivered the
33 presentation?

34 A. Yes, that's my recollection.

35
36 Q. And did you speak at all, as you remember?

37 A. Not as far as I remember, unless someone had asked me
38 a direct question, but I don't remember speaking, no.

39
40 Q. I see. And before the PowerPoint presentation was
41 created do you recall that Workplace Edge prepared a draft
42 report?

43 A. Yes, they did a draft themed report.

44
45 Q. And did you see a copy of that?

46 A. Yes.

47

1 Q. And did you have the opportunity to comment on that?

2 A. Not as far as I remember. The themes report then
3 became the presentation that was provided to the staff.

4

5 Q. You don't remember getting a copy of the report and
6 responding with your comments by email?

7 A. I may have, and so I may have forgotten that. Sorry,
8 I don't recall whether I did on the themes report.

9

10 Q. And you don't remember tracking changes into the
11 document prepared by Workplace Edge?

12 A. I could have. As I say, I don't have a recollection
13 around that.

14

15 Q. Do you agree with this proposition: the Workplace Edge
16 process wasn't something that happened independent of you
17 but, rather, you were intimately involved in providing
18 feedback on what came from Workplace Edge and with
19 Mr Csoban formulating the way in which that would be
20 presented to the staff?

21 A. I was asked to provide some feedback, but that was on
22 the basis that they had written their report and I wasn't
23 involved in the formulation of that report or the
24 presentation.

25

26 Q. I'll show you some documents. So first can we bring
27 up [FSS.0001.0083.4025]. So you see this is an email that
28 somebody from Workplace Edge sent to Mr Lok and Mr Csoban
29 on 10 January 2018 and then Mr Csoban forwards to you?

30 A. Yes, the themes document, yes.

31

32 Q. Yes. And was it the case that Workplace Edge weren't
33 meeting with you but they were meeting with Mr Lok and
34 Mr Csoban?

35 A. That's probably right. I'm not sure. I don't - I'm
36 sorry, I don't recall.

37

38 Q. And you see the version that Mr Csoban is sending to
39 you is a PDF?

40 A. Yes.

41

42 Q. And he's sending that to you on 11 January. Nobody
43 else is copied into that email; it's just Mr Csoban
44 forwarding it to you. Was that common, that Mr Csoban
45 would just send things to you and not copy anyone else in?

46 A. It depended on what the topic was, whether it went to
47 other people or myself.

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Q. And then if we - sorry, Commissioner, I'll tender that email.

THE COMMISSIONER: The email of 11 January 2018 from Mr Csoban to Ms Allen is exhibit 184.

EXHIBIT #184 EMAIL OF 11 JANUARY 2018 FROM MR CSOBAN TO MS ALLEN BARCODED [FSS.0001.0083.4025]

MR HODGE: Then if we could bring up [FSS.0001.0083.4017]. So this is the attachment to that email, the themes document as you've referred to it?

A. Yes.

Q. And I think you know you reviewed this at the time?
A. Yes, I would likely have read it at the time, yes.

Q. I think you probably know you definitely read it at the time because you provided detailed comments on it, as we'll come to in a moment.

A. Okay, yes.

Q. Do you remember that?

A. I don't have any independent recollection of it, no.

Q. Do you remember that one of the things that Workplace Edge recommended in their initial draft was a significant restructure of the way that the lab worked?

A. I don't necessarily remember that now, no.

Q. Do you recall that they described the model that was being used within the laboratory as the production line model?

A. Yes, it has been referred to as that, yes.

Q. And they - and I'll show you this. If we go to page 2 of the document, at the bottom of the page you see in 1(a) they say:

The production line model has not achieved the optimal delivery of services under the current structure with the existing systems and processes, and resource allocation.

A. Yes.

1 Q. And you see they also say:

2

3 *The organisational structure does not fully*
4 *support the current operating model as*
5 *illustrated by comments provided by staff.*

6

7 And then you see they go on to say:

8

9 *The Team, as a whole is over-governed with*
10 *10 supervisors managing approximately 60*
11 *staff, giving a ratio of 1:6 actuals and*
12 *between 1:4 and 1:5 FTE.*

13

14 A. Yes.

15

16 Q. And then if we go over the page I just want to note
17 two more things. You see they raise an issue about
18 projects taking too long to establish and complete?

19 A. Yes.

20

21 Q. And they raise an issue about the quality function; do
22 you see that in the next dash?

23 A. Yes.

24

25 Q. And then if you skip over the next one about pay, but
26 then you see they raise two further issues about the
27 production line concept?

28 A. Yes.

29

30 Q. And tell me do you remember them raising these
31 criticisms of the production line concept now?

32 A. Not specifically, no, but I see it in the document,
33 yes.

34

35 Q. If we then come to page 5, which is .4021, you see
36 starting at the bottom of the page they have
37 recommendations?

38 A. Yes.

39

40 Q. And Option 1 is, "Process integrated team approach",
41 and they say this would involve a shift from the production
42 line model?

43 A. Yes.

44

45 Q. And then if we go over the page we can see - if we
46 could keep scrolling, Mr Operator, thank you - we can see
47 they have a model for what they describe as the process

1 integrated team approach as a possibility?

2 A. Yes.

3

4 Q. And then if we keep scrolling down the page we see
5 they have what they describe as Option 2, which is an
6 "Enhanced production line model"; and you see they say:

7

8 *This option would involve structural and*
9 *process changes to address many of the*
10 *concerns expressed above.*

11

12 A. Yes.

13

14 Q. And if we then go over the page you can see then they
15 have this different form of structural chart that they
16 propose?

17 A. Yes.

18

19 Q. And then we can see if we go to the bottom of the page
20 they have their recommendation 1, which is about
21 considering options for operational model and structural
22 change. Then if we go over the page we see recommendation
23 2 is, regardless of what operating model is chosen, that
24 there needs to be strengthening of quality and projects?

25 A. Yes.

26

27 Q. And they said the role of quality should report
28 directly to the managing scientist?

29 A. Yes.

30

31 Q. All right. Now, do you agree with me you rejected the
32 possibility of structural change in the lab?

33 A. No, I don't recall rejecting change.

34

35 Q. Do you agree with me that you rejected changes to
36 strengthen the quality function?

37 A. I don't recall rejecting that, no.

38

39 Q. I'll show you a document. Now, I'll just check if
40 you've got this, Mr Operator. My version doesn't have a
41 doc ID. Could we bring up, Operator, [FSS.1000.0079.8813].
42 That doesn't help. It may have just been emailed to you.
43 Thank you. So if we could just scroll down first just so
44 that Ms Allen can see. So you see you sent an email - if
45 you can scroll up very slightly just so you can see the
46 header. You sent an email on Thursday, 11 January, in the
47 morning giving detailed feedback about that themes

1 document?

2 A. Yes.

3

4 Q. And if we scroll up to the top, and then a little
5 later - I'm not sure if you can see the header time, but
6 this was sent at 10.30 in the morning - you sent a further
7 email dealing with the recommendations and you see you say:

8

9 *I support the spirit of recommendation 1,*
10 *however I don't support either of the*
11 *proposed Org structures put forward.*

12

13 A. Yes.

14

15 Q. And then you see recommendation 2 you say:

16

17 *By placing quality and projects under the*
18 *managing scientist, the expectation is that*
19 *the managing scientist is able to achieve*
20 *more things than others, which isn't a good*
21 *assumption to move forward with. I don't*
22 *support this but I wouldn't oppose it if it*
23 *is framed very carefully with the staff.*

24

25 A. Yes.

26

27 Q. And then you see at the bottom of your email there's a
28 line which is:

29

30 *There hasn't been enough focus on fixing*
31 *the issue with reporting - as reporters*
32 *have advised Justin that they have laid*
33 *everything on the line with Allan - and*
34 *this report won't satisfy them at all.*

35

36 A. Yes.

37

38 Q. And tell me if you agree with this: the senior
39 managers in reporting under Mr Howse were Ms Rika and
40 Ms Reeves at the time?

41

42 A. Yes.

43

44 Q. And your view was that they were the problem?
45 A. No. I was trying to advise that the reporting staff
46 had put forward all of their ideas around this process and
47 that it hadn't necessarily addressed that.

1 Q. I see. I tender that email, Commissioner.

2

3 THE COMMISSIONER: What's the date of it, Mr Hodge?

4

5 MR HODGE: 11 January 2018.

6

7 THE COMMISSIONER: Exhibit 185.

8

9 **EXHIBIT #185 EMAIL SENT BY MS ALLEN DATED 11/01/2018**

10

11 MR HODGE: Now, then, then at some stage you were provided
12 with a Word document version of that themes report; do you
13 recall that?

14 A. I don't specifically recall it, but okay.

15

16 Q. And you went through and you tracked in comments into
17 the Word version of the report?

18 A. Okay.

19

20 Q. And if we bring up [WIT.0019.0016.1688], if you look
21 at the bottom of the page there's an email from Mr Csoban
22 to you where we can't see there's an attachment but
23 presumably there's an attachment and he says, "For review
24 please"?

25 A. Yes.

26

27 Q. And if we scroll up the page you see you email back a
28 version to Mr Csoban?

29 A. Yes.

30

31 Q. And then if we go over the page, Mr Operator, do you
32 see the start of the document, so this is the themes
33 document, and in blue we can see just the changes that
34 you're tracking to the document?

35 A. Yes.

36

37 Q. And then if we go over the page. Now, this is a bit
38 confusing, but I want to suggest something to you. We see
39 both red and blue on this document. What I want to suggest
40 to you is both red and blue come from you.

41 A. Okay. Why would you say that?

42

43 Q. I'll show you why.

44 A. That both red and - okay.

45

46 Q. You see in the - sorry, can I just ask something.

47 This is a document that's actually attached to one of your

1 witness statements. Have you reviewed it any time in the
2 last couple of months?

3 A. No, I haven't, I'm sorry; no.

4

5 Q. I see. How would it get attached to one of your
6 witness statements without you reviewing it?

7 A. I would have used that as some type of evidence for a
8 particular question.

9

10 Q. I see. You see in the red it says:

11

12 *It is not accurate to say that the*
13 *production line model has not achieved the*
14 *optimal delivery of services.*

15

16 A. Yes.

17

18 Q. And then, Mr Operator, could I get you to bring back
19 up that email that we were looking at, which was the last
20 exhibit.

21

22 OPERATOR: Side by side?

23

24 MR HODGE: Yes, if you could do it side by side, that
25 would be great. Thanks. And if you could scroll down to
26 the email that was sent at 9.20 in the morning, and just
27 stop there. It may be hard to zoom it in, but do you see,
28 Ms Allen, in that email on 11 January at 9.20 (a) says:

29

30 *It is not accurate to say that the*
31 *production line model has not achieved the*
32 *optimal delivery of services.*

33

34 A. Yes.

35

36 Q. And what it looks like has happened is that you have
37 copied your initial comments from 11 January over into the
38 document, and they are in red, and then you have in tracked
39 over them in blue and so the blue is also your
40 contribution; do you agree with that?

41 A. That's possible. I don't remember doing that, but
42 that's possible.

43

44 Q. And it looks like - you tell me if you agree with
45 this - you rejected the criticism of the production line
46 model?

47 A. I didn't necessarily think it was an accurate

1 portrayal given that there had been an end to end process
2 that had been conducted.

3
4 Q. And you see - I think we can take down the email now,
5 Mr Operator, and that will allow us to blow up a bit better
6 what's happening on the page. Could you just blow up the
7 last section at the bottom of that page, that's right, the
8 part highlighted in blue including the comment. So you see
9 what Workplace Edge had said is:

10
11 *The Team as a whole is over-governed with*
12 *10 supervisors managing approximately 60*
13 *staff.*

14 A. Yes.

15
16 Q. And then your comment is or the words you add is:

17
18 *Staff members highlighted that the*
19 *reporting teams were over-governed by*
20 *supervisors and proposed that the two*
21 *reporting teams could be merged into one*
22 *team with one supervisor.*

23
24 A. Yes.

25
26 Q. And then you see you have a comment to the side which
27 is:

28
29 *Its my understanding that the comments made*
30 *about over-governed were restricted to the*
31 *reporting teams, not the whole team.*

32
33 A. Yes.

34
35 Q. And then you say:

36
37 *Its Workplace Edge's opinion that the whole*
38 *team is over-governed. This needs to be*
39 *made clearer.*

40
41 A. Yes.

42
43 Q. And I want to just clarify some things about that.
44 The supervisors in the reporting teams, that was Ms Rika
45 and Ms Reeves?

46 A. Yes.

47

1 Q. And tell me if you agree with this: what you were
2 trying to bring about was the abolition of one of their
3 positions?

4 A. No. Sorry, I thought you were going to go on. No,
5 not necessarily, because we would use that position
6 somewhere else within the lab.

7
8 Q. Yes. But they each held a particular role as a
9 supervisor of a reporting team, and you wanted to get rid
10 of one of them as the supervisor of a reporting team?

11 A. If you merged the two teams then the other HP5 senior
12 scientist position could be utilised somewhere else within
13 Forensic DNA Analysis.

14
15 Q. I understand. But I think if you just come back to my
16 question. They were each the supervisor of a reporting
17 team, and you wanted to get rid of one of those positions
18 held by one of them?

19 A. As I said, that was my understanding of what the team
20 had put forward.

21
22 Q. And I just want to understand that. When you say
23 "what the team had put forward" tell me if you agree with
24 this: this was supposed to be anonymous feedback being
25 reported to Workplace Edge as external consultants?

26 A. Yes.

27
28 Q. And you weren't sitting in on the interviews?

29 A. No.

30
31 Q. That would have defeated the entire purpose of it?

32 A. Yes.

33
34 Q. And so when you said staff wrote in the documents,
35 "Staff members highlighted that the reporting teams were
36 over-governed by supervisors and proposed that the two
37 reporting teams could be merged into one team with one
38 supervisor," that statement couldn't have come from you
39 having actually participated in the interviews that were
40 the basis of this document?

41 A. No.

42
43 Q. Do you honestly say that you thought it was legitimate
44 for you to be seeking to manipulate the results of what was
45 supposedly the anonymous feedback from a workplace survey?

46 A. I was not manipulating the results of the survey.

47

1 Q. Ms Allen, we can see it in writing what you did?

2 A. That information had been - so what was the date of
3 this email to me and the email regarding the presentation?
4 Weren't they at about the same time?

5

6 Q. I don't understand. This email is 12 January 2018.
7 The presentation I think from memory was 23 January 2018.

8 A. That's when the presentation was given to the staff
9 members, but I thought that presentation had been provided
10 earlier.

11

12 Q. I see. If you're asking when was the first draft of
13 the PowerPoint representation provided by Mr Csoban to you
14 it was on 17 January, five days later.

15 A. Okay.

16

17 THE COMMISSIONER: Mr Hodge, is this document that we're
18 looking at that was given to Ms Allen by Mr Csoban for her
19 comments a document that was in due course supposed to
20 become the report of Workplace Edge?

21

22 MR HODGE: Yes, as I understand it.

23

24 THE COMMISSIONER: Right.

25

26 MR HODGE: But, as it turned out, I think this is fair,
27 the Workplace Edge engagement ended early.

28

29 THE COMMISSIONER: Yes. But at this stage --

30

31 MR HODGE: So it was never finalised.

32

33 THE COMMISSIONER: At this stage it was a draft that was
34 circulated for comment.

35

36 MR HODGE: Yes.

37

38 THE COMMISSIONER: And the alterations that were made to
39 it were made to it with the aim in due course that that
40 would be the form of the report that Workplace Edge would
41 submit?

42

43 MR HODGE: Yes.

44

45 Q. So I'm sorry, Ms Allen, I understood you were
46 explaining that you weren't trying to bring about a change
47 in the opinion from Workplace Edge and you said - you asked

1 the question about when the PowerPoint presentation was
2 provided.

3 A. My recollection is that Workplace Edge had provided an
4 overview to Mr Csoban and myself. I can't remember whether
5 that - I think that was a verbal overview which is where my
6 comment had come from, because I wasn't involved in any of
7 the interviews and this information came from Workplace
8 Edge, which is what I was trying to say within my comment,
9 that if this is what they had told us previously that this
10 is what's in this document then it needs to be clearer
11 around that.

12
13 Q. So you're saying you thought Workplace Edge had told
14 you at some earlier time that staff members had said that
15 the reporting teams were over-governed and proposed that
16 the two reporting teams could be merged into one team with
17 one supervisor?

18 A. That's my recollection, yes.

19
20 Q. And when do you say that happened?

21 A. At around this time. It was either late December or
22 in the January around this time.

23
24 Q. I see. But you can't tell us when it was?

25 A. I'm sorry, I can't - I don't remember.

26
27 Q. And was it a briefing, as you recall, just to you and
28 Mr Csoban?

29 A. And I think also Mr Peter Matthews may have also been
30 there as well from Workplace Edge.

31
32 Q. And this was something separate from the direct
33 engagement that Workplace Edge was having with Mr Csoban
34 and Mr Lok?

35 A. Yes, that's my recollection; yes.

36
37 Q. And why - tell me if you can - was it necessary for
38 Mr Csoban to be separately forwarding these documents on to
39 you for your comment if you were involved in any way with
40 the formal process by which Workplace Edge was engaging
41 with him and Mr Lok from Queensland Health?

42 A. He asked for my opinion on the document. That's all
43 I can say from that.

44
45 Q. And then I want to suggest to you - I don't want to go
46 through them now, but I will if I need to - then from the
47 17th versions of PowerPoint presentations started being

1 prepared and you - I think you might have edited a couple
2 of versions of the PowerPoint presentation for Mr Csoban?
3 A. Okay. I don't remember how many.

4
5 Q. I don't want to suggest to you that you made any
6 significant changes other than in one respect. Do you
7 recall that there was an issue that Workplace Edge raised
8 about Project 181 taking too long?

9 A. I don't specifically recall that, no.

10
11 Q. Is it possible that you removed the reference to
12 Project 181 taking too long from the PowerPoint
13 presentation?

14 A. I don't remember. So it's possible. I don't remember
15 what I did for those presentations.

16
17 THE COMMISSIONER: 181 was the spermatozoa?

18
19 MR HODGE: Yes. If I could then just get the operator to
20 bring back up that email chain once more that we were
21 looking at. Can we just scroll down again so we can see
22 Ms Allen's email. You see your opening line is:

23
24 *My feedback is based on ensuring that*
25 *adequate details have been supplied within*
26 *the document given that it is highly likely*
27 *to be requested through RTI?*

28
29 A. Yes.

30
31 Q. And what was going on at the time or what had begun by
32 this time was that Ms Reeves was making RTI applications?

33 A. I'm not sure whether it was at that time or whether
34 I was anticipating that there would be. I didn't think it
35 was that early in the year, but I could be wrong because
36 I don't have the dates of the RTIs.

37
38 Q. In any event when you refer to it being "highly likely
39 to be requested through RTI" the person that you
40 anticipated requesting it through RTI was Ms Reeves?

41 A. She was most likely, but there were other staff that
42 could have also requested it.

43
44 Q. But she was the one who was foremost in your mind,
45 wasn't she, at the time?

46 A. Yes.

47

1 Q. And so what you were seeking to do - I think you use
2 the phrase "ensuring that adequate details have been
3 supplied within the document", what you were seeking to do,
4 though, was make it or get the document into a form where
5 you would be content for it to be produced to Ms Reeves if
6 she requested it by RTI?
7 A. No, that was not my intent. The intent was to ensure
8 that there was adequate detail within the document so that
9 it could, for want of a better word, stand alone because it
10 had enough detail in it.

11
12 Q. But, Ms Allen, look at the words that you use:

13
14 *My feedback is based on ensuring that*
15 *adequate details have been supplied within*
16 *the document given that it is highly likely*
17 *to be requested through RTI.*

18
19 THE COMMISSIONER: That's the point you're making,
20 Mr Hodge?

21
22 MR HODGE: I'll put it more bluntly.

23
24 Q. What you were seeking to do was to ensure that
25 whatever opinions or statements were made by Workplace Edge
26 were statements that you would be happy with if they were
27 produced to Ms Reeves?

28 A. No, that's not right.

29
30 Q. You didn't want any statements that might be
31 supportive of her criticisms of the operation of the
32 laboratory?

33 A. No, that's not right.

34
35 Q. And then I want to ask you then one last thing, which
36 is about that meeting with Workplace Edge. Can we bring up
37 another document which is [FSS.0001.0083.4210].

38
39 THE COMMISSIONER: At some point, Mr Hodge, can you make
40 plain what point you're making about the foot of that
41 amended report of Workplace Edge, the last two lines in
42 blue relating to reporting scientists wanting to get rid of
43 one of the positions?

44
45 MR HODGE: Yes, I thought I might have put it. But I can
46 put it in a different way.

47

1 THE COMMISSIONER: I just need to understand the point and
2 be sure that Ms Allen has had an opportunity to respond to
3 it, whatever it is.

4
5 MR HODGE: I might just do it now.

6
7 Q. Ms Allen, what I'm putting to you is this: you wanted
8 to get rid of Amanda Reeves; do you agree?

9 A. No.

10
11 Q. And the problem with the feedback that Workplace Edge
12 was saying they had received was that they were suggesting
13 that as a whole the DNA lab had too many managers, and that
14 wasn't feedback that you wanted?

15 A. No, that's not true.

16
17 Q. The feedback that you wanted was that one of
18 the positions held by Ms Reeves or Ms Rika should be
19 abolished?

20 A. No, that's not true.

21
22 Q. And so you set about adding as a comment the
23 suggestion that that was in fact the feedback that had been
24 received, even though that wasn't how Workplace Edge in
25 writing had summarised the feedback?

26 A. As I said, that was my understanding of what had
27 occurred and so that they needed to clarify that so that
28 there was understanding, because I was confused by it.

29
30 Q. If the evidence you're giving now is true, tell me
31 this: why would you not simply add a comment to the side
32 saying, "Is this description of the feedback accurate,
33 because I had thought that Workplace Edge had said that the
34 feedback was something different"? Why would you take the
35 trouble to edit the document to type in different words as
36 the feedback?

37 A. Because Mr Csoban had asked me to review that document
38 and so my understanding was to add information to it. He
39 didn't ask me just to make comments on it. He asked me to
40 review it. So that's what I did.

41
42 Q. I have to suggest this to you, Ms Allen. Once again
43 this explanation that you're giving doesn't make sense and
44 that's because it's not true.

45 A. I'm not lying.

46
47 Q. Now, you see this email that you sent to Mr Csoban and

1 Allan - you can't see who the other person is but it's
2 Allan from Workplace Edge?

3 A. Yes.

4

5 Q. And you sent it on 25 January 2018, so this is two
6 days after that all staff meeting?

7 A. Yes.

8

9 Q. And you see what you're setting out is some feedback
10 that you'd received from Mr Howse about feedback that he in
11 turn had received from Ms Rika?

12 A. Yes.

13

14 Q. And you see it says the feedback was at least half the
15 staff had said that the presentation didn't represent their
16 views or what they provided in the interviews?

17 A. Yes.

18

19 Q. And then you see two dashes down it says:

20

21 *It was put forward that Allan, Cathie and*
22 *Paul only put forward the things that they*
23 *wanted to say and not the views of the*
24 *staff.*

25

26 A. Yes.

27

28 Q. Now, I'm interested in that. How could it be that you
29 were putting forward any views at this meeting if, as you
30 said in evidence a day ago, you were just sitting in the
31 audience?

32 A. That was their perception from the preparation, is my
33 understanding of that dot point. The staff's perception
34 was that the views that had been put forward was mine and
35 Paul's.

36

37 Q. And then you see the last paragraph says:

38

39 *I'm concerned about this type of discussion*
40 *and the affect that it will have on the*
41 *staff member who have opened up. And*
42 *I would welcome any ideas on what we could*
43 *do to quell some of this nonsense.*

44

45 A. Yes.

46

47 Q. And by "quell some of this nonsense" you meant the

1 dissent that Ms Rika was expressing and saying that other
2 staff felt about the things that had been said at the
3 meeting?

4 A. No, it was about how all of that discussion would
5 affect the team and we were trying to move forward with the
6 team. So discussions like this needed to be quelled in
7 some way or additional feedback provided from Workplace
8 Edge on their specific points so that staff could
9 understand that the comments had come from the staff and
10 not come from others so that that could possibly help them
11 move forward.

12
13 Q. You agree with me that what was presented on
14 23 January - we can leave aside for the moment who
15 presented it - but what was presented was things that you
16 and Mr Csoban were happy to have presented to staff?

17 A. What was presented to them was generated by Workplace
18 Edge and that was the process that we undertook. It wasn't
19 necessarily that I was happy about the content.

20
21 Q. I don't have any further questions. Sorry, I tender
22 that email, Commissioner.

23
24 THE COMMISSIONER: Exhibit 186.

25
26 **EXHIBIT #186 EMAIL FROM MS ALLEN TO MR CSOBAN AND ALLAN**
27 **DATED 25/01/2018**

28
29 THE COMMISSIONER: Mr Hickey.

30
31 MR HICKEY: Yes, Commissioner.

32
33 THE COMMISSIONER: I think this line of questioning arose
34 out of some of the evidence that you elicited about the
35 efforts that were made to bring in external consultants and
36 so on. But Mr Hodge's questions extended over a range. So
37 I wondered whether you wanted to cover any of it.

38
39 MR HICKEY: No, thank you, Commissioner.

40
41 THE COMMISSIONER: All right. Thanks. That concludes
42 your questioning, Ms Allen. You're free to cut the link
43 now, if you wish.

44 A. Thank you.

45
46 **<THE WITNESS WITHDREW**

47

1 THE COMMISSIONER: Mr Hodge, what's next on the agenda?
2

3 MR HODGE: Commissioner, we now seamlessly transition to
4 module 5, which is the evidence of Ms Baker and Dr Kogios.
5 What I was going to do was give a short opening about that
6 evidence and then we were going to call them. They're
7 going to appear via video.
8

9 THE COMMISSIONER: Yes.
10

11 MR HODGE: I'm sorry, there's one other thing I have to do
12 which is there's a large number of additional documents
13 which are to be tendered in line with what you indicated,
14 Commissioner, that the parties should have certainty about
15 what you're going to look at.
16

17 THE COMMISSIONER: Yes.
18

19 MR HODGE: So can I hand up - these are broken down into
20 for each different topic the additional documents that are
21 to be tendered. So I might just formally hand that up and
22 then in due course we'll do something where we allocate
23 exhibit numbers.
24

25 THE COMMISSIONER: Why don't you keep it until you're
26 ready to make it part of the record in some form that can
27 be useful to anybody reading the transcript.
28

29 MR HODGE: I'll have a further discussion with my team
30 over lunch about how that's to go up.
31

32 THE COMMISSIONER: All right.
33

34 MR HODGE: So, Commissioner, I'll just say something, it
35 will probably take me about 10 minutes, I think, just to
36 run through some things.
37

38 THE COMMISSIONER: And has everybody got the expert report
39 that you're going to be speaking about?
40

41 MR HODGE: Yes. Commissioner, in the last five weeks of
42 hearing we've heard much about the past and present
43 practices of the laboratory, and you have heard evidence
44 from scientists, police and experts, and then over the last
45 week from managers involved in the management of the
46 laboratory. In this final module, which will probably take
47 a day to a day and a half, you'll hear evidence from two

1 highly experienced forensic DNA scientists, Dr Rebecca
2 Kogios and Ms Heidi Baker, who have conducted a review of
3 the current operation of the lab. That review involved a
4 thorough consideration of whether the lab's operations are
5 consistent with international best practice, what needs to
6 be done to rectify deficiencies that they identified, and
7 where the lab should review or retest samples which have
8 been dealt with in a way that has in the past been
9 inconsistent with best practice.

10
11 I might bring up the expert report. Can we bring up
12 [EXP.0007.0001.0001]. So this is the expert report that
13 Ms Baker and Dr Kogios have prepared, and it's dated
14 28 October 2022. I might just tender it now, Commissioner,
15 and it can go as an exhibit.

16
17 THE COMMISSIONER: Yes. The report is exhibit 187.

18
19 **EXHIBIT #187 EXPERT REPORT THAT MS BAKER AND DR KOGIOS**
20 **BARCODED [EXP.0007.0001.0001]**

21
22 MR HODGE: I might just tell you very briefly about the
23 two experts, Commissioner, and then we won't need to
24 traverse through that again when they give evidence.

25
26 THE COMMISSIONER: Yes.

27
28 MR HODGE: Ms Baker has a bachelor of science with honours
29 in genetics. She's currently a forensic senior scientist
30 at the highly regarded Institute of Environmental Science
31 and Research, which is what is referred to as ESR, and
32 you've heard references to ESR before, and ESR is in
33 New Zealand. Ms Baker has over 20 years experience as a
34 scientist and senior scientist in forensic DNA laboratories
35 and is currently based in the forensic research and
36 development team at ESR providing technical advice for
37 genomics research and social systems projects.

38
39 Dr Kogios has a PhD in molecular biology and bachelor
40 degrees in science and law. She is the executive director
41 of the forensic services department which is part of the
42 Victorian Police and she has had a career of more than
43 20 years in forensic biology. She has responsibility for
44 all forensic services provided by the Victorian Police,
45 including forensic DNA.

46
47 Between them the two experts have worked at four

1 forensic service providers in three different countries and
2 have a combined experience of more than 40 years in
3 forensic DNA. They were provided with over 2,300 documents
4 that had been compiled by the Commission to cover the
5 current operations of the lab, and that included a full set
6 of the current standard operating procedures, recent
7 quality system documents and management team meetings, and
8 they were also given the other expert reports that you
9 obtained, Commissioner, for the purposes of this
10 Commission.

11
12 THE COMMISSIONER: That is 2,300 document, not 2,300
13 pages.

14 MR HODGE: Correct.

15
16
17 THE COMMISSIONER: Each document maybe containing dozens
18 or hundreds of pages.

19
20 MR HODGE: Sometimes many pages.

21
22 THE COMMISSIONER: Yes.

23
24 MR HODGE: Many pages. They visited the laboratory over
25 four days between 21 and 27 September 2022, and that
26 included tours and explanations of relevant parts of the
27 laboratory and interviews with staff. They were involved
28 in speaking to staff of the laboratory on 22 occasions from
29 reporting, analytical and evidence recovery scientists to
30 senior scientists, team leaders, the managing scientist,
31 the quality manager of FSS and the executive director of
32 FSS.

33
34 They have in their report identified a number of
35 features of the laboratory that fall below best practice.
36 Some are high level and they affect the way that the lab as
37 a whole functions and others are technical, and we will
38 canvass a number of them in their oral evidence today and
39 likely continuing into tomorrow.

40
41 Ms Baker and Dr Kogios also deal with a number of
42 issues in relation to the governance and structure of the
43 laboratory, and they identify some difficulties with the
44 current structure for the management and governance of the
45 lab. They have made 47 recommendations to bring the lab
46 back into line with best practice.

47

1 Before we call them I wanted to just outline very
2 briefly a few of the issues that they have discussed in
3 their report. The first key issue is about workflow,
4 something, Commissioner, that you've heard about a number
5 of times over the course of the last five weeks. Ms Baker
6 and Dr Kogios identify a number of features of the current
7 workflow that create a potential issue, including that
8 there is no dedicated case manager for cases other than
9 those designated as P1. The lab tests everything it
10 receives, and the lab uses a work list system so that
11 reporting is done on a sample by sample basis without full
12 case context.

13
14 No DNA and DIFP results when they were still reported
15 were reported without a reporting scientist considering the
16 results at all. A whole of case review would only occur
17 when a statement was required for court, and they express
18 the opinion that that for reasons they identify is
19 problematic because the risks of this workflow are
20 significant.

21
22 One risk is the missed opportunity to obtain all
23 available forensic evidence. Another is the risk of not
24 detecting contamination or unexpected results, and also the
25 potential overservicing and damage to the relationships of
26 the lab both internally in the sense of the trust of its
27 scientists and externally in terms of the trust of the QPS.

28
29 Ms Baker and Dr Kogios consider that this workflow
30 model, the production line model, presently in use falls
31 below what is required to be best practice, and they
32 consider it results in suboptimal triage and case review in
33 some cases. Ultimately, as you'll hear from them, they
34 recommend some changes that could be made or considered in
35 terms of the operation of the lab.

36
37 In relation to the issue of thresholds, something that
38 you've heard a lot of evidence about, Commissioner,
39 Dr Kogios and Ms Baker consistently, with what other
40 experts have said, have found that the lab's approach to
41 thresholds falls below best practice. The no DNA threshold
42 could be best practice if properly validated and properly
43 explained to end users of the results, but neither is the
44 case at present. The DIFP threshold is not supported by
45 Ms Baker or Dr Kogios at all. Rectification of this issue
46 will require a review of all samples reported as DIFP and
47 immediate proper validation of the limited detection. In

1 terms of future thresholds Dr Kogios and Ms Baker suggest
2 no threshold at all for serious or complex crimes or only a
3 limited detection threshold which would be able to be
4 overruled by a scientist at the scientist's discretion.
5

6 Ms Baker and Dr Kogios also found a number of other
7 features of the lab's current operations to fall below best
8 practice, including the lack of Y-STR testing, the
9 reporting of incorrect results to police, the elution and
10 auto-concentration practices, and the change in cleaning
11 protocols for bones that was implemented in 2019. They
12 also make a number of recommendations in areas where
13 practice can be improved.
14

15 In relation to SAIKs they recommend the provision of
16 feedback to collectors of SAIKs, accreditation of kits, and
17 the formation of an interagency group to provide advice on
18 best practice. They also recommend changes to the content
19 of the SAIKs, including extra swabs, a swab to take a
20 reference sample, materials to take fingernail clippings,
21 and to make slides for microscopy.
22

23 In quality management they are concerned by the
24 current arrangements which involve the quality senior
25 scientist, who is embedded in case work and has no power to
26 overrule a manager, and the quality manager of FSS, who
27 plays an advisory role only. They recommend a quality
28 manager role which is dedicated solely to the forensic case
29 work and a quality lead within all DNA analysis teams.
30

31 In the structure of the lab they recommend the
32 division of managerial and technical roles, with the
33 management role for sole responsibility for DNA analysis
34 and a technical lead to serve as the custodian of
35 scientific help. Ms Baker and Dr Kogios also recommend the
36 development of research, development and innovation
37 capabilities in the lab to ensure they keep pace of
38 scientific developments in the field.
39

40 Ms Baker and Dr Kogios also identify significant
41 problems in the culture of the laboratory, including
42 strained relationships, inability to resolve scientific
43 differences, disconnect from the other labs and opaque
44 decision-making. However, as you will hear, Commissioner,
45 I expect very early in their evidence they have a very high
46 regard for the scientists who work in the laboratory and
47 were very impressed by the quality and experience of those

1 scientists. They identify the features of a healthy
2 scientific workplace culture as being one in which you can
3 raise concerns without the fear of retribution, one that
4 encourages innovation, and one that is supported by a
5 values based culture.

6
7 Dr Kogios and Ms Baker will give evidence
8 simultaneously and by video link; Dr Kogios in Victoria and
9 Ms Baker in New Zealand. Is it convenient, Commissioner,
10 if we call them now and commence their evidence?

11
12 THE COMMISSIONER: Of course. Yes, certainly.

13
14 MR HODGE: I call Dr Kogios and Ms Baker. I'm told they
15 should be in the link. I can see Ms Baker. I should say,
16 Commissioner, just while we're waiting for Dr Kogios to
17 join, I'm going to address a few topics with the experts
18 and then I'll hand over to Ms Hedge and she'll address
19 other topics. Can we just adjourn for a moment and we'll
20 get the technology working?

21
22 THE COMMISSIONER: That's all right. Just get it working.
23 I'll wait.

24
25 MR HODGE: Commissioner, I understand the operator has
26 asked us to adjourn so he can sort out the feedback.

27
28 THE COMMISSIONER: All right.

29
30 MR HODGE: So if we can adjourn for five minutes.

31
32 THE COMMISSIONER: Yes.

33
34 **LUNCHEON ADJOURNMENT**

35
36 THE COMMISSIONER: Ready to go, Mr Hodge?

37
38 MR HODGE: I am. Just before we do that can I just hand
39 back up that list of documents to be tendered --

40
41 THE COMMISSIONER: Yes.

42
43 MR HODGE: -- and I'll get you, Commissioner, to allocate
44 exhibit numbers.

45
46 THE COMMISSIONER: Yes. And how do you want to describe
47 that bundle?

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MR HODGE: So each - if you have a look at the front page, there's a series of topics that are identified and then behind that there's a list for each topic, and the idea is there will be a single exhibit number that you'll allocate now to each topic.

THE COMMISSIONER: I see what you've done. What you're doing is you're tendering a list in relation to each matter that we've been examining; is that it?

MR HODGE: Yes. So if you allocate an exhibit number to each one of them where there's the space on the right-hand side. Then when they go up on the website and for the purposes of the parties making submissions they will, for example, be able to identify - I'm not sure what the next exhibit number is.

THE COMMISSIONER: The next number is 188.

MR HODGE: So "General" will be exhibit 188, and then within that list the very first item, which is the Forensic DNA Analysis Unit team chart, that will be 188.1, and that's how it will go up on the website and the parties will be able to identify it.

THE COMMISSIONER: All right. So what do you want me to do with this?

MR HODGE: I just want you to - well, you could do it now or we could just do it later, but No.1 will be 188 and it will continue through. So if you just accept that as formally tendered we'll allocate the numbers or --

THE COMMISSIONER: Sorry, I'm not with the scheme yet.

MR HODGE: Sorry, if you look at the front page.

THE COMMISSIONER: Yes.

MR HODGE: You see where it says "Exhibit number"?

THE COMMISSIONER: Yes.

MR HODGE: So "General", if you write "188" there.

THE COMMISSIONER: Yes.

1
2 MR HODGE: Options Paper will be 189, et cetera.
3
4 THE COMMISSIONER: Yes.
5
6 MR HODGE: And that will be it. That then will be the
7 formal tendering of all of those documents.
8
9 THE COMMISSIONER: I see. All right. Well, that's what
10 I'll do. Take that as a given, from 188, No.1, to --
11
12 MR HODGE: I'm sorry, just before you do that - yes, if
13 you just do it as 188 and onwards, and then - so it will be
14 188, 189, et cetera.
15
16 THE COMMISSIONER: Yes.
17
18 MR HODGE: And then the list itself we'll make 188.0.
19
20 THE COMMISSIONER: I don't understand any of that. We can
21 mark it later and then read it into the record, Mr Hodge.
22
23 MR HODGE: Thank you, Commissioner.
24
25 THE COMMISSIONER: All right? So that I don't add to any
26 confusion.
27
28 MR HODGE: I'll deal with that later.
29
30 THE COMMISSIONER: All right.
31
32 MR HODGE: Thank you.
33
34 THE COMMISSIONER: Are we ready to proceed?
35
36 MR HODGE: We are. Thank you.
37
38 <REBECCA JUSTINE KOGIOS, sworn:
39
40 <HEIDI MIRANDA RUTH BAKER, affirmed:
41
42 THE COMMISSIONER: Thank you, both. Mr Hodge.
43
44 MR HODGE: Thank you.
45
46 <EXAMINATION BY MR HODGE:
47

1 MR HODGE: I might just have each of you just identify
2 yourselves. Dr Kogios, could you state your full name for
3 the Commission?
4

5 DR KOGIOS: Yes, my name is Rebecca Justine Kogios.
6

7 MR HODGE: And what is your occupation?
8

9 DR KOGIOS: I'm the executive director of the Victoria
10 Police Forensic Services Department. I should say that for
11 the purposes of this Commission the views that I express
12 are personal views and should not be perceived as an
13 official commitment or a view of Victoria Police or of the
14 Victorian government.
15

16 THE COMMISSIONER: Yes, I'm acting upon the basis that
17 each of you has been retained in your personal capacity to
18 give your personal expert opinions and that nothing that
19 you say is to be taken by anybody as reflecting an official
20 view on the part of anyone. Is that what you're saying?
21 Yes?
22

23 DR KOGIOS: Yes, thank you.
24

25 MS BAKER: Yes.
26

27 THE COMMISSIONER: Thank you, Mr Hodge.
28

29 MR HODGE: And, Ms Baker, could you state your full name
30 for the Commission?
31

32 MS BAKER: Yes, it's Heidi Miranda Ruth Baker.
33

34 MR HODGE: Thank you. And what is your occupation?
35

36 MS BAKER: I'm a senior forensic scientist at ESR in New
37 Zealand.
38

39 MR HODGE: Thank you. Now, I'll just bring up, so that we
40 all at least have it on your screen, your expert report,
41 which is [EXP.0007.0001.0114]. I'm hoping that both of you
42 can see that as well?
43

44 MS BAKER: Yes.
45

46 DR KOGIOS: Yes.
47

1 MR HODGE: Great. That's the report that the two of you
2 have prepared for the Commission?

3
4 MS BAKER: It is.

5
6 DR KOGIOS: It is.

7
8 MR HODGE: And, insofar as it expresses opinions, those
9 opinions are ones that you genuinely hold?

10
11 MS BAKER: Yes.

12
13 DR KOGIOS: Yes, that's correct. Now, we've already
14 formally tendered it --

15
16 THE COMMISSIONER: Just before you go on, because we're on
17 video with each of you and because you're not together
18 shall we just adopt the process that, Dr Kogios, if you
19 wouldn't mind speaking first in every case and, Ms Baker,
20 you speak second if the question is put to both of you,
21 subject to Mr Hodge asking or any of the counsel here
22 asking for some different sequence, and then you won't
23 interrupt each other.

24
25 DR KOGIOS: Yes.

26
27 THE COMMISSIONER: Yes, Mr Hodge.

28
29 MR HODGE: Thank you. What I want to start with is just
30 inviting you to express your general observations about the
31 positive qualities of the lab based on your review, and
32 I wonder, Dr Kogios, if you might start?

33
34 DR KOGIOS: Yes. More than happy to do that. It's fair
35 to say that Ms Baker and I did conduct quite a deep dive in
36 the limited time that we had, both through our site visit
37 and through the extensive access to SOPs, to standard
38 operating procedures, that we were given, and on the whole
39 overwhelmingly we found a highly functioning performing
40 laboratory with a very skilled cohort of staff across all
41 levels, staff who were very professional, very
42 knowledgeable, very experienced and incredibly committed to
43 their work and to providing an excellent service to the
44 State of Queensland. We found the facilities themselves to
45 be first rate, and on balance the methodology, the
46 protocols in use are very consistent with the methodology
47 and the protocols in use in the broader forensic sector in

1 this country and beyond. So we had many, many positive
2 observations from our time with the staff of the
3 Queensland Health Forensic and Scientific Services
4 laboratory.
5

6 MR HODGE: Thank you. Ms Baker, did you want to add
7 anything to that?
8

9 MS BAKER: I would, thank you. I certainly would describe
10 the staff as incredibly passionate, very dedicated to the
11 people of Queensland. Most of them have dedicated their
12 whole careers to forensic science. I would like to express
13 my thanks for how helpful the staff were when we did our
14 visit, and I appreciate it was an incredibly challenging
15 time for those staff, and their demeanour and the way they
16 carried themselves during that visit was to be commended.
17 So that would be a huge thankyou from me. I also noticed
18 the really well-written extensive standard operating
19 procedures, so those are like the manuals that people
20 worked towards. So there was certainly good evidence of a
21 high level of documentation there as well.
22

23 MR HODGE: Now, is it fair to say, and I'll direct this
24 first to Dr Kogios, what you also observed was within the
25 work group fragmentation and issues of trust?
26

27 DR KOGIOS: Yes. Yes, that is fair to say, and that won't
28 come as any surprise, given some of the evidence that has
29 been before the Commission. I think it's probably an
30 observation that I would make that as a general rule
31 forensic work groups tend to be fairly fixed. It takes a
32 long time to develop expertise in forensic science,
33 particularly to the point that enables a person to give
34 evidence in court. So what you end up often is a work
35 group that has been there for a very long period of time,
36 and this is a blessing because obviously you develop an
37 enormous amount of skill and expertise in that work cohort.
38 But it can also mean that there are difficulties that can
39 arise potentially through longstanding issues in the
40 workplace, and we certainly saw some evidence of that in
41 our time in the laboratory.
42

43 MR HODGE: And I wonder, Ms Baker, are you able to just
44 describe for the Commissioner, if you're familiar with it,
45 what might be thought of as a no-blame culture within a
46 workplace?
47

1 MS BAKER: Yes, of course. So it's really important in
2 forensics. You know, we're mostly human beings. We have
3 some robotics as well, but we make mistakes, we're human,
4 and it is really important to have a culture of no blame so
5 that people feel able to raise any concerns that they may
6 have. If you're in the middle of an item examination and
7 you accidentally drop a tube, it is incredibly important
8 that you feel able to own that and seek some support as to
9 how best to rectify that situation.

10
11 We also are really sort of strongly advocating for
12 that near-miss approach as well, so don't wait for
13 something to go wrong. If you see a potential for
14 something to go wrong in a process or the particular way
15 that you're doing something, it's really important to flag
16 that, and that's at all levels, and we really relish new
17 staff coming into our laboratory who review our standard
18 operating procedures as part of their initiation because we
19 want to make sure that what we're saying we do we're
20 actually doing, and we sort of really empower our new staff
21 to sort of hold us to account, and if they hear us talking
22 about something in a way that we're not describing it in
23 our operating procedures we encourage them to speak out
24 about that, and then that continues throughout people's
25 forensic career.

26
27 I would just like to add in terms of the work culture
28 the work we do is incredibly tough and challenging at
29 times, mentally, emotionally as well, and it's incredibly
30 important to have a support structure around you. A lot of
31 our work is confidential. We can't talk about it with our
32 friends or family. So to have work colleagues around you
33 that you can trust and who understand the pressures that
34 you're going through and some of the things that you find
35 quite difficult to work with is really important, and
36 I felt in some ways that was obviously lacking in certain
37 areas within the laboratory, and that's a real shame for
38 those staff.

39
40 MR HODGE: And - I might direct this first to Dr Kogios -
41 in terms of that idea of a no-blame culture, did you form a
42 view about the extent to which that is reflected within the
43 culture of the Queensland laboratory?
44

45 DR KOGIOS: Well, I mean, we did certainly see signs of a
46 no-blame culture. A lot of people that we spoke to spoke
47 about quality is everybody's business, everybody has a role

1 in calling out issues around quality. So, you know, there
2 was evidence of a no-blame environment. We also heard from
3 other staff members who had a very different experience.
4 I think, you know, my personal view would be that the only
5 way to really get the measure of a particular culture would
6 be to be a part of that culture. You have to understand
7 that Dr Baker and I, we had a view into the culture, but
8 we've only seen certain perspectives. So whatever opinion
9 we may offer would be limited, you know, when looking at it
10 through that lens.

11

12 MR HODGE: I understand. What we might do is then move to
13 the topic of workflow and start at a general level. One
14 aspect of workflow I want to ask you about is in your
15 experience are there ways in which different laboratories
16 will go about trying to cap or limit the work that occurs
17 at different stages of the forensic examination process?

18

19 DR KOGIOS: Yes, absolutely, and, look, I think it's
20 important to understand that decisions are made right the
21 way along the forensic continuum, if you like, from the
22 start, from an event that takes place out at a crime scene,
23 or what becomes a crime scene, right the way up to
24 reporting the final results of a case. It's a series of
25 decision making that takes place, and it's not just about
26 efficiencies by any stretch. It is the case that not every
27 scenario, not every case requires what we would consider to
28 be a fully exhaustive approach to testing.

29

30 So, you know, to just give you some examples, at a
31 crime scene it may well be that, you know, where do you
32 draw the line? You could potentially collect every single
33 item in the scene. It just wouldn't be necessary. So what
34 you rely on is skilled experienced crime scene examiners to
35 make good decisions based on what they observe and the
36 information they have been given about the scene to zero
37 in, if you like, on the exhibits that are going to be
38 informative in that particular case. So there's an episode
39 of sort of culling, if you like, from the start at the
40 crime scene.

41

42 Then there's another round of decision making around
43 which items will actually be examined. So you wouldn't
44 necessarily in a major crime examine every item that was
45 collected from a crime scene. Again, you're relying on
46 experienced, skilled professionals to make judgment calls
47 around setting an examination strategy that's going to give

1 you the most value in the case.

2
3 Then the next step down would be decision making
4 around the samples that have been selected from those items
5 that have been examined, which samples to process in which
6 order, what level of re-work might be appropriate, and then
7 at the end of that first initial round of testing a
8 backward look, if you like, to say, "Well, what have we got
9 so far? Is that sufficient in this case? Have we answered
10 the key questions that we think forensic evidence are going
11 to be able to provide answers to in this case?"
12

13 There may be new information as well that's come to
14 the fore in the passage of time between the incident and,
15 you know, this particular point in the sequence. So that
16 might occasion a person to then go back and do some further
17 item examination. Some of those exhibits or items that
18 were collected are not examined in the first pass, you
19 might want to go back and do further testing of those
20 items. So it's a continual process of decision making to
21 decide what gets carried forward at any particular point in
22 time.
23

24 MR HODGE: And there's two different aspects of that that
25 I want to ask you some questions about. One is the way in
26 which that ties into the workflow that's used, and the
27 other is the way in which that ties into thresholds. So
28 I'll start with the workflow. You make the observation in
29 your report that the current process that is used within
30 the Queensland laboratory is that cases are not routinely
31 allocated to a case manager, except in the cases of the
32 P1 cases. I wonder if you might just explain from your
33 perspective how you would describe in its essence the type
34 of workflow process that is used in the Queensland lab?
35

36 DR KOGIOS: Is that a question for me or for Ms Baker?
37

38 MR HODGE: I'll direct that to you, if that's all right,
39 Dr Kogios
40

41 DR KOGIOS: Sure. So I think we would describe it as a
42 sort of end-to-end workflow that's split across two
43 agencies. So, you know, you've got the Queensland Police,
44 the QPS, responsible for the first part of that workflow.
45 So that is not only the crime scene attendance but also the
46 item - the setting of an examination strategy and the item
47 examination. And then you've got a submission of samples

1 in an "in tube" model through to QHFSS - I'll use that
2 acronym, I think, FSS, to describe the laboratory. So
3 those samples are then submitted in tubes through to the
4 laboratory for the subsequent analysis, the interpretation
5 and the reporting stages of that workflow, with results
6 then provided back to QPS. So I think we would think about
7 this as being a split operating model between the two
8 agencies with an "in tube" laboratory submission.

9
10 MR HODGE: And, Ms Baker, one of the expressions that
11 sometimes's used is "robot ready". Could you just explain
12 what that means?

13
14 MS BAKER: Yes. So to assist in processing large batches
15 of samples and to I guess reduce the possibility of human
16 error a lot of forensic laboratories do employ robots, so,
17 for example, to do the extraction process, so actually
18 getting the DNA out of the sample for quantification or
19 measuring the amount of DNA in the sample, and also for
20 amplification, so making lots of copies of them. And
21 I guess being robot ready would mean that in this case the
22 Queensland Police would submit a sample that's already in
23 a - we call it a microcentrifuge tube, so a little tube
24 that is ready to go straight onto the robot to be
25 extracted.

26
27 MR HODGE: And, again, I'll direct this to you, Ms Baker.
28 The model that is used in Queensland, we've heard it
29 referred to in different ways in the evidence, but
30 sometimes there's something like a production line or
31 something along those lines. Does that reflect the way, in
32 your view, the process works within the Queensland
33 laboratory, excluding P1 cases?

34
35 MS BAKER: Yes. In some respects I guess the idea behind
36 that is that samples are reported individually rather than
37 as a case, and it's seen as a way of getting a high
38 throughput and a relatively short turnaround time for a
39 sample.

40
41 MR HODGE: Yes, and so I think - and I'll direct this to
42 Dr Kogios - an advantage of that model is it is high
43 throughput in terms of getting through samples?

44
45 DR KOGIOS: Yes, yes, absolutely, and I think one must -
46 I guess I would caution against looking at high throughput
47 as being necessarily a negative thing. In contemporary law

1 enforcement it's absolutely about intelligence-led
2 policing. So police are really in some instances relying
3 on a forensic link to give them a lead in a case that
4 perhaps they wouldn't otherwise have, and having an early
5 lead on a case can lead to significant positive outcomes in
6 terms of the progression of that particular case. It might
7 also be very useful in disrupting an active offender and
8 therefore preventing further crimes from happening. So one
9 of the benefits of this particular model is that it does
10 have the potential to offer that high throughput, which
11 then enables a rapid link and that information to be
12 provided to police.

13

14 MR HODGE: Is it fair to say, though, in terms of where
15 that kind of benefit accrues it's really for what's
16 referred to as volume crime, or P3 cases in the Queensland
17 parlance, rather than being - whilst it might occasionally
18 be of significance, it's probably not normally of great
19 significance in relation to murders and other kinds of
20 serious offences?

21

22 DR KOGIOS: Broadly I would agree with you. I mean, as
23 you say, there could be some instances of those serious
24 crimes against the person where police just don't have a
25 lead and they really are relying upon some forensic link to
26 give them some sort of direction in a case. Forensic links
27 are also vitally important in exculpating individuals from
28 investigations as well, of course. So I think, yes, that
29 I would agree that the high throughput and the ability to
30 get a quick link is of particular benefit when you're
31 dealing with high volume crime. It can be of benefit for
32 some serious crimes against the person. But for those
33 crimes it's often more the build of the full forensic
34 picture that a court will subsequently rely on in that sort
35 of evidential or that prosecutorial phase.

36

37 MR HODGE: The two of you identify a number of risks with
38 this kind of process, so I just want to draw those out from
39 you. One of those risks is the risk of over-servicing, and
40 I wonder - and I'll direct this I think to you, Dr Kogios -
41 could you just explain what that means in this context?

42

43 DR KOGIOS: Yes, Mr Hodge, if I can just take a moment
44 just to explain. There is no such thing as a universally
45 agreed international best practice for an operating model,
46 and the operating model that is in place in Queensland is
47 certainly within the range of accepted operating models in

1 Australia. So it is not that our evidence is that the
2 operating model per se is the problem; rather, that under
3 that particular operating model as opposed to other models,
4 like a case manager led model, there is the potential for
5 some risk through that lack of oversight, and that's where
6 we say that, you know, safeguards are required to guard
7 against some of those risks, and I think what you're asking
8 me about now is one of those risks that we have identified.
9

10 MR HODGE: Yes. I think - let me say it back to you, and
11 I'll direct it to both of you to make sure that
12 I understand, and I was going to come to this point in due
13 course, but your point is it's not that you don't want to
14 be taken to be expressing the view that to have this kind
15 of production line model is fundamentally wrong, and indeed
16 it's a model that, as I understand it, at least aspects of
17 it are reflected in New South Wales, but the point that
18 you're making is it is a model like any model that comes
19 with certain risks and if you're going to use that type of
20 model then you need to make sure that you have risk
21 mitigation strategies in place to address those risks?
22

23 THE COMMISSIONER: And that you don't use it in
24 inappropriate circumstances.
25

26 DR KOGIOS: Yes. I'm terribly sorry, but the first part
27 of that audio dropped out for me completely. So I caught
28 the last part of what you said, and, yes, our evidence is
29 that you need to have risk mitigation strategies in place
30 really for any model, for any operating model. It's a
31 question of identifying the weak points and putting some
32 mitigation strategies in. For this particular model there
33 are some specific risks that arise and we would say require
34 a certain level of risk treatment.
35

36 MR HODGE: And we'll come to the detail of it, but is it
37 fair to say that as an overall view your view is that the
38 workflow model that's been used in Queensland doesn't have
39 sufficient risk mitigation strategies around it to address
40 the risks that come with that kind of production line
41 model?
42

43 DR KOGIOS: It's fair to say we did see some evidence to
44 support that statement through our case file review in
45 particular.
46

47 MR HODGE: And, Ms Baker, what's your view about that?

1
2 MS BAKER: I would say I would agree with you and say the
3 model itself isn't problematic and it does have advantages
4 which we have talked about. What I would say is that for
5 it to be successful it requires an incredibly strong
6 collaborative relationship between those two providers;
7 excellent communication, and that would be at all levels,
8 between those two agencies; continual feedback as well is
9 incredibly important to make sure there's no divergent
10 evolution of practice; and I think, really importantly, any
11 changes that either party make - and it could be as simple
12 as changing which test you use to see whether something is
13 blood or not, for example - they have to make the other
14 party aware of that and consider the upstream and
15 downstream impacts of any of those changes. So there's
16 just a number of really key areas where things could
17 potentially fall through the cracks, and it's really
18 important that this sort of working model has those ironed
19 out and continually reviewed as well to make sure that
20 there's not a slow creep of any issues.

21
22 MR HODGE: And so then, Dr Kogios, to come back to some of
23 the risks that you've identified with the current model,
24 one of them is over-servicing. Could you just explain what
25 you mean by that?

26
27 DR KOGIOS: Yes. So through our case file review we
28 observed a number of instances where the test - "we test
29 everything we receive" approach potentially has led to a
30 degree of unnecessary testing, and, look, I think it's fair
31 to say here that really it's up to a court to decide what
32 is important in any given case. So we are making some
33 assumptions here, and the assumption that we're making is
34 that if, for example, you had a sexual assault case and
35 there were, you know, multiple swabs collected from the
36 same part of the complainant's body and that all of those
37 swabs were tested independently through the laboratory and
38 all of them gave a sort of a very similar DNA result, if
39 you like, let's say a two-person mixture with both the
40 complainant and the accused not excluded from that
41 two-person mixture, then we would say, you know, "Did you
42 really need to test all nine of those swabs," for example,
43 "You might have got that answer with just testing one of
44 those swabs."

45
46 Of course, it depends on the scenario, the particular
47 scenario in question. Particularly if you had more than

1 one alleged offender, well, then of course you would need a
2 more exhaustive testing regime. It would depend on what
3 the accused person had said in terms of their version of
4 what had taken place. But I think it's fair to say that we
5 did see some evidence of what we felt to be multiple
6 samples being put through the system at the same time, so a
7 part of that first pass testing, all of which were giving
8 very similar results, and that led us to believe that there
9 was a degree of over-servicing in that process.

10
11 MR HODGE: And I'll come back in one moment to sexual
12 assault investigation kits and ask Ms Baker a question
13 about that. Could I just ask you to just address one more
14 part of what you were talking about, Dr Kogios, which is
15 outside the context of sexual assaults, and so looking at
16 other kinds of offences of violence, does the same kind of
17 issue arise; that is, does the same issue of potential
18 over-servicing arise in relation to a murder or an assault?
19

20 DR KOGIOS: Yes, potentially. So we didn't have the
21 opportunity to take a deep dive into QPS protocols. That
22 was not part of our terms of reference. But what we do
23 understand is that the submission for major crime like
24 homicide, it's capped at 25 samples. So, you know, if you
25 had a scenario where 25 samples were submitted - I'm not
26 saying that in all cases 25 samples would be submitted, but
27 the FSS, the scientists in the laboratory are really
28 relying on the QPS to have made those decisions about which
29 samples to submit. The sexual assault case work is
30 slightly different in that the case - the scientists in the
31 laboratory at FSS themselves are really the starter of that
32 workflow process, whereas in homicide cases those decisions
33 are likely being made by the QPS.
34

35 But, you know, certainly from my experience and from
36 Ms Baker's experience you wouldn't necessarily start off in
37 a homicide case processing 25 samples in one go. You might
38 start off, depending on the case scenario, processing a
39 smaller number of samples and seeing what results you get
40 back and then considering a second round and a third round,
41 potentially even a fourth round of testing. I guess it's
42 fair to say that in our experience we are used to a more
43 sort of staged triage type approach.
44

45 MR HODGE: I understand, and just to explore that a little
46 bit further, as you understand it within the way the
47 Queensland laboratory works, if the QPS send over 25

1 samples, all of those samples will be tested by the
2 laboratory regardless of whether, if after testing just two
3 of those samples, they really have whatever the information
4 is that could be useful to the case?
5

6 DR KOGIOS: That's our understanding of how the model has
7 been established, yes.
8

9 MR HODGE: And I'm going to come back to you in a moment,
10 Dr Kogios, to get you to put that in the context of an
11 examinations strategy. But can I just switch over to
12 Ms Baker to ask you to talk about the context of testing
13 all the samples in a SAIKs. Could you just explain are
14 there risks involved with just automatically testing all of
15 the samples within a SAIKs kit rather than looking at what
16 results you get from some swabs, say, and then thinking
17 about what other kinds of testing you might need to do?
18

19 MS BAKER: Yes. So I would say that if you only have
20 standard DNA testing in your forensic toolbox then the risk
21 is that you have used material from all of those samples,
22 and we know that in sexual assaults we usually have an
23 overwhelming amount of female DNA in those sort of intimate
24 swabs, and if you've been unable to obtain a male DNA
25 profile from that, so there might be cases where there's
26 such a ratio that the female DNA swamps out any male DNA,
27 you've actually already used quite a lot of material in
28 that case, whereas potentially if at the outset you've
29 identified there was no semen, for example, detected in
30 that case, consideration could be given to submitting it
31 for a more appropriate test, so perhaps a male-specific DNA
32 test which has the ability to ignore all the female DNA
33 that is in those samples and just target low levels of male
34 DNA that you may not be able to sort of see or detect in a
35 standard DNA test.
36

37 MR HODGE: And is another issue with just taking the
38 approach of testing every sample that is provided in a
39 SAIKs kit without necessarily thinking in more detail about
40 what exactly has occurred that you might have a different
41 strategy for testing depending, for example, upon the
42 nature of the allegation, whether, for example, it's
43 digital penetration or penile penetration?
44

45 MS BAKER: Absolutely. So I would expect any sexual
46 assault kits to have an examination strategy at the
47 beginning to look at the information that's provided in the

1 case context and decide which samples to test and in what
2 order. So not necessarily to test all the samples and, on
3 top of that, not to necessarily test all the samples at
4 once - all the ones you select for testing. Do a phased
5 approach and see what information you get.
6

7 MR HODGE: And what I might do is I want to ask each of
8 you about examination strategy. I'll start with Dr Kogios.
9 You refer in your report on a number of occasions to an
10 examination strategy. Can you just start by explaining to
11 the Commissioner what you mean by that?
12

13 DR KOGIOS: Sure. So it's a term that I picked up when
14 I first started working in the UK. It's certainly
15 something that they refer to, an examination strategy.
16 Other laboratories would call it triage or vetting. It
17 really is essentially looking at the case and deciding what
18 is the best type of testing to perform on this particular
19 case. So, to give you an example, it could be a homicide
20 matter and it might be that there's, you know, 20 items -
21 that's probably unrealistic. It might be that there's,
22 say, 50 items that have been collected from a crime scene.
23 So you have the potential to examine 50 items. Your job in
24 setting up the examination strategy is to say, "What's
25 going to be most likely to give us the most valuable
26 information in this case," and you need to have a bit of an
27 understanding about the broader case context to be able to
28 set the right strategy.
29

30 So it might be that you decided, hypothetically, to
31 say, "Right, well, we've got two items that we will start
32 with. It's item 4. It's a knife (indistinct) and we need
33 to look for trace DNA on the handle of the knife, and then
34 examine the blade for blood. If blood is present, let's
35 take a sample of that blood." So that would be an example
36 of - an examination strategy that of all the clothing that
37 has been submitted in this case - there's a particular
38 allegation that seems to be under some sort of challenge,
39 so it might be that, you know, of all of the pieces of
40 clothing it's the T-shirt that's going to be most useful
41 for us and we're interested in a particular type of blood
42 pattern to see whether, you know, does the T-shirt show a
43 particular type of blood staining that could be the vital
44 piece of evidence in that case to help us refute/support
45 the various hypotheses that have been put forward.
46

47 So, instead of sort of a blanket testing regime, you

1 might end up with a very sort of tailored testing regime
2 that says, "We're going to start with just two items, and
3 we're going to treat those two items in this particular way
4 and we're looking for specific things in those two items."
5 That might be your first pass testing, and that might be
6 all you need to do. So that would be an example of how you
7 would go about setting an examination strategy for a
8 complex case where you have potentially many, many
9 exhibits.

10
11 MR HODGE: There's many elements of that that we'll deal
12 with, but, just to focus on one part of it, what you are
13 talking about is at the very beginning, before you
14 undertake any DNA testing, first somebody thinking about
15 what, given the samples we have, are the best things to
16 start with testing, thinking about what is the most
17 information that they will produce in the context of
18 whatever the crime is that we're seeking to solve?

19
20 DR KOGIOS: That's right. That's right, and it's a very
21 important step because it dictates what happens next. So
22 if something is amiss in the examination strategy, well,
23 you know, the horse has bolted, if you like, by the time it
24 gets to a person to interpret those results.

25
26 The other benefit of a really well thought out
27 examination strategy is at the time of reporting the case
28 if the reporting scientist - they don't necessarily have to
29 have been the same person who devised that strategy, but
30 ideally they have access to that examination strategy, and
31 then they have the opportunity to look at it and say, "Is
32 anything amiss? Does anything look not right in the
33 results that we've got," because that could be a sign of a
34 contamination event, it could be the sign of something not
35 working optimally in the process. So it gives them that
36 opportunity. But it also gives them the opportunity to
37 say - and here we are talking about those most complex
38 crimes, those most serious crimes against a person where
39 one would expect the community would be expecting, you
40 know, law enforcement and forensic services to leave no
41 stone unturned. So we're not talking about a theft of a
42 bicycle here; we are talking about a serious crime against
43 a person.

44
45 The reporting scientist having access to that
46 examination strategy then gives them that ability to say,
47 "Has everything been done that could be done in this case?"

1 Have we left any stone unturned, and, if not, then we can
2 go back and we can do some further testing." So that's
3 another benefit of having a really well thought out
4 examination strategy or a vetting strategy or a triage
5 strategy.
6

7 MR HODGE: Thank you, and I'll just turn to ask Ms Baker a
8 question and then continue on in a different way,
9 Dr Kogios. Ms Baker, are you able to, given some of the
10 explanation you gave earlier in relation to SAIKs, just
11 help us to think about an examination strategy for a SAIKs
12 kit and what that would involve?
13

14 MS BAKER: Yes. So, for example, if there's been a sexual
15 assault and there's alleged to have been one male offender
16 and there are sperm or semen detected on the microscope
17 slides that are made as part of that process, I, for
18 example, would not in that case feel the need to examine
19 every swab that was submitted, and there's likely to be,
20 you know, anywhere from three to perhaps nine, I think I've
21 seen in particular case files at FSS. I would perhaps
22 start with one of those samples because I would be
23 confident in the process that I had that I should be able
24 to obtain a male DNA profile from the semen that I could
25 see on the microscope slide, so in that case you're looking
26 at only processing one swab as opposed to multiple swabs,
27 and perhaps if it turns out that there's only a small
28 amount of semen or in fact it could be quite heavily
29 degraded then you've got lots of material left to consider
30 whether another type of DNA testing might be more
31 appropriate for the next sample.
32

33 MR HODGE: And so, just at a very basic level, if you had
34 nine swabs from a SAIKs kit you might expect - and what
35 you're dealing with was an allegation of penile penetration
36 and you could identify semen on a slide in relation to a
37 high vaginal swab, you would look to your high vaginal swab
38 as the starting point because if you could identify semen
39 that you could match to a reference sample from that swab
40 it's not going to be necessary to test and use up all of
41 the other swabs?
42

43 MS BAKER: Exactly. Exactly. I think, you know,
44 typically in that situation, to find semen that corresponds
45 to an individual on someone's high vaginal swab would be
46 seen as having a high probative value, and, again, it's a
47 conversation that you would have with the police. They may

1 well be having conversations with the justice department to
2 determine, "Is that sufficient in this case? Does this
3 (indistinct) people's scenarios that they have suggested,
4 and, if not, let's go back and test something else," or,
5 "If so, that's great, let's move on to the next." Can I --

6

7 MR HODGE: And so --

8

9 MS BAKER: Sorry. One example of over-servicing, again,
10 we talk about the swabs from a SAIK, but, for example,
11 pieces of fabric that were submitted to the laboratory
12 which were then sort of cut into, for example, two sections
13 or four sections, and then all of those separate pieces
14 were tested, and that to me is another example of
15 over-servicing, where ideally you'd have a piece of fabric
16 that's submitted that is small enough to be robot ready, as
17 you've suggested, or an agreed procedure where you would
18 just take one sample from that piece of fabric and run it
19 through the system to see what you've got, as opposed to
20 automatically processing, for one of the cases that I saw,
21 all four subsamples, if you like, from a piece of fabric.

22

23 MR HODGE: I understand. So in both of those examples -
24 that is, both the example of processing all nine swabs from
25 a SAIKs kit and processing all four samples from a piece of
26 cloth which had bloodstaining on it - it might well be that
27 if you just processed one sample you would get sufficient
28 information to not need to undertake testing of all of
29 those other samples. So you've effectively - if you're
30 talking about the case of nine swabs, you've done nine
31 times the amount of work that was actually necessary in
32 relation to that one case?

33

34 MS BAKER: Yes.

35

36 MR HODGE: And that is the issue of over-servicing that
37 you're describing when you refer to one of the risks of the
38 production line method that's used at the moment in
39 Queensland, and, as I understand it, the point about having
40 a good examination strategy is that's a way of trying to
41 deal with that issue of over-servicing, amongst other
42 things?

43

44 MS BAKER: Exactly.

45

46 MR HODGE: And then is having a good examination strategy
47 also a way of dealing with another risk that you mention,

1 which is the missed opportunity to harvest all available
2 forensic evidence?

3

4 MS BAKER: It is, yes. I guess ideally and certainly from
5 my own experience having that whole case overview means
6 that you know which exhibits are available to you, you know
7 what areas have been highlighted as potential for sampling
8 or processing through DNA testing, and so you're able to
9 make those sort of strategic decisions as to what is going
10 to be in the first pass testing and what items or samples
11 you have available should you need to go back and use in
12 re-testing. Without having that sort of whole case
13 overview it in my mind can be very difficult. You're
14 expecting two different groups to have that covered, and
15 they don't necessarily (indistinct) same amount of
16 information from start to finish from that workflow.

17

18 MR HODGE: And, Dr Kogios, does that issue or that issue
19 of missing the opportunity to harvest all available
20 forensic evidence, does that also tie into the issue of the
21 strict application of thresholds?

22

23 DR KOGIOS: Yes, because if you're using a threshold to
24 make a decision not to proceed with testing then you're
25 missing the opportunity to recover whatever DNA profile
26 information might have been present in that sample. Now,
27 here I think again it's important to note that the use of
28 thresholds is absolutely common practice in the forensic
29 science sector. As part of our work in the Commission we
30 had the opportunity to look at other Australasian forensic
31 science providers and what they do with thresholds, and
32 it's absolutely the case that the majority of jurisdictions
33 in Australasia do apply a form of threshold. It's common
34 practice. That threshold tends to be set at the limit of
35 detection. So some jurisdictions will use a threshold at
36 limit of detection only and they will only apply it to
37 certain types of cases. But I suppose what we're doing
38 here is pointing out that the use of thresholds per se is
39 not unusual, and it is tied to the fact that we do know
40 that you do get stochastic effect with low levels of DNA
41 and in some case types and some instances it just may not
42 be worth proceeding on with a particular type of testing.
43 It's a decision, it's a policy decision, if you like, for
44 each laboratory to set for themselves rather than it being
45 a matter of science.

46

47 MR HODGE: I understand, and I might just jump forward to

1 thresholds just to help everyone to understand your views
2 about that. It's fair to say, isn't it, your view is that
3 the way in which the Queensland lab is currently
4 approaching thresholds is not best practice; you say that
5 at paragraph 47 of your report?
6

7 DR KOGIOS: So 47 of my report, we're talking here about
8 their recent use of thresholds, and specifically we're
9 talking about the so-called DIFP threshold. So we're not
10 talking about, as we understand it, the current state,
11 which is use of a limit of detection threshold, albeit that
12 there are some questions over the current threshold and
13 whether that has been appropriately obtained through
14 appropriate validation. But, to make it really clear, what
15 we're saying here is it would be considered broadly
16 accepted practice, widespread accepted practice, to have a
17 threshold beyond which you don't proceed set to the limit
18 of detection. But the idea of having sort of that range,
19 that DIFP range, so to speak, that's not something that
20 we've seen in other jurisdictions as part of our review for
21 this Commission.
22

23 MR HODGE: I understand. Can I try to break that down
24 into pieces so that we can all understand it.
25

26 DR KOGIOS: Sure.
27

28 MR HODGE: There's two thresholds that are apparent on the
29 material to you that Queensland has been applying. One is
30 a limit of detection, which they have set at 0.001ng/ μ L,
31 and the other, until the changes made a few months ago, was
32 what's referred to as the DIFP threshold, that if it's
33 below 0.0088ng/ μ L they wouldn't as a matter of standard
34 process continue to process the sample. So those are the
35 two thresholds you were talking about?
36

37 DR KOGIOS: That's correct.
38

39 MR HODGE: And I think your point is you and Ms Baker have
40 the view that the use of the DIFP threshold is something
41 that falls below best practice?
42

43 DR KOGIOS: It's a very difficult question for a scientist
44 to answer the binary is it best practice, is it not best
45 practice. Ms Baker and I spent quite a bit of time
46 thinking about this because we understand that that is
47 exactly what the Commission is asking us to provide an

1 opinion on. So we came up with a bit of a framework that
2 we have applied to our opinions around what is and what is
3 not best practice, and our framework involved looking to
4 see, you know, is there an ISO standard, let's say, that
5 specifies that something must be done a certain way and is
6 there some practice that we've seen that is inconsistent
7 with that standard. If so, then we would say that that
8 cannot be considered best practice.
9

10 There is no ISO standard that relates to the topic of
11 threshold. So that is more of a policy decision for each
12 laboratory to make. So what we did then was we looked at
13 the responses from the other Australasian jurisdictions,
14 and we looked for something to see whether it was, you
15 know, significantly out of step with what the rest of the
16 Australasian community was doing, and, if so, then we would
17 say that falls below that definition of best practice.
18 It's absolutely a subjective call that - you know, that we
19 made with a degree of trepidation and with all of those
20 caveats attached.
21

22 MR HODGE: I understand. If we just bring up paragraph 47
23 of your report. I know you've got it there, but I think it
24 will just be helpful for everybody else. Sorry, it's not
25 page 47. Paragraph 47. That's on page 23. You see in the
26 first sentence where you say:
27

28 *QHFSS recent approach to thresholds falls*
29 *below best practice.*
30

31 What you're explaining to the Commissioner is what you mean
32 by best practice and the point that you're making is one of
33 the challenges for you in preparing your report was
34 understanding or identifying what is the content of best
35 practice given that we're lawyers and we try to do things
36 in a very binary way and we've just said to you, "Is it
37 best practice or not," and you had to then think about what
38 does that even mean, what does it mean to say it is or
39 isn't best practice, and your point is you started by
40 asking is there a particular international standard that
41 sets the practice in this particular way, and if it didn't
42 accord with that standard then you would say, "Well, it
43 falls below best practice."
44

45 But if there wasn't an international standard but you
46 were able to, between the two of you, given your expertise,
47 recognise a consistent practice around laboratories around

1 Australia, and the practice within the Queensland lab fell
2 below that consistent practice that you could identify,
3 then that was the other circumstance when you would say,
4 "Well, it falls below best practice"; is that a fair
5 summary of your evidence?
6

7 DR KOGIOS: That is a fair summary of our evidence. We
8 did find this particularly challenging. I think the other
9 element to call out is forensic science is, like all
10 science, constantly evolving, and there is a body of what
11 we would call emergent best practice, and all forensic
12 science providers need to keep an eye on that emerging body
13 of knowledge, and so it's a process of continually
14 reviewing and making amendments to practice to ensure that
15 you maintain a level of contemporaneous practice.
16

17 What we have tried to do is draw a line between what
18 we would consider to be emergent best practice and a
19 journey that all forensic science providers are on, as
20 opposed to what would be considered accepted best practice
21 and has been the case for some period of time, and it's
22 those instances where we felt that the Queensland lab was
23 out of step that we called that below best practice.
24

25 You know, obviously you're showing on the screen one
26 area of our report. We do make many references throughout
27 our report to there being no such thing necessarily as, you
28 know, a universally accepted best practice model. But with
29 the right caveats around it we have made these observations
30 on a number of instances - actually, really quite a small
31 number of instances when you consider the vast amount of
32 material that we've looked at from this laboratory and the
33 deep dive that we've done. But we can't shy away from
34 the fact that there were a number of instances where we did
35 feel that we had to use that phrase "below best practice",
36 albeit that they were not (indistinct) in total.
37

38 THE COMMISSIONER: I wonder if I could ask you to approach
39 the issue in a slightly different way. I do understand
40 that when I come to consider what to write in the report
41 I'll have to take account of the scientific principles that
42 have been explained to me by you and other experts, I'll
43 have to take into account instances of what's called best
44 practice, if there is such a thing in particular instances,
45 and I'll have to take into account international or
46 Australian standards where they exist.
47

1 But there is another way of looking at it, which is
2 that one has a look at the purpose of what a lab is doing
3 and the ultimate purpose of what a lab is doing, and one
4 can ask whether a particular process suits that end or not.
5 So I understood that the purpose of the Options Paper that
6 led to the DIFP category and the decision not to test DIFP
7 automatically was justified by seeking to, as it was
8 believed, improve the efficiency of the lab overall in
9 terms of turnaround times and matters of that kind, and
10 I understand your evidence to be that turnaround times are
11 a factor - I'm correct, aren't I, that they're a factor?
12

13 DR KOGIOS: Yes.

14
15 THE COMMISSIONER: One scientific article that came to my
16 attention as having been looked at at the time that these
17 issues were being considered in the lab was from a number
18 of Israeli scientists, and, Mr Woolridge, could you put
19 that document up? Just for those in the hearing room, it's
20 [FSS.0001.0011.2109], and if you go to the next page,
21 please, it will be a scientific article, I think, that was
22 attached to that document.
23

24 MR HODGE: I'll give you that doc ID.

25
26 THE COMMISSIONER: Yes.

27
28 MR HODGE: It's [FSS.0001.0011.2110_0001].
29

30 THE COMMISSIONER: Thank you, Mr Hodge. Just while that's
31 being obtained, this is an article that was explaining how
32 scientists in Israel in a DNA lab were looking to make
33 their lab more efficient by understanding where they can
34 save time and effort, and the approach that they took was
35 to apply a factor to every piece of work that was done and
36 in that way to quantify the work that's done on each phase
37 of the relevant process and to arrive at a result. But
38 what I was interested in was that - yes, if you could go to
39 the second page of that article, and go to the next page,
40 yes, you'll see - can you see that on the screen now?
41

42 DR KOGIOS: Yes. It's very small for me, but I can see
43 it.
44

45 THE COMMISSIONER: We'll expand it a little. If you go to
46 the preceding page, please, and go back to the next page,
47 and would you go to the page after this, yes, you'll see

1 that in that first paragraph - if you could expand that
2 first paragraph; thanks - they were looking at samples and
3 what results they got, and they found that samples they
4 regarded as insufficient DNA for amplification that had
5 less than 250 picograms. So their whole study was to do
6 with the amount of effort that was put in and the lack of
7 results from low-quant samples.
8

9 But, Mr Woolridge, if you go back to the previous
10 page, and if you highlight the top right-hand corner
11 paragraph - that's it - you'll see that the authors there
12 say that the work they're doing has got nothing to do with
13 serious offences. What they're doing is they're analysing
14 efficiency from those points of view to do with what we
15 call in Queensland volume crime. But with the processing
16 of homicide and sexual assaults cases they just test to the
17 limits, subject to selection of samples and matters of that
18 kind.
19

20 So it occurs to me that is this the perspective that
21 you might advocate, that a threshold, whether it's the
22 limit of detection or some other threshold, is a relevant
23 factor to take into account as a guideline or a trigger for
24 consideration as to what further steps, if any, should be
25 taken and what those steps should be, but that there is,
26 firstly, no place anywhere for an arbitrary guideline that
27 would dictate in every case what is to be done, and,
28 secondly, when dealing with the most serious offences one
29 ought - that it is in general the practice of labs with
30 which you are familiar to test samples that are to be
31 tested within that particular case to the limit; what would
32 you say to that? That is to say, thresholds should never
33 be arbitrary, they should only be used to trigger a
34 particular approach or to trigger considerations, and,
35 secondly, samples in cases of serious crime should be
36 tested to the hilt - I'm not saying every sample, but those
37 samples that you choose to test along the lines that have
38 been explained this afternoon should be tested to the
39 hilt - and should not be ever excluded because of the lack
40 of faith of getting a result; so what will you say to that
41 as a proposition?
42

43 DR KOGIOS: Look, it's very difficult to be definitive
44 because we can't - we don't know every laboratory, we
45 don't - you know, there might be some laboratories that
46 just aren't funded to do everything in every case, and so
47 it makes perfect sense for them to prioritise the work

1 that's most likely to give them a result. My own personal
2 view is that if funding is not an issue then having a
3 threshold that can be overruled by a scientist on the basis
4 of what they see in that particular sample is the way to
5 go, that an empowered scientist furnished with the right
6 level of information should be able to make a decision
7 around the progression of a particular sample regardless of
8 the crime type, and personally my view would be for serious
9 crimes against the person that an approach where you leave
10 no stone unturned would be preferable.

11

12 THE COMMISSIONER: Yes, thank you. Ms Baker, what would
13 you say?

14

15 MS BAKER: Well, I think I would agree. It is really
16 important that the scientist is empowered to make those
17 decisions. They'll know what type of sample it is, what
18 the substrate is, the sort of ease or not of recovering DNA
19 from that particular type of sample. What I would say is
20 it also comes down to what forensic tools you have
21 available to you, and again we talked about if you only had
22 standard DNA testing you may well consider that very low
23 levels of DNA or a very degraded DNA sample may not benefit
24 from that standard DNA testing, and consider outsourcing to
25 another provider for more specific testing.

26

27 I guess in terms of thresholds, if you're looking at a
28 sample that you want to be able to load up to your database
29 and you know that you have a minimum number of pieces of
30 information of DNA that you need to obtain in order to load
31 to that database, that could be a consideration. But for a
32 lot of cases they're not necessarily going to a database.
33 You may well have reference DNA samples from individuals in
34 that case for comparison. And I think it's something that
35 shows again to have that really collaborative relationship
36 with the police in understanding what stage their
37 investigation is at, what particular areas they're looking
38 to forensics to provide evidence or information to support
39 their investigation, and really having those conversations
40 throughout an investigative process is crucial for
41 understanding what type of testing you do when.

42

43 THE COMMISSIONER: So what I've drawn from both of you
44 then is this: that it's no part of the scientific approach
45 of scientists in your field to adopt an arbitrary threshold
46 to determine the course of sampling. That is a policy
47 issue, not a scientific issue, and it will driven by

1 resource questions. That's the first thing, and the second
2 thing is that the question - subject to that policy issue,
3 the question how samples ought to be treated ought be at
4 the discretion of the scientist. That is to say you ought
5 to trust your scientists to make the right decisions; you
6 can't do better than that.

7

8 DR KOGIOS: Yes.

9

10 THE COMMISSIONER: You can't do worse than that, but you
11 can't do better than that

12

13 DR KOGIOS: That's right, and equip that scientist with
14 the right information that they need to be able to know,
15 you know, to make the best decision in the individual case.

16

17 THE COMMISSIONER: And it seems to me then that a
18 production line system of the kind that we've encountered
19 here for what were believed to be reasons of efficiency and
20 productivity and so on is prone to deny that level of
21 discretion to scientists?

22

23 DR KOGIOS: I think that it doesn't - the two are not
24 mutually exclusive, but with the right level of
25 communication and engagement and collaboration between the
26 two agencies it could happen. I guess from our experience,
27 Ms Baker and I, our lived experience in the agencies that
28 we've worked in, this work is done inhouse, not necessarily
29 by the same person, but within the same agency. So, you
30 know, these groups of people are sharing a tearoom, they're
31 sharing a car park, they're known to each other. They're
32 communicating frequently throughout the day, so it's very
33 easy to share information in that kind of environment.
34 Splitting across a workflow across two agencies doesn't
35 preclude that. It just - as Ms Baker has said a number of
36 times now, it just really does rely on that really
37 connected collaborative engagement between the
38 practitioners at the different - or stages of the work.

39

40 THE COMMISSIONER: Yes, that's very helpful. Did you want
41 to add anything, Ms Baker?

42

43 MS BAKER: No, I think between the two of you you have it
44 covered. Thank you, sir.

45

46 THE COMMISSIONER: Thank you. Mr Hodge?

47

1 MR HODGE: Thank you. Ms Baker, could I just clarify one
2 thing with you, and I think this is my fault. But when
3 we've been referring to the production line system that's
4 used in Queensland --

5
6 THE COMMISSIONER: For what it's worth, I'll mark that
7 article exhibit 188.

8
9 **EXHIBIT #188 SCIENTIFIC ARTICLE BARCODED**
10 **[FSS.0001.0011.2110_0001]**

11
12 THE COMMISSIONER: Sorry, Mr Hodge.

13
14 MR HODGE: Thank you. When we've been referring to the
15 production line system in Queensland is it fair to say that
16 there are two significant elements to it? One is what
17 I think what most of - what we've been talking about seems
18 to be about, which is that the collection of samples and
19 the decision about what samples would be submitted for
20 analysis is made by the QPS separate from decisions that
21 are made in the DNA laboratory, but the second element of
22 it is that within the laboratory the system that they use
23 other than in relation to P1 samples is the work list
24 system?

25
26 MS BAKER: Yes, that's correct. So the police will decide
27 which - they'll do the evidence recovery, I guess, so
28 looking, for example, for a piece of clothing and deciding
29 which samples to submit. It will then come into the lab
30 and go through the analytical process, and only when it
31 comes out of the other side of that DNA processing will it
32 be seen by a reporting scientist, who will then interpret
33 and then have that result verified on a sample by sample
34 basis, and each time one of those samples is verified, as
35 I understand it, the result is made available in the
36 forensic-register to the police. My understanding is only
37 perhaps in about 10 per cent of cases are statements
38 requested, and at that point a case manager will be
39 assigned who will have oversight of all the samples in a
40 particular case and draw those results together and put
41 them into a statement format report.

42
43 MR HODGE: Thank you. I'll come back to that aspect in a
44 moment. Mr Operator, could you just bring back up the
45 report and again go to page 23. I just want to cover off
46 on a couple of other aspects of this. I'll direct this
47 question first to you, Ms Baker. It's paragraph 49, if we

1 could just blow that up.

2
3 This reflects the recommendations that you and
4 Dr Kogios come to in relation to thresholds, and I just
5 want to clarify that there's - I think this reflects what
6 you've said to the Commissioner. Although it looks like
7 it's (a), (b) and (c), there's actually two possibilities
8 here that you're identifying. (a) is that there be no
9 quantification threshold for serious or complex crimes, so
10 that would mean not even a limit of detection threshold;
11 whereas the alternative is (b) and (c) together, that is
12 applying a lower limit threshold in the form of a limit of
13 detection that's been validated, but then enabling
14 scientists to overrule that limit; is that right?

15
16 MS BAKER: Yes, that's correct. So the scientists are
17 highly trained, they're very experienced and they will know
18 what type of samples they have and also what extra testing
19 is available to them. In terms of the FSS, unfortunately
20 they're limited by only having that standard DNA testing.
21 But they have certain clean-up or concentration steps that
22 are available to them. So I would expect a scientist to
23 look at a result and decide what their expectations are
24 about getting a probative result from that if they do some
25 more work or some different types of testing.

26
27 MR HODGE: Thank you. Then to come back again to the
28 question I was asking Dr Kogios earlier about two
29 thresholds, which can get a bit confusing, I think, for all
30 of us, just focusing on the higher threshold, the DIFP
31 threshold that had been in use, is it right, Ms Baker, that
32 your view and the view of you and Dr Kogios is that
33 threshold, the DIFP threshold, is out of step with the
34 practice of other laboratories in Australia and
35 New Zealand?

36
37 MS BAKER: I think it is certainly with respect to those
38 serious or complex crimes. I can see a situation where for
39 a volume crime case, sort of a property related offence,
40 that that might be the only evidence in the case. So from
41 the police's perspective they're interested in obtaining a
42 profile that can be loaded up to the database. If you have
43 sufficient validation to show the types of DNA results you
44 get and based on their quantification or when you measure
45 the amount of DNA in them, I can see a scenario where that
46 would be considered okay. But it would worry me to be
47 applying that for all case types.

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MR HODGE: Thank you. Then if we blow up paragraph 48 of your report, in 48 you and Dr Kogios recommend that the Queensland laboratory should cease application of it says "the current threshold" - so, just to be clear about what that means, that mean this current limit of detection threshold of .001ng/ μ L?

MS BAKER: Yes.

MR HODGE: And the recommendation from the two of you is that they should cease applying that threshold until they have properly validated what the actual limit of detection is of the kit within the laboratory; is that right?

MS BAKER: Yes, exactly. If you're making that sort of binary decision of yes to processing or no to processing based on a limit of detection that hasn't been properly validated, that is inappropriate and we would recommend that that ceases.

DR KOGIOS: I was just going to add that here we are drawing upon the report of Commission expert Dr Duncan Taylor and his findings specifically around that particular validation, that piece of validation work. So we effectively have incorporated his finding into our report through this particular aspect.

MR HODGE: Yes, he's identified the point that the Queensland laboratory hasn't validated that limit of detection of .001.

DR KOGIOS: That is right. And it's fair to say that we don't expect there to be a significant difference between their current lower limit threshold and an appropriately determined limit of detection threshold because their threshold looks about right. I haven't got in front of me the thresholds that are in place and used in other Australasian jurisdictions, but it's certainly in the ballpark, and Dr Taylor himself has given that evidence as I understand it as well. So this is more a sort of a cease using the current threshold as a decision-making factor until such time as that work has been done, and once that work has been done then compare the two and essentially check that that is indeed the case, that the two are very similar.

1 MR HODGE: Thank you. Then I think just to tie off on one
2 last thing, could we just blow back up paragraph 47 again.
3 I think there might have been a slight confusion in some of
4 the evidence earlier, but am I right in thinking the
5 approach to both thresholds that Queensland has adopted
6 recently is problematic but the limit of detection
7 threshold is not problematic in a permanent way; it's just
8 problematic in the sense that you shouldn't be applying a
9 limit of detection without having validated what the limit
10 of detection is; is that fair, Dr Kogios?

11

12 DR KOGIOS: Yes.

13

14 MR HODGE: Thank you. To then return back to where we
15 were, which is in relation to the issues that arise where
16 you're using the production line method, I think where we
17 had started was I was referring to paragraph 37,
18 subparagraph (b), subparagraph (iii), which is on page 18
19 of the report, and that's where you're identifying one of
20 the risks of the production line method is this strict
21 application of process and thresholds rather than the
22 exercise of discretion of the kind that you've described in
23 relation to thresholds. I'm just wondering given what
24 we've already talked about is there anything you wanted to
25 add about what that risk is, Dr Kogios?

26

27 DR KOGIOS: No. I mean, I think the application of
28 thresholds, it's not in and of itself an essential part of
29 that so-called production line model. It was more that in
30 this section of our report we were detailing our
31 observations around potential missed opportunity. And so
32 that's why we've referenced the strict application of
33 thresholds in this section of our report. You could
34 certainly have that current operating model and not apply
35 thresholds to that operating model. So the two things are
36 related but they're not one and the same.

37

38 MR HODGE: Thank you. And then another risk that the two
39 of you have identified of this kind or the current kind of
40 model is the missed opportunity to detect contamination or
41 other unexpected results, and I might direct this one to
42 Ms Baker. Could you just explain what that risk is?

43

44 MS BAKER: I suppose if you're not proceeding with a
45 result - I mean, there's two aspects of that. One is to do
46 with processing the negative control, and I'm not sure if
47 that's what you are referring to here, but the other one is

1 actually progressing some of those samples through and just
2 checking whether or not you do actually have low levels of
3 DNA detected and whether those are popping up in your
4 controls.

5
6 MR HODGE: I'll bring it up just so the two of you can see
7 it. If we bring up page 19 and subparagraph (c) of
8 paragraph 37. I had understood this as referring to the
9 issue of where a result arises which is strange or doesn't
10 quite make sense in the context of the case and the missed
11 opportunity to be able to identify that. So I don't know
12 whether maybe you want to expand upon that, Ms Baker, and
13 then I might just ask you there's a reference to the Jama
14 case. I don't know, Dr Kogios, whether you're able to
15 speak about that or whether I should ask Ms Baker to speak
16 about that.

17
18 DR KOGIOS: I'm happy to speak about that, Ms Baker, if
19 that's --

20
21 MS BAKER: Yes.

22
23 DR KOGIOS: So, look, we included a reference to this
24 particular case - it is a Victorian case - really as a bit
25 of a cautionary tale. So, without going into detail, it
26 certainly is the case that that particular case has
27 ultimately been found to have had a miscarriage of justice
28 involved. It was an allegation of sexual assault where a
29 contamination had happened upstream of the laboratory but
30 was not detected at the time. So really we highlight that
31 case as being, you know, a case to provide support for the
32 notion that the reporting biologist, the more equipped with
33 information that they can be about the circumstances of the
34 case and that ability to look more broadly at the result
35 rather than just, you know, a DNA result on a page, but to
36 understand the context of the case, it might be helpful
37 then in, I suppose, raising an alarm that something doesn't
38 look quite right.

39
40 Here we draw on the UK's Forensic Science Regulator,
41 and there's a reference that we have provided to one of the
42 Forensic Science Regulator's report from the UK that really
43 encourages reporting officers to take that time to consider
44 anything in terms of a result that doesn't fit with
45 the case circumstances. You know, we've said this a couple
46 of times in our evidence. When you put humans into systems
47 mistakes will happen and we can't shy away from that.

1 Contamination happens in forensic laboratories in every
2 forensic laboratory. The best defence that we in the
3 business of forensic science provision have to that is, you
4 know, accepting it and being on the hunt for it, and then
5 having appropriate risk mitigation strategies.
6

7 This is a vital risk mitigation strategy, to have a
8 reporting scientist who can look across that case
9 holistically and see whether there is anything that just
10 doesn't look right on the circumstances. It could be what
11 stands between, you know, a result going out the door or
12 that result being caught, and the opportunity for a deeper
13 dive to look into what might have happened to explain this
14 result. This could have happened as a result of a
15 contamination event.
16

17 MR HODGE: Does the Queensland system at present outside
18 of P1 cases have that kind of overview?
19

20 DR KOGIOS: Well, I think it's fair to say that
21 the scientists at FSS are very limited in their
22 (indistinct) ability to perform this kind of check
23 (indistinct) because they just don't have (indistinct)
24 perhaps QPS have that ability to (indistinct) in any great
25 detail, but I guess the point --
26

27 THE COMMISSIONER: Dr Kogios, we lost the last 30 seconds.
28

29 DR KOGIOS: My apologies.
30

31 THE COMMISSIONER: I'm sorry, could you start again.
32

33 DR KOGIOS: Yes. So the point that I'm making here is
34 that the scientists at QHFSS are limited in their ability
35 to perform this type of check because they don't have that
36 whole of case visibility. It may well be that the staff,
37 the scientists at QPS are performing this whole of case
38 check. We didn't do a deep dive into QPS's function really
39 in any great sense. That was outside of our terms of
40 reference.
41

42 But the point we make is where you have a workflow
43 that straddles the two agencies and you have people in both
44 of those agencies whose got some sort of knowledge you
45 really do need to have those safeguard mechanisms in place
46 so that you can join up the various pieces of the puzzle so
47 that things don't fall through the cracks.

1
2 MR HODGE: Thank you. And then, Ms Baker, I might just
3 then ask you to talk about one last risk that the two of
4 you raise under the current model, and that is the loss of
5 trust or the relationship, and I was wondering if you could
6 in particular just explain the view that the two of you
7 have informed about the use of incorrects and the term
8 "unintended human error".
9

10 MS BAKER: Yes, I'm happy to. Just to add to that last
11 point as well it's really important that if there are any
12 events such as that that Dr Kogios has just described that
13 they need to be identified and remedied as early on in the
14 process as possible. I think that's what we're advocating
15 for by the case managers can have more overall case
16 visibility. But, yes, more than happy to talk to this.
17

18 So we noted that because the results are reported
19 sample by sample through the work list, so they're made
20 available to QPS, and then, for example, say there's 10
21 samples in a case, they get reported perhaps by different
22 individuals, they're verified on the way out, but they go
23 sample by sample. At some point the case manager is asked
24 to produce the statements. So they bring together all of
25 those results. It's a completely normal scientific
26 forensic phenomenon that we don't always agree with the
27 interpretation of DNA results. That's not to say that one
28 person is right and another person is wrong. It can be
29 down to different experiences, different perspectives.
30 Sometimes two people just need to sit down in the same room
31 together and nut it out and listen to each other's points
32 of view, and that can be sufficient.
33

34 But what we noticed at the FSS is that the
35 (indistinct) looking at the statement disagreed with the
36 original interpretation, they were forced to sort of by way
37 of retraction issue an incorrect notice and to say that the
38 original result was as a result of unintended human error.
39 I think from my perspective that gives the opinion that
40 somebody's done something wrong; whereas what we're really
41 talking about is a perfectly normal difference of opinion
42 between forensic scientists that can either be resolved
43 through conversation or perhaps through additional testing
44 as examples. So to label them as an incorrect and to say
45 it's an unintended human error, I personally would feel
46 quite uncomfortable if that was a label that was applied to
47 some work that I had done, and I feel it goes against that

1 no blame culture that we discussed earlier and that people
2 should be able to have those differences of opinion and
3 have those robust discussions and do a bit of extra testing
4 to gain some more confidence in the result. But the person
5 delivering that statement and going to court and providing
6 evidence has to have the belief and the confidence in the
7 result that they're reporting.

8
9 MR HODGE: Thank you. Is it fair to say - and I direct
10 this to Dr Kogios - one of the things you'd say that's
11 problematic about describing that type of situation where
12 the reporting side - where the scientist ultimately doing a
13 review at the end comes to a different view is that to
14 describe it as error is incorrect or maybe incorrect in the
15 sense that it may not involve any error at all; it's just a
16 matter of differing professional judgment.

17
18 DR KOGIOS: Yes, that's right. That is right. And we
19 sort of put ourselves in the shoes of the QPS members
20 receiving, you know, notification of the amendment to the
21 result and we sort of thought about from their perspective
22 that must be - you know, it might perhaps cause them to
23 lose faith a little bit in the laboratory. "What's going
24 on in that laboratory? They keep changing their mind." As
25 Ms Baker said, these are not errors per se. It's just the
26 natural consequence of the complexity of DNA evidence and
27 the fact that in some instance, not all instances but in
28 some instances, two highly trained individuals will come to
29 a difference of opinion.

30
31 In a case manager allocation type model those
32 differences of opinions tend to get natted out before a
33 result goes out the door. So that might be one of the
34 things that's playing out with the Queensland model, that
35 police are being brought into the process at an earlier
36 stage perhaps before that difference of opinion has had a
37 chance to be natted out. So we were concerned about what
38 that might mean for QPS in terms of their ability to rely
39 on the results that are coming from FSS and for the general
40 faith that they have in the people who are providing, you
41 know, forensic DNA services to them. It's very important
42 of course that the parties involved have that level of
43 trust and can rely on the results.

44
45 MR HODGE: Thank you. I think that's a really important
46 point. Can I give an example of something that might
47 occur, which is that it might be that one scientist looks

1 at the profile or looks at the result that they get and
2 thinks, "That is something where I can see two distinct
3 profiles," but another scientist might look at it and
4 think, "Actually, it's more than two contributors," and
5 that changes their interpretation of the result that they
6 can draw from the sample; that's the kind of situation
7 you're talking about?

8
9 DR KOGIOS: Yes, that's exactly right. The number of
10 contributors can be one of the most vexed issues. So, you
11 know, what would you do in that circumstance? Well,
12 ideally the two individuals would sit down, nut it out.
13 Potentially they might reach agreement at that point. If
14 not, then perhaps a third person can be brought in to
15 adjudicate. We did see evidence of that process at QHFSS.
16 So that certainly is the practice.

17
18 I guess, the difference is because of the operating
19 model numerous scientists are coming into contact with the
20 samples in the case. Let's say it's a large case with lots
21 of samples in it. You've got many, many hands touching
22 that case. So you've got that potential for divergence of
23 opinion in a much greater scale than you would have if you
24 had a whole of case, dedicated case manager reporting that
25 particular case. So that was why we thought this might be
26 happening more often in Queensland; that coupled with
27 the fact that, you know, the results are being made
28 available to police earlier on in the piece.

29
30 Again, how might you put in a safeguard as sort of a
31 checker balance operating model? You could consider
32 perhaps use of some sort of flag so that if you're
33 reporting to police on a sample by sample basis rather than
34 having done whole of case review perhaps some way of
35 communicating to police that, you know, "This is a
36 preliminary result, perhaps even an interim result, and it
37 may be subject to change. So if you are intending to rely
38 on this result perhaps to arrest an individual or to, you
39 know, do something in your investigation, let us know and
40 we might pull this one out and look at it from a holistic
41 point of view to make sure that you are ultimately going to
42 be able to rely on that result in court." That's an
43 example of a safety net, if you like, that could be applied
44 to this type of operating model.

45
46 MR HODGE: I understand that as an idea for a safeguard.
47 Can I just ask about that. Would that be, in your view, a

1 good practice to adopt for a major crime?
2

3 DR KOGIOS: I think that's a good practice to adopt if
4 that's your operating model. If your operating model is
5 you have this split between two agencies then, yes, I would
6 see that as a vital safeguard.
7

8 MR HODGE: I suppose, sorry, what I meant was presumably
9 even within the model of having the split between two
10 agencies you could still have some kind of case management
11 so that you weren't delivering results on a sample by
12 sample basis and you were waiting until there had been a
13 holistic review at the end before the results were
14 delivered back from the DNA laboratory back to the police?
15

16 DR KOGIOS: Yes, that's true. You could invoke a case
17 manager allocation model within that split workflow; yes,
18 that's absolutely correct.
19

20 MR HODGE: And I was just interested in whether your view
21 is in terms of good practice whether for major crime it
22 would be good practice to be continuing to provide those
23 kinds of provisional sample by sample results to police or
24 whether you think it would be better for major crime to
25 have case management so that you're not delivering interim
26 results; you're only delivering final results after you've
27 had a holistic review. It may be there's no right answer,
28 but I'm just interested in your views about it
29

30 DR KOGIOS: Yes, look, I think Ms Baker and I, our lived
31 experience has absolutely been in the case manager
32 allocation model. We like that model. It's served us well
33 over the years. Neither of us has ever worked in a model
34 like the model in Queensland, and I think it's important
35 that we flag that. There are labs and people who work
36 within that model who sing the praises of that model. So
37 I don't think it's for us to say the model itself is wrong.
38 All we can do is call out some of the perhaps gaps that
39 we've seen around the way that model is currently
40 operating.
41

42 MR HODGE: And then just to tie off on the significance of
43 this description "unintended human error" am I right in
44 thinking your points are in relation to scientists within
45 the lab the problematic aspect of it is it conveys the idea
46 that if one person, the final person, has a different view
47 from you that that must mean that you are in error or you

1 are wrong in the original view that you took, which is not
2 something that the two of you would agree with as an
3 approach to scientific reasoning?
4

5 DR KOGIOS: Yes, that's correct. So the reality is you
6 can never really know - unless, you know, a construct, an
7 artificial construct that you've set up and you have that
8 ground truth knowledge, you know exactly how many people
9 have contributed to that mixture because you've constructed
10 that mixture; absence of that, which of course is not the
11 reality in a case work scenario, you can never know. All
12 you can do is come to an opinion on the basis of the
13 evidence. So you can never say that one person was wrong
14 and the other person was right.
15

16 MR HODGE: And then the second aspect of it is, which I'll
17 direct to Ms Baker, but the second aspect of it is it gives
18 police the misleading impression that if somebody else
19 comes to a different - another scientist comes to a
20 different view from the first scientist, then that means
21 that the first scientist was wrong as opposed to this is
22 just a matter of professional judgment about which
23 judgments will differ.
24

25 MS BAKER: Yes, I'd agree with that. I think it's an
26 incredibly poor choice of words. I can also see a
27 situation where it could act as a deterrent from a
28 scientist wanting to come to a different conclusion about a
29 particular DNA result. We're all different. There are a
30 lot of people who work in forensics who perhaps wouldn't
31 appreciate the sort of confrontation that would need to be
32 involved in having those discussions or wouldn't want to
33 (indistinct) an incorrect or an unintended human error on
34 one of their colleagues. I think that as a barrier is
35 concerning and certainly not ideal. Just the negative
36 impact on people's own morale. Like I said, possibly just
37 a very poor choice of words, where what we're actually
38 talking about is a difference in scientific opinion.
39

40 MR HODGE: Thank you. And then I want to then move to
41 talk about the possible changes that might be made. So can
42 we bring up paragraph 39 on page 20 first. This is where
43 you talk about the in tube model that's presently used by
44 the QPS and the FSS, and you explain the advantages of that
45 which is high throughput and fast turnaround times. You
46 make the point there that there are risks, and you've
47 talked already about the risks and we've talked about them,

1 because you don't have case management oversight.
2

3 Then I want to just move to paragraph 40, which is
4 over the page, where you explain the kinds of safeguards
5 that are required for sexual assaults and other complex
6 cases where you're using that kind of in tube model. This
7 comes back to the point I was asking you about earlier,
8 which is that there's really two different aspects of the
9 Queensland model. One is the separation between QPS and
10 FSS, but the other of it is the work list system. Perhaps
11 at a general level am I right in thinking the safeguards
12 that you identify are really ones that would mean not
13 applying the work list system to these kinds of complex
14 crimes even if you are using the in tube model? I might
15 start with - I can see Ms Baker nodding, but I might start
16 with Dr Kogios
17

18 DR KOGIOS: Yes, I think that's right. I think that's
19 right. I mean, ultimately it's a matter for each
20 jurisdiction to determine their own operating model. So
21 I guess we're working from the sort of assumption that the
22 operating model exists. As we've said, we didn't look at
23 QPS. So we've got, you know, limited line of sight into
24 how the model works from their perspective. If the model
25 persists these are the types of safeguards that we thought
26 could be put in place at FSS because, remember, that was of
27 course the focus of the work that we were there to do, to
28 look at FSS per se. So these aspects would be, I suppose,
29 modifications in the work list model.
30

31 MR HODGE: Well, I mean, in saying that, is it fair to say
32 it's much more like using the model that's presently used
33 for P1 samples but applying it to all complex cases? So
34 that is treating it as a whole case, somebody having an
35 overview of it, somebody interacting directly with QPS,
36 somebody watching the progress of it through?
37

38 DR KOGIOS: Yes, I think that's fair to say. Certainly
39 (a) there, case manager allocation at the point of entry,
40 yes, that's as we understand it what happens in the P1
41 category of cases. So applying that to P2, yes. (b) as
42 well, whole of case review prior to reporting. We didn't
43 see whole of case review prior to reporting for P1s. So
44 I don't think it would be as simple as picking up the P1
45 model and broadening that out to P2s. That would work in
46 terms of 40(a), case manager allocation at point of entry.
47 But, 40(b), it would be new for the P1 category of cases as

1 well.

2

3 MR HODGE: Yes. Am I right in thinking - I might just
4 direct this one to Ms Baker - your proposition is not that
5 any one of these safeguards would be sufficient by itself;
6 it's that you need all of these safeguards to deal with the
7 kind of risks that arise from using that separation
8 production line model of in tube samples coming from QPS?

9

10 MS BAKER: Yes. So in this case we sort of talk about the
11 Swiss cheese effects where all the holes have to line up
12 for something not great to happen at the end, and it's a
13 way of how do you plug all of those gaps so that you're
14 avoiding or minimising any risk of that end result
15 happening. I would like to note as well those P1 cases,
16 I did review some of those as part of our work and I noted
17 that there was really good collaboration and communication
18 between the FSS and the QPS for those cases. That gave me
19 great faith that this particular sort of case manager model
20 that we're suggesting is something that the scientists are
21 more than capable of and that they have already
22 demonstrated the ability to work well with that kind of
23 collaboration and communication throughout the lifecycle of
24 those cases.

25

26 MR HODGE: And, Dr Kogios, I suppose then one of the
27 things that it will be important for the Commissioner to
28 grapple with is you and Ms Baker obviously have a lot of
29 experience with the case management model. Is it the case
30 that you can use the case management model whilst
31 maintaining the separation between of function lying with
32 QPS and some function lying with FSS or does it really
33 require a reconsideration of where you draw the line?

34

35 DR KOGIOS: I think you can apply the principles that
36 underpin the case manager-led model to a split workflow.
37 It just might mean that in some instances you get your QPS
38 member and your FSS member together to conduct a whole of
39 case review, for example, because the knowledge might be
40 split between those two individuals. So from a principle
41 based approach, yes, it can be applied to the current
42 operating model.

43

44 MR HODGE: Just to unpack that a little bit, in terms of
45 the kind of model that you and Ms Baker are familiar with
46 as a case management model, in that model would the
47 examination strategy be devised by the same person or

1 preferably be devised by the same person who also then has
2 a holistic overview of the entire case?

3
4 DR KOGIOS: Look, it's certainly not the case that it must
5 be the same person. There are instances where, you know,
6 you might have a person who's on maternity leave or who has
7 left the organisation who started the case and then you've
8 got someone else coming in to finish off the case and, you
9 know, there would be some crimes against the person where
10 there's no problem at all with it being two separate
11 people.

12
13 For me I think the key is that the person at the back
14 end, the person who is reporting, has access, full access,
15 to that examination strategy so that they can see and
16 understand the basis for the examination strategy having
17 been set up the way that it was. So, you know, coupling
18 those two people together or providing that level of
19 information, sharing that level of information, you know,
20 you could achieve the right outcome albeit with those two
21 people not being the same - there's a level of extra
22 difficulty if those two people don't belong to the same
23 agency, but these are not insurmountable problems.

24
25 MR HODGE: I understand. They're surmountable if you have
26 adequate levels of communication between at one end the
27 person who is devising the examination strategy and at the
28 other end the person who is undertaking the holistic review
29 of the DNA testing?

30
31 DR KOGIOS: Yes, that's right. As Ms Baker said, we did
32 see evidence of that in P1 cases from both QPS side and
33 from FSS side.

34
35 MR HODGE: And, Ms Baker, in your experience of this kind
36 of case management model could you just maybe give the
37 Commissioner some sense of how common would it be for the
38 person who is undertaking the devising of the examination
39 strategy to be the same person who ultimately is going to
40 have the holistic responsibility for the case?

41
42 MS BAKER: I would say that would be the ideal and that
43 would certainly be sort of normal practice from my
44 perspective from the laboratories where I've worked. There
45 are occasions, and I can think of one being where there's
46 actually quite a large backlog at the sort of reporting end
47 and that you don't want your labs (indistinct) twiddling

1 their thumbs while your reporting staff are heavily trying
2 to get through a backlog of work for any particular reason.
3 So in that situation you may allocate the person to do the
4 triaging or the examination strategy for cases coming in to
5 make sure that those cases are progressing through the
6 laboratory in a timely way, and perhaps even if there is a
7 backlog at the reporting end you are having those
8 conversations with the police, with the Crown prosecutor
9 or, sorry, the OPDD in Queensland and you can prioritise
10 work based on that. But at least the work has been done.
11 So that's the situation. But, ideally, you would have a
12 case start to finish. It's a much smoother process because
13 it takes time for another scientist to go back and review
14 from the start to the point where they entered that case.

15
16 MR HODGE: At the moment under the Queensland model
17 whatever examination strategy there is is one that's
18 devised within the QPS?

19
20 MS BAKER: Yes, with the exception of the sexual assault
21 kit.

22
23 MR HODGE: And you haven't undertaken a review of the QPS
24 procedures, but one of the things I gather you haven't seen
25 is what SOP the QPS have for devising an examination
26 strategy?

27
28 DR KOGIOS: That's right.

29
30 MR HODGE: And if we go to page 24 of your report you deal
31 there with bias, and I just wanted to get you to explain
32 that a little bit to the Commissioner because it seems to
33 be one of the points that is inherent in your opinion from
34 the stages of the workflow you set out is that under your
35 case management model you're not assuming that the same
36 scientist will devise the examination strategy, conduct the
37 collection analysis plate reading, and effectively
38 undertake all stages of the analysis; that's right, isn't
39 it?

40
41 DR KOGIOS: Yes, that's correct. That's correct.

42
43 MR HODGE: And in fact you think it would be - in fact
44 you're not even suggesting that would be a good model. To
45 you a good model would be one where you do have different
46 people at different stages because you want to blind some
47 of them to certain information so they're not biased in

1 relation to what's going on?

2

3 DR KOGIOS: Yes, that's right. That's right. So we've
4 included this because, you know, we understand that there
5 may be some concerns or some challenge offered to the
6 so-called case manager allocation model, which is the model
7 that Ms Baker and I are used to, in that, well, then how do
8 you manage bias. Well, this section of our report speaks
9 to what we consider to be, you know, international emergent
10 best practice around how to handle the topic of bias in DNA
11 case work in particular. But in actual fact it does have
12 broader application right across forensics.

13

14 So if we think about bias really as being, you know,
15 the shortcuts taken by the human brain unconsciously, and
16 there are two types of bias that can arise in the forensic
17 context. One is around context bias. So that might be
18 where information around, you know, case information not
19 relevant to the task at hand might be biasing the analyst
20 in some of the decisions that they're making. Then the
21 second form of bias is confirmation bias. So that might be
22 where you have a view about something because of something
23 that you've already seen and so you're unconsciously
24 focused on that information that then would confirm what
25 you expect to see.

26

27 So the international recommended gold standard
28 approach to this we looked to a paper by Krane in the
29 Journal of Forensic Sciences that speaks to a concept
30 called sequential unmasking. Essentially what it does is -
31 and you can see it up there on the screen - it sets out the
32 various stages of the workflow, five in total; the first
33 one being really, you know, assessing the case and setting
34 your examination strategy, and you've heard us use that
35 language today; the second one being the actual sort of
36 analysis phase; then through into interpretation; through
37 to reporting; and through to final review.

38

39 What this best practice calls out would be, you know,
40 if you think about it as a bookend approach at the start
41 and at the end of the process having that full picture so
42 that you can set the right examination strategy, you can
43 make sure all the right testing has been done and nothing
44 looks odd in the case, but in between the people who are
45 involved in the workflow don't have all of that additional
46 information. So they just know, "I'm to pick up item 4 and
47 examine the handle of the knife for trace and look for

1 blood on the knife blade." They don't need to know
2 anything about the broader context of the case. That would
3 be what we would consider to be that emergent best practice
4 approach.
5

6 You know, can we say we think that the substructure of
7 the FSS laboratory in that they have got groupings aligned
8 to tasks, they have that evidence recovery team, they have
9 their analysis team, and they have their reporting team, it
10 actually lends itself really well to this style of
11 approach, provided you've got the ability to sort of mask
12 from individuals at certain stages in the process, you
13 know, key pieces of information masked at certain stages,
14 and that's where we make a recommendation around changes to
15 the forensic-register to support that level of sequential.
16

17 SHORT ADJOURNMENT

18
19 THE COMMISSIONER: Mr Hodge.

20
21 MR HODGE: Thank you. Dr Kogios, can you see and hear me?

22
23 DR KOGIOS: I can, yes.

24
25 MR HODGE: Thank you. And, Ms Baker, can you see and hear
26 me?

27
28 MS BAKER: Yes, I can, Mr Hodge.

29
30 MR HODGE: Great. Thank you. Now, could we just scroll
31 down a little bit on that report that we've got up there.
32 I might start with you, Ms Baker. I wanted to ask you
33 about recommendation 2. So you see in recommendation 2 the
34 recommendation you and Dr Kogios make is that:

35
36 *QPS/FSS retrospectively review all sexual*
37 *assault and complex cases falling outside*
38 *the "hot jobs" and "major incident"*
39 *categories.*

40
41 I want to just start with understanding some terms there.
42 When you say complex cases what do you mean by that?

43
44 MS BAKER: So I think as Dr Kogios gave us an example
45 earlier, not all homicides could be considered a complex
46 case. If your submission is a knife, that you look at the
47 handle for trace DNA and the blade for blood, then we

1 wouldn't necessarily call that a complex case.

2

3

4 Most volume crime cases or sort of property crime
5 cases might be considered simple. But you may well have a
6 situation where a gang of individuals go from one end of
7 the street to another smashing windows in cars, being cut
8 in the process and depositing blood. Whilst it's a
9 property crime, that may well be considered complex because
10 you have multiple scenes in effect in terms of each
11 vehicle; potential multiple offenders as well. So I think
12 we're just highlighting that the complex cases aren't
13 necessarily defined by the type of crime that has been
14 committed but more so the number of samples that are
15 required and the number of crime scenes, the number of
16 individual victims or complainants in a case, or the number
17 of offenders as examples.

17

18 MR HODGE: And then where you refer to hot jobs and major
19 incident categories can you just explain what you mean by
20 that?

21

22 MS BAKER: Honestly I might struggle. Those are terms
23 used by the QPS that I'm aware of. We refer to the report
24 of Anna Davey when she was describing those types of cases,
25 though I wouldn't give my opinion as to what they mean when
26 they're a QPS term as far as I'm aware.

27

28 MR HODGE: Maybe I should approach this in a slightly
29 different way. You're recommending a retrospective review
30 of all of the sexual assault and complex cases other than
31 those that were classified as hot jobs and major incidents.
32 So maybe you could just explain to us why not review the
33 hot jobs and major incident ones?

34

35 MS BAKER: Yes, of course. So my understanding from Anna
36 Davey's report is that that sort of holistic case overview
37 has been carried out for those hot jobs or major
38 instances - sorry, major categories. My understanding was
39 that Ms Davey didn't find evidence to suggest that that
40 holistic case overview to make sure there's no potential
41 other avenues for evidence or processing or different types
42 of testing, and that she didn't see evidence that that's
43 been carried out for other types of cases. We felt that
44 given that there is the potential for some of that missed
45 opportunity to fall through the cracks, if that holistic
46 overview isn't carried out, that that would be a really
47 good idea just to make sure that there was nothing missing

1 for individual cases which require further testing or fall
2 into that missed opportunity category.

3
4 MR HODGE: So is the reason for or is the reasoning behind
5 recommendation 2 then that sexual assault and complex cases
6 are the ones most likely to have been detrimentally
7 affected, not in terms of the ultimate conclusion
8 necessarily but in terms of the process of gathering and
9 analysing DNA evidence by virtue of the system that was in
10 place in Queensland without the kinds of safeguards that
11 you and Dr Kogios have recommended?

12
13 MS BAKER: Yes, I think that would be fair. We were also,
14 I guess, taking a risk based approach of the impact of not
15 - or missing evidence in those types of cases, or missing
16 the potential for more testing. That's not to say it will
17 necessarily bring a different outcome, but just the missed
18 opportunity for potential work.

19
20 MR HODGE: And are you able to - I'll perhaps direct this
21 to Dr Kogios first. Are you able to help us or help - yes,
22 help us with understanding what kind of criteria might be
23 applied to determine whether a case is a complex case, or
24 is it a matter of judgment depending upon each case?

25
26 DR KOGIOS: Well, I think it is a matter of judgment. But
27 I think as a starting point - and Ms Baker is right; in
28 this recommendation we are highly reliant on the findings
29 of Commission expert Anna Davey and we do quote from her
30 report on page 18 of paragraph 37(b)(ii). She made a
31 finding as a result of having a good look at the QPS
32 process that this process of holistic case review was
33 missing in certain categories of cases. So I think a
34 starting point would be to be guided by that and look at
35 those categories of cases where that holistic review hadn't
36 happened. I think the criteria would be and the reason why
37 we've sort of listed this as a sort of sequential QPS first
38 and then FSS would be that the police themselves would be
39 best placed to understand, yes, you know, perhaps there
40 were some cases there that hadn't been holistically
41 reviewed, but those cases may not be proceeding for reasons
42 unrelated to the forensics, for example. So there perhaps
43 is no point to go back and look at those particular cases
44 if there's no realistic chance of a prosecution for other
45 reasons, reasons not related to the forensics. So rather
46 than a blanket go back and test all of those samples and
47 also, to be frank, FSS wouldn't necessarily know, one would

1 assume, which cases fell outside of the ones that had been
2 holistically reviewed.

3
4 So I think as a starting point it would be Anna
5 Davey's report to look at the category of cases that fell
6 outside of those that had been holistically reviewed, and
7 then a systemic review of each case by QPS to ascertain,
8 you know, whether there was more work to be done given the
9 circumstances of the case, and then at that point engaging
10 the lab to facilitate the progression of further testing
11 for those cases that had been pulled out and identified as
12 being in scope.

13
14 MR HODGE: I see. And just, though, in terms of maybe
15 then for the QPS and thinking about what constitutes a
16 complex case, how would you suggest they go about thinking
17 about that?

18
19 DR KOGIOS: Well, we really have defined "complex case" as
20 really being a case involving multiple items, multiple
21 persons of interest, multiple complainants, for example,
22 multiple accused. So I really think there's no simple
23 answer to this. Each case turns on its individual merits.
24 But, because we were guided by Ms Davey's report, her
25 report would be a starting point for QPS - I mean, assuming
26 that this is accurate and is in fact the case, for QPS to
27 start with those jobs that hadn't been holistically
28 reviewed and to systematically work their way through those
29 cases.

30
31 MR HODGE: And presumably in the absence of the kind of
32 case management framework that you and Ms Baker have
33 described where you've got a DNA scientist who's involved
34 in the examination strategy at the beginning, the person
35 who is or the group that is going to need to make a
36 judgment about whether a case is complex or not will have
37 to be the QPS?

38
39 DR KOGIOS: Yes, yes. And our understanding is QPS are -
40 outside of SAIKs, QPS are setting examination strategies.
41 So there's nothing in the materials for us to suggest that
42 they're not entirely capable of and, you know, well placed
43 to perform that work.

44
45 MR HODGE: Thank you. And then if we go over the page to
46 recommendation 3, so this is where you make a
47 recommendation - I'll direct this to you, Dr Kogios - for a

1 change to the process that is used in Queensland at the
2 moment to establish what you describe as fit for purpose
3 work streams for the different type of case work received;
4 that's right?

5
6 DR KOGIOS: Yes, that's right, and again prefaced with
7 there is no one universal accepted best practice model. If
8 this operating model is retained, this recommendation
9 speaks to some safeguards and some checks and balances that
10 we think could be helpful in terms of those complex cases.

11
12 MR HODGE: I understand. I think is it fair to say your
13 point is the recommendation as to what ought to be done is
14 that there needs to be the introduction of fit for purpose
15 work streams within QHFSS; it may be that there are
16 different models that might be used that are fit for
17 purpose depending upon whether or not, for example, the QPS
18 continues to be the controller and decider of examination
19 strategies?

20
21 DR KOGIOS: Yes, that's right.

22
23 MR HODGE: And, if the QPS continues to be the controller
24 and decider of examination strategies, then that will
25 require particular safeguards to be introduced to deal with
26 the risks that arise from that kind of situation?

27
28 DR KOGIOS: Yes. From the situation that involves people
29 in the workflow split between two different agencies.

30
31 MR HODGE: And in general, regardless of whether QPS or
32 FSS - that is regardless of whether it is somebody within
33 the police or somebody within the DNA lab who decides what
34 the examination strategy is going to be - your
35 recommendation is that for sexual assaults and complex
36 cases that there be a case management approach to those
37 kinds of cases?

38
39 DR KOGIOS: Yes. I mean, there's many different ways to
40 define a case manager approach, but this recommendation
41 details those specific elements. They're sort of
42 principles that underpin that case manager model that we
43 think would be helpful.

44
45 MR HODGE: Thank you. Now, I was then going to move to
46 talk about or to ask Ms Baker about the toolkit that's
47 available to the FSS. I just wondered whether either of

1 you wanted to say anything finally in relation to the
2 workflow model before we move to that other topic.

3

4 MS BAKER: No, nothing from me.

5

6 MR HODGE: I'll take silence as no. Thank you. So then
7 can we move to the toolkit that is available to FSS at the
8 moment, and if we go to paragraph 74 on page 36. The point
9 that you identify at the start of paragraph 74 - I'm
10 directing this to Ms Baker - is that FSS offers standard
11 DNA testing only; it doesn't have Y-STR testing?

12

13 MS BAKER: That's correct, yes.

14

15 MR HODGE: And there's a number of other kinds of
16 technology or methodologies that you then list in the
17 following sentence which are also things that are not
18 presently available to FSS?

19

20 MS BAKER: Yes.

21

22 MR HODGE: And I think the two of you also observe that
23 there seems to be very limited subcontracting of samples,
24 that is the sending out of samples, by FSS to other
25 laboratories around Australia?

26

27 MS BAKER: Yes. My understanding is it's the QPS that
28 will decide what samples to outsource in that respect, and
29 the FSS provide them the samples to send out.

30

31 MR HODGE: And if we then go over the page to page 37 in
32 paragraph 80 the two of you make the point that the lack of
33 Y-STR capability places FSS outside of best practice in
34 terms of the provision of service. I was interested in
35 understanding, or maybe for the Commissioner to understand,
36 what are the benefits of Y-STR testing for sexual assault
37 investigations?

38

39 MS BAKER: I'm happy to speak to that. So I will say
40 Y-STR capability is revolutionary when it comes to sexual
41 assault investigations. So we know that in many cases
42 sexual assault may involve touching or, for example, penile
43 or digital penetration. There's not always semen deposited
44 as a result of those assaults. So, as I spoke to earlier,
45 having the capability to detect really low levels of male
46 DNA against an overwhelming background of female DNA, so,
47 for example, in those intimate body swabs, it is

1 revolutionary now that we have that male specific testing.

2
3 It's also really helpful in determining (indistinct)
4 providing more confidence when you're determining the
5 number of contributors of DNA. So you use Y-STR for that
6 to say, "Well, actually, there was a low level of male DNA.
7 It could have been one person. It could have potentially
8 been two." We've run that sample through this Y-STR
9 testing and we've detected, for example, two paternally
10 unrelated males in that sample.

11
12 MR HODGE: And is it right to say from your report most
13 other Australian labs have had Y-STR for the last five
14 years?

15
16 MS BAKER: Yes, my understanding is that the final
17 forensic service provider implemented Y-STR approximately
18 five years ago.

19
20 MR HODGE: And that's why, if we go over the page to page
21 38, in recommendation 15 you and Dr Kogios recommend that
22 the:

23
24 *QPS/FSS retrospectively review all sexual*
25 *assault casework to identify cases with*
26 *samples suitable for Y-STR testing.*

27
28 MS BAKER: Yes. I think we both feel this is incredibly
29 important for those people who are experiencing sexual
30 assault in that just because no male DNA was detected using
31 standard DNA testing that's not to say in fact that
32 incident didn't occur and there could have in fact been low
33 levels of male DNA that just weren't able to be detected
34 using that standard test.

35
36 THE COMMISSIONER: That's a matter of great concern to me
37 because anybody who practises criminal law in Queensland
38 knows that sexual offences are a large proportion of the
39 offences that are tried in court. Were you able to get any
40 sense of why it's taken FSS so long to undertake the
41 validation process? Were there some troubles they were
42 facing that need to be addressed?

43
44 DR KOGIOS: I might speak to that one, if you can hear me
45 over the rain that's just unfolding above my office.
46 I would say it's very hard to quickly operationalise new
47 capabilities when you don't have a dedicated research,

1 development and innovation group or when you don't have
2 staff members who are dedicated to research and
3 development. So the lab has rightly been trying to
4 implement and validate and implement Y-STR for many years.
5 I would say that they're hamstrung by the pressures that -
6 you know, the constant grind of getting cases out the door
7 and not having that dedicated research capability to
8 support them in rapidly turning on a new capability.
9 I think that that is a significant part of what has
10 contributed to it taking them quite so long.

11

12 THE COMMISSIONER: Ms Baker?

13

14 MS BAKER: Yes, so I share your concern as well,
15 Commissioner, in that I understand that sexual assault
16 cases are highly underreported and, sort of, of those that
17 are reported very few make it through to a court process.

18

19 THE COMMISSIONER: Yes

20

21 MS BAKER: So it really does have a significant impact.
22 I think the statistics of the number of people, not just
23 women but men and children as well, who experience sexual
24 assault, this capability as I said is revolutionary for
25 those types of cases.

26

27 THE COMMISSIONER: Yes. So the trouble that they were
28 facing in the lab is that it seems that scientists have to
29 do this sort of work in effect part-time, whether it's a
30 project or whether it's Y-STR validation. Nobody's
31 allocated to it as a matter of sole interest and priority.
32 They do it when they can find time in amongst all their
33 other work; is that an exaggeration, what I've put?

34

35 MS BAKER: No, I think that would be fair. I think you've
36 also got the backdrop of a focus on high throughputs, rapid
37 turnaround as well is also going to be a factor in that.
38 I'm quite sure the lab very much wanted to have implemented
39 Y-STR by now. I will say it is a more complex DNA test.
40 The interpretation and the way in which it's reported and
41 the statistical assessment of Y-STR is different to
42 standard DNA testing. So it's not just a straightforward
43 validate a particular kit. It has knock-on effects as well
44 in terms of the reporting of those results. So for that
45 reason it would take longer than, for example, just
46 introducing a new standard DNA kit.

47

1 THE COMMISSIONER: Yes. Thank you.

2
3 DR KOGIOS: I might just add it's also certainly the case
4 that not every forensic science provider can have every
5 tool, every technique, particularly some of the smaller
6 ones. It's just not possible. The volume of work that
7 they get wouldn't necessarily justify everything. So
8 outsourcing is entirely appropriate. We have seen
9 instances of outsourcing of this particular type of case
10 work. As we understand it, that's not a decision that's
11 made by FSS as to whether a particular case gets an
12 outsource or not. So I just think it's important to offer
13 that as well in the interests of, you know, a full balanced
14 view.

15
16 THE COMMISSIONER: Thank you for mentioning that because
17 I saw in your report - and it's obvious when you think
18 about it - you may not be able to do everything in a
19 particular lab, in Australia anyway

20
21 DR KOGIOS: Yes.

22
23 THE COMMISSIONER: Mr Hodge, you carry on, but just keep
24 an eye on the time, which is almost there.

25
26 MR HODGE: I will. Thank you, Commissioner. Could I just
27 tie off on three things from what both of you have just
28 said. The first is the significance of Y-STR is the reason
29 why - and I'll direct this to you, Ms Baker. If we go to
30 the bottom of page 37, recommendation 13, you recommend as
31 a priority the validation and implementation of Y-STR
32 profiling, and I think that reflects the things that you've
33 already said to the Commissioner about its significance.

34
35 MS BAKER: Yes, and I would like to say that this isn't
36 something that the laboratory should have to do in
37 isolation. I would hope that the Australasian forensic
38 community will support the laboratory in doing that because
39 certainly many of the other laboratories have significant
40 experience in Y-STR testing.

41
42 MR HODGE: And then the second thing is you were talking a
43 little earlier about recommendation 15, if we could just
44 scroll down again. One thing I just wanted to clarify
45 about that is if it's been the practice of FSS to test all
46 swabs in a SAIKs kit will that pose any difficulty for
47 going back to perform Y-STR testing?

1
2 MS BAKER: There may well be some loss of material if
3 samples, for example, have gone through that microcon
4 concentration to full, which I know the Commission has
5 spoken about. What I will say is there is all the
6 potential to re-extract the swabs, and we do have
7 successful Y-STR from re-extraction of those swabs or the
8 sample remains, if there's differential lysis being carried
9 out, it's not ideal but we could always go back to that
10 (indistinct) as well. So there are sort of several bites
11 at that cherry, I guess is what I'm trying to say. So just
12 because all the samples were tested doesn't mean that there
13 is nothing left to look at for Y-STR. It is a more
14 sensitive DNA test than standard DNA testing, which is
15 helpful.

16
17 MR HODGE: And so, given your answer, if samples haven't
18 been microconned to full and depending on whether there's
19 been re-works of samples or not, there's likely to be
20 sufficient material still available from original extracts
21 to be able to perform Y-STR testing?

22
23 MS BAKER: Yes, there should be. Like I said, the options
24 to go back to sample remains can also be available.
25 Sometimes we find that the original extraction has taken
26 out a lot of the female DNA and in fact when the sample is
27 re-extracted we actually get almost get a better ratio of
28 male DNA from those.

29
30 MR HODGE: And the other part of that is, as I think you
31 know, Queensland has ceased the DIFP process and will have
32 to go back and retrospectively review cases that were
33 designated as DIFP over the course of the last more than
34 four years. Is it fair to say you would expect that as
35 part of that review good practice would be to consider
36 whether in reviewing those samples Y-STR should be used for
37 them?

38
39 MS BAKER: Yes, absolutely. I think it has to be a case
40 of best science approach and what is most likely to give a
41 probative result given the amount of extract that's
42 available. I wouldn't necessarily limit the Y-STR
43 retrospectively to just four years.

44
45 MR HODGE: No, I understand. You wouldn't just stop four
46 years ago. You would go back further than that. But you
47 would agree, I think, that given that you are going to be

1 reviewing DIFP cases it's particularly important to take
2 this into account

3
4 MS BAKER: Absolutely, yes.

5
6 MR HODGE: And then, Dr Kogios, you in answering one of
7 the Commissioner's questions, you were referring to the
8 decision to outsource to other laboratories being made by
9 the QPS rather than FSS, and I was interested in whether
10 you have a view about whether it will be better for FSS to
11 be independently considering whether or not to outsource to
12 other laboratories?

13
14 DR KOGIOS: Not necessarily. I mean, I think that
15 ultimately, you know, it is the remit of QPS to decide how
16 to build their case, and they are perhaps better placed to
17 have the fulsome knowledge of the case context to know
18 whether a particular sample would benefit from that
19 approach. So QPS taking carriage of that decision doesn't
20 trouble me.

21
22 MR HODGE: I understand. And then in making that decision
23 what are the kinds of factors that you would expect to be
24 taken into account, or does it depend on the case?

25
26 DR KOGIOS: Well, the case circumstances, absolutely. So
27 it does depend on the case. The case scenario, the
28 availability - I mean, are we talking specifically about
29 Y-STR? I guess any kind of outsourcing depends on the
30 availability to procure those particular services.
31 Sometimes it might be a question of having conversations
32 with the scientist because the scientists are best placed
33 to know about emerging techniques. The forensic science
34 community is watching with great interest; there are
35 developments in relation to the forensic investigative
36 genetic genealogy as another examine of new capability that
37 we've not had traditionally. So I think, broadly speaking,
38 the DNA scientists would be best placed to provide advice
39 to QPS on the potential for further testing more broadly
40 than Y-STR, for example. But ultimately I would see that
41 that would be a decision for QPS.

42
43 MR HODGE: Is it fair to say that some of the factors that
44 you expect would need to be taken into account would
45 include particular information about the scientific
46 qualities of the material, for example, the quant value,
47 level of degradation.

1
2 DR KOGIOS: Yes, I think that would be fair enough. So
3 again it does call for that conversation between the QPS
4 and FSS.

5
6 MR HODGE: Thank you. And then I just want to ask you
7 about one last thing before we finish. Could we just go to
8 page 13 of your report, and here you have recommendation
9 No.1, which is:

10
11 *Consideration be given to the establishment*
12 *of a Forensic Science Advisory Board to*
13 *assist with the coordination and*
14 *accountability for managing forensic*
15 *services across agencies.*

16
17 I think a little earlier in your report you say if the
18 provision of forensic services is to remain within the
19 Department of Health then you would recommend the formation
20 of this kind of board. But I wonder if you might just step
21 back - and I'll ask you to do it first, Dr Kogios - and
22 explain to us what kind of board you envisage and what the
23 purpose of that kind of board would be?

24
25 DR KOGIOS: Really, this recommendation was grounded in
26 the fact that QHFSS is funded by QPS and Queensland Health,
27 but its output has, you know, much broader implications for
28 police, for the criminal justice system, the broader
29 criminal justice system, and for the Queensland community.
30 So really it's about having that broader frame of reference
31 that brings in to play all the different stakeholders
32 across that broader criminal justice system.

33
34 You know, ultimately the operating model, it's a
35 matter for each jurisdiction, as we have said. But
36 particularly where you've got forensic science provision
37 happening outside of the traditional criminal justice
38 system and, I guess, in that sense we're saying Health
39 perhaps sits to the side of that system, we felt that it
40 could be of benefit to have some sort of overarching board
41 that could help connect the different players in this
42 space, provide a place of guidance perhaps to sense check
43 things like a DIFP policy so that it's not just sort of
44 left to the lab to make a decision in isolation or just by
45 checking in with QPS.

46
47 I mean, ideally you take into account a broader

1 spectrum of considerations when you're setting those sorts
2 of policies. But in practical reality how do you do that?
3 It's not always easy to do that. It's not always easy to
4 know where to go and in what format to go. So this was
5 where we felt that some sort of overarching forensic
6 science advisory board to connect the agencies together to
7 help with that sort of development of a whole of system
8 sort of lens, perhaps, sort of understanding of what risk
9 appetite might look like across that broader criminal
10 justice system could be really helpful for a lab like FSS
11 sitting as they currently do within Health.

12
13 MR HODGE: Thank you. Commissioner, that was all I wanted
14 to ask this afternoon, and then tomorrow when we resume
15 Ms Hedge will be continuing the examination.

16
17 THE COMMISSIONER: Yes.

18
19 MR HODGE: So is that a convenient time to adjourn?

20
21 THE COMMISSIONER: It is. Ms Hedge, how long do you think
22 you'll be?

23
24 MS HEDGE: Maybe half a day.

25
26 THE COMMISSIONER: All right. You might not have
27 formulated your views yet, the rest of you, but, Mr Hunter,
28 do you have a great deal for the two experts?

29
30 MR HUNTER: Very little.

31
32 THE COMMISSIONER: Mr Rice?

33
34 MR RICE: Not a great deal, Commissioner.

35
36 THE COMMISSIONER: Ms McKenzie?

37
38 MS MCKENZIE: No.

39
40 THE COMMISSIONER: Mr Hickey?

41
42 MR HICKEY: No, Commissioner.

43
44 THE COMMISSIONER: All right. So it looks like we'll
45 finish with this part of it tomorrow at some point; is that
46 right?

47

1 MR HODGE: Yes.
2
3 THE COMMISSIONER: That's what you think?
4
5 MR HODGE: That's what I expect.
6
7 THE COMMISSIONER: That's good. Thank you very much for
8 this afternoon and for your help. New Zealand is ahead of
9 us, isn't it?
10
11 MR HODGE: Three hours ahead in New Zealand and one hour
12 ahead in Victoria. So if we resume at 10 then it will be
13 1 pm for Ms Baker and 11 am for --
14
15 THE COMMISSIONER: So we could resume at nine?
16
17 MR HODGE: I think they have been told 10 am Brisbane
18 time.
19
20 THE COMMISSIONER: What suits you two? Ms Baker, what
21 time suits you tomorrow?
22
23 MS BAKER: Well, I'm probably - I'm happy starting earlier
24 just because it's probably not got the same impact on me.
25 But I'll leave it up to Dr Kogios.
26
27 THE COMMISSIONER: Thank you. Dr Kogios?
28
29 DR KOGIOS: Look, I'm fine as well. I'm just mindful that
30 for Ms Baker the finish time in Brisbane is later on in the
31 day for her. So that opportunity to start earlier that
32 might be appreciated. But from my perspective I can fall
33 in with whatever works with you, Commissioner.
34
35 THE COMMISSIONER: All right.
36
37 MR HODGE: I think just from feedback at the Bar table we
38 couldn't start before 9.30.
39
40 THE COMMISSIONER: All right. We'll make it 9.30 Brisbane
41 time.
42
43 MR HODGE: Thank you, Commissioner.
44
45 THE COMMISSIONER: See you then. Thank you.
46
47 <THE WITNESSES WITHDREW

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AT 4.38PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY,
2 NOVEMBER 2022 AT 9.30AM

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