

COMMISSION OF INQUIRY  
INTO FORENSIC DNA TESTING IN QUEENSLAND

Brisbane Magistrates Court  
Level 8/363 George Street, Brisbane

On Monday, 24 October 2022 at 9.30 am

Before: The Hon Walter Sofronoff KC, Commissioner

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

1 THE COMMISSIONER: Ms Hedge.

2  
3 MS HEDGE: Thank you, Commissioner. I will now outline the  
4 topic of investigation relating to the contamination of DNA  
5 samples that was identified in the Queensland laboratory in  
6 2008.

7  
8 Is the contamination was identified as occurring in  
9 the extraction phase of the DAN testing and analysis  
10 undertaken by the laboratory. In October 2007, the  
11 laboratory had implemented the DNAIQ system for extraction.  
12 That system is used to extract DNA from biological  
13 material. It comprises three steps.

14  
15 First, lysis, which breaks down the cell membranes  
16 and proteins holding the DNA in the nucleus and releases  
17 the DNA.

18  
19 Secondly, washing, where the DNA is bound to magnetic  
20 beads and washed to remove substances that might inhibit  
21 DNA testing and, third, elution, where a liquid is added to  
22 make the sample ready for processing.

23  
24 In March 2008 the Queensland laboratory introduced a  
25 partly manual and partly automated process with the lysis  
26 step performed manually and the washing and elution steps  
27 performed by the Multi Pro 2 platform known as the MP2.

28  
29 In the first half of 2008 at least five instances ever  
30 contamination were observed by the laboratory and OQIs or  
31 Opportunities for Quality Improvement were raised for each.  
32 The contamination was within the batch of samples that were  
33 processed together on the MP2 instrument. That is, it was  
34 noticed that the same DNA profile was seen in at least one  
35 unconnected sample that was processed together. In some  
36 batches it was seen in more than one unconnected sample.

37  
38 That is a highly concerning type of contamination  
39 because if not identified as contamination it could result  
40 in a person being identified as having deposited DNA at a  
41 crime scene with which they had absolutely no connection.  
42 For example, in one case identified during the  
43 investigation, an alleged sexual assault victim's profile  
44 from an oral (indistinct) swab was found in a sample from a  
45 swab from the right throttle of a motorbike used in an  
46 unlawful use of a motor vehicle case. Those two samples  
47 had been near each other on the plate used in the MP2

1 instrument.

2  
3 Dr Ingrid Moeller gave evidence the week before last  
4 about another instance. She was told by a reporter about a  
5 time that a sexual assault complainant was questioned about  
6 a murder because her DNA from her sexual assault  
7 investigation kit found its way into a crime scene sample  
8 from a murder investigation.

9  
10 So, Commissioner, you can see from those examples the  
11 seriousness of that sort of contamination.

12  
13 The laboratory took this issue very seriously. There  
14 was an investigation, a number of audits and two  
15 extraordinary management meetings. The laboratory also  
16 obtained an independent expert report and by 28 July 2008  
17 the laboratory ceased processes with the DNAIQ system and  
18 returned to the previous manual processing.

19  
20 The Queensland Police Service and the Office of the  
21 Director of Public Prosecutions were briefed about the  
22 issue. The independent expert report was obtained in  
23 November 2008. It concluded that the most likely reason  
24 for the contamination was that the seal that covered the  
25 samples inside the MP2 instrument was not preventing DNA  
26 from one tube to entering other tubes in the same batch.

27  
28 The laboratory also engaged in some retrospective  
29 identification of cases that might be affected and  
30 re-tested. Samples that were affected were identified and  
31 re-tested. The scale of the issue is apparent from that  
32 investigation.

33  
34 Could I have on the screen [FSS.0001.0060.5723].  
35 This is one of the audit reports that was done during the  
36 investigation and you can see there in the table the number  
37 of batches that were processed in the period that was of  
38 concern, which was 23 October 2007 to 28 July 2008. The  
39 total number of extraction batches used in that time was  
40 278. 202 of those were released, that is there was no  
41 concern about them, 14 were put on hold and 62 were  
42 removed. Each batch has up to 96 samples, but a batch is  
43 not always full and, of course, there are negative and  
44 positive controls. So at a broad estimate of those 62  
45 batches that were removed and needed further consideration,  
46 say if there were 50 samples in each of those batches, that  
47 might be up to around 3,000 samples which needed

1 consideration and retesting. The laboratory did that and  
2 ensured that every case that might have been effected was  
3 reviewed.

4  
5 There was addendum statements produced for the use by  
6 the QPS and the DPP.

7  
8 The Commission procured, this Commission, your  
9 Commission, procured professor Linzi Wilson-Wilde to  
10 consider the methods employed by the laboratory both before  
11 and after this issue arose and the investigation undertaken  
12 by the laboratory. She's provided an expert report which I  
13 have on the screen, EXP.0002.0005.0001.

14  
15 This is a report dated 20 October 2022. Can I turn  
16 to paragraph 26 of that report, which appears on p4. In  
17 paragraph 26 to 32 Professor Wilson-Wilde's opinion is that  
18 the laboratory's use of the DNAIQ system before this issue  
19 arose at the start of 2008 was not consistent with best  
20 practice because the verification of the system that  
21 underpinned it was not performed appropriately. So in  
22 paragraph 26 and 27 Professor-Wilson-Wilde concludes that  
23 the volumes used in the Queensland lab were far larger than  
24 those in the manufacturer's protocol and at paragraph 31  
25 she concludes that the verification done of that method was  
26 insufficient to test those larger volumes.

27  
28 In paragraph 32, Professor-Wilson-Wilde identified  
29 that in the verification, this is in the second sentence,  
30 significantly it is noted that one of the runs was  
31 invalidated due to the presence of an unknown profile could  
32 not be identified. That should have resulted in further  
33 testing. So that is - it may be - of course there wasn't  
34 further testing, but that was a contamination check, so it  
35 may be that the contamination issue that arose later was  
36 actually identified in the verification but not  
37 sufficiently investigated to ensure that the platform  
38 wasn't creating that problem.

39  
40 Then in paragraph 30, Professor-Wilson-Wilde  
41 concludes that the use of high volumes may have contributed  
42 to the contamination events.

43  
44 So while the verification was not done in accordance  
45 with best practice, Professor-Wilson-Wilde did find that  
46 the investigation of the problem was performed in  
47 accordance with best practice.

1  
2 Finally can we turn to the impact on results. Can we  
3 turn to paragraph 65 to 69 first please. The question that  
4 was asked here is whether the obtaining of a usable DNA  
5 profile was reliable and accurate, that is whether you do  
6 obtain one when you should and not obtain one when you  
7 shouldn't, as opposed to the accuracy of that profile,  
8 which was a second question. And in these paragraphs  
9 Professor Wilson-Wilde concludes that after the retesting  
10 and the investigation was done, none of the results  
11 released cause a concern about reliability or accuracy.  
12

13 Then in paragraphs 70 and 71 that second question is  
14 asked, whether the actual profiles obtained were reliable  
15 and accurate and because of their extensive review and  
16 retesting the results that were released are to be  
17 considered reliable and accurate.  
18

19 So there is no ongoing concern that results obtained  
20 during that period, there was no concern about their  
21 reliability or accuracy.  
22

23 Professor Wilson-Wilde did identify some aspects of  
24 the laboratory's operations during this period which fell  
25 below best practice, as well as the verification that we've  
26 discussed. At paragraph 36, Professor Wilson-Wilde  
27 identifies that the training manual for the off deck lysis,  
28 which means the manual licence followed by the automated  
29 washing and elution steps, was introduced in March 2008,  
30 but the training manual was not updated until August 2008,  
31 and that is a matter that falls below best practice because  
32 the training manual will, of course, be relevant to any  
33 staff using the process.  
34

35 In paragraph 48, Professor Wilson-Wilde indicated that she  
36 expected to see a greater clarity in the Standard Operating  
37 Procedures for cleaning about the deep clean procedure and  
38 records of them being undertaken and that deep clean should  
39 be done on a monthly basis. Of course, when contamination  
40 is the issue, the cleaning of the environment is a key  
41 feature to ensure that it is right before anyone is  
42 concerned about particular instruments.  
43

44 Finally, at paragraph 57 there are the comments from  
45 Professor Wilson-Wilde about a particular audit report in  
46 that it's not clear from that report what was actually  
47 conducted as part of the audit or the method of it, and

1 that that further information should be included to assist  
2 other scientists who read audit reports to determine  
3 whether there's some systemic issue, whether there's some  
4 overlap with other audits that have been done, whether the  
5 audit has been done appropriately.  
6

7 So those three features were identified by  
8 Professor Wilson-Wilde underneath the overall conclusion  
9 that the investigation was of a high standard and in  
10 accordance with best practice.  
11

12 Commissioner, while no significant failing was found  
13 in the investigation and resolution of the issue, and  
14 there's no concern about the reliability of results  
15 produced by the laboratory in that period, this issue  
16 provides a useful oil for the sperm microscopy  
17 investigation conducted between 2016 and 2020, that is,  
18 there is a significant difference that can be seen between  
19 the two investigations in terms of, first, the urgency with  
20 which the issues were addressed; secondly, the use of the  
21 OQI and audit procedure in this case, compared to the  
22 project procedure in the other case; the length of time  
23 that it took to come to firm conclusions about cause; the  
24 ceasing of the compromised process. In this case, once the  
25 error was identified, which occurred fairly quickly, as  
26 opposed to in the sperm microscopy case, and the  
27 identification of all samples that had been affected by the  
28 compromised process and retesting for those samples, which  
29 is not a step that had been undertaken up to just last week  
30 in the sperm microscopy case.  
31

32 The other list of documents that we intend to tender  
33 that's been disclosed to the parties - if we could put that  
34 on the screen - EXP.0002.0006.0001. Can I tender,  
35 Commissioner, that document as an exhibit.  
36

37 EXHIBIT #128 EXP.0002.0006.0001.  
38

39 MS HEDGE: And then could I enter the documents contained  
40 in that index, not including those which already have been  
41 exhibit number, as a separate exhibit, as a bundle.  
42

43 EXHIBIT #129 INDEX EXP.0002.0006.0001.  
44

45 MS HEDGE: None of the Counsel Assisting require any oral  
46 evidence on this topic, so this opening and the documents  
47 in the index will form the basis of the public evidence on

1 this.

2  
3 THE COMMISSIONER: Thank you.

4  
5 MS HEDGE: Thank you. Mr Hodge will call the first  
6 witness.

7  
8 MR HODGE: Commissioner, the first witness is Ms Keller.

9  
10 THE COMMISSIONER: Yes.

11  
12 <LARA JANE KELLER, sworn: [11.08]

13  
14 <EXAMINATION BY MR HODGE:

15  
16 MR HODGE: Q. Could you state your full name to the  
17 Commission?

18 A. Lara Jane Keller.

19  
20 Q. What is your occupation?

21 A. I'm currently the Acting Executive Director of Forensic  
22 and Scientific Services.

23  
24 Q. Thank you. And you have given I think three statements  
25 to the Commission, is that right?

26 A. Yes.

27  
28 Q. I'll just bring those up in turn. Could we first bring  
29 up WIT.0017.0003.0001. You see that's a statement of yours  
30 and I think if we go to the page ending in .0051. You'll  
31 see that one's dated the 20th day of December 2021?

32 A. Yes.

33  
34 Q. You've reviewed that statement recently?

35 A. Yes.

36  
37 Q. Is it true and correct to the best of your knowledge  
38 and belief?

39 A. As far as I know, yes.

40  
41 Q. Thank you. There are no corrections to it?

42 A. Not - no, I don't believe so, no.

43  
44 Q. Commissioner, I tender that first statement of  
45 Ms Keller.

46  
47 EXHIBIT #130 STATEMENT OF LARA KELLER DATED 20/12/2021.

1  
2 MR HODGE: Then you've given a further two statements in  
3 the last few days and you'll just need to give me a moment  
4 to bring up the doc ID. The first is WIT.0017.0248.0001.  
5 I think, as you note there, you've also participated in an  
6 interview with the Commission. You can see that in  
7 paragraph 1. Could we go, Mr Operator, to - I'll just give  
8 you the correct page for it - if we go to p42 of that  
9 statement. This is a statement that you gave on  
10 21 October 2022?

11 A. Yes.

12  
13 Q. Again, you've obviously reviewed that recently?

14 A. Yes.

15  
16 Q. Are there any corrections to that statement?

17 A. I don't believe so.

18  
19 Q. It's true and correct to the best of your knowledge and  
20 belief.

21 A. Yes.

22  
23 Thank you. I tender that statement, Commissioner. I  
24 should say I tender them together with their exhibits or  
25 attachments.

26  
27 **EXHIBIT #131 WIT.0017.0248.0001 TOGETHER WITH ATTACHMENTS.**

28  
29 MR HODGE: Then you gave another statement yesterday. Can  
30 we bring up WIT.0017.0249.0001. This is a short statement.  
31 I think if we go over the page we can see the date of it.  
32 That's dated 23 October 2022. That was yesterday?

33 A. Yes.

34  
35 Q. This was prompted by finding an email in your records?

36 A. Yes.

37  
38 Q. We'll come back to that later but, again, this is true  
39 and correct to the best of your knowledge and belief?

40 A. Yes.

41  
42 I tender that statement, Commissioner.

43  
44 **EXHIBIT #132 WIT.0017.0249.0001.**

45  
46 MR HODGE: Now, before we go to your statements, Ms Keller,  
47 I just want to ask you some general questions about the



1 management of the lab and your knowledge of what's been  
2 going on during the Commission. Have you been following  
3 the evidence that's come out during the Commission?

4 A. As best I've been able to, yes.

5

6 Q. You know that one of the witnesses who was called is  
7 Helen Gregg?

8 A. Yes.

9

10 Q. She's their quality manager for FSS?

11 A. She is.

12

13 Q. As we understand her evidence, she has no forensic DNA  
14 experience?

15 A. I don't believe so.

16

17 Q. Were you aware of that when you started in the role as  
18 Executive Director Acting Executive Director?

19 A. Yes, I have worked with Helen over the years.

20

21 Q. She has responsibility for a number of areas?

22 A. She does.

23

24 Q. Are you aware that in her evidence she wasn't able to  
25 identify one proactive action that she'd taken in relation  
26 to the DNA analysis unit in the five years leading up to  
27 the Commission?

28 A. I don't recall her saying that.

29

30 Q. Are you aware that she described herself as a reactive  
31 quality manager?

32 A. I don't think I heard her say that.

33

34 Q. Do you have a view about what kind of role you would  
35 expect the quality manager to play?

36 A. For an organisation as big as FSS I think that her role  
37 would be to oversee accreditation and compliance for the  
38 whole campus, which is quite broad, so - rather than being  
39 a working, with each unit specifically, because they all  
40 have quality officers. A lot of them do, I believe.

41

42 Q. I see. Do you have a view about whether the quality  
43 management ought to be reactive or proactive?

44 A. Always should be proactive.

45

46 Q. So in saying that what would you envisage as proactive  
47 steps that the quality manager ought to be taking in

1 relation to either FSS in general or the DNA lab  
2 specifically?

3 A. My understanding of the role of the quality manager,  
4 and you've been one in the past, is that you schedule  
5 audits, you follow up, you look for trends, you do root  
6 cause analyses and generally you're doing that in advance  
7 so that you can identify if there are any issues so that  
8 you can take the preventative action rather than the  
9 corrective action.

10  
11 Q. Over the course of the last almost a year now that  
12 you've been in the role, have you turned your mind to  
13 whether the quality management in relation to the DNA lab  
14 is adequate?

15 A. I haven't had the opportunity to assess it in any  
16 depth. I was confident there was a quality manager and a  
17 quality officer.

18  
19 Q. Are you content with the quality management oversight  
20 of the forensic DNA lab in Queensland?

21 A. I am. I am.

22  
23 Q. I see .

24 A. I think we've got some things we can learn from the  
25 Commission.

26  
27 Q. In saying that you're content with it, I'm interested  
28 in understanding, does that mean you've looked over the  
29 course of the last year, and we'll take Ms Gregg  
30 specifically, what things, if any, she's done in relation  
31 to quality management in the lab?

32 A. Sorry, could you say that again.

33  
34 Q. Yes. To take Ms Gregg specifically, have you looked  
35 over the course of the last year at what things  
36 specifically she's done in relation to quality management  
37 of the lab?

38 A. She's overseen a number of assessments that have  
39 happened on campus and that helps, that prepares the  
40 laboratories for, you know, the technical assessor visits.  
41 I think she's undertaken some audits, I'd have to go back  
42 and have a look at the records on that. Her role is more  
43 of an advisory kind of role for the different areas, so  
44 certainly she and I have talked a lot about improving  
45 aspects like training, which I see as part of the quality  
46 system, so she's been very proactive in that space.

1 Q. I see. I suppose obviously you know there is a quality  
2 manager?

3 A. H'mm.

4

5 Q. I'm interested in understanding beyond knowing that  
6 there is a quality manager, in forming the view that you're  
7 content with the quality management in relation to the lab,  
8 what understanding you have of what the quality manager has  
9 actually done over the course of the last year?

10 A. I would have to go back through my records on that,  
11 including the CSP records. So I mean there's always room  
12 to improve, so, you know, content is probably a word that -  
13 you know, we can always improve, that's the whole idea of  
14 the quality system, is to look for improvement.

15

16 THE COMMISSIONER: You mean that by the use of the word  
17 contented, you don't mean that you're complacent?

18 A. No.

19

20 Q. Or that you believe everything is perfect, it is that I  
21 take it you believe the systems in place are adequate to  
22 pick up and anticipate error?

23 A. Yes, Commissioner.

24

25 MR HODGE: And so just in agreeing with the Commissioner,  
26 or adopting those words from the Commissioner, what I'm  
27 interested in understanding is beyond knowing that there is  
28 a quality manager how have you satisfied yourself that  
29 there are systems in place that are adequate for picking up  
30 and preventing error?

31 A. So I'm aware that within a quality system it's not  
32 many, many facets, so you know depending upon the standard  
33 that you're complying with, there's a multitude of  
34 different aspects that a quality system can oversee. So  
35 from down in the laboratory, talking about things like the  
36 quality controls, the quality assurance, the training, the  
37 competency, and then you overlay things like audits and  
38 client satisfaction and those kinds of aspects to ensure  
39 that the quality of the results or accuracy of the results  
40 matches with the client needs. So it's all encompassing  
41 when we talk about the different standards. So I trust, I  
42 trust that based upon the fact that we're NATA accredited,  
43 which is not - that's not, that doesn't go into every  
44 single process in every single laboratory, it can't, but  
45 the fact that we remain accredited gives me a sense of  
46 confidence that the system is in place.

47

1 Q. We'll come to NATA accreditation in a moment. At the  
2 moment I just want to focus on the quality management  
3 system. I think you described Ms Greig's role as an  
4 advisor?

5 A. It's - yes, in most respects I think it's more an  
6 advisory role rather - because we have a number of quality  
7 officers in place.

8  
9 Q. So who is it, if anyone, with quality oversight who  
10 could intervene in relation to a process?

11 A. It would be the quality manager, in consultation with  
12 the quality officer. So I would expect within the  
13 laboratory the quality officer would be the one who would  
14 oversee, for example, signing off temperature records on a  
15 monthly basis, that kind of thing, and then you would have  
16 the quality manager that would, as part of the overall  
17 oversight of the quality system, would, you know, monitor  
18 that as well.

19  
20 Q. So it would be Ms Gregg who could intervene?  
21 A. Yes, or Dr Scott in this case.

22  
23 Q. We'll come to Dr Scott in a moment. Are you aware of  
24 Ms Gregg having intervened in relation to any quality issue  
25 in the lab?

26 A. Not that I can recall.

27  
28 Q. Are you aware of her intervening in relation to quality  
29 issues in other parts of Forensic and Scientific Services?

30 A. Not that I can recall.

31  
32 Q. When you reflect, as I assume you have, on what  
33 happened in relation to the ceasing of processing of  
34 samples in the DIFP range that is .001 nanograms to .008  
35 nanograms, do you regard that as a failure of quality  
36 management?

37 A. I think it depends, it depends on how we got to that  
38 point. So not necessarily a failure, but I think certainly  
39 hindsight has given us the opportunity to revisit a lot of  
40 the science here.

41  
42 Q. I understand you've had the opportunity now to revisit  
43 things. Perhaps we might need to break this down a little  
44 bit. When you say "revisit the science here", what does  
45 that mean?

46 A. Well from the moment that I've arrived there - well,  
47 not from the moment, say from March, there's been some

1 discussions or differences of scientific opinion that, you  
2 know, appear to have become louder and that's a good thing  
3 in terms of improvement. I guess now we have an  
4 opportunity to, to look at those various processes with a  
5 different lens. So - and we would, you know, it's  
6 incumbent upon us now to do that.

7  
8 Q. Perhaps if I try to frame it in a slightly simpler way.  
9 Do you think that if there was adequate quality management  
10 in relation to FSS that it would have picked up at a much  
11 earlier time the issue in relation to not processing  
12 samples in the DIFP range?

13 A. Possibly.

14  
15 Q. Is that a view that you've held for a long time or just  
16 formed now as I've been asking you questions?

17 A. I've only been here for a very short time. What I've  
18 been hearing makes me concerned about the quality system,  
19 so this is our opportunity.

20  
21 Q. You mean the evidence in the Commission has made you  
22 concerned about that?

23 A. And the comments from some of the scientific staff has  
24 made me question.

25  
26 Q. We'll come to this in due course during the day but  
27 what I want to try to understand as best we can is whether  
28 you have identified, or identified at any earlier point in  
29 time in your tenure, that there was an issue in quality  
30 management given what had happened in relation to DIFP  
31 processing and, if so and when, and, if so, what you've  
32 done about it? So can you help us with that?

33 A. I think it's easy to look back, you know, with a  
34 different lens. I think had I, had I known and had I had  
35 the opportunity to spend time investigating what was  
36 happening in that particular part of the laboratory, then I  
37 may have formed a different view. I think, you know, I was  
38 in a position where I trusted that the people who were  
39 doing the quality jobs were doing them correctly, so I  
40 think, I think that they have done their best.

41  
42 Q. Let me then ask about the role of Dr Scott. Do you  
43 know what rank Dr Scott holds?

44 A. Rank?

45  
46 Q. Yes, so what position she holds, what level she's at?

47 A. Well she's a health practitioner. I'm not sure whether

1 she's a 5 or a 6. I believe she may be a 5, level 5.  
2  
3 Q. So if she's a HP5, she would report to a HP6?  
4 A. Yes.  
5  
6 Q. Do you know who she reports to?  
7 A. I'm trying to picture the chart. I think she reports  
8 through to the team leader of evidence recovery, which  
9 would be Ms Brisotto.  
10  
11 Q. Who's an HP6?  
12 A. Correct.  
13  
14 Q. And then in turn Ms Risotto reports to Ms Allen?  
15 A. Correct. HP7?  
16  
17 Q. Who's a HP7?  
18 A. Yes.  
19  
20 Q. And Ms Allen reports to you?  
21 A. Yes.  
22  
23 Q. And Ms Gregg is also a HP6?  
24 A. Correct.  
25  
26 Q. And she reports to you?  
27 A. She does.  
28  
29 Q. So do you know what authority, if any, Dr Scott has to  
30 overrule or pause processes?  
31 A. I don't know.  
32  
33 Q. Have you ever, in the course of the last now 11 months,  
34 have you ever investigated that at all?  
35 A. No.  
36  
37 Q. To come back to the question I'm interested in trying  
38 to understand at this point, which is your view about the  
39 adequacy of quality management oversight, do you regard  
40 that as an adequate process for quality management within  
41 the DNA lab?  
42 A. Yes.  
43  
44 Q. Why?  
45 A. Because I guess I, I guess I've been in a situation  
46 where I've seen this all happening. If I had - it's easy  
47 for me to be able to look back and judge what was happening

1 there. I've been going through it at the same time, so I  
2 guess I - it would be easy to say, to ask why I perhaps  
3 might not have done such and such, but I guess I was  
4 confident at the time that there were processes in place,  
5 that we were abiding by the standards, so I guess we're in  
6 a situation now where we, you know, we've got an  
7 opportunity to revisit that.

8  
9 Q. Step back for a moment from the particular issue that  
10 happened in relation to DIFP?

11 A. Right.

12  
13 Q. Do you regard the quality management function within  
14 the lab as adequate if Ms Gregg does not appear to be a  
15 proactive manager and has responsibility for many different  
16 areas, as you've noted, and Ms Scott, Dr Scott reports to  
17 somebody who reports to Ms Allen and has no independent  
18 authority to pause or do anything on the basis of quality  
19 issues?

20 A. That's a lot that you've just said.

21  
22 Q. Is there a part of it you didn't understand because  
23 I'll take you to it?

24 A. No, no I understood. I understood what you said.

25  
26 THE COMMISSIONER: Would you mind putting it again so I can  
27 understand it.

28  
29 MR HODGE: Yes. As I understand the quality management  
30 function in relation to the lab it has, there are two  
31 people who have responsibility, one is Ms Gregg, is that  
32 right?

33 A. Yes.

34  
35 Q. And the other is Dr Scott?

36 A. Yes.

37  
38 Q. Ms Gregg is a reactive manager. That's not meant as a  
39 criticism of her, but that's the reality, where she has the  
40 responsibility over a number of different areas?

41 A. I would not consider her to only be reactive, I think  
42 she is proactive also. If I could just add something. You  
43 know, scientific practice means that everybody in the  
44 laboratory is responsible for the quality, not just two  
45 people. Each scientist that is doing a test is responsible  
46 for the quality. That's part of our role. So I just want  
47 to clarify that. Because in a laboratory environment we're

1 all responsible.

2

3 Q. I'm not disagreeing with you about that but you have a  
4 specific quality management function for a reason  
5 presumably?

6 A. Yes. Yes, it's part of the standard.

7

8 Q. You don't just park somebody there arbitrarily. So  
9 they have a role and I want to understand your view as to  
10 whether the discharge of the role and the set up in  
11 relation to it is adequate. Ms Gregg has responsibility -  
12 I understand you disagree with the characterisation of her  
13 as reactive?

14 A. I do.

15

16 Q. But she has responsibility for many areas?

17 A. She does.

18

19 Q. And Dr Scott reports to somebody who reports to  
20 Ms Allen and does not have independent authority over  
21 quality management, she can't stop processes or intervene  
22 or act in any way independently?

23 A. I don't know whether she can or not. I would hope that  
24 she would be able to speak up if she identified something.

25

26 Q. But you understand there's a difference, don't you,  
27 between being able to speak up?

28 A. M'hmm.

29

30 Q. And having independent authority to be able to do  
31 something?

32 A. Yes.

33

34 Q. So she doesn't have - you don't think that she has some  
35 independent authority in relation to the lab?

36 A. No.

37

38 Q. And quality control?

39 A. No.

40

41 Q. You're a scientist - sorry, you just have to --

42 A. I was.

43

44 Q. In any event you have scientific training?

45 A. I do.

46

47 Q. Do you regard the set up of the quality management



1 function as adequate; and, if so, why having regard to what  
2 we just talked about as to the roles of the two people who  
3 are responsible for that?

4 A. I believe it's adequate.

5  
6 Q. And doing the best you can for us why, having regard to  
7 the roles of Ms Gregg and Dr Scott?

8 A. Because up until this point in time I've had no reason  
9 to second-guess what they're doing.

10  
11 Q. I see. Let me then ask you about --

12  
13 THE COMMISSIONER: But I understood, Ms Keller, from your  
14 earlier answer?

15 A. M'hmm.

16  
17 Q. That you didn't know whether Dr Scott had authority to  
18 overrule?

19 A. No, that's true.

20  
21 Q. Why would you have had reason to regard them as  
22 adequate? I can understand if you hadn't thought about it  
23 but you didn't actually have any basis upon which to think  
24 that the processes in place to ensure the maintenance of  
25 quality and reliability were adequate because you didn't  
26 know what they were doing or what they could do?

27 A. Well when I say adequate I mean we were complying with  
28 NATA inspections. I was not made aware of any glaring  
29 issues with regards to QC or external QAP. So on that  
30 basis I considered that the quality system was functional.

31  
32 Q. I understand.

33  
34 MR HODGE: Can I ask one other thing related to that then.  
35 Have you done any research or have any expertise in  
36 relation to what is an adequate quality management system?

37 A. Not research as such.

38  
39 Q. Have you got an understanding of what constitutes an  
40 adequate quality management system?

41 A. Yes.

42  
43 Q. And what would be the necessary components of an  
44 adequate quality management system?

45 A. So as I said before there's a number of different  
46 components, and I'm just thinking through the standard, you  
47 know, so you have to all sorts of things like, you know,

1 appropriate supervision in place, you need to have audits,  
2 you need to have training records, competency records,  
3 processes for managing complaints and client feedback. You  
4 need to be able to undertake various assessments of  
5 performance. You need to assess your stakeholders in terms  
6 of who you send your samples to. Those kinds of things.  
7 The Standards are a dry read but there's a lot in there.

8  
9 Q. And when you say the Standards, which standards are you  
10 referring to?

11 A. Well I'm most familiar with 15189 but I am aware that  
12 DNA is accredited to 17025.

13  
14 Q. We'll come to that, you're talking about the ISO  
15 standard, is that right?

16 A. Yes.

17  
18 Q. We'll come to that in a moment. I just want to check  
19 though whether we're not at cross-purposes. I was asking  
20 if you have an understanding of what is an adequate quality  
21 management function and you were talking about the ISO  
22 standard?

23 A. M'hmm.

24  
25 Q. So I just want to check whether you're answering the  
26 question or whether you've understood the question I'm  
27 asking. Insofar as you have an understanding of what  
28 constitutes an adequate quality management function, is  
29 that based on your understanding of an international  
30 standard?

31 A. It's how you implement the requirements of that  
32 standard. It's fine just to have a standard that says that  
33 you must address complaints, but an effective quality  
34 system will have that complaint fully investigated to root  
35 cause and feedback, so that's where you assess whether it's  
36 effective or not. Just having the requirement for it  
37 doesn't mean it's going to be effective, it's how you  
38 execute that.

39  
40 Q. Assuming your view is, as I understand it, that the ISO  
41 standard or whatever the relevant ISO standard is that  
42 applies requires a root cause analysis and being able to  
43 undertake a root cause analysis is an indication of good  
44 quality management, have you satisfied yourself or looked  
45 at whether or not that occurs in FSS?

46 A. Not to that level of detail, no.  
47

1 Q. To any level of detail?  
2 A. Not in my current role.  
3  
4 Q. When you refer to - was it ISO 15189 that you --  
5 A. That's a laboratory one, yes.  
6  
7 Q. When you started talking about a standard before that  
8 was the one that you were referring to, that you're  
9 familiar with?  
10 A. They're very similar.  
11  
12 Q. That's the one that applies for human pathology lab  
13 accreditation?  
14 A. Yes.  
15  
16 Q. And that's one you're familiar with from your previous  
17 role?  
18 A. I am familiar with 17025 and 9001 as well.  
19  
20 Q. And 17025 is the one that the DNA lab is accredited  
21 against?  
22 A. I believe so.  
23  
24 Q. What do you understand that's a standard for?  
25 A. That's a general laboratory kind of standard.  
26  
27 Q. Tell me do you agree with this, ISO 17025 is an  
28 international standard for testing and calibration in  
29 laboratories?  
30 A. I don't know what the exact title of it is.  
31  
32 Q. It's not specific to forensic science?  
33 A. No, I don't believe so.  
34  
35 Q. It's certainly not specific to DNA analysis?  
36 A. I don't believe so.  
37  
38 Q. It provides for standard levels of processes to be in  
39 place for standard laboratory testing regimes?  
40 A. I believe so.  
41  
42 Q. Are you aware that there's an Australian Standard for  
43 forensic analysis?  
44 A. No.  
45  
46 Q. AS5388?  
47 A. Okay.

1  
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Q. You're not aware of that?

A. No.

Q. I see. You've referred to NATA accreditation. Were you aware that NATA can accredit against that standard?

A. No.

THE COMMISSIONER: What's the number of the standard again, Mr Hodge?

MR HODGE: It's AS5388.

THE COMMISSIONER: Thank you.

MR HODGE: Am I right in thinking you sit on the executive committee of, it's ANZPAA, how do you - the Australian and New Zealand - it's PAA?

A. It's policing - policing agency and authority, I can't recall. I'd have to have a look. It's all a bunch of acronyms.

Q. Did you know that the Australian - I'm assuming you didn't know - that the Australian Standard for forensic analysis involved that organisation that you sit on the executive committee for?

A. I presume so now based on what you've said.

Q. And it's published on their website?

A. Okay.

Q. This takes you by surprise?

A. Not necessarily because of the complexity across FSS and there's probably many standards that we comply with that I'm not familiar with.

Q. And the NATA accreditation that's undertaken for the Queensland DNA lab, I understand your view is that demonstrates the adequacy of the lab's processes?

A. That's one mechanism to assess it, not the only one.

Q. So are you familiar with what accreditation by NATA has involved for the Queensland lab?

A. No, I haven't participated in that.

Q. I see. And so how did you form the view that NATA accreditation was a reassurance about the quality of the

1 lab without understanding what it is that NATA accredited  
2 the lab against?

3 A. I guess it's, you know, I have to trust my people and  
4 that's what I did.

5  
6 Q. When you say trust your people, who are the people  
7 you're referring to?

8 A. The people who were in management positions responsible  
9 for the laboratory function and the quality system.

10  
11 Q. Does that mean, I'm assuming one of those people is  
12 Cathie Allen?

13 A. Yes.

14  
15 Q. Who are the other people that you're referring to that  
16 you trusted?

17 A. All of the managers that are responsible for the  
18 quality of the work that's provided.

19  
20 Q. I suppose perhaps if we might approach it in a  
21 different way. Did somebody assure you that the fact of  
22 NATA accreditation was a good indicator as to the quality  
23 of the processes used in the Queensland DNA lab?

24 A. I may have come to that view myself. I see it as one  
25 part of the process.

26  
27 Q. I suppose then perhaps just to come back to, I asked  
28 you about how you'd formed the view that you were satisfied  
29 that NATA accreditation demonstrated the fitness of the  
30 laboratory processes and you said, "I suppose I have to  
31 trust my people" and I'm just interested in understanding  
32 what the connection is. How does trusting your people  
33 explain why it is that you were satisfied about NATA  
34 accreditation without understanding what standard NATA  
35 accredited the lab against?

36 A. So I trust them to do their jobs and part of that is to  
37 fulfil the various accreditation requirements. So I was  
38 confident that that's what was happening.

39  
40 Q. I see. You trusted that they would fulfil whatever the  
41 accreditation requirements were?

42 A. Yes.

43  
44 Q. But that does then bring us back to the question of -  
45 perhaps I can put it in a different way. Do you think in  
46 your role you ought to have familiarised yourself with what  
47 was involved in NATA accreditation for the DNA lab?

1 A. In hindsight, yes.  
2  
3 Q. Before today is that a thought that's occurred to you?  
4 A. Not - well, there's lots of things I could have become  
5 more familiar with, so.  
6  
7 Q. I want to then turn to some of the detail of what  
8 happened in relation to these DIFP samples and your  
9 involvement with them. I understand you started in the  
10 role as Acting Executive Director in, was it October or  
11 November?  
12 A. October.  
13  
14 Q. October of last year. Can you tell us when was the  
15 first time after you'd started in your role that anyone  
16 raised with you there being an issue about the lab not  
17 processing samples between .001 ng/ $\mu$ L and .008 ng/ $\mu$ L?  
18 A. So I can't actually recall exactly when. People  
19 certainly were speaking to me, obviously we now know the  
20 people that were speaking with me. That was when I first  
21 became aware or I was being told that there was some  
22 concern around that DIFP process. That would have been  
23 around March.  
24  
25 Q. March of this year?  
26 A. Yes.  
27  
28 Q. Let's just go back a step. You were copied into emails  
29 with the police?  
30 A. Oh yes.  
31  
32 Q. Last year?  
33 A. Yes.  
34  
35 Q. So presumably you must have at least become aware of  
36 the issue last year when you got emails from the police?  
37 A. Yes. On seeing those is two different things. So I'm  
38 seeing the contact that we had or that I was brought into  
39 with Inspector Neville was talking about the threshold in  
40 general rather than the process of the DIFP in the  
41 laboratory. So to me they're two different things.  
42 Certainly I was aware and I had been copied into Inspector  
43 Neville's correspondence with Ms Allen, where my  
44 understanding was that he was questioning the threshold and  
45 was asking for more information around that. So I was  
46 aware of that. But at that time I did not know - I had no  
47 understanding of what was happening in the laboratory with

1 those three baskets of results. I was not aware of that at  
2 that stage, so I later became aware of that.

3  
4 Q. So when you say what was happening in the laboratory in  
5 relation to those three baskets of results, can you just  
6 explain that?

7 A. So I can't recall when it was but there was a  
8 conversation and Ms Allen described it very well to me so I  
9 could understand it, that there was three different baskets  
10 of results. So there was the less than .001 basket where  
11 there was, I was led to believe there was essentially no  
12 DNA present. Then there was the .001 to .0088 where there  
13 was a small amount of DNA present, and I didn't understand  
14 the spectrum of that at the time, and then there was the  
15 everything higher than that. That's what I mean when I say  
16 about the three baskets. I didn't know at that stage how  
17 each of those was processed in the laboratory. I've  
18 subsequently become aware to some extent as to how that's  
19 done.

20  
21 Q. I may have misunderstood your evidence but I thought  
22 you were saying when some scientists came to raise issues  
23 with you, you understood their issue to be about the  
24 process in the lab for what you described as the three  
25 buckets?

26 A. So relating to the threshold value and whether or not  
27 there was additional processing done, at that stage I  
28 didn't realise what that additional processing was, and at  
29 that stage I was under the belief that at any time in the  
30 process one of the scientists in the laboratory or a member  
31 of the police could ask for additional work to be done. So  
32 at that time I understood that Inspector Neville was asking  
33 about the thresholds and then by the time those people came  
34 and had a talk to me about their concerns, then I took - I  
35 thought they were two different things at the time.

36  
37  
38 THE COMMISSIONER: That is to say you didn't link them?

39 A. I didn't. I didn't. Because I don't know if it's -  
40 Inspector Neville referred to a particular case or a  
41 particular program of work and so I called that particular  
42 and the rest was --

43  
44 Q. You didn't appreciate then that what the scientists  
45 were speaking about and what Neville was speaking about  
46 were different perspectives on the same process?

47 A. I did not.

1  
2 MR HODGE: We'll come back to that then, but can you tell  
3 us when you came to realise that they were talking about  
4 the same thing?  
5 A. Gee, no, I can't tell you exactly. I guess it's sort  
6 of evolved over the time that I've been there that I've  
7 sort of become more aware of the different aspects. I  
8 can't tell you an exact date I'm sorry.  
9  
10 Q. Had you realised by June?  
11 A. Oh absolutely.  
12  
13 Q. Okay. So you realised by June that the scientists and  
14 the police were talking about the same thing?  
15 A. Facets of the same thing, yes.  
16  
17 Q. And you think the scientists first came to you in  
18 March, is that right?  
19 A. That's when the first more formalised conversation took  
20 place. I had had a very informal conversation with one of  
21 the scientific staff, I can't remember if it was late - if  
22 it was in December or January. We had said we'd been to a  
23 meeting and we'd been talking about the possibility, I  
24 think it was the possibility of a review and I'd had an  
25 informal conversation where they'd said, you know, there  
26 was some report and not everyone agreed - this person  
27 didn't necessarily agree with it. It was all sort of very  
28 piecemeal back then.  
29  
30 Q. That was Kylie Rika?  
31 A. No, that was actually Rhys Parry.  
32  
33 Q. Oh I see, Rhys Parry had raised these issues?  
34 A. We had a really informal conversation where I'd asked  
35 him about something and then he said that he had been asked  
36 to provide his opinion on a program of work, which at that  
37 stage I didn't know which one it was.  
38  
39 Q. Do you remember when you first spoke to Kylie Rika  
40 about - just in a very general (indistinct) about an issue  
41 in the lab?  
42 A. Are you talking about a scientific issue?  
43  
44 Q. Any issue, yes?  
45 A. Okay. So Ms Rika would come and have a chat very -  
46 every now and then and I guess I first - we first had a  
47 conversation I think about just the general management team



1 interactions and things like that and I was led to believe  
2 that Ms Rika was - had some different views to some of the  
3 other managers, so we talked about that. I believe we also  
4 talked about the restructuring of the different teams, her  
5 team and another team, and there was a little bit of  
6 concern about why that happened. So we talked about those  
7 kinds of things. And then Kylie, you know, earlier this  
8 year brought me quite a bit of information which was  
9 subsequently part of what we'll probably talk about with  
10 the ESU referrals. So it was a combination of workplace  
11 happenings and then the scientific information.

12  
13 Q. You think it wasn't until this year that she raised an  
14 issue about scientific issues or you're not sure?

15 A. I'm not sure. I'm not sure. I mean I'd have to go  
16 back and have a look at my records but certainly nothing  
17 formal that way that I can recall.

18  
19 Q. Do you remember whether at some stage when she came and  
20 spoke to you she told you about keeping a spreadsheet of  
21 the results?

22 A. Oh, I received a copy of that later and that was  
23 submitted to ESU.

24  
25 Q. I see. When you say later that was in March, was it,  
26 of this year?

27 A. Yes.

28  
29 Q. What did you understand the spreadsheet was about?

30 A. I thought - I didn't really understand but what I  
31 thought she was doing was she was looking at different  
32 cases to try and identify if there were any  
33 inconsistencies. I didn't understand what it said. She  
34 had said to me that a few of them were looking at that and  
35 that they were, essentially I believed, going to provide  
36 that to more senior managers for assessment. I don't  
37 believe I received a copy of that until when the submission  
38 was made, which it was included in that submission.

39  
40 Q. I see. And when you say the submission, you're talking  
41 about in March the submission to ESU?

42 A. I am.

43  
44 Q. At an earlier point in time she told you that she and  
45 some other scientists had been preparing a spreadsheet?

46 A. I think so.

47

1 Q. You think she told you they were going to submit it to  
2 more senior management?

3 A. That's what I thought.  
4

5 Q. The more senior managers I presume would have been  
6 Justin Howes and Cathie Allen?

7 A. I would have thought so.  
8

9 Q. You already knew by then that there was, regardless of  
10 whose fault it was, there were significant personality  
11 issues between Cathie Allen and Justin Howes on the one  
12 hand and Ms Rika?

13 A. I got the impression that there was sort of two  
14 different groups within the leadership team. It was Kylie  
15 with her team and then, you know, Cathie and Justin with  
16 their team. So I would have still expected them to work  
17 together.  
18

19 Q. Did you have the view that Ms Allen had an approach to  
20 management which you described as command and control?

21 A. Yes.  
22

23 Q. Could you just explain to the Commissioner what you  
24 mean by that?

25 A. So my view is that a hierarchical sort of command and  
26 control where only one person makes the decisions on behalf  
27 of everyone, or that people are managed such they have  
28 little - their voice is not loud enough or if they - it's  
29 almost as though they're - everything has to be run through  
30 a particular person in order to be approved, for example.  
31 That's a very, to my mind, old-fashioned view, management  
32 style. So when I realised or I took the view that that's -  
33 how that laboratory was being run, it didn't sit with me  
34 because that's not my style. So that's why I would say  
35 that everything kind of would go through Cathie. So, you  
36 know, you don't necessarily - my view, you don't  
37 necessarily get the best outcomes from that approach.  
38

39 Q. And that's a view you formed very early in taking up  
40 your position?

41 A. In the first couple of months.  
42

43 Q. So that is last year?

44 A. Yes.  
45

46 Q. Just while we're on that issue, do you remember very  
47 soon after you started you intervened to take control of

1 work from home arrangements?

2 A. Yes.

3

4 Q. And that was, what, within about a week of you starting  
5 in the role?

6 A. I don't know, it may have been.

7

8 Q. It was very early?

9 A. It was pretty early.

10

11 Q. Is it the case before your intervention those  
12 arrangements were controlled by Ms Allen?

13 A. And the individual line managers at that time, yes.

14

15 Q. And you stepped in to say they should now come to you  
16 for approval?

17 A. I made the decision that I wanted to see, I wanted to  
18 be able to understand, you know, what was being requested,  
19 and at that stage I don't recall exactly when but people  
20 had been starting to say to me they felt that things  
21 weren't as flexible as they would like. So I therefore  
22 asked if they could all come to me. And it wasn't just a  
23 forensic DNA, it was the whole of the leadership team I  
24 made that request.

25

26 Q. But were the issues in relation to just DNA or just  
27 generally in relation to --

28 A. Mainly DNA lab.

29

30 Q. Those were issues that you were alerted to, what,  
31 almost immediately after you started the role?

32 A. Fairly soon after I started.

33

34 Q. And only by staff members complaining to you or was  
35 there some sort of feedback you were receiving from other  
36 parts of Queensland Health?

37 A. I can't recall when it was but I did have a  
38 conversation with the HR, because I had regular  
39 conversations with our HR expert, and they said that they  
40 considered that the practice of managing the flexible work  
41 arrangements was less than contemporary.

42

43 Q. In the DNA lab?

44 A. Yes.

45

46 Q. Was that when you started or soon after you started or  
47 you're not sure?

1 A. I'd have to go back to my notes. I think it was fairly  
2 early on.

3  
4 Q. That was what prompted you to step in, along with  
5 receiving complaints from staff members, or was it just the  
6 fact you'd received the feedback from DNA?

7 A. It was a combination of things, and subsequently when I  
8 would receive a flexible work arrangement request I felt  
9 that there was perhaps a higher level of rigour for those  
10 particular ones than for other parts of FSS, so that's when  
11 I sort of thought I need to understand what's happening  
12 here.

13  
14 Q. I see. So then to move forward again, at some stage -  
15 and I'm just trying to pin down the timing from your  
16 perspective, at some point earlier than March Ms Rika has  
17 told you that she and some other scientists in the lab have  
18 been preparing a spreadsheet where they identify results  
19 where there's an issue?

20 A. Yes.

21  
22 Q. I've understood you to say you didn't know exactly  
23 what, or you didn't understand exactly what the issue was?

24 A. No.

25  
26 Q. And how early do you think she told you this?

27 A. I don't know. I don't actually - I don't know exactly  
28 when that was. She was one --

29  
30 Q. (Indistinct)?

31 A. She came to see me fairly early on.

32  
33 Q. Could it have been at the end of last year that she  
34 told you that?

35 A. Quite possibly.

36  
37 Q. And Dr Moeller, you know her as well?

38 A. Yes.

39  
40 Q. And do you recall she emailed you last year?

41 A. I would need to see the details. I don't know.

42  
43 Q. I'll show you the email. Can we bring up  
44 FSS.0001.0083.0035R, so the redacted version?

45 A. This was about the - just let me have a look here.

46 Yes. So that was when I mentioned earlier about the team,  
47 the constitution of the different teams. Then, yes, that's

1 what this was, as far as I can recall, about.

2  
3 Q. So she sent you an email on 28 October 2021 and said.

4  
5 *In 2017 a staff member left because of*  
6 *bullying issues. She was attempting to*  
7 *bring to light a significant issue with*  
8 *sperm detection on alleged sexual assault*  
9 *samples. Problems with practices and*  
10 *procedures are ongoing.*

11  
12 A. Yes, I can see that.

13  
14 Q. Did that prompt you to investigate what that was about?

15 A. That's a very vague statement, so no.

16  
17 Q. Sorry, what is the vague statement, the "problems with  
18 processes and procedures are ongoing"?

19 A. Yes. That doesn't have much detail, or any detail  
20 really, so I didn't know at that stage, bearing in mind I'd  
21 arrived four weeks previously, what that actually meant.

22  
23 Q. But did you ask her?

24 A. I don't recall.

25  
26 Q. You don't recall whether you asked her?

27 A. We were talking - no, I don't, because we were talking  
28 about the team composition at the time with this.

29  
30 Q. Did you find out what the issue was with sperm  
31 detection on alleged sexual assault samples?

32 A. Not at that stage, no.

33  
34 Q. I assume you don't regard that as a vague statement?

35 A. No, but my understanding from that was that that was  
36 well before my tenure and I would have hoped it would have  
37 been addressed.

38  
39 Q. She says she was attempting to bring to light a  
40 significant issue with sperm detection on alleged sexual  
41 assault samples. "Problems with process and procedures are  
42 ongoing." I'm struggling with this one. You thought the  
43 statement about sperm detection was specific, but that was  
44 from before your time, and then you thought "problems with  
45 process and procedures are ongoing" was too vague. So you  
46 don't know whether you did anything about?

47 A. At that stage I was, I had just arrived, so, I did not

1 know - I didn't know anything about any of this at the  
2 time.

3  
4 I accept that.

5  
6 THE COMMISSIONER: Maybe you wouldn't know, but really the  
7 issue is you'd just arrived and one of the scientists tells  
8 you that problems with and process and procedures are  
9 ongoing and she's speaking as somebody who's engaged in the  
10 provision of evidence in criminal trials. So the issue is  
11 having received that upon your arrival one would, I would  
12 think, that you'd immediately find out what this was all  
13 about because it might be nothing, it might be a  
14 disgruntled employee, but it might be something serious,  
15 but you didn't --

16 A. Looking back on that now, yes, that's a fair  
17 assessment.

18  
19 MR HODGE: Just doing the best you can for us, why didn't  
20 you do it?

21 A. I'm not, I'm not actually going to sit here and make  
22 excuses for the workload, et cetera, et cetera. So it was  
23 not done. Looking back, should I have done that?  
24 Probably. Did I? No. Would I do it differently? Yes.

25  
26 Q. Do you receive copies of the management meeting minutes  
27 from the DNA lab?

28 A. No.

29  
30 Q. I see. So how do you get informed about what has been  
31 considered by the management team?

32 A. Via Cathie.

33  
34 Q. By written updates or verbal?

35 A. We would meet on a fairly regular basis.

36  
37 Q. I see. I'm interesting in just understanding one  
38 thing. Can we bring up WIT.0006.0115.0001. So these are  
39 the minutes of the management team meeting on  
40 11 November 2021. Can we just go to p7 of that document.  
41 You see at item 8.1 "Is DNA insufficient for processing  
42 process"?

43 A. Yes.

44  
45 Q. The person whose initials are next to it is Kylie Rika?

46 A. I presume that's her initials.

47

1 Q. You see what's referred to there is Ms Rika collecting  
2 samples where better results obtained after case manager  
3 requested concentration, including profiles for NCIDD.

4  
5 *General discussion ensued that this*  
6 *possibility was communicated and accepted*  
7 *by QPS and that they could request*  
8 *processing any time, that the case manager*  
9 *may rework if case circumstances indicate*  
10 *worthwhile.*

11  
12 I'm just interested in knowing whether Cathie Allen  
13 reported back to you that this issue of what was going on  
14 with DIFP samples was also something within her management  
15 team they were raising as an issue?

16 A. Not at that time, no.

17  
18 Q. At any time?

19 A. I don't recall that, no.

20  
21 Q. That's already been tendered, Commissioner, so I don't  
22 need to tender that. Can we then bring up - sorry, I don't  
23 have a doc ID for it because these are exhibits from  
24 Ms Keller's statement, so I just need to give you the  
25 exhibit number and I'm hoping it will be possible to bring  
26 that up, Mr Operator. Can we bring up LK-18. Sorry,  
27 LK-118, I apologise. So this is a chain of emails and if  
28 we go to p2 of the chain - I'm sorry, actually that's my  
29 fault. If we go to p1 of the chain. You see at the bottom  
30 of the page there's an email, if we blow it up - we just  
31 need to scroll up, Mr Operator - it's an email from  
32 Ms Allen back to Inspector Neville and copied to  
33 Superintendent Frieberg and you?

34 A. Yes.

35  
36 Q. It's dated 16 December 2021 and it seems that it's  
37 Ms Allen who is copying you into this chain of emails  
38 that's about what's going on with the DIFP results?

39 A. I was copied in around about that time, I believe. I  
40 think that that conversation between the two of them had  
41 been going on before that date.

42  
43 Q. Yes, I understand. You were copied in at about this  
44 time. I'm interested in understanding, before you got  
45 copied in on the chain of emails, had you already discussed  
46 the issue with Ms Allen?

47 A. No.

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Q. Had you discussed it with anyone?

A. This particular issue?

Q. Yes?

A. I wasn't aware of it until then.

Q. So the first time you became aware of it was when you were copied into a chain of emails?

A. I believe so.

Q. Did you read the chain of emails then?

A. Yes.

Q. Did you understand what it was about?

A. Not in entirety, no.

Q. But to some extent?

A. Vaguely, I would have to say.

THE COMMISSIONER: Ms Keller, you have a scientific background?

A. I do.

Q. But not in DNA profiling?

A. No.

Q. But when you become the head of a body like FSS, which includes DNA profiling, I take it you didn't regard it as a necessary preparation for filling that role that you should educate yourself on the science and technology of DNA profiling? At least you didn't do so, I gather?

A. I did not.

Q. Because one would think that, as we lawyers have done, we're not scientists, in order to conduct this enquiry we've had to educate ourselves in that subject but how did you - you've been in management positions before. What did you regard as your role then if you would not be able to penetrate what you're being told in relation to the scientific craft? How would you be able to manage in some situations if you, as in the case of Ms Rika giving a spreadsheet which didn't mean anything to you, and I take it you really didn't understand the substance of her complaints, how could you manage it if you don't have an adequate knowledge of the subject matter?

A. So my role, as I understand it, or understood it at the



1 time, was not to be the scientific expert in the various  
2 disciplines at FSS, of which there are perhaps seven. I  
3 don't think there is such a person who could be a  
4 specialist in every single aspect of FSS. I certainly have  
5 not portrayed myself as that. I have - my understanding of  
6 my role at FSS is that I'm to lead the organisation. I'm  
7 not to - my role is not to be that scientific expert  
8 because I have a team at FSS of those people who I - who  
9 provide me with that advice. So I see my role as being  
10 overarching for the management of the campus. So that's  
11 what I think I've done.

12  
13 MR HODGE: Now, when you were copied into this chain of  
14 emails - if we go to the email at the top of the page,  
15 Mr Operator. You knew from Inspector Neville's email that  
16 the issue is one that the QPS regarded as a high priority?

17 A. Yes.

18  
19 Q. And they were seeking advice as soon as possible?

20 A. Yes.

21  
22 Q. I'm just trying to understand then what you understood  
23 the issue to be. I might take you to some parts of the  
24 email. Can we go to p3. Can we blow up the email from  
25 Inspector Neville on 3 December, which is in the middle of  
26 the page. So you understood that there was an issue that  
27 had arisen - I know it says 2008 but I'm assuming you  
28 realise it was 2018 - an issue that had arisen about some  
29 decision that had been made in 2018?

30 A. Yes.

31  
32 Q. Do you understand what the decision was?

33 A. No.

34  
35 Q. Did you understand how the decision had come about?

36 A. No.

37  
38 Q. Did you seek to inform yourself as to what the decision  
39 was or how it had come about?

40 A. Not at that stage.

41  
42 Q. When you were copied into the chain of emails did you -  
43 after you read them did you discuss it with Ms Allen?

44 A. Not at that stage.

45  
46 Q. Could you just explain to us why not?

47 A. Because with regards to this particular enquiry, my

1 understand at that time was that Cathie and Inspector  
2 Neville's roles were essentially equivalent in terms of  
3 they were, you know, peers working on different projects,  
4 so I expected that Cathie would address those concerns  
5 without - you know, on behalf of that team.  
6

7 Q. I just want to understand. You're copied into a chain  
8 of emails, you haven't been on the earlier emails, but it  
9 seems to have reached a point where somebody has decided  
10 you should be involved?

11 A. So it seems.

12  
13 Q. It's not just that you were involved, it's also that  
14 the superintendent is involved.

15 A. Yes.

16  
17 Q. Having been copied into these emails on an issue that  
18 you'd not heard about before, you didn't make any inquiries  
19 as to what it was about?

20 A. I think I will have, there'll be records where I've  
21 spoken with Cathie about this particular - and that's why I  
22 called it, I can see now it's referred to as the operation  
23 there. That's how I referred to it with her and I did have  
24 conversations with Cathie about the progress of that  
25 request.  
26

27 Q. I see. So you did have conversations with Ms Allen  
28 about what the request was about and how it was going?

29 A. Yes, and they will be part of my statement, the  
30 different diary notes from the meetings I had with Cathie.  
31

32 Q. We'll come back to that in a moment. Can we blow up  
33 the email at the bottom of the page. You see this is an  
34 email from Ms Allen to Inspector Neville and you'll see  
35 that Ms Allen says in that large paragraph.  
36

37 *After we had conducted a review of the*  
38 *large dataset it was found that below a*  
39 *particular quantitation threshold, and in*  
40 *line with manufacturer's specifications, a*  
41 *very small percentage of samples may*  
42 *provide some type of DNA profile if they*  
43 *proceeded through DNA processing.*  
44

45 Do you remember whether you discussed with Ms Allen what  
46 the dataset was or what the percentage was that was  
47 providing a DNA profile?

1 A. Not at that stage.  
2  
3 Q. But at some stage?  
4 A. Yes.  
5  
6 Q. When was that?  
7 A. I don't recall exactly when that was.  
8  
9 Q. You see that she then goes on to say.  
10  
11 *This information was provided to the QPS*  
12 *and the QPS advised that it would prefer*  
13 *that those samples that didn't exceed the*  
14 *quant threshold were not processed through*  
15 *to a DNA profile. We've monitored this and*  
16 *have found that with a larger dataset the*  
17 *small percentage didn't vary.*  
18  
19 A. I can see that, yes.  
20  
21 Q. Have you ever discussed with Ms Allen what this larger  
22 dataset was, or the monitoring was?  
23 A. Subsequently.  
24  
25 Q. When?  
26 A. When I became - I assume, I can't recall exact dates,  
27 when I became aware of that options paper, so --  
28  
29 Q. I see. So did you ascertain from Ms Allen whether or  
30 not there had been further monitoring of a larger dataset?  
31 A. Not at that stage. I became aware based upon Inspector  
32 Neville's request that another data extract was going to be  
33 assessed, but not at that, not at that stage.  
34  
35 Q. I suppose we'll come to those emails in a moment but is  
36 what you're referring to that Ms Allen said it would be  
37 necessary to extract data from the forensic register?  
38 A. In response to the request from Inspector Neville that  
39 was what I understood, yes.  
40  
41 Q. Do you see, though, in this email what Alan is saying  
42 we've monitored this and found that with in a larger  
43 dataset the smaller percentage didn't vary. Have you ever  
44 been told what that monitoring was or what this larger  
45 dataset was that showed that the small percentage didn't  
46 vary?  
47 A. No.

1  
2 Q. Did you ever ask her about it?

3 A. No.  
4

5 Q. Then if we go to p2, and can we blow up the text of  
6 that email, which you'll see is an email from Inspector  
7 Neville to Ms Allen. This is the email immediately before  
8 you get copied in, so I'm assuming you would have read this  
9 email at the time?

10 A. Yes, but - yes. It doesn't mean I understood the  
11 detail at the time.  
12

13 Q. You may not have understood the detail, I'm just trying  
14 to understand what you understood, if anything. You see  
15 that in the first sentence it says.  
16

17 *Since sending you my last message I found*  
18 *some correspondence from February 2018*  
19 *where QHFSS made a recommendation to QPS*  
20 *that testing of samples that contained less*  
21 *than .008 ng/uL of DNA should discontinue*  
22 *because the chance of obtaining a profile*  
23 *was less than 2 per cent?*

24 A. Yes.  
25

26 Q. Then if you look in the last - the rest of the email  
27 talked about further testing but you see the last full  
28 sentence from Inspector Neville says  
29

30 *I think the 30 per cent success rate of*  
31 *retesting warrants a little further*  
32 *examination to make sure we are maximizing*  
33 *our chances of solving crime, particularly*  
34 *for major crime matters.*  
35

36 A. Yes.  
37

38 Q. Did you understand that, that is back in December of  
39 last year, that there was an issue that apparently samples  
40 were not being tested below a certain threshold on the  
41 premise that there was a less than 2 per cent chance of  
42 obtaining a profile, but more recent testing had shown a  
43 30 per cent success rate?

44 A. At that, at that time I was being told that, and  
45 subsequent to that I was being told that the 1.86 per cent  
46 was the figure in question and that there was a safety net  
47 in that at any time a scientist or a member of the Police

1 Service could request full testing, so I didn't really  
2 understand the 30 per cent success rate because I was being  
3 presented with the 1.86 on a regular basis with that caveat  
4 that essentially nothing is missed, so.

5  
6 Q. Just for a moment just focus your attention on December  
7 of last year when, as I understand your evidence, this  
8 issue gets raised with you for the first time by being  
9 copied into emails, that's right?

10 A. Yes. I think so.

11  
12 Q. The emails that are identifying the issue are  
13 identifying that on the one hand a decision seems to have  
14 been made on the basis that the chance of obtaining a  
15 profile was less than 2 per cent, but on the other hand  
16 more recent retesting by police had shown a 30 per cent  
17 success rate. You must have at least understood that from  
18 reading the email, that that was an issue, that there was a  
19 difference between the very low original percentage and the  
20 much higher percentage that the police were now finding?

21 A. Not at that time, I did not.

22  
23 Q. I don't understand, how could you not have understood  
24 that if you'd read the email?

25 A. I did not understand that at the time.

26  
27 Q. Okay. You understood - tell me then if you understood  
28 at least this: that the issue of concern to police was  
29 about whether a process had been put in place that was not  
30 maximizing the chance of solving crime, particularly for  
31 major crime matters?

32  
33 THE COMMISSIONER: I'm sorry, could you say that again.

34  
35 MR HODGE: Yes. You understood that the issue that was  
36 being raised by police was whether a process had been put  
37 in place that was not maximizing the chance of solving  
38 crime, particularly for major crime matters?

39 A. I did not put that into context at the time because I  
40 was under the impression that a review was going to be done  
41 and, again, that nothing, that there was no cases that were  
42 going to be compromised. That's what I was continually  
43 told.

44  
45 Q. Before we go into what you understood as the response  
46 that might have come from Ms Allen or somebody else, I just  
47 want to get a focus on what you understood was the issue

1 that was being raided by police. I understand you're  
2 saying in December of last year you didn't understand the  
3 idea of a very low percentage versus 30 per cent. I'm  
4 interested in understanding whether even at a more general  
5 level you understood that the concern being raised by the  
6 police was a process had been put in place that was not  
7 maximizing the chance of solving crime, particularly for  
8 major crimes?

9 A. I did not understand that at that time.

10  
11 Q. Again, doing the best you can for us - how, how could  
12 you not have understood that?

13  
14 THE COMMISSIONER: That question is almost impossible to  
15 answer.

16 A. Exactly. Thank you, commissioner.

17  
18 Is that a convenient time for a break?

19  
20 MR HODGE: Yes, Commissioner.

21  
22 THE COMMISSIONER: We'll resume at quarter to 12.

23  
24 **SHORT ADJOURNMENT**

25  
26 THE COMMISSIONER: Yes Mr Hodge.

27  
28 MR HODGE: Thank you, Commissioner. I think we had up on  
29 the screen - there we go. So, Ms Keller, that was the  
30 email from Inspector Neville and then if we then go to the  
31 first page, which is p1. You were copied into the email  
32 from Ms Allen, which we looked at at a moment, we brought  
33 that up, on 16 December. So you knew that Ms Allen was  
34 saying that somebody, the lab, "we" were going to review  
35 the scientific data available to them and provide further  
36 advise to QPS?

37 A. Yes.

38  
39 Q. You knew, if we go to the email at the top, that  
40 whatever this issue was, it was high priority for the QPS?

41 A. Yes.

42  
43 Q. I think you were saying to the Commissioner before the  
44 break that you were receiving, in effect, reassurance from  
45 Ms Allen. I just wanted to understand the reassurance, was  
46 that at the end of last year or was that this year or  
47 you're not sure?

1 A. I don't know the exact date.

2  
3 Q. I then just wanted to try to understand, having  
4 received an email from the Inspector to Ms Allen and copied  
5 to you and the Superintendent saying that this issue, and I  
6 accept you say you didn't understand what it was, but that  
7 "the issue is high priority for us", did you take steps to  
8 understand or monitor what was going to be done about the  
9 issue?

10 A. We did.

11  
12 Q. What was that?

13 A. So you'll see in my statement that there was a number  
14 of different occasions where I spoke with Ms Allen to check  
15 on the progress of that data extract and the subsequent  
16 review.

17  
18 Q. We can go to your statement in a moment. Let me just  
19 understand, though, when you're talking about the data  
20 extract, are you talking about February of this year?

21 A. Yes.

22  
23 Q. Just take your mind back, though, if you can, to  
24 mid-December of last year?

25 A. H'mm.

26  
27 Q. Which is when you're told, for the first time it seems,  
28 that there's this high priority issue for the QPS?

29 A. H'mm.

30  
31 Q. What steps, if any, did you take at that time to try to  
32 understand what the issue was about or what was going to be  
33 done about it?

34 A. So after this - I don't have a diary note of it, but I  
35 did sit down and talk with Cathie and Justin and asked them  
36 what, what is required to address that concern and I was  
37 told that it required an extract from the Forensic  
38 Register, so at that stage I didn't know anything about the  
39 Forensic Register as such and how difficult that would be  
40 to get, so I left that with Cathie to initiate and commence  
41 the report, or the review based upon the inquiry.

42  
43 Q. Maybe if we can bring back up your supplementary  
44 witness statement. So, Mr Operator, this is  
45 WIT.0017.0248.0001. Then can we go to p24 of the  
46 statement. If we blow up paragraph 76, you set out in the  
47 preceding paragraph those emails from December and then you

1 say

2  
3 *I subsequent understood the review of the*  
4 *scientific data that Ms Allen had referred*  
5 *to in her email to Inspector Neville dated*  
6 *16 December 2021 would involve data being*  
7 *extracted from the Forensic Register and*  
8 *that a quote would need to be obtained from*  
9 *BDNA prior to requesting the work to be*  
10 *performed. I also understood that once the*  
11 *data had been extracted and reviewed, the*  
12 *findings were to be presented to the QPS in*  
13 *the form of a further report*  
14

15 Can you tell us when you came to have that understanding  
16 that you've described in paragraph 76?

17 A. That was not long after when I spoke with Cathie and  
18 Justin, as I just mentioned.  
19

20 Q. And when you spoke to Cathie and Justin, was that back  
21 in December of last year?

22 A. Yes, it was. My recollection, it was not long after I  
23 was brought in on the discussion.  
24

25 Q. So in December of last year, you think after having  
26 been copied into this email exchange, you had a meeting  
27 with Ms Allen and Mr Howes?

28 A. I think it would have been informal, but yes.  
29

30 Q. Just tell me if I'm right about this: you weren't  
31 regularly meeting with Mr Howes?

32 A. No, no.  
33

34 Q. So if Mr Howes was coming to a meeting, that wasn't  
35 part of your regular catch-up with Ms Allen?

36 A. No.  
37

38 Q. So is there a separate meeting that the three of you  
39 had in order to discuss this issue?

40 A. So from memory Mr Howes had been acting for a period of  
41 leave, so he was involved in a lot of different  
42 conversations, so I think it was just a conversation that  
43 included him, but, yes, most of the time it was with  
44 Cathie.  
45

46 Q. Is it possible you're getting confused and whatever the  
47 discussion is that you're referring to is something that



1 happened in February of this year?

2 A. No.

3

4 Q. So it happened last year. Nd when you had this meeting  
5 with them to discuss this issue and what they were going to  
6 do, did you ask them to explain what the issue was to you?

7 A. Not at that stage. Basically they were going to go and  
8 do that review and I was just awaiting the findings from  
9 that.

10

11 Q. But you didn't have an understanding of what it was  
12 that they were reviewing?

13 A. I thought that they were going to go back to have a  
14 look at the data for that particular time frame in question  
15 and reassess that data.

16

17 Q. What time frame in question?

18 A. Well, I think it was from 2018 onwards.

19

20 Q. What did you understand they were assessing?

21 A. The percentage, the 1.86, they were going to reassess  
22 whether or not from then onwards whether there was any  
23 difference in that, in that rate.

24

25 Q. So you understood that in December of last year?

26 A. Based on this, that's all, that's all I knew at that  
27 stage.

28

29 Q. When you say "based on this", what's on the screen is  
30 paragraph 76 of your supplementary statement. Is that what  
31 you're referring to?

32 A. Based on conversation about what would be required to  
33 have a look at that data.

34

35 Q. You had a discussion with Cathie Allen and Justin Howes  
36 in December of last year about what would be required to  
37 look at the data and what you understood they were looking  
38 at was whether there had been a change since 2018 to a  
39 percentage rate which you had understood had previously  
40 been 1.86 per cent?

41 A. That's what I understood.

42

43 Q. To go back to my earlier question about the 30 per  
44 cent, did you understand that the police were saying they  
45 were getting 30 percent?

46 A. No, not at that stage.

47

1 Q. When did you come to understand that?  
 2 A. More recently as - more recently.  
 3  
 4 Q. Does that mean in the last month or in the last three  
 5 months? I'm just - doing the best you can for us?  
 6 A. Back in June I think.  
 7  
 8 Q. I see. Okay. We'll come back to that. So you had  
 9 this discussion with Ms Allen and Mr Howes and if we blow  
 10 up paragraph 77, I take it you understood that the issue  
 11 had an urgency to it?  
 12 A. Yes.  
 13  
 14 Q. You understood that from December of last year?  
 15 A. Yes.  
 16  
 17 Q. You say.  
 18  
 19 *I expected Ms Allen to prioritise the work*  
 20 *involved in requesting the quote*  
 21 *undertaking the review and preparing the*  
 22 *supplementary report*  
 23 A. Yes.  
 24  
 25 Q. I am reading your reading, it reads as if you had that  
 26 expectation from December of last year?  
 27 A. Yes.  
 28  
 29 Q. And so can you tell us then what were the steps you  
 30 took, if any, to supervise whether she was doing that or  
 31 not?  
 32 A. I - as I said earlier, there was a number of meetings,  
 33 the regular meetings where I checked on the progress of  
 34 that with her.  
 35  
 36 Q. But these are your regular catch ups with her?  
 37 A. Yes.  
 38  
 39 Q. So you might have had one before Christmas, you might  
 40 not have?  
 41 A. They were generally every couple of weeks.  
 42  
 43 Q. Okay, so you might have had a couple in January?  
 44 A. I think my notes have been part of my statement.  
 45  
 46 Q. And what did she tell you?  
 47 A. That that was being worked on.

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Q. She told you that in January?

A. Yes.

Q. And then on 1 February 2022 there was a meeting that occurred with QPS?

A. Yes.

Q. And you sent round the agenda for that meeting?

A. I may have.

Q. Can we bring up FSS.0001.0011.5279. It might need to come out of the Commission's private book. Thank you. I'm going to do that at least once more to you. Can we just scroll down the page. You see, so you send an email on 1 February to Superintendent Frieberg?

A. Yes.

Q. With the agenda for the meeting that day?

A. Yes.

Q. It doesn't look like this issue of the DIFP processing was on the agenda?

A. Not at that stage.

Q. Was there a reason why you didn't put it on the agenda?

A. Because I was under the impression that it was being worked on.

Q. Sorry, being worked on by Ms Allen?

A. Yes.

Q. I'm not sure I understand that answer, but let me explain to you why and then you can respond?

A. M'hmm.

Q. You've seen an email in mid-December of the year before where Inspector Neville has said this is an issue of priority for the police?

A. Yes.

Q. And you've given evidence that you understood that there was an urgency to the issue and you hadn't been copied into any further communications between Ms Allen and Inspector Neville about the issue?

A. I don't know, I'd have to go back through my records.

1 Q. You weren't aware of any other communications that  
2 occurred?

3 A. No, not that I know.

4  
5 Q. Between Inspector Neville and Ms Allen about the  
6 issues?

7 A. Not anything - I wasn't copied in on, no.

8  
9 Q. So would it not be natural if you were having your  
10 meeting with the QPS to have on the agenda this issue that  
11 they have described as one of priority for them?

12 A. Well I didn't at that stage - I didn't have an  
13 appreciation of how much work it would be to extract and  
14 review that data. So, you know, I had - I guess I didn't  
15 understand that whether it would be a large data extract or  
16 I didn't understand the detail around what was required,  
17 but Cathie, I was assured that it was, you know, under way.

18  
19 Q. I don't know that that answers my question. What I'm  
20 just trying to understand is given that you knew that this  
21 was an issue for the QPS and that it was an urgent issue?

22 A. M'hmm.

23  
24 Q. And that as far as you knew no update had been provided  
25 to the QPS about what was being undertaken, why didn't you  
26 then put it on the agenda?

27 A. As I said I was being assured that it was in progress.

28  
29 Q. And then if we blow up paragraph 78 of your statement.  
30 At paragraph 78 of your statement you say:

31  
32 *At a meeting with the QPS on 1 February*  
33 *2022 I asked Ms Allen to provide an update*  
34 *on the review of the scientific data.*

35  
36 A. M'hmm.

37  
38 Q. Is that accurate, that you at the meeting asked  
39 Ms Allen to provide an update on the review?

40 A. Yes.

41  
42 Q. Do you remember that now?

43 A. Yes.

44  
45 Q. Do you remember how the issue came up at the meeting  
46 given that you hadn't put it on the agenda?

47 A. At those meetings it could have just been raised by one

1 of our QPS colleagues.

2  
3 Q. Was what happened this, at the meeting Inspector  
4 Neville asked about this issue, which was an issue of  
5 concern to him?

6 A. Quite possibly.

7  
8 Q. And did Ms Allen respond?

9 A. Yes.

10  
11 Q. And when you say you asked her to provide an update, do  
12 you actually remember asking her to do something?

13 A. Yes.

14  
15 Q. What did you ask her to do?

16 A. I asked her to give an update on where the review was  
17 up to. At that stage I wasn't aware of any report having  
18 been generated.

19  
20 Q. I understand. But you as I understand it, by this  
21 time, by 1 February, you had thought for a month and a half  
22 or thereabouts that (a) there was information that needed  
23 to be extracted from the forensic register in order to do a  
24 report, (b) that Ms Allen and Mr Howes were taking steps to  
25 extract that data, and (c) that they were going to prepare  
26 a supplementary report?

27 A. That's correct.

28  
29 Q. If we then blow up the next paragraph of your  
30 statement, you say:

31  
32 *On 21 February I was copied into an email*  
33 *from Inspector Neville and Ms Allen with*  
34 *the subject line forward testing thresholds*  
35 *in which Inspector Neville pressed the*  
36 *issue of testing thresholds and asked for*  
37 *advice on how the Queensland threshold*  
38 *accorded with other jurisdiction, as well*  
39 *as the outcome of the review of the*  
40 *scientific data referenced in December.*

41  
42 A. Yes.

43  
44 Q. And he again stated that the request was urgent?

45 A. Yes.

46  
47 Q. Again, just doing the best you can for us, do you

1 remember whether what had happened was that an issue had  
2 arisen because an article had been published in The  
3 Australian newspaper?

4 A. There was a lot going on back then that way.

5  
6 Q. Yes. Do you remember --

7 A. There was a lot of publicity at that stage.

8  
9 Q. Yes. Do you remember whether an article had been  
10 published in The Australian on about 17 February?

11 A. Possibly.

12  
13 Q. If we take that down and blow back up paragraph 78  
14 again. As I'm understanding the timeline, in mid-December  
15 you've been given the information that you've referred to  
16 by Mr Howes and Ms Allen. On 1 February there's this  
17 meeting and then on 21 February there's the email from  
18 Inspector Neville. Can you just explain to us, dealing  
19 with each of the two segments, between mid-December and 1  
20 February did you follow up with Ms Allen about what was  
21 happening about this extracting data, reviewing data and  
22 preparing a report?

23 A. I think you'll find in my exhibits that my diary notes  
24 suggested it was part of our regular discussions.

25  
26 Q. Okay. And then between 1 February and 21 February had  
27 you followed up about that issue?

28 A. I'd have to go back and check.

29  
30 Q. Okay?

31 A. But that will be in my statement.

32  
33 Q. All right. Can we bring up WIT.0017.0090.0001. Can we  
34 just go to p.0003 please, Mr Operator. You see at the  
35 bottom of the page I think is the first email you're  
36 referring to where Inspector Neville emails Ms Allen and  
37 copies you and Superintendent Frieberg?

38 A. Yes.

39  
40 Q. And he notes at the beginning of his email the  
41 difficulty of the ongoing coverage by The Australian of the  
42 Shandee Blackburn case?

43 A. Yes.

44  
45 Q. And expresses sympathy that that coverage must be  
46 causing significant stress or Ms Allen and her staff?

47 A. Yes.

1  
2 Q. You see then he notes that he's been drawn in to  
3 comment internally on peripheral matters that have been  
4 raised by and he says the article which seems to be The  
5 Australian on 18 February 2022?

6 A. Yes.

7  
8 Q. And just reading that, does that bring back for you a  
9 memory that on about 17 or 18 February 2022 The Australian  
10 had published a story that had further raised concerns  
11 about DNA testing in Queensland?

12 A. Yes.

13  
14 Q. One of the things you refer to in your statement is the  
15 external review that was sought to be engaged?

16 A. Yes.

17  
18 Q. Am I right in thinking what prompted the decision by  
19 somebody that there should be an external review was the  
20 coverage in The Australian?

21 A. That was part of it, certainly.

22  
23 Q. One of the things I'm interested in, and I'll come back  
24 to the detail of this, is who it was that made that  
25 decision or suggested - perhaps I'll put it a different  
26 way, who suggested that there be an external review? The  
27 way your statement reads it's almost as if it was you, but  
28 it wasn't you, was it?

29 A. It was - it was more than just me.

30  
31 Q. Was it you at all?

32 A. Yes.

33  
34 Q. So you sat down and spoke to some people and suggested  
35 that there be an external review?

36 A. It was agreed that there would be some kind of review  
37 which then a brief was prepared from my office. So yes, I  
38 was involved in it.

39  
40 Q. Who were the people though who you talked to?

41 A. Well the people that I would normally be talking to at  
42 that point in time.

43  
44 Q. Just rather than telling the hearing --

45 A. Well I don't recall exactly who but I presume it would  
46 have been my immediate manager.

1 Q. Who was that?

2 A. Mr Bricknell.

3

4 Q. And was what happened that at the time or on the day or  
5 around the day when The Australian published the article  
6 that one of your superiors got in contact with you about  
7 the issue?

8 A. Quite possibly.

9

10 Q. You don't remember?

11 A. No.

12

13 Q. If we look at the email we see Inspector Neville says:

14

15 *It claims that the Queensland lab requires*  
16 *crime scene samples to have the equivalent*  
17 *of at least 22 cells to be fully tested*  
18 *otherwise they are deemed to have*  
19 *insufficient DNA. It claims that the*  
20 *threshold is double the 11 cells required*  
21 *in New South Wales and almost three times*  
22 *the eight cells that the product*  
23 *manufacturer has used to obtain good*  
24 *quality DNA profiles. I know you are busy*  
25 *but since 1 December 2021 I have raised*  
26 *concerns in relation to the truncating of*  
27 *testing based on DNA quant values because*  
28 *of the significant number of below*  
29 *threshold samples yielding a profile when*  
30 *testing is continued. This remains a high*  
31 *priority matter for the QPS. To date I*  
32 *have not received any feedback or*  
33 *explanation as to the difference between*  
34 *the predicted (less than 2 per cent) and*  
35 *observed success rate (30 per cent) for*  
36 *samples that reportedly contained a low*  
37 *concentration.*

38

39 Just pausing there, presumably you read this email?

40 A. Yes.

41

42 Q. When you read this email did you understand that the  
43 concern being raised by the QPS was about an apparent  
44 difference of a predicted less than two per cent success  
45 rate and an observed success rate of 30 per cent?

46 A. I do now.

47



1 Q. No, please. Answer my question. When you read this  
2 email did you understand that?

3 A. Not at the time.

4

5 Q. Again, is there an explanation you can offer for how  
6 you could not have understood it at the time?

7 A. No.

8

9 Q. Then you see Inspector Neville says:

10

11 *Could you please provide advice as to how*  
12 *the Queensland threshold for testing*  
13 *accords with other jurisdictions. Can you*  
14 *also please advise the outcome of any*  
15 *internal review that you have undertaken*  
16 *based on the information I have provided.*  
17 *I need this information as a matter of*  
18 *urgency to brief the Executive in relation*  
19 *to this matter.*

20

21 A. Yes.

22

23 Q. I want to then understand though, as at this day, 21  
24 February, you had understood I take it for about two months  
25 that a further report was being prepared by the DNA lab?

26 A. Yes.

27

28 Q. And had that been, as you recall it, revealed at the  
29 meeting on 1 February?

30 A. No.

31

32 Q. So nobody told the QPS on 1 February that you were  
33 preparing a report?

34 A. I think that there had been informal conversations  
35 about that.

36

37 Q. Between whom?

38 A. Possibly between myself and either Superintendent - I  
39 can't recall who was in the role at the time, either it was  
40 Superintendent Frieberg or McNab.

41

42 Q. So at the meeting on 1 February neither you nor  
43 Ms Allen said:

44

45 *We're preparing a report.*

46

47 A. Well I don't think I would have said that so - I think

1 it was still being presented to QPS as though it was an  
2 undertaking a review of some data.

3  
4 Q. Okay. Then at some point you had some conversations  
5 with Superintendent McNab?

6 A. Yes, on I think - quite frequently we would talk about  
7 various things.

8  
9 Q. Is it possible the conversations you're referring to  
10 are ones that you had later in March or April?

11 A. Possibly, yes.

12  
13 Q. We'll come to those. So then if we go back to this  
14 email. You got the email and you knew that Ms Allen was  
15 away?

16 A. Yes.

17  
18 Q. Could we just go back to page 2 of the email. So then  
19 - I'm sorry, that's my fault, Mr Operator. Could we go  
20 back down to page 3. So you then forward the email to  
21 Mr Howes?

22 A. Yes.

23  
24 Q. And ask him to investigate and provide you with an  
25 update on the progress of the request?

26 A. Yes.

27  
28 Q. You say:

29  
30 *Cathie mentioned a quote for forensic*  
31 *register but I don't have the detail on an*  
32 *expected turn around time.*

33  
34 A. That's right.

35  
36 Q. Just take a moment to think about it. Is it possible  
37 that no one had discussed with you the idea of a further  
38 report being prepared at this stage?

39 A. Sorry, can you say that again?

40  
41 Q. Yes. Is it possible that at this stage no one had  
42 discussed with you the idea of preparing a further report?

43 A. I'm not sure if it was then but we certainly talked  
44 about what this report might be called. So there was talk  
45 of a report because it wasn't going to be called another  
46 Options Paper or anything like that, but that might have  
47 been just after that.

1  
2 Q. I see?  
3 A. But I thought there was going to be another report.  
4  
5 Q. Just doing the best you can for us, is it possible that  
6 what had happened at the meeting on 1 February with the  
7 QPS, when Inspector Neville had raised the issue, that  
8 Ms Allen had said:  
9  
10 *We've got to do a data analysis. The only*  
11 *way to do is to extract information from*  
12 *the forensic register which we don't*  
13 *presently have the capability to do and*  
14 *we're going to have to get a quote to do*  
15 *that.*  
16  
17 Or something to that effect?  
18 A. Possibly, yes.  
19  
20 Q. Then if we go to the next page, or to page 2, and then  
21 if we blow up in the middle of the page you'll see Mr Howes  
22 responds to you?  
23 A. M'mm.  
24  
25 Q. He says:  
26  
27 *Hi Lara.*  
28  
29 *As discussed I'm not aware of the other*  
30 *labs' current values for processing*  
31 *post-quant and we would tread cautiously*  
32 *with what is presented in the media and*  
33 *replicated in the message below.*  
34  
35 Just pausing on that, you must have had a discussion with  
36 him that day?  
37 A. No, I think I just sent him an email actually.  
38  
39 Q. You see it says hi Lara, as discussed?  
40 A. As discussed. Yea, I don't recall that.  
41  
42 Q. You don't remember what you discussed with him?  
43 A. No.  
44  
45 Q. Then you see, the email goes on to say:  
46  
47 *In 2018 options were presented to QPS which*

1           *were provided in the attached document.*  
2           *The options were presented and one was*  
3           *approved by QPS at the time, Option 2.*  
4

5           A. Yes.  
6

7           Q. What he attached to that email was what's referred to  
8           as the Options Paper?

9           A. Yes.  
10

11          Q. Did you read that?

12          A. At the time I did read that.  
13

14          Q. And did you understand it?

15          A. Not really.  
16

17          Q. Okay. Did that concern you, that you didn't understand  
18          it?

19          A. That's a frequent thing for me. So much to learn.  
20

21          Q. And then if we go to the first page. And can we blow  
22          up the email at the bottom. You see - actually we might  
23          need to scroll it down just so we can see it. You see what  
24          you've done is you've copied the questions that have been  
25          raised by Inspector Neville and you quote that and then  
26          you're saying to Mr Howes:

27                   *Does the paper you sent through address*  
28                   *these questions.*  
29  
30

31          A. Yes.  
32

33          Q. You're actually copying the part of the text that  
34          refers to the predicted less than 2 per cent and observed  
35          success rate of 30 per cent?

36          A. Yes.  
37

38          Q. But as I understand it you say even though you were  
39          copying that text out, you didn't understand that there was  
40          some issue about the difference between the predicted rate  
41          of 2 per cent and the observed rate of 30 per cent?

42          A. At that stage I still thought that the purpose of the  
43          review was - the data extract was to reassess the less than  
44          2 per cent. So that's what I was looking at at that stage.  
45

46          Q. But when you say reassess the 2 per cent, reassess it  
47          why?

1 A. Because the data was going to - essentially as far as I  
2 understood it, it was going to take the information for the  
3 time period in question and reassess. So that's what I  
4 understood at the time.

5  
6 Q. Did you understand why the concern had arisen?

7 A. Not really.

8  
9 Q. I see. Just tell me - no, I won't ask that. All  
10 right. So then if we go to the email at the top of the  
11 page. Mr Howes responds and says:

12  
13 *Hi, yes to a degree. I don't know where*  
14 *the less than 2 per cent comes from. The*  
15 *data in the report mentions approximately*  
16 *10 per cent fail according to the*  
17 *definition. It could be that less than 2*  
18 *per cent could relate to the number of*  
19 *profiles that are obtained in the quant*  
20 *range that were suitable for NCIDD loading.*

21  
22 And he there says the paper mentions 1.86 per cent, the  
23 figure that you've used. And then he goes on to say:

24  
25 *If so, then I seriously doubt the 30*  
26 *per cent is measuring the same thing.*  
27 *Further, we cannot verify the data of 30*  
28 *per cent that is quoted. This might be a*  
29 *subset of samples QPS have selected to look*  
30 *at.*

31  
32 And he goes on to say:

33  
34 *The Options Paper looked at a year's worth*  
35 *of data and in order to look at data again*  
36 *we would need to have that requested*  
37 *through BDNA.*

38  
39 A. Yes.

40  
41 Q. Perhaps I'll take this in stages. Did you know what  
42 NCIDD profiles referred to?

43 A. No, I don't - well, I don't know when I understood that  
44 but I now know what that is.

45  
46 Q. When he refers to doubting the 30 per cent, at that  
47 stage did you wonder what that 30 per cent was?

1 A. No, I just took what he said.

2  
3 Q. Did you by this stage understand that the issue was  
4 that the QPS thought that the rate that had been predicted  
5 in the Options Paper was less than 2 per cent but they were  
6 observing a 30 per cent success rate?

7 A. That's what that infers there.

8  
9 Q. Yes, but did you - I'm just struggling to understand  
10 whether you appreciated that that was the issue they were  
11 raising?

12 A. No, I don't think I did. I think I've said that.

13  
14 Q. Can we then bring up QPS.0001.1332.0001. If we blow up  
15 the email that you sent at the bottom of the page, you see  
16 you send a copy of the Options Paper to Inspector Neville?

17 A. I did.

18  
19 Q. And you say:

20  
21 *Not sure if you have a copy of this paper.*  
22 *It may go some way to answering your*  
23 *inquiries.*

24  
25 A. That's right.

26  
27 Q. Then if we go to the email at the top of the page. He  
28 responds and says:

29  
30 *Thanks for sending this through. I did*  
31 *have it already. Based on the paper a*  
32 *recommendation was made to QPS that testing*  
33 *of samples containing less than .008 ng/ $\mu$ L*  
34 *of DNA should discontinue because the*  
35 *chances of obtaining a profile would be*  
36 *less than 2 per cent. As a result of this*  
37 *research QHFSS advised that they would*  
38 *report samples below this threshold as*  
39 *insufficient DNA for further processing and*  
40 *that QPS could request to continue if the*  
41 *sample was critical to the case.*

42  
43 And he says:

44  
45 *With the exception of priority 1 samples*  
46 *the QPS agreed to discontinue testing at*  
47 *that point as a matter of routine based on*

1           *the advice. In November 2021 the QPS*  
2           *undertook a review of the success rate of*  
3           *obtaining a profile when it requested*  
4           *testing to continue for samples initially*  
5           *reported as insufficient DNA for further*  
6           *testing. This revealed that 30 per cent of*  
7           *the samples yield a usable DNA profile when*  
8           *testing was continued. It is the*  
9           *difference between 2 per cent (expected)*  
10          *and 30 per cent (observed) that I am*  
11          *concerned about.*

12

13          Did you read the email?

14          A. Yes.

15

16          Q. Do you say even when you read the email that finished  
17          by saying:

18

19                 *It is the difference between the 2 per cent*  
20                 *expected and 30 per cent observed that I am*  
21                 *concerned about.*

22

23          That you still didn't understand that the concern was about  
24          the difference between 2 per cent and 30 per cent?

25          A. So what I thought was happening was that the data was  
26          being assessed to address those concerns.

27

28          Q. If you could answer my question I would really  
29          appreciate that?

30          A. I don't remember whether or not I - as I've said, I  
31          don't recall whether I understood or didn't understand. I  
32          don't think I understood that.

33

34          Q. Do you remember whether you were concerned?

35          A. Yes, because I checked with Ms Allen on a number of  
36          occasions about the progress of the report.

37

38          Q. You see what Inspector Neville is saying in this email  
39          is that QHFSS provided advice to the QPS, and on the basis  
40          of that advice QPS agreed to a change in process?

41          A. Yes.

42

43          Q. Perhaps if we just pause on that. Did you understand  
44          that as at 21 February that advice had been provided to QPS  
45          and QPS had agreed to a change in process based on that  
46          advice?

47          A. Only I've subsequently become aware of that, because

1 that was the first time I think I received a copy of that  
2 Options Paper.

3  
4 Q. Do you think though that on 21 February when you  
5 received the Options Paper and you received the email from  
6 Inspector Neville that you understood that QPS had agreed  
7 to discontinue the process on the basis of advice from  
8 Queensland Health?

9 A. Yes, yes.

10  
11 Q. Did you understand that the issue that was being raised  
12 of concern by Inspector Neville was whether that advice was  
13 wrong?

14 A. Not necessarily that the advice was wrong, was that I  
15 understood that the data extract was going to show whether  
16 there was any differences. So that's what I understood at  
17 the time.

18  
19 Q. At this point then, this thing that he says he's  
20 concerned about, you were concerned about it as well?

21 A. I was led to believe that the data would prove or  
22 disprove if there was any differences. So, you know, as you  
23 can see, the commentary from Justin would suggest that it  
24 wasn't of concern we needed to be looking at that data, and  
25 that's how I understood that at the time.

26  
27 Commissioner, I might tender that email.

28  
29 **EXHIBIT #133 EMAIL FROM INSPECTOR NEVILLE TO MS KELLER OF**  
30 **21 FEBRUARY 2022**

31  
32 MR HODGE: Then can we bring up QPS.0150.0010.0013. It  
33 looks like, if we blow up the email at the bottom of the  
34 page, it looks like the next day, 22 February, Ms Allen has  
35 returned to work?

36 A. Yes.

37  
38 Q. She says, she emails back to Inspector Neville and  
39 copies you and Superintendent Frieburg?

40 A. Yes.

41  
42 Q. And she says

43  
44 *During the bimonthly meeting (which is that*  
45 *one on 1 February) I provided a verbal*  
46 *update to you and Superintendent Frieburg*  
47 *regarding this. Minutes from this meeting*



1           *are yet to be circulated. I have detailed*  
2           *notes that I took during the meeting and*  
3           *I've referred to those for this email*  
4

5       A. Yes.  
6

7       Q. She says she advised during the meeting that.  
8

9           *Due to the community transmission of*  
10          *COVID-19 affecting forensic DNA analysis*  
11          *staff members and two urgent cases that QPS*  
12          *had requested we process, slow progress had*  
13          *been made on the request.*  
14

15      A. Yes.  
16

17      Q. Do you remember her saying that at the meeting on  
18      1 February?

19      A. I think she said - she referred to COVID-19, yes.  
20

21      Q. Again, given that by 1 February you knew that the  
22      police regarded it as a priority and regarded it as a  
23      circumstance of urgency, were you concerned on 1 February  
24      that she hadn't progressed it due to COVID?

25      A. I was. I wondered - I mean that was the, the rationale  
26      that was put forward and I had no reason to mistrust that,  
27      so - and that was a stage where there was a lot of COVID in  
28      the community so it made sense.  
29

30      Q. So did you seek, after that meeting on 1 February, to  
31      have her urgently progress it?

32      A. I had meetings with her on a regular basis asking about  
33      the progress, so yes.  
34

35      Q. I see. So you'd asked her at a meeting after  
36      1 February but before these emails what progress she'd  
37      made?

38      A. I don't know, I'd have to go back through my notes that  
39      were part of my statement as to exactly when.  
40

41      Q. I see. Then you see at the end of the paragraph she  
42      says.  
43

44           *The data that is required to be analysed is*  
45           *within the Forensic Register and FSS have*  
46           *submitted a request to BDNA for a quote to*  
47           *extract the data required. Once we have*

1           *received the quote and approved it and then*  
2           *received and analysed the data, we will*  
3           *provide a report to the QPS regarding this.*

4  
5       A. Yes.

6  
7       Q. Is it possible that this email was the first email that  
8       raised the prospect of a report?

9       A. Possibly.

10  
11       Q. Is it possible that when you said you could remember  
12       Ms Allen and Mr Howes telling you back in December that  
13       they were going to extract the data and provide a report,  
14       that that was not accurate?

15       A. I don't know whether we got, we talked about a report  
16       back then, so - I was under the impression back then that  
17       they were going to extract some data. Whether it turned  
18       into a report, I don't recall when that specifically became  
19       the format, that it was going to be returned in.

20  
21       Q. Is it possible that this is the first time that the  
22       idea of extracting data and getting a quote from BDNA was  
23       raised?

24       A. No.

25  
26       Q. That had been raised before?

27       A. Yes.

28  
29       Q. At the meeting on 1 February as you recall?

30       A. I'd have to check the minutes.

31  
32       I'll just check if I have to tender that, Commissioner.

33  
34       **EXHIBIT #134 EMAIL FROM MS ALLEN TO INSPECTOR NEVILLE OF 22**  
35       **FEBRUARY 2022**

36  
37       MR HODGE: Actually, I think in fairness I should direct  
38       you to something else in that chain of emails. There's a  
39       new email that your lawyers sent to us which I'll show you.  
40       I don't think it will have a doc ID. It's just been  
41       emailed to you, Mr Operator. In a moment I'm hoping a  
42       chain of emails will - there we go. The operator is biting  
43       his lip nervously. What I think it will show when it comes  
44       up is to come back to that 1 February meeting, that it was  
45       Inspector Neville who before the meeting raised the issue  
46       of the options paper and DIFP?

47       A. Okay.

1  
2 Q. He sent an email to Superintendent Frieberg and what he  
3 said was.

4  
5 *Can we raise in February 2018 QHFFS made a*  
6 *recommendation to QPS that testing of*  
7 *samples that contained less than .008 ng/uL*  
8 *should discontinue because the chance of*  
9 *obtaining a profile was less than 2 per*  
10 *cent. However, QPS has found that we have*  
11 *a success cease rate of 30 per cent if we*  
12 *request testing to continue. The*  
13 *difference in successful rate is of*  
14 *concerned and the practice may require a*  
15 *review.*

16  
17 Then Superintendent Frieberg then forwarded that email to  
18 you and you then forwarded that email to Ms Allen and said

19  
20 *FYI Cathie, may I ask you to speak to*  
21 *these items at the meeting.*

22  
23 A. Okay.

24  
25 Q. There we go, we can see that on the page. So it  
26 appears that the dogged Inspector Neville is again raising  
27 the issue for the meeting. Superintendent Frieberg  
28 provides the information to you and you then pass it to  
29 Ms Allen?

30 A. Yes.

31  
32 Q. Again, though - maybe if we blow up the text at the  
33 bottom of the page. What I want to suggest to you,  
34 Ms Keller, is this: that it must have been obvious to you  
35 in February of 2022 that the concern of the QPS was that a  
36 process had been discontinued on the belief that in only  
37 2 per cent of cases would a profile be obtained and they  
38 were now finding a success cease rate of 30 per cent and  
39 that meant the process should be reviewed?

40 A. Yes.

41  
42 Q. You understood that?

43 A. Well, I understood that they were asking for an  
44 analysis of the data so, yes.

45  
46 Q. I see.

47 A. I had left that with Ms Allen to progress, which is why

1 I asked her to speak to it at the meeting.

2  
3 Q. Can we then bring up - I should tender that document,  
4 Commissioner, it doesn't have a doc ID at the moment. If  
5 we go to the top we can see the date. It's 1 February.

6  
7 **EXHIBIT #135 EMAIL FROM MS KELLER TO MS ALLEN OF 1 FEBRUARY**  
8 **2022**  
9

10 MR HODGE: Can we bring back up - we'll go now to another  
11 document which is in your statement which is LK-119. The  
12 doc ID is WIT.0017.0221.0001. Sorry, 0221, rather than  
13 0231. On 1 March you send an email to Ms Allen saying.

14  
15 *Could you please seek an update from BDNA*  
16 *regarding the quote for the data for QPS.*  
17 *I'd like some idea from them as to when we*  
18 *can expect the data to be made available,*  
19 *please.*  
20

21 A. Yes.

22  
23 Q. Then if we bring up the next - sorry, I should just  
24 note, you see you send that email on 1 March at 1.14 pm?  
25 A. Yes.

26  
27 Q. If we then bring up WIT.0017.0222.001, which is the  
28 next email in the chain. You forward that email back or  
29 you reply to your own email to Ms Allen the next day at  
30 12.09 pm and say.

31  
32 *Further to my request below, may I please*  
33 *have a copy of the requested quote for my*  
34 *records.*  
35

36 A. Yes.

37  
38 Q. Had you, in between those two emails, spoken to  
39 Ms Allen?

40 A. No, not at that stage.

41  
42 Q. So you'd had no response?

43 A. Doesn't appear so.

44  
45 Q. At that point when you say "May I please have a copy of  
46 the requested quote for my records", were you seeking a  
47 copy of the request or a copy of the quote?

1 A. They referred to that, any request like that as a  
2 quote, so I'd - because quote was the word that was used,  
3 then that was the word that I used.

4  
5 Q. I see. So what you wanted to have a copy of was to see  
6 the request that Ms Allen had sent?

7 A. Yes, and when that was requested.

8  
9 Q. Why were you seeking that?

10 A. Because it seemed like quite some time had passed, so I  
11 just wanted to see whether I could potentially expedite any  
12 data extraction process.

13  
14 Q. You see you then go on to say.

15  
16 *As part of our response to Inspector*  
17 *Neville's enquiry, I'd like to give QPS an*  
18 *idea of when we can expect BDNA to deliver*  
19 *on our request*

20  
21 A. Yes.

22  
23 Q. You ask her for an update by the next day at close of  
24 business?

25 A. Yes.

26  
27 Q. Then Ms Allen responded, and if we bring up the next  
28 email which is LK-122. So Ms Allen emails you that day and  
29 she says.

30  
31 *I followed up with BDNA regarding the quote*  
32 *for work*

33  
34 A. H'mm, yes.

35  
36 Q. She says

37  
38 *A formal quote hasn't been provided as yet*  
39 *as FSS haven't confirmed that the data*  
40 *extraction is correct.*

41  
42 A. Yes.

43  
44 Q. Then if we go over the page - I'm sorry, actually over  
45 another page. You'll see at the very bottom of that page  
46 there's an email from Ms Allen to Mr O'Malley on  
47 18 February 2022?

1 A. Yes.

2  
3 Q. It says.

4  
5 *In 2018 Justin Howes compiled the attached*  
6 *as an options paper for the QPS to*  
7 *consider. Recently Inspector Neville has*  
8 *raised that when samples that were not DNA*  
9 *profiled initially but underwent*  
10 *amplification a DNA result was obtained.*  
11 *We would like to re-run the data review*  
12 *process and would like to obtain the data*  
13 *from the Forensic Register. Attached are*  
14 *the parameters as set out by Justin. Could*  
15 *you please review the below and provide a*  
16 *quote for the cost of undertaking the work.*

17  
18 A. Yes.

19  
20 Q. You read this email and this was the point at which you  
21 discovered that Ms Allen had only requested the quote on  
22 18 February?

23 A. That's - yes.

24  
25 Q. Notwithstanding that you knew that the issue had been  
26 raised, to your knowledge, by Inspector Neville in  
27 mid-December the previous year?

28 A. Yes.

29  
30 Q. And that he regarded it as a priority?

31 A. Yes.

32  
33 Q. And that you regarded it as a matter of some urgency?

34 A. Yes.

35  
36 Q. The thing was by now there was substantial media  
37 attention about around this issue?

38 A. Yes.

39  
40 Q. In fact 18 February, the day that the quote was  
41 requested, that was either the day or the day after an  
42 article was published in The Australian newspaper about the  
43 threshold used in the Queensland lab?

44 A. Okay.

45  
46 Q. Do you remember that?

47 A. There were multiple articles, so quite possibly there

1 was one that day, yes.

2  
3 Q. You knew about the article published in the Australian  
4 about the threshold?

5 A. I was aware of I think all of the articles that were  
6 published.

7  
8 THE COMMISSIONER: What date was that, Mr Hodge?

9  
10 MR HODGE: I think it's either 17 or 18 February. I think  
11 it's published on the 17th, but then some, it looks like  
12 some people probably only read it on the 18th. Did you  
13 discuss the article with Ms Allen?

14 A. No.

15  
16 Q. You didn't discuss with Ms Allen the fact that the  
17 media was now raising an issue about what threshold was  
18 used in the Queensland lab?

19 A. No.

20  
21 Q. Then what was happening was, wasn't it, at the end of  
22 February and into the beginning of March there was  
23 consideration being given to a review being undertaken of  
24 the DNA lab?

25 A. Yes.

26  
27 Q. I think one of the complaints you make in your  
28 supplementary statement is that it's not accurate to  
29 suggest that you were unenthusiastic about the review?

30 A. Yes.

31  
32 Q. I'm interested in understanding that. Was it the case  
33 that somebody else suggested the review?

34 A. No. I think, as I said to you, there were discussions  
35 about what could be done so --

36  
37 Q. Discussions between you and who, or you can't remember  
38 now?

39 A. Well, as I said earlier, it would have been with  
40 Mr Bricknell as my line manager.

41  
42 Q. I see. By about mid-March there was, it was reaching  
43 the point where you were attempting to finalise various  
44 documents in relation to the review. Do you recall that?

45 A. What documents are you referring to?

46  
47 Q. Documents like the briefing note and the terms of

1 reference?

2 A. Yes.

3

4 Q. The potentially media statement and that type of thing?

5 A. Yes.

6

7 Q. I just want to understand something then. You have  
8 discovered on 2 March that Ms Allen had only requested a  
9 quote on 18 February 2022?

10 A. Yes.

11

12 Q. You must have realised that that must have meant that  
13 she couldn't have done any work on the review between -  
14 well at any stage since mid-December?

15 A. I didn't know what else she was doing, so I knew about  
16 the Forensic Register part of it.

17

18 Q. But you understood, because we've seen it in the email  
19 that Ms Allen had sent, that they needed to extract the  
20 information --

21 A. Yes.

22

23 Q. -- from the Forensic Register to be able to do the data  
24 analysis?

25 A. That's what she said, yes.

26

27 Q. To the extent that you understood what it was that was  
28 being looked at, you understood it was going back and  
29 re-analysing data?

30 A. That's what I thought, yes.

31

32 Q. Was there something else you thought she was doing that  
33 was not dependent upon the BDNA extraction?

34 A. I didn't know what she would be doing with regards to  
35 that. I knew that was one part of it.

36

37 Q. What were the other parts?

38 A. She could have been talking about the staff, she could  
39 have been going back through records.

40

41 Q. Did you ask her?

42 A. No.

43

44 Q. Then when you discover that she's only requested the  
45 data on 18 February, did you ask her why she had waited so  
46 long?

47 A. Not at that stage, no.



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Q. Did you ask her at some stage?

A. I think that when I look at the email, when I started to ask about the status of the quote, I started to be concerned that the delays were - it was concerning me that the quote had been submitted with peers, the quote was submitted quite some time after Inspector Neville's enquiry. I was surprised by that so - - -

Q. I understand you say in your supplementary statement today you were surprised. My question is: when you became surprised did you ask her why it was that she had waited until 18 February to request the data?

A. No, not at that stage, no.

Q. Again, you say at that stage, so that's why I need to keep pressing you. Does that mean you asked her at some stage why she had waited until 18 February?

A. I don't think I did by then.

Q. At any time? Have you ever asked her why she waited until 18 February?

A. No.

Q. Okay. Why didn't you ever ask her?

A. Because by that stage I was becoming a bit concerned and I was becoming comfortable that we were going to undergo an external review and that any of the information that related to threshold would be included in that, so I felt that if even if there was a delay being introduced to responding to that feedback from Inspector Neville, that that would be identified in a review.

Q. Sorry, what would be identified in the review?

A. Anything - the concept of the thresholds and the suitability of those thresholds. You can see the terms of reference from that review are quite comprehensive.

Q. We'll come to that after lunch. But what I'm interested in understanding is, as the manager for Ms Allen where you have discovered that she has not seemingly taken any step to obtain the data necessary to undertake the review that you understood was a matter of priority for the police and that you regarded as a matter of urgency, and she's not done these things for two months, why, as a manager, you didn't ask her what was going on?

A. I would have asked her in the fortnightly catch-ups

1 what the progress was.

2

3 Q. It was plainly unsatisfactory, wasn't it?

4 A. In hindsight, yes.

5

6 Q. Well, at the time you thought it was unsatisfactory,  
7 didn't you?

8 A. I was starting to get suspicious.

9

10 Q. Suspicious of what?

11 A. That, that it was a delaying approach. I didn't  
12 understand anything other than that.

13

14 Q. I see. Now you understood, didn't you, that Ms Allen  
15 was telling the police that she was going to provide a  
16 report?

17 A. Yes.

18

19 Q. Do you remember that she - I might just bring up your  
20 statement, that's probably going to be the easiest thing I  
21 think. Can we bring back up the supplementary statement  
22 again, that's - thank you. Can we go to paragraph - it's  
23 p26 and can we blow up paragraph 84. You see you say on  
24 3 March Ms Allen sent an email to Inspector Neville and  
25 advised the supplementary report dealing with concerns  
26 regarding the testing thresholds will be provided to the  
27 QPS in approximately two weeks.

28

29 A. Yes.

30

31 Q. When she sent that did you think it was true?

32 A. I hoped it would be, yes.

33

34 Q. I'm interested in understanding, though, because the  
35 day before you've been told we haven't even been able to  
36 get a quote from BDNA because we haven't finalised what the  
37 parameters are to be and you understand or you understood,  
38 as I've taken your evidence, you understood that it was  
39 necessary to extract the data in order to be able to  
40 analyse it and then to provide a report?

41 A. I did.

42

43 Q. So at this stage you thought that's all going to happen  
44 in two weeks?

45 A. I was hopeful, yes, because I'd been asking.

46

47 Q. When you say you'd been asking, I just want to clarify

1 what this means. We've seen the emails where you ask for a  
2 copy of the quote. I haven't seen any emails where you're  
3 writing to Ms Allen saying, "This is urgent, we have to do  
4 this, it has to be delivered", but was that a message you  
5 were communicating to her orally?

6 A. It's in my notes of when I met with her, yes.

7  
8 Q. You were saying to her this is urgent?

9 A. I was saying we need to get this done for the police.

10  
11 Q. Then can we blow up paragraph 85. You see you say in  
12 paragraph 85.

13  
14 *On 15 March 2022, and as I still had no*  
15 *draft document, I sent an email to*  
16 *Professor McNeil, Ms Dawn Schofield (an*  
17 *Executive Director within the office of the*  
18 *Director General) and the acting chief*  
19 *legal counsel Ms Megan Fairweather with the*  
20 *subject line "Re independent review of the*  
21 *Forensic and Scientific Forensic DNA*  
22 *Analysis Unit. The email advised them of*  
23 *Inspector Neville's concerns raised since*  
24 *December 2021 regarding testing thresholds.*

25  
26 A. Yes.

27  
28 Q.

29 *I also advised in this email that a quote*  
30 *had been sought from the IT vendor to*  
31 *extract the relevant data to reassess the*  
32 *agreed testing thresholds. This was the*  
33 *first time I became concerned to the point*  
34 *of needing to escalate the testing*  
35 *thresholds matter, as I was becoming*  
36 *increasingly concerned about the delay,*  
37 *having formerly believed Ms Allen would*  
38 *address the issue in an appropriate and*  
39 *timely manner.*

40  
41 A. Yes.

42  
43 Q. Those last two sentences - sorry, that last sentence  
44 where you say.

45  
46 *This was the first time I became concerned*  
47 *to the point of needing to escalate the*

1           *testing thresholds matter as I was becoming*  
2           *increasingly concerned about the delay,*  
3           *having formerly believed Ms Allen would*  
4           *address the issue in an appropriate and*  
5           *timely manner*  
6

7           That's true, is it?

8           A. Yes.

9  
10          Q. Do you say that was why you sent the email on 15 March?

11          A. That was when I - that was when I felt that I needed to  
12          make those recipients known, make it known to them that  
13          there was a delay, because I was getting concerned about  
14          why there might be a delay.

15  
16          Q. But the way this paragraph reads is that you had become  
17          concerned to the point of needing to escalate the issue and  
18          so you sent an email to them to escalate the issue and tell  
19          them that?

20          A. That's what it looks like, yes.

21  
22          Q. Is that true?

23          A. Yes.

24  
25          Q. So you'd become so concerned by mid March that you felt  
26          you needed to escalate the issue?

27          A. Because some time had passed I felt it was appropriate  
28          to make more senior people aware that there was a delay.  
29          At that stage as well we had the, what I thought the  
30          external review was well and truly getting going and I  
31          wanted them to be aware that there was a matter in hand -  
32          well, being dealt with, but I was concerned about the  
33          delay.

34  
35          Q. I see. The reason for sending it though was the  
36          concern about the delay?

37          A. Yes, I mean that was one reason. I'd have to have a  
38          look at the email again.

39  
40          Q. I will show it to you again. Can we put the statement  
41          on one side of the screen and then bring up on the other  
42          side of the screen LK-124, which is WIT.0017.0226.0001. So  
43          can we go over to the second page first. You see this is a  
44          chain of emails that's happening on 15 March 2022?

45          A. Okay, yep.

46  
47          Q. Do you recall that there was a meeting with Mr Drummond

1 and the Director General where they said a review was  
2 necessary?

3 A. There was, there was a meeting that I was involved with  
4 where I was at an airport and I dialled in. That was on  
5 the, I think it was 8 March, and the outgoing and the  
6 incoming DG were in attendance, yes.

7

8 Q. Then there was another one on 14 March?

9 A. Was I invited to that? I don't know that I was invited  
10 to that.

11

12 Q. I see. Were you aware of there being a meeting on  
13 14 March?

14 A. Possibly.

15

16 Q. So you see at the top of this page, Ms Fairweather  
17 sends an email saying

18

19 *Hi Dawn and Keith. I did consider adding*  
20 *in something along the lines that until now*  
21 *we had not been aware of any formal*  
22 *requests for systemic review, but we would*  
23 *need instructions to confirm that is*  
24 *accurate.*

25

26 A. Okay.

27

28 Q. And then, I know you're not copied --

29 A. I didn't write that so I don't know.

30

31 Q. No, but you can read it?

32 A. Yes, was I copied in on that?

33

34 Q. No?

35 A. Okay.

36

37 Q. And you'll get it in a moment?

38 A. Okay.

39

40 Q. You can read it?

41 A. Yes.

42

43 Q. And you would have read it at the time?

44 A. Probably.

45

46 Q. Then can we go to the first page. You see at the  
47 bottom of the page that Mr McNeil sends an email back and

1 says:

2  
3 *Thanks Megan. FSS is not aware of any*  
4 *issues having been raised outside the*  
5 *current case in front of the coroner.*  
6

7 That's a reference to the Blackburn case? Sorry, you're  
8 nodding but just because it's being recorded --

9 A. Yes. Yes, it is.

10  
11 Q. And then he says:

12  
13 *Lara can you confirm that?*  
14

15 A. Yes.

16  
17 Q. And he's added you to the email?

18 A. Yes.

19  
20 Q. And then you reply and say:

21  
22 *Morning all. The only formal request is*  
23 *from the Inspector of Biometrics Queensland*  
24 *Police Service. This was initiated by*  
25 *email in December 2021 and requests*  
26 *reassessment of agreed testing thresholds.*  
27 *A quotation was sought from the forensic*  
28 *register vendor to extract relevant data to*  
29 *undertake this reassessment. This is*  
30 *referenced in a version of the Ministerial*  
31 *brief.*  
32

33 And then you've copied out some text that's in the  
34 Ministerial brief which says:

35  
36 *Note that the Queensland Police Service has*  
37 *made recent inquiries to FSS in relation to*  
38 *lowering the scientific threshold set by*  
39 *the Forensic DNA Analysis laboratory for*  
40 *the full process testing of trace DNA*  
41 *samples.*  
42

43 A. Yes.

44  
45 Q. Now just to assist, Ms Keller, can we see on one side  
46 of the screen let her see what's in her email and on the  
47 other side of the screen see paragraph 85. Tell me if you

1 agree with this: you didn't send that email on 15 March to  
2 those people because you were escalating a concern about  
3 delay?  
4 A. It doesn't say that, no.  
5  
6 Q. No, the email doesn't say that?  
7 A. No.  
8  
9 Q. And that's not why you sent it?  
10 A. We can see what I sent there.  
11  
12 Q. You sent it because they were finalising within the  
13 process of creating the review what statement they were  
14 going to make about the context in which the review was  
15 occurring?  
16 A. What statement?  
17  
18 Q. A public statement was going to be made about it?  
19 A. Okay.  
20  
21 Q. And you were asked by Mr McNeil to confirm that they  
22 weren't aware of - that no one was aware of any issues,  
23 systemic issues?  
24 A. Systemic issues? I don't think it says that.  
25  
26 Q. I'll put it a different way. You were being asked by  
27 Mr McNeil to confirm that FSS is not aware of any issues  
28 having been raised outside of the current Blackburn case?  
29 A. That's why I said - that's why I responded with regards  
30 to that.  
31  
32 Q. And you responded and said, and explained that actually  
33 there was this request that had been made back in December  
34 of 2021 about the agreed testing thresholds?  
35 A. Yes.  
36  
37 Q. Do you agree with me what you have said in paragraph 85  
38 is not true?  
39 A. No.  
40  
41 Q. Do you think it is true to suggest to the Commissioner  
42 that the reason you sent the email was because you had  
43 become concerned to the point of needing to escalate the  
44 testing thresholds matter?  
45 A. It needed to be put on the radar of those, particularly  
46 Professor McNeil.  
47

1 THE COMMISSIONER: But the reason you sent the email was  
2 because --

3 A. Yes.

4  
5 Q. -- half an hour earlier you'd received a request to  
6 confirm that there were no other issues that had been  
7 raised, and so in response to that email from Mr McNeil you  
8 informed him that there had been a formal request about a  
9 subject. But you hadn't written the email because you were  
10 at the point of needing to escalate the testing thresholds  
11 matter, and you didn't send the email because you were  
12 becoming increasingly concerned, you sent the email because  
13 you were asked for some information?

14 A. In that email you can see that it says that the first  
15 request was December 2021.

16  
17 Q. Yes?

18 A. So I wanted to make them aware that some time had  
19 passed. I didn't specifically say it in that way, but yes,  
20 that's correct.

21  
22 MR HODGE: Is that a convenient time?

23  
24 THE COMMISSIONER: Yes, it is. We'll adjourn until what  
25 time, Mr Hodge?

26  
27 MR HODGE: 2.15.

28  
29 THE COMMISSIONER: We'll adjourn until 2.15.

30  
31 **LUNCHEON ADJOURNMENT**

32  
33 THE COMMISSIONER: Yes Mr Hodge.

34  
35 MR HODGE: Thank you. Ms Keller, before we broke we were  
36 looking at those emails on 15 March. You might remember I  
37 asked you some questions about meetings that had happened  
38 with the Director-General and the Acting Director-General  
39 immediately beforehand, and I'd understood your evidence to  
40 be that you could remember a meeting slightly earlier on 8  
41 March 2022 that you attended?

42 A. Yes.

43  
44 Q. Can you tell us, first - I hadn't seen you deal with  
45 that meeting in your witness statements?

46 A. Okay.



1 Q. Does that sound right?

2 A. It wasn't a formal meeting so possibly not.

3

4 Q. Okay. So there was a meeting and did you attend it in  
5 person?

6 A. No.

7

8 Q. Okay, you were by phone?

9 A. Yes.

10

11 Q. And who were the other people at the meeting, or on the  
12 phone call?

13 A. It was Teams so I was aware that Professor McNeil,  
14 Dr Petra Derrington, Dr John Wakefield and Mr Shaun  
15 Drummond. As far as I knew I couldn't see anyone else.

16

17 Q. So Mr Wakefield was the outgoing Director-General?

18 A. He was.

19

20 Q. And Mr Drummond was the incoming Director-General?

21 A. Yes, yes.

22

23 Q. What was the reason for the meeting as you recall?

24 A. From memory I thought it was to discuss, you know, the  
25 final sort of a way forward with what's now being called  
26 the external review.

27

28 Q. Do you recall anyone at the meeting, or on the Teams  
29 call I should say, expressing the view that - I'll withdraw  
30 that. Do you recall anyone on the Teams call noting that  
31 the lab was accredited by NATA?

32 A. Oh probably.

33

34 Q. Do you recall anyone on the Teams call saying something  
35 to the effect that accreditation by NATA amounted to an  
36 external validation of FSS's systems and processes?

37 A. May have.

38

39 Q. Do you recall anyone on the call expressing the view  
40 that for that reason an independent review was not  
41 necessary?

42 A. I don't recall that.

43

44 Q. Is it possible that somebody said that?

45 A. Yes, it's possible.

46

47 Q. Do you recall whether Professor McNeil expressed that

1 view?  
2 A. It's possible.  
3  
4 Q. Do you recall whether you agreed with that view?  
5 A. As I said earlier NATA's only one aspect.  
6  
7 Q. Yes, I understand. But just come back to - perhaps  
8 I'll try to simplify it. Do you recall anyone expressing  
9 the view on the call that an external - sorry, I withdraw  
10 that. Do you recall anyone on the call expressing the view  
11 that an independent review was not necessary?  
12 A. No, I don't recall that.  
13  
14 Q. Did you have the view that an independent review was  
15 not necessary?  
16 A. No, I did not.  
17  
18 Q. You thought it was necessary?  
19 A. I was very happy that it was going ahead.  
20  
21 Q. That's not an answer to my question, you know that.  
22 Did you think that an independent review was necessary?  
23 A. Yes, I did.  
24  
25 Q. Did you communicate that view to somebody?  
26 A. I put - I can't recall when I would have but there's  
27 certainly an email that says that any review needs to be  
28 transparent.  
29  
30 Q. Did you communicate to anyone the view that an  
31 independent review was necessary?  
32 A. I don't recall whether I did. I mean certainly the  
33 briefing notes suggest I did.  
34  
35 Q. When you say that, the briefing notes suggests that you  
36 drafted a briefing note. What I want to understand is did  
37 you communicate to anyone that you held the view that an  
38 independent review was necessary; and, if so, who and when?  
39 A. I'm sure I have done that. I don't recall the dates  
40 and times and who to.  
41  
42 Q. I see. But you think you said it to someone?  
43 A. Yes.  
44  
45 Q. But not in writing?  
46 A. I beg your pardon?  
47

1 Q. Not in writing?

2 A. Certainly my - maybe not in those exact words but  
3 certainly you can see from my statement and my attachments  
4 that I did support it.

5

6 Q. I don't know that we can see that from your attachments  
7 so that's why I wanted to understand it. I know in your  
8 statement you reject the proposition that's come from  
9 Mr Drummond that you didn't think an independent review was  
10 necessary. So that's why I want to understand it. Can you  
11 think of anything that you might have said that might have  
12 conveyed the impression that you did not support an  
13 independent review?

14 A. The only thing I can think of is early on we had a  
15 whole of staff meeting where we were just, you know, I was  
16 offering support and I was saying, you know, we have NATA  
17 accreditation and, you know, everything will be okay. So  
18 if that's been interpreted that way then certainly that's  
19 not - I certainly do, did, still do, support an independent  
20 review.

21

22 Q. When was that meeting?

23 A. I'd have to have a look at my notes. It was - it's in  
24 my statement that it was a meeting.

25

26 Q. A whole staff meeting?

27 A. Yes.

28

29 Q. Do you mean the whole staff of the laboratory?

30 A. DNA is only one small part of the FSS, very small  
31 compared to the rest, so yes, that team.

32

33 Q. If you just try to fix it by reference to a date, the  
34 one that you're talking about, was it --

35 A. It may have been, we could go back and check, but it  
36 may have been in December.

37

38 Q. In December?

39 A. Possibly. I can check my notes.

40

41 Q. You've got your statements there, why don't you  
42 identify for us what you're talking about?

43 A. Okay. There was a meeting on - there was a meeting  
44 that was attended by Professor McNeil and Brett Bricknell  
45 and at that meeting we were trying to reassure the staff,  
46 you know, that they had our support and I may have very  
47 well have said we're NATA accredited and that's a good

1 thing. That doesn't mean that I didn't support a review.  
2  
3 Q. Where have you found that?  
4 A. No, I haven't found it yet.  
5  
6 Q. When was it?  
7 A. That's what I'm trying to find for you. I'm sure  
8 there's reference to that meeting somewhere in my  
9 statement.  
10  
11 Q. Look, I think you're going to be back tomorrow,  
12 Ms Keller?  
13 A. Okay, great.  
14  
15 Q. Overnight you can see if you can identify it?  
16 A. I will.  
17  
18 Q. What you're talking about. So to come back to the  
19 meeting on 8 March, do you remember any discussion about a  
20 1 per cent number at that meeting or less than 2 per cent?  
21 A. No, I don't think so, no.  
22  
23 Q. It's a bit unclear to me. Have you actually read the  
24 transcript of what Mr Drummond said in his evidence?  
25 A. Yes.  
26  
27 Q. You know that one of the things he says is that at  
28 around that time, that is the 8 March meeting, they were  
29 being told that it was a 1 per cent issue?  
30 A. That's what was happening at the time, I don't recall  
31 mentioning that in that meeting, but certainly that's what  
32 I was being told was the 1.86 per cent figure.  
33  
34 Q. You were being told that by Ms Allen and Mr Howes?  
35 A. Yes.  
36  
37 Q. And you were communicating that after --  
38 A. I don't know if I said it at that meeting though.  
39  
40 Q. But at times you were communicating to your superiors  
41 that this was an issue about a tiny fraction of cases?  
42 A. Yes.  
43  
44 Q. Again, do the best you can for us, did you ever say to  
45 them that the police think it's 30 per cent?  
46 A. No.  
47

1 Q. Why not?

2 A. Because at the time I didn't have - we didn't have the  
3 review, we didn't have the findings, we didn't have the  
4 documents.

5

6 Q. It doesn't answer the question though, does it? And  
7 this is what I'm trying to understand, you know your  
8 superiors are dependent on you to provide them with  
9 accurate information so they can make decisions?

10 A. Yes.

11

12 Q. You agree with that?

13 A. Yes.

14

15 Q. You knew, you must have known by the beginning of March  
16 the police had been consistently saying, not just to Cathie  
17 Allen who's then communicating it to you, but saying  
18 directly to you:

19

20 *We seem to be getting 30 per cent.*

21

22 So it's not an explanation for not revealing to your  
23 superiors that the police were saying 30 per cent, that the  
24 lab hadn't yet finished undertaking a review, do you agree  
25 with that?

26 A. No, but can you say that if you wish. I don't agree  
27 with you, but --

28

29 Q. Tell me why?

30 A. Because I've said to you that that was my understanding  
31 at the time.

32

33 Q. I understand --

34 A. It doesn't mean I was lying, because I wasn't lying, so  
35 --

36

37 Q. I'm not putting to you that you're lying. What I'm  
38 trying to understand is why you didn't communicate to your  
39 superiors that the concern coming from the QPS was that on  
40 retesting 30 per cent of samples were producing a usable  
41 profile.

42

43 THE COMMISSIONER: Or at least that they were saying that?

44 A. I acknowledge that now.

45

46 MR HODGE: I understand, but do the best you can for us.

47 Is there any explanation you can offer for why you didn't

1 inform your superiors of it?

2 A. No, because I was under the impression it was 1.86  
3 per cent.

4

5 Q. I'm going to press you on this?

6 A. Okay.

7

8 Q. You were under the impression that the lab were saying  
9 that their original data review four years earlier had been  
10 1.86 per cent?

11 A. Yes.

12

13 Q. You understood, I'm suggesting to you, that the police  
14 were saying that as things actually turned out it looked  
15 like when they retested samples it was 30 per cent?

16 A. Yes.

17

18 Q. What you didn't communicate to your superiors was that  
19 the police were saying to you:

20

21 *When we retest it's 30 per cent.*

22

23 A. Yes.

24

25 Q. What I want you to explain to us is why you didn't  
26 communicate that to your superiors, that the police were  
27 saying to you that when we retest it's 30 per cent?

28 A. I have no explanation for that.

29

30 Q. Well let's think about what the explanations could be.  
31 Do you agree with me that if you say to your superiors the  
32 issue is about 1 per cent or 2 per cent of cases, that it  
33 sounds like it's a very small issue?

34 A. Yes.

35

36 Q. And do you agree with me that if you said to them:

37

38 *But the police say it's not 1 per cent or 2*  
39 *per cent, they think it's 30 per cent.*

40

41 Suddenly it looks like a very big issue?

42 A. Yes.

43

44 Q. Can you see then that one explanation is that you  
45 didn't want your superiors to know that this looked like a  
46 very big issue?

47 A. No, that's not true.

1  
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47

Q. Can you think of another explanation for why you would not have communicated to your superiors that the police were saying they seemed to be getting 30 per cent?

A. The only explanation is my ignorance, not understanding it. That is the explanation.

Q. The ignorance of what?

A. Of the scientific differences. That's the reason. I'm not trying to hide anything, just not understanding it.

Q. But again, and if you think about it, one of the other striking things about your behaviour is that you didn't escalate it to your superiors, do you agree with that?

A. You can say that if you wish.

Q. Well it's not just that I can say that. We did this before lunch. In your statement you have affirmed that you became concerned in mid-March and because you were concerned you escalated it, and we've looked at the email and I suggest to you that's not what happened, you can see that's not what happened. You told them only because they asked you a specific question?

A. I raised the issue. Whether or not I put 'I am alarmed', I did not. The email's there.

Q. Yes. You told them in an email because Professor McNeil asked you a specific question?

A. I was asked about inquiries, yes.

Q. You didn't tell them because you were escalated?

A. I don't recall. Now I've seen that then I've obviously misunderstood.

Q. Misunderstood what?

A. When I was preparing my statement what that was about.

Q. So again tell me if you can offer some explanation for this. It looks like, notwithstanding that you knew that it was a priority issue for the police since mid-December, that the only reason that you eventually told your superiors in mid-March was because Professor McNeil asked you a specific question and that question was relevant to what public statement Queensland Health was going to make about this issue?

A. I didn't link it with any public statement. I think I need to mention that by this time I was under the

1 impression that an external review was going to happen and  
2 I was under the impression that that would include a  
3 comprehensive review of the service, so I had some level of  
4 confidence that that would include multiple aspects of the  
5 service.  
6

7 Q. And do you say that is some explanation for why you  
8 didn't at an earlier time escalate the issue to your  
9 superiors?

10 A. No, I already said that was my ignorance.  
11

12 Q. And your ignorance was of the scientific issue; is that  
13 right?

14 A. You've repeatedly said 1.86 and 30, I've repeatedly  
15 said I didn't understand the concept or the significance of  
16 the 30. That's the truth.  
17

18 Q. Again, when you say you didn't understand the  
19 significance of it, you understood that 30 per cent was a  
20 much larger percentage than less than 2 per cent?

21 A. Of course.  
22

23 Q. So you understood that?

24 A. The 1.86 per cent, of course.  
25

26 Q. So when you say you didn't understand the significance  
27 of it, what is the thing that you didn't understand the  
28 significance of it?

29 A. What I now know and I didn't know then was 1.86 was to  
30 do with the NCIDD upload, the 30 per cent was whether you  
31 actually got a profile. I did not realise that they could  
32 have been the same thing.  
33

34 Q. They couldn't be the same?

35 A. Could have been the same thing.  
36

37 Q. I'm sorry, I understand what you're saying. What you  
38 now understand is 30 per cent is whether you obtained a  
39 profile from a crime scene sample?

40 A. Yes.  
41

42 Q. The 1.86 per cent is the obtaining on NCIDD uplink?

43 A. Yes.  
44

45 Q. But again, I don't understand so I need you to do the  
46 best you can for us. What is the thing that you didn't  
47 understand that meant you didn't understand that there was



1 some significance to the difference between 2 per cent and  
2 30 per cent?

3 A. So 1.86 per cent was what I was being told was  
4 rationale for the agreement that was put into place. I  
5 didn't understand that 30 per cent was if the sample was  
6 taken all the way through to a DNA profile. I didn't  
7 understand at that point in time that not all of the  
8 samples were going through to that stage. I didn't  
9 understand that at the time. So I believed the 1.86  
10 per cent, and I was under the impression that things were  
11 not being missed because police could retest or do extra  
12 testing, reworks, or the scientists could. So that was  
13 what happened.

14  
15 Q. What I suggest to you is that none of what you've said  
16 explains why it is that you would not understand at the  
17 most basic level that there was a difference between 2  
18 per cent and 30 per cent and that that difference was  
19 significant without understanding how they were arrived at,  
20 and therefore was something you ought to have reported to  
21 your superiors, do you agree with that?

22 A. What I would say to you is that we now have the benefit  
23 of hundreds and hundreds of hours of reviewing the science.  
24 I did not have that at the time. I was making decisions on  
25 what I knew at the time. We've all been educated since,  
26 I'm one of those. So, you know, that is the situation.

27  
28 Q. Before the break you referred on a number of occasions  
29 to meetings that you had with Cathie Allen where as I  
30 understood it you were saying you would need to go back to  
31 your notes to see when it was that you raised with her the  
32 issue of the report and the retesting?

33 A. I think I may have referred to those notes or may have  
34 referred to it as Tango Amunet, because that's how I was  
35 referring to it at the time.

36  
37 Q. Mr Operator, can we bring up WIT.0017.0003.0019 and  
38 also perhaps bring up that page and the next page on the  
39 screen for Ms Keller. This is from your - I think I was  
40 referring to it as your first statement, it's the one we've  
41 tendered but there was an earlier statement you gave for  
42 the purpose of the Commissioner's interim report. But you  
43 see in paragraph 82 you say:

44  
45 *There have been an extraordinary number of*  
46 *discussions regarding forensic DNA analysis*  
47 *unit since my appointment in October 2021.*

1  
2 And you say it's impossible to recollect all of them. You  
3 can see what follows is over the page, subparagraph (b) you  
4 say:

5  
6 *I have informal notes suggesting that*  
7 *thresholds were discussed on the following*  
8 *dates.*  
9

10 A. M'hmm.

11  
12 Q. Then (i) refers to a discussion on 16 December 2021?

13 A. M'hmm.

14  
15 Q. And (ii) refers to a discussion on 23 March 2022, (iii)  
16 refers to a discussion on 7 April 2022?

17 A. Yes.

18  
19 Q. And I take it you went through and you reviewed all of  
20 the notes that you've kept in relation to meetings you had  
21 with Ms Allen and these were the only three where you could  
22 identify that you seemed to have raised in any sense the  
23 issue of the testing threshold with Ms Allen?

24 A. Those are the only ones that I had notes on, yes.

25  
26 Q. Do you think you raised it at other times?

27 A. Quite possibly.

28  
29 Q. I see. Well, perhaps we might do it in this way. So  
30 the first item, item number 1 which is Exhibit LK-33.48 -  
31 Mr Operator are you able to bring that up or do you want me  
32 to give you a doc ID to do that?

33 OPERATOR: (Indistinct).

34  
35 MR HODGE: Bring that up on the left if that's all right.  
36 This is your handwritten note from a meeting on 16 December  
37 2021?

38 A. Looks like it.

39  
40 Q. What you're referring to I think is there's some boxes  
41 at the top which presumably were a list of things that  
42 you'd recorded beforehand to discuss with Ms Allen?

43 A. Or at the time.

44  
45 Q. And the second one is Operation Tango Amunet, is that  
46 right, progress?

47 A. M'hmm.

1  
2 Q. So that's the only record you have of a discussion in  
3 December of 2021?  
4 A. I believe so.  
5  
6 Q. That's what you're referring to if you look at the  
7 right-hand side of the screen as the discussion on 16  
8 December?  
9 A. Yep.  
10  
11 Q. But you can't remember now what the contents of that  
12 discussion was?  
13 A. No, I would have - I mean it would have just been a  
14 discussion about, you know, what's required because that  
15 was right when I was copied in.  
16  
17 Q. Okay. If we then bring up WIT.0017.0094.0001, again on  
18 the left-hand side, Mr Operator. This is an agenda  
19 document with handwritten notes on it. Is that an agenda  
20 document that you prepared beforehand?  
21 A. No.  
22  
23 Q. Is it an agenda document that somebody else prepared?  
24 A. Yes.  
25  
26 Q. Who was that?  
27 A. Ms Allen.  
28  
29 Q. Is what would happen she would send you this agenda  
30 document and then you would make notes on it?  
31 A. Yes, either in advance if I had something I'd like to  
32 talk with her about or as we had our conversation.  
33  
34 Q. When you met with her in mid-January 2022, if we look  
35 at items 1 to 7 it doesn't look like she has put down an  
36 item about anything to do with the retesting or the  
37 threshold?  
38 A. No.  
39  
40 Q. But if you look down at the bottom left-hand corner you  
41 can see in handwriting you've got two dot points. One is  
42 Clifton Streets roll out. That was a kind of workplace  
43 culture assessment or workplace mental health assessment --  
44 A. No, that's actually a positive exercise that I rolled  
45 out for that team as a starting point to assist them with  
46 their engagement in the workplace.  
47

1 Q. And then Operation Tango Amunet progress?

2 A. M'hmm.

3

4 Q. That's again - I think you've said that's the way you  
5 were describing it at the time?

6 A. Yes.

7

8 Q. It looks like you've just written the words and ticked  
9 it?

10 A. Yes.

11

12 Q. So you can't remember now what it was you discussed  
13 with her mid-January?

14 A. I expect I asked how things were going with that  
15 inquiry.

16

17 Q. I see. And then can we then bring up - Commissioner,  
18 I'll tender that document.

19

20 THE COMMISSIONER: The note?

21

22 MR HODGE: Yes, or the --

23

24 THE COMMISSIONER: The agenda?

25

26 MR HODGE: The agenda with the notes.

27

28 THE COMMISSIONER: The agenda of the meeting of 13 January  
29 2022 is Exhibit 136.

30

31 EXHIBIT #136 AGENDA OF THE MEETING OF 13 JANUARY 2022.

32

33 MR HODGE: Can we then bring up WIT.0017.0034.0001. This  
34 is then another one of those agenda documents, this time  
35 dated 10 February 2022?

36 A. Okay, yep.

37

38 Q. Again, assuming the same practice was followed this  
39 would have had agenda items that were prepared by Ms Allen?

40 A. Yes.

41

42 Q. And take your time, but looking at I can't see that it  
43 raises the issue of this priority issue for the police  
44 about the testing threshold?

45 A. Not from Ms Allen. I can't read my notes, they're too  
46 pale.

47

1 Q. We can blow it up I think to help you. You seem to  
2 have made notes on the top half just against the agenda  
3 item s?

4 A. H'mm.

5

6 Q. Then if we blow up the bottom half. You can see  
7 there's some other notes. Is there something there that  
8 seems to relate to this priority issue for the police?

9 A. No. That doesn't mean we didn't talk about it.

10

11 Q. No. Do you agree with me, given you're making notes of  
12 a discussion, that if you had a discussion about a topic  
13 and it was significant, then you would have made a note of  
14 it?

15 A. Not necessarily.

16

17 Q. I see. So you could have had some discussion, a  
18 significant discussion about the fact that QPS had this  
19 priority issue that didn't seem to have been addressed and  
20 you just wouldn't make a note of it?

21 A. I may not have.

22

23 Q. You just don't know?

24 A. No. I mean - you know, like I said in my statement,  
25 there are multiple conversations about all sorts of things  
26 going on.

27

28 Q. Thank you. You then met with Ms Allen on 23 March. So  
29 can we bring up - that, Mr Operator, is LK-33.51.

30

31 THE COMMISSIONER: Did you want to tender that document?

32

33 MR HODGE: I don't think I need to, I think it's gone in as  
34 part of an exhibit already. So this is now 23 March 2022.  
35 You can see that at the top?

36 A. Yep.

37

38 Q. Again, it looks like the same kind of format, it's  
39 something that has an agenda created by Ms Allen and then  
40 you've scribbled some notes on it?

41 A. H'mm, yes.

42

43 Q. Then if we blow up the handwritten in the bottom part  
44 of the note?

45 A. Yes.

46

47 Q. That's your handwriting, I take it?

1 A. Yes.

2  
3 Q. So in that note on 23 March 2022 we can see a bullet  
4 point there which is "Tango Amunet report progress"?

5 A. Yes.

6  
7 Q. It looks like, just from the handwriting and the change  
8 of pen colour, it looks like you might have made notes  
9 beforehand of things you wanted to discuss with Ms Allen  
10 and then you made some additional notes during the meeting,  
11 do you agree with that?

12 A. Yes, that's what it looks like.

13  
14 Q. So you made a note that you needed to discuss with her  
15 the Tango Amunet report progress and then it looks like the  
16 note you made during the meeting was, "Justin finished  
17 writing paper CA", that is Cathie Allen, "doing executive  
18 have summary?"

19 A. Yes.

20  
21 Q. With the benefit of that note do you remember what it  
22 is that you discussed with her about how it was going?

23 A. I think I would have just asked her how that was  
24 progressing so that then that's why she appears to have  
25 said he finished writing the paper and she was doing the  
26 summary.

27  
28 Q. This is 23 March. Do you recall that the week earlier,  
29 on 17 March, that there'd been a meeting that had occurred  
30 with QPS?

31 A. Yes, I think - yes.

32  
33 Q. Actually, I can show you this just to help you. Can we  
34 bring up LK-33.54B. I'm sorry, I apologise, I've given you  
35 the wrong one, it's LK-33.54. So these are your  
36 handwritten notes of that meeting?

37 A. Yes.

38  
39 Q. Can we just zoom in on that, Mr Operator, just to make  
40 the whole thing - do you recall whether at that meeting -  
41 do you see at the very bottom it says "DNA insufficient  
42 project" and you see in your handwriting you've "got report  
43 next week (indistinct) CA"?

44 A. Yes.

45  
46 Q. Does that mean that at that meeting Ms Allen said the  
47 report would be coming in the following week?

1 A. It appears so, yes.  
2  
3 Q. You don't remember that now?  
4 A. I'd have to have a look at the minutes. There should  
5 be some minutes, I guess, but, yes, I wouldn't have written  
6 it I don't think otherwise.  
7  
8 Q. Then can we bring up LK-33.49. You see these are  
9 handwritten notes dated 7 April 2022?  
10 A. Yes.  
11  
12 Q. Am I right in thinking all the handwriting we've looked  
13 at, that's all your handwriting?  
14 A. So far.  
15  
16 Q. At this stage you asked her again about the threshold  
17 report?  
18 A. Yes.  
19  
20 Q. You can see that in the third box there it says  
21 threshold report?  
22 A. Yes.  
23  
24 Q. Then it has some dashes next to it. The first says "25  
25 per cent in bucket 2 "?  
26 A. Yes.  
27  
28 Q. The second says "options would require FR"?  
29 A. Yes.  
30  
31 Q. Do you know what 25 per cent in bucket 2 means?  
32 A. Well it appears now that that's the buckets that we  
33 were talking about.  
34  
35 Q. But do you know what it means to say 25 per cent in  
36 bucket 2?  
37 A. That was 25 per cent of the cases were in that bucket.  
38  
39 Q. I see. Then you see - sorry, is that something you  
40 remember or that's just something you're inferring?  
41 A. I remember bucket concepts.  
42  
43 Q. Another possibility is that 25 per cent of the samples  
44 in bucket 2 were obtaining a profile?  
45 A. No, I don't think so.  
46  
47 Q. You don't think that's what it means?

1 A. No.

2  
3 Q. Then you see the next dash is "options would require  
4 FR"?

5 A. Yes.

6  
7 Q. Do you know what that was about?

8 A. If I recall correctly at the time Inspector Neville had  
9 re-sent that graph back to Ms Allen, the graph that was in  
10 the options paper that he'd circled and I think he was  
11 suggesting that a review of that range would be something  
12 to work through. Maybe lower that bucket 2 range, and  
13 that's what I think that 132 lowest to 100 might mean.

14  
15 Q. That wasn't something Ms Allen was suggesting as a  
16 possibility that was something being suggested by somebody  
17 else or you can't remember now?

18 A. I remember at the time Inspector Neville had sent that  
19 graph through and he'd questioned, and he'd drawn a circle  
20 around that and suggested perhaps we could look at dropping  
21 that threshold, and I think that's what that related to.

22  
23 Q. I see. These seem to be the notes you'd taken of your  
24 meetings with Ms Allen between December and early April of  
25 - December 2021 and early April 22 that relate to this  
26 threshold report issue?

27 A. Yes.

28  
29 Q. Do you agree with me in none of these do you record  
30 having conveyed to Ms Allen that there was some urgency to  
31 this being done?

32 A. I may have.

33  
34 Q. That is, you're saying you may have conveyed that but  
35 not recorded it in your notes?

36 A. Yes.

37  
38 Q. I see?

39 A. We both received the email that said that it was.

40  
41 Q. You both received the email from the police?

42 A. Mr Neville, yes.

43  
44 Q. We were looking before at some emails on 15 March, so  
45 that's when you're emailing Professor McNeil, and we were  
46 looking at a note of a meeting you had with police on  
47 17 March, which was a note you have with the police?



1 A. Okay.

2  
3 Q. Do you recall on those same dates you also met with  
4 Kylie Rika and Dr Muller?

5 A. Okay.

6  
7 Q. All of these things were happening at about the same  
8 time?

9 A. That was the nature of the work at the time, yes.

10  
11 Q. I understood your evidence from this morning to be that  
12 you hadn't realised that the issue being raised by Ms Rika  
13 and Dr Muller was the same as the issue in relation to the  
14 thresholds that had been raised by the police?

15 A. Sorry, can you say that again.

16  
17 Q. Yes. I had understood your evidence this morning to be  
18 that you hadn't understood that the issue being raised by  
19 Ms Rika and Dr Muller was the same as the issue being  
20 raised by the police?

21 A. Not at that time. I guess I subsequently did, yes,  
22 it's very - it's all around the same time.

23  
24 Q. But when do you say you came to that realisation?

25 A. That's what I said, I couldn't necessarily remember the  
26 exact date.

27  
28 Q. But you're convinced you didn't know that it was the  
29 same issue?

30 A. Well I didn't understand it.

31  
32 Q. When you say you didn't understand it, does that mean  
33 you didn't understand the complaint being raised by the  
34 police, didn't understand the issue being raised by Ms Rika  
35 and Dr Muller or didn't understand any of what the issue  
36 was?

37 A. So the issues that were raised by Dr Muller and Ms Rika  
38 related - so Ms Rika's related to what appeared to be a  
39 difference of scientific opinion between, in relation to  
40 the comprehensive report in preparation for the options  
41 paper, and I was concerned about that from the perspective  
42 that it didn't seem that there'd been - the way - it didn't  
43 seem that the concerns had been incorporated into that  
44 report, so that was what Ms Rika was talking about and  
45 Ms Rika was challenging the science behind that. And she  
46 was also raising that there was concern that her,  
47 essentially her voice had not been heard at that stage.

1 That's what I understood about that. Ms Rika subsequently  
2 came back and gave me quite a few documents which were, you  
3 know, really technical documents, which had some  
4 handwritten commentary from, I think, another of the  
5 scientists and that, at that stage, I was of the  
6 understanding that there was, they weren't agreeing with  
7 the science in 2018 and that they were also not being given  
8 the opportunity to have that heard. So that was what I  
9 understood from Ms Rika's. Dr Muller raised different  
10 issues with me. She raised the issues of - she raised  
11 three different issues with me. So I can speak to those if  
12 you want me to now.

13  
14 Q. Why don't we deal with Ms Rika's issues first. So you  
15 spoke to her, you took some notes in a meeting with her,  
16 you obtained documents from her?

17 A. Yes.

18  
19 Q. Am I right in thinking you met with her once and she  
20 spoke to you about the issues but I don't think you've got  
21 a file note of that meeting.

22 A. Okay.

23  
24 Q. Then she provided documents to you and you met with her  
25 again after she'd provided the documents and that same day  
26 you sent a referral to the ESU?

27 A. Yes, that sounds right.

28  
29 Q. The file note that you've got, it looks to me like a  
30 file note of that meeting you had on 15 March, the same day  
31 you sent the referral to the ESU?

32 A. H'mm.

33  
34 Q. I'll show you the email that you sent and the  
35 attachment. So can we bring up [FSS.001.0067.3666]. So  
36 you see this is on the left-hand side?

37 A. H'mm.

38  
39 Q. This is your email to, it's CO complaints, but that's  
40 the ESU referral?

41 A. Yes.

42  
43 Q. You say.

44  
45 *I've been provided with the attached*  
46 *documentation from the staff member and*  
47 *have alerted Jess to it being sent for*

1           *assessment. It's from a staff member from*  
2           *the Forensic DNA laboratory. There is*  
3           *media attention directed towards this Unit*  
4           *so I'd appreciate your consideration of*  
5           *this as a matter of urgency, please.*  
6

7           A. Yes.

8  
9           Q. In the summary you say.

10  
11           *They provided feedback on the draft paper*  
12           *for which they were listed as a*  
13           *signatory/reviewer. The feedback was not*  
14           *incorporated and their name was removed*  
15           *from the signatory list for the final*  
16           *version and they went on to question the*  
17           *science on two other occasions but without*  
18           *success.*  
19

20           A. Yes.

21  
22           Q. Do you say you didn't understand that the science that  
23           was being questioned was the science that led to the figure  
24           of 1.86 per cent?

25           A. No, not at that time.

26  
27           Q. I'll show you the attachment. Can we bring up  
28           [FSS.0001.0067.3667. This is, it's a PDF document that has  
29           a number of parts to it, but this is the submission that  
30           you sent in which has your file notes and all the documents  
31           were produced by Ms Rika?

32           A. That's not my writing.

33  
34           A. I'm sorry, whose writing is that?

35           A. That's Ms Rika.

36  
37           Q. So she's given you a copy of her file note?

38           A. Yes.

39  
40           Q. Out of curiosity, had you read this?

41           A. Not at that stage.

42  
43           Q. When you sent it off to ESU, did you read it?

44           A. Briefly, but she gave me a lot of information. My  
45           concern was around the disagreements in the scientific  
46           practice, more so that they were not, that there didn't  
47           seem at that point to be a mechanism for people, or

1 Ms Rika, to have her comments incorporated. What I've  
2 subsequently, and I imagine you will see from the ESU, that  
3 there was a consequent document that I did send through  
4 that did show that Ms Rika was on the signatory list, but  
5 that didn't mean that there wasn't remaining concern about  
6 the process for raising concerns there.

7  
8 THE COMMISSIONER: I'm getting the impression that your  
9 view at the time was that Ms Rika's complaint was that her  
10 view as a scientist wasn't being taken into account and yet  
11 her name was on the document, but in any event her view  
12 wasn't taken into account?

13 A. Yes. She initially told me her name was not on the  
14 document.

15  
16 Q. No, I understand. I'm also getting the impression that  
17 the reason that you handled all of this in the way that you  
18 did at the time was because you didn't know anything about  
19 the subject matter in the lab and do you think that's  
20 adequate, that somebody in the position of Executive  
21 Director doesn't have a working knowledge of what's  
22 happening in the lab? I know that you said that there are  
23 seven areas in FSS and, of course, you can't be an expert,  
24 but if you don't know anything about it, then when you get  
25 a complaint like this one, which was directed really to a  
26 fundamental issue, the fundamental issue that the lab  
27 wasn't doing some of the work that it ought to be doing  
28 with the result that evidence was not being produced that  
29 ought to be produced, then it's not surprising that you  
30 were unaware and that you didn't grasp the significance.  
31 Do you think in terms of how a technical institution like  
32 this is managed at a senior level is satisfactory?

33 A. I guess I can understand why someone may consider that  
34 it may not be.

35  
36 Q. But what do you think?

37 A. I don't think so.

38  
39 Q. Why is that?

40 A. Because as I said previously, I was not, I was not  
41 brought in to this role to be a scientist.

42  
43 Q. No, I understand that, but when you have somebody  
44 bringing you a complaint like this, it seems to me that you  
45 misunderstood the nature of the complaint because you  
46 weren't aware of what they were doing and you weren't  
47 capable of sitting down and reading the documents and

1 understanding them and conferring with Ms Rika or somebody  
2 to explain to you what it was all about, which was well, I  
3 would think, well within your capacity, undoubtedly within  
4 your capacity to understand if you took the time. But you  
5 didn't, so that's all right, that's in the past. Do you  
6 think that a manager who lacks the ability to understand  
7 the significance of matters like this represents the best  
8 form of management we can have for a lab like this?

9 A. Well, I mean I would say that my role was not the  
10 science, my role was to trust the experts, and that's what  
11 I did.

12  
13 Yes, Mr Hodge.

14  
15 MR HODGE: Do you see on this first page, if we just blow  
16 up the bottom third of the page, you see it says --

17  
18 THE COMMISSIONER: I'm sorry, did you say "my role was to  
19 trust the science"?

20 A. My role was not to challenge the science.

21  
22 Q. Yes.

23 A. And I was very clear that I did not come into that role  
24 with any knowledge of that, that was not my area of  
25 expertise, so I was therefore in a position where I have,  
26 for example, in this case I have a HP7 who I had no  
27 knowledge of anything other than this was an expert in  
28 their field and so when they told me 1.86 per cent is the  
29 number, I trusted that and because I was led to believe  
30 that this --

31  
32 Q. I can understand that, anybody can understand that, of  
33 course?

34 A. Okay.

35  
36 Q. But then when you have another scientist saying there  
37 is bad science here, how do you resolve it?

38 A. That's why the external review was what I was hoping we  
39 would have because that was the only way we could resolve  
40 it at the time.

41  
42 Q. I see. I understand.

43 A. Because I wasn't in a position to - I'd only just  
44 started. I think I'd had one meeting with (indistinct). I  
45 didn't even know who those people were, so I didn't know  
46 who I could have reached out to call. I expected that, and  
47 I was fully, by this time, I was confident that a review

1 was going to happen. I might have had, I had had some  
2 input into the terms of reference, which I put in  
3 thresholds and DIFP into that.

4  
5 Q. Yes, I saw that.

6 A. So I was trying to be as exhaustive in the review as I  
7 possibly could and I had confidence, and I even have an  
8 email that shows that I actually said we should go out to a  
9 number of different areas so that we can be transparent, so  
10 at that time I was confident that we could have this  
11 science addressed.

12  
13 Yes, I understand. Thanks for that perspective. Yes,  
14 Mr Hodge.

15  
16 MR HODGE: If you thought the way to address these things  
17 was by the review, is there a reason why you didn't  
18 directly say to your superiors here is the issue by the QPS  
19 and here is the issue raised by the scientists?

20 A. I mean it's clear from the records that I found I must  
21 have had a conversation with Dr Derrington and  
22 Professor McNeil, and it's quite possible I said that the  
23 science had been challenged. As for why I didn't brief up  
24 about the specific police question, I thought that that had  
25 been put into a Ministerial brief as being --

26  
27 Q. When you say it's clear that you must have had a  
28 conversation, the issue of thresholds put in that very  
29 general way, that had been raised by The Australian in a  
30 newspaper report, hadn't it?

31 A. It was in the media, yes.

32  
33 Q. So it's unsurprising that the terms of reference and  
34 the review would refer to the very issue that had been  
35 raised by the media?

36 A. I think it would have been foolish not to.

37  
38 Q. But you had other information, you knew about the  
39 complaint that the police had made to you and you knew  
40 about the issues being raised by the scientists, and I just  
41 want to understand, as you recall it, did you disclose all  
42 of that information to your superiors?

43 A. I can't recall whether I had a conversation. It's  
44 quite likely because I was talking with them very  
45 frequently.

46  
47 Q. So you see this part that we have blown up on the

1 screen, your note is.

2  
3 *QPS report/options. QPS given options*  
4 *based on .008 where analysis of data*  
5 *indicates threshold should be less than*  
6 *this value.*

7  
8 A. Yes.

9  
10 Q. I'm just trying to understand, do you not even remember  
11 reading this file note or you think you read it and you  
12 just didn't understand?

13 A. I think I would have read it and just at the time  
14 absorbed it, but not necessarily processed it in that  
15 depth.

16  
17 Q. You see the next item is January 2021

18  
19 *KDR suggests review of DIFP quant ranges.*

20  
21 A. H'mm.

22  
23 Q. Again, you say you just wouldn't have understood what  
24 that was about?

25 A. I later became aware of what the 3500 was but not at  
26 that stage.

27  
28 Q. I understand. Leaving aside what the 3500  
29 implementation was, the part which suggests review of DIFP  
30 quant ranges, you didn't understand what that was or  
31 connected to the issue raised by the police?

32 A. I may have but this is, this was well before I arrived  
33 so I guess I may have thought that it had been discussed to  
34 that point.

35  
36 Q. If we go over to the next page, you see November 2021.

37  
38 *KDR and AAP raised to management team need*  
39 *to consider doing a new data analysis to*  
40 *inform DIFP as staff have concerns that we*  
41 *are getting lots of really good results*  
42 *from (I think that's) reviewing or testing*  
43 *those.*

44  
45 A. I can see that.

46  
47 Q. Again, you say you didn't connect that to the issue

1 being raised by the police?  
 2 A. I was becoming more aware that it was all linked.  
 3  
 4 Q. You see then 10 February 2022  
 5  
 6 *KDR asked JAH if any movement on this idea*  
 7 *since it was raised at management meeting*  
 8 *as minutes don't provide actions.*  
 9  
 10 A. M'hmm.  
 11  
 12 Q. And it says:  
 13  
 14 *No movement to his knowledge.*  
 15  
 16 A. I can see that.  
 17  
 18 Q. Again, I'm just trying to understand when you were  
 19 getting a note reporting this issue having been raised over  
 20 a period of time with management and concerns about the  
 21 quant range and the threshold (indistinct), which is  
 22 effectively the same thing, how could it be that you could  
 23 not have connected these things?  
 24 A. At this time I was starting to put that all together.  
 25  
 26 Q. When you say at this time, so this is March 2022, and  
 27 this is when you've got the scientists' complaints?  
 28 A. Yes.  
 29  
 30 Q. Again, I'm just trying to understand your evidence. I  
 31 had thought your evidence was you didn't understand that  
 32 the scientists' complaints were raising the same thing as  
 33 that being raised by the police?  
 34 A. The terminology was a bit different so I was obviously  
 35 confused.  
 36  
 37 Q. I see. Then if we go through, Mr Operator, to  
 38 FSS.0001.0067.3709. This is part of this bundle of  
 39 material that you've sent off to ESU. And you see this is  
 40 the Options Paper?  
 41 A. Yes.  
 42  
 43 Q. This would have been a document by now, that is by  
 44 mid-March, that you must have been familiar with?---I was.  
 45 By then, yes, I was aware of it.  
 46  
 47 Q. A month earlier you'd emailed it to Inspector Neville?



1 A. Yes, I did.  
2  
3 Q. And you'd read it?  
4 A. Yes.  
5  
6 Q. If we go to page.3718 which is the conclusions part  
7 with the options to consider. Can you see there's some  
8 handwriting there?  
9 A. Yes.  
10  
11 Q. And whose handwriting is that?  
12 A. It's not mine.  
13  
14 Q. You see it's circled around 1.45 per cent and says:  
15  
16 *Based on false assumptions.*  
17  
18 A. Yes.  
19  
20 Q. That is a profile valuable or not, rather than profile  
21 or not?  
22 A. Yes.  
23  
24 Q. When you went through the material that Ms Rika  
25 provided to you, you didn't notice that the handwriting was  
26 identifying the very issue that the police were  
27 identifying?  
28 A. 1.45 wasn't something that was being identified at that  
29 stage as far as I understand it. 1.86 was being mentioned.  
30  
31 Q. I see. So you didn't know what the connection was  
32 between 1.86 and 1. --  
33 A. I do now.  
34  
35 Q. But you didn't at the time?  
36 A. I - not - I do now.  
37  
38 Q. But you say at the time you didn't put it together?  
39 A. It seems not.  
40  
41 Q. And ESU didn't accept the complaint as raising an issue  
42 for them - sorry, that is they accepted the complaint, they  
43 reviewed it but it wasn't something that they could  
44 progress further?  
45 A. So they replied saying that they'd assessed it and did  
46 not constitute public interest disclosure or fulfil the  
47 requirements for a CCC referral.

1  
2 Q. Yes?  
3 A. From recollection they said that they weren't qualified  
4 to assess the science and they returned it back to the  
5 Department.  
6  
7 Q. And so that meant coming back to you?  
8 A. Yes.  
9  
10 Q. And what did you do?  
11 A. This was when I was confident that the review was going  
12 to start so it would have been part of the considerations  
13 of the external reviewers.  
14  
15 Q. And so did you pass it on to someone?  
16 A. Who would I have passed it on to? I was waiting for a  
17 review to start.  
18  
19 Q. Who would you have passed on the information from the  
20 scientists?  
21 A. I would have passed it on to the external review  
22 officers as part of the review.  
23  
24 Q. Why not pass it on to your superior?  
25 A. I could have done that.  
26  
27 Q. And why didn't you?  
28 A. I may have discussed it with them.  
29  
30 Q. You also met with Dr Moeller. Can we bring up  
31 WIT.0001.0013.0001?  
32 A. I think it's important to note here that this was from  
33 2018, so I had no knowledge of what had been done between  
34 when that paper came out.  
35  
36 THE COMMISSIONER: No, I understand, you were fresh to the  
37 job and you were learning?  
38 A. I had no hand over.  
39  
40 Q. No, I understand that?  
41 A. At all. When it came to this science anyway.  
42  
43 MR HODGE: So see these are your notes from your meeting  
44 with Dr Moeller?  
45 A. Yes.  
46  
47 Q. For 17 March?

1 A. Yes.  
2  
3 Q. You said there were three issues that were raised but  
4 they weren't the issues that Ms Rika was raising?  
5 A. Well they were different context but still the  
6 scientific aspects of it.  
7  
8 Q. But the first issue which is which you've taken a note  
9 of, that is the same issue, isn't it?  
10 A. DIFP was the way they reported it. As for the  
11 thresholds, that's a bit different. They put DIFP as the  
12 comment I subsequently became aware, so it's the thresholds  
13 but it's the comment code that they would put on the  
14 thresholds. So it is all interlinked.  
15  
16 Q. If we blow up the notes from the - perhaps from DIFP  
17 downwards just so that's a bit easier for Ms Keller to  
18 read. This is your handwritten notes as Dr Moeller is  
19 talking through this thing?  
20 A. And afterwards, after the notes that I took after I  
21 spoke with her.  
22  
23 Q. I see. You both took some notes whilst she was talking  
24 to you but you also then expanded out on it?  
25 A. Yes, otherwise I wouldn't have been listening to her.  
26  
27 Q. You see the first bullet point says:  
28  
29 *August 2015 project. 163 was to assess*  
30 *auto-microconcentration.*  
31  
32 A. Yes.  
33  
34 Q. Prior to this you were sending certain values to  
35 micro-con.  
36 A. Yes.  
37  
38 Q. And then you see that the next bullet point down says:  
39  
40 *8 per cent yielded profiles for NCIDD.*  
41  
42 A. Yes.  
43  
44 Q. The next bullet point says:  
45  
46 *Proposals x 3 and Option 2 was adopted.*  
47

1 A. Yes.

2  
3 Q. And there's an asterisk which says:  
4 *Risks page 18.*

5  
6 A. Yes.

7  
8 Q. What's that page 18 referable to?

9 A. The document she gave me.

10  
11 Q. I see. And you see it says, or your note next to it is  
12 suggestive of:

13  
14 *Don't better, there's not enough there.*

15  
16  
17 A. That's what she said to me. That's my recollection of  
18 what she said to me.

19  
20 Q. And then you see she then in the next bullet point or  
21 what you've noted down is:

22  
23 *Mentioned the issue of ...*

24  
25 Can you just read that? Is that:

26  
27 *Statement then reworked for a particular*  
28 *case. Kylie said yes, Sharon said no, not*  
29 *enough time.*

30  
31 A. Yes.

32  
33 Q. And then the next asterisk point is:

34  
35 *We have adopted the most risky and cost*  
36 *effective option.*

37  
38 A. Yes.

39  
40 Q. And then the next bullet point says:

41  
42 *Micro-cons ceased in 2018.*

43  
44 A. That's what she must have said to me.

45  
46 Q.  
47 *Reporting scientists not happy.*

1  
2 A. Yes.  
3  
4 Q. Did you know at this time what micro-cons meant?  
5 A. Not really.  
6  
7 Q. I don't want to take you back through the documents but  
8 do you agree with me that by March there were many  
9 documents that you'd received, many emails from the police  
10 included referring to concentration?  
11 A. Yes.  
12  
13 Q. Did you know what concentration was?  
14 A. Basically.  
15  
16 Q. Did you know what micro-cons was?  
17 A. Not at that stage. Certainly not like to 35 or  
18 anything like that that we now know.  
19  
20 Q. You see you say:  
21  
22 *I advised Ingrid that this may represent an*  
23 *ESU rereferral.*  
24  
25 A. Yes.  
26  
27 Q. Then there's a note you've taken about DIFP with less  
28 than .088?  
29 A. Yes.  
30  
31 Q. Can we go over the page? Then if we just blow up the  
32 last part there at the top of the page where it says Ingrid  
33 gave examples?  
34 A. Yes.  
35  
36 Q. Do you remember now what that's about?  
37 A. She presented me with some - they looked like sort of  
38 printouts from a database, presumably the  
39 forensic-register, I don't know. I don't have access to  
40 the forensic-register.  
41  
42 Q. Then can we go back to the first page and then just  
43 blow up at the very top of the page from about the first  
44 seven lines. So you've recorded that Dr Moeller asked for  
45 a private meeting?  
46 A. Yes.  
47

1 Q. And you see over on the right-hand side you've  
2 recorded:

3  
4 *Ingrid scared of Cathie.*

5  
6 A. That's what she told me.

7  
8 Q. And:

9  
10 *Cathie punishes people.*

11  
12 A. That's what she said.

13  
14 Q. And then you see the quote that you've written down  
15 from her is:

16  
17 *It's possible criminals are getting off*  
18 *scot-free in Queensland.*

19  
20 A. Yes.

21  
22 Q. I want to suggest to you even if you hadn't known  
23 before 17 March, you knew from 17 March onwards that  
24 Dr Moeller was scared of Ms Allen?

25 A. I did.

26  
27 Q. And you knew that she believed that Ms Allen punished  
28 people?

29 A. That's what she told me.

30  
31 Q. You see that a quotation you put, which is:

32  
33 *It's possible criminals are getting off*  
34 *scot-free in Queensland.*

35  
36 A. Yes.

37  
38 Q. You understood that reflected a concern that Justin  
39 Moeller about the consequences of bad science being used?

40 A. No, I took it as exactly what that says.

41  
42 Q. What did you think was the cause of:

43  
44 *It's possible criminals are getting off*  
45 *scot - free in Queensland.*

46  
47 A. That she was challenging the scientific processes.

1  
2 Q. Yes, that is she was saying to you:  
3  
4 *There is a problem with the scientific*  
5 *processes and they could lead to criminals*  
6 *getting off in Queensland.*  
7  
8 A. That's what she said to me.  
9  
10 Q. And so then you referred that to the ESU?  
11 A. A combination of that.  
12  
13 Q. And again the ESU accepted it but it didn't constitute  
14 - what was explained to them it didn't constitute official  
15 corruption?  
16 A. That's what I was told by them.  
17  
18 Q. So they sent it back to you to deal with?  
19 A. Yes.  
20  
21 Q. So at this stage you had what Dr Moeller was putting to  
22 you was actually three issues: DIFP, sperm, and inaction by  
23 management. And just tell us what were the steps that you  
24 then took to address those issues?  
25 A. So again, I was confident at that stage that there was  
26 going to be an external independent review and I was  
27 hopeful that would include all of the scientific processes  
28 that were included in the Terms of Reference, which were  
29 very board. And these issues seem to have been from years  
30 prior and I had knowledge of what had been done back then.  
31  
32 Q. Did you investigate?  
33 A. Not at this stage.  
34  
35 Q. When you say not at that stage, that suggests that you  
36 did you at some stage. So did you at some stage  
37 investigate these complaints?  
38 A. No, not at that stage. No, I did not.  
39  
40 Q. Again, you keep saying not at this stage. I just need  
41 to understand. When you say that what it suggests is you  
42 didn't do it then but you did it later. Did you do it  
43 later?  
44 A. No, I was hoping that the review would identify that.  
45  
46 THE COMMISSIONER: By that stage as I understand it, I'm  
47 looking at an email attached to your statement of 22

1 February from you to Brett Bricknell - who is Mr Bricknell?  
2 A. Yes.  
3  
4 Q. Who is Mr Bricknell?  
5 A. He was the general manager.  
6  
7 Q. Of?  
8 A. PQFSS.  
9  
10 Q. And Petra Derrington, who's she?  
11 A. She's the chief pathologist.  
12  
13 Q. And the two lawyers attached to Queensland Health. By  
14 that stage you were emailing to them suggesting places  
15 where you might look for reviewers for this review?  
16 A. I was.  
17  
18 Q. Again, on 24 February you suggested the National  
19 Institute as a place?  
20 A. Yes.  
21  
22 Q. There's an email from Ms Lord to you and Mr Bricknell  
23 and Ms Derrington that the Terms of Reference have been  
24 drafted by Minter Ellison?  
25 A. Yes.  
26  
27 Q. Ms Moeller then sees you three weeks later?  
28 A. Yes.  
29  
30 Q. I'm just trying to get the timeline in my mind. Yes,  
31 thank you.  
32  
33 MR HODGE: I think you agree with this, mid-March you knew  
34 that QPS had been raising an issue about testing thresholds  
35 and said it was a priority for them in December of the year  
36 before?  
37 A. Yes.  
38  
39 Q. You knew that Ms Rika had come to you and raised an  
40 issue about the science behind the Options Paper?  
41 A. Yes.  
42  
43 Q. You knew that Dr Moeller had come to you and raised  
44 three issues but one of which was about this testing  
45 threshold?  
46 A. Yes.  
47



1 Q. You believed that Cathie Allen was not dealing with it  
2 urgently?

3 A. That's the impression I had.

4

5 Q. You believed it was an urgent matter?

6 A. Yes.

7

8 Q. And you must have understood by then that there was a  
9 disparity between what was claimed to be the consequence of  
10 not testing these samples and what seemed to be turning out  
11 to be the consequence of not testing the samples.

12 A. I'm sorry, can you repeat that?

13

14 Q. Yes. By mid-March you must have understood that there  
15 was a disparity between what had been claimed by the lab to  
16 be the consequence of not testing the samples and what it  
17 seemed to be on the police's account turning out to be the  
18 consequence of not testing the samples?

19 A. Yes, I guess so, yes.

20

21 Q. And so did you take all of this information and present  
22 it to your superiors to say:

23

24 *We have a very urgent situation where both*  
25 *the police and scientists who are coming to*  
26 *me with me privately are raising an issue.*

27

28 A. I think I did speak with Dr Derrington and Professor  
29 McNeil.

30

31 Q. Is there something - you've obviously reviewed a lot of  
32 documents that you have prepared in your contemporaneous  
33 documents and you're familiar with them, you refer to your  
34 file notes in answer to my questions. Is there any  
35 document you've seen in which you convey to anyone a sense  
36 of urgency about this issue?

37 A. There may not have be a document but there was  
38 certainly a lot of discussions around the importance of  
39 this review.

40

41 Q. Perhaps again, because I think you'll be back tomorrow,  
42 you could look through your documents and see if you can  
43 refine something where you think it conveys a sense of  
44 urgency to any of your superiors?

45 A. I don't think there is anything that you'll find in my  
46 emails. I've checked my emails. Certainly that doesn't  
47 mean that there weren't conversations about what should go

1 into the external review and the requirement for the  
2 external review. If I had sent an email that said this is  
3 urgent, I'm not sure there'll be one. Certainly my actions  
4 were showing that I was supporting an external review  
5 happening.  
6

7 Q. On 1 April Inspector Neville again followed up the  
8 issue. Can we bring up QPS.0001.1312.0001. I'm sorry,  
9 actually there's something else I just need to ask you  
10 about. Mr Operator, can we just bring up the witness  
11 statement again. I just need to - it's the supplementary  
12 witness statement, the first supplementary witness  
13 statement. The doc ID for that one is WIT.0017.0248.0001.  
14 Can we go to page 21 of that document and blow up paragraph  
15 72. This is a paragraph which you affirmed in response to  
16 an opinion expressed by Mr Drummond that you should have  
17 referred the information up to him?

18 A. Yes.  
19

20 Q. And you say:  
21

22 *I understand it has been suggested in the*  
23 *evidence given in this Commission of*  
24 *Inquiry that following receipt of the*  
25 *information I should have referred the*  
26 *information to the Acting Director-General.*  
27 *I did not refer the information to the*  
28 *Acting Director-General because of the*  
29 *independence of the ESU's functions. As a*  
30 *matter of practice no other information*  
31 *that is the subject of an ESU referral is*  
32 *referred to the Acting Director-General in*  
33 *the confidentiality obligations that I*  
34 *understood applied to me by virtue section*  
35 *65 of the PID Act.*  
36

37 A. Yes, and there's a subsequent statement from yesterday  
38 that clarifies those points.  
39

40 Q. Well it doesn't clarify it, does it? I want to  
41 understand this, 72, is that true?

42 A. Yes.  
43

44 Q. It's true that you didn't refer information to the  
45 Acting Director-General because of the independence of the  
46 ESU's functions and because of the confidentiality  
47 obligations that you understood apply to you by virtue

1 section 65 of the PID Act?  
 2 A. This relates to - when this was prepared this was what  
 3 I - my obligations that I took as the confidentiality were  
 4 not to disclose the names of the persons who came and spoke  
 5 to me. That's the confidentiality aspect.  
 6  
 7 Q. That's not what you say?  
 8 A. Pardon?  
 9  
 10 Q. That's not what you say, you know that. Where did you  
 11 say:  
 12  
 13 *I therefore thought I had to keep*  
 14 *confidential the names of the people.*  
 15  
 16 A. That's in my supplementary statement.  
 17  
 18 Q. Where do you say in that paragraph:  
 19  
 20 *I thought I had to keep confidential the*  
 21 *names.*  
 22  
 23 A. It doesn't say it there but you've assumed it.  
 24  
 25 Q. I've assumed what?  
 26 A. You've turned it into that, that's not what it means to  
 27 me.  
 28  
 29 Q. It says:  
 30  
 31 *I did not refer the information to the*  
 32 *Acting Director-General.*  
 33  
 34 A. M'mm.  
 35  
 36 Q. And that follows on from the first sentence which says:  
 37  
 38 *I understand it has been suggested in the*  
 39 *evidence given in this Commission of*  
 40 *Inquiry that following receipt of the*  
 41 *information received from Ms Rika,*  
 42 *Dr Moeller and Ms Keller.*  
 43  
 44 A. M'hmm.  
 45  
 46 Q. So the information being referred to in all places is  
 47 the information received from the three people?

1 A. Okay.  
2  
3 Q. It is, isn't it?  
4 A. Okay.  
5  
6 Q. It's your statement, isn't that what it means?  
7  
8 THE COMMISSIONER: You think about it, Ms Keller, take your  
9 time. You had received an approach from Ms Rika and  
10 Dr Moeller and Angelina Keller.  
11 A. Yes.  
12  
13 Q. Confusingly?  
14 A. She's very nice.  
15  
16 Q. And so as a consequence of that you thought it a  
17 justified referral to the ESU by means of a PID; is that  
18 right?  
19 A. It's a - you send it to the complaints and you ask them  
20 to assess it.  
21  
22 Q. Right, so you send it to them. You say:  
23  
24 *I didn't refer the information to the*  
25 *Acting Director-General because of the*  
26 *independence of the ESU's functions.*  
27  
28 What do you mean by that?  
29 A. Well they are a stand alone body.  
30  
31 Q. Yes, I understand they're independent but I'm really  
32 talking about the word because:  
33  
34 *I didn't refer it to the Director-General*  
35 *because of the independence of the ESU.*  
36  
37 A. Okay, that's probably poorly worded on my behalf.  
38  
39 Q. What did you mean then?  
40 A. Well, my understanding is that because of the nature of  
41 what the Ethical Standards Unit does, and you can see from  
42 my email highly confidential, everything was contained  
43 because I've always considered that when something's  
44 referred to ESU that disclosers can be fearful, so I try  
45 and contain everything I possibly can to protect them.  
46 I've probably worded this very poorly.  
47

1 Q. Don't worry about the wording?

2 A. My intention was to protect those people and I was  
3 aware at that stage I had scientific differences of  
4 opinion. I was aware about the external review. I didn't  
5 brief up with the detail because I guess I was trying to  
6 protect the people that were coming forth to me.

7

8 Q. Yes, I understand. Yes, Mr Hodge?

9 A. Particularly as - if I may add?

10

11 Q. Yes?

12 A. At least one of them said they were frightened of  
13 retribution so I was making every attempt to be very  
14 confidential about the whole thing.

15

16 Q. What you're being asked really is, on this premise I  
17 think, you can keep confidential who has approached you and  
18 how many people have approached you?

19 A. Yes.

20

21 Q. But you can advise the Acting DG about the substance of  
22 the matter and you're being asked why didn't you do that.  
23 Is that correct, Mr Hodge?

24

25 MR HODGE: It goes a bit further than that.

26

27 THE COMMISSIONER: All right, you continue.

28

29 MR HODGE: You know that the criticism that was made by the  
30 Acting Director-General of you in his evidence is that you  
31 did not brief up the information from the scientists?

32 A. To him?

33

34 Q. Yes?

35 A. Yes.

36

37 Q. In your first supplementary on Friday you sought to  
38 suggest that the reason that you hadn't briefed up that  
39 information was because of the independence of the ESU's  
40 functions and the confidentiality obligations that you  
41 thought were imposed on you by statute?

42 A. Yes.

43

44 MR HOLT: Sorry, Commissioner, I hesitate to get to my  
45 feet.

46

47 THE COMMISSIONER: I'm sorry, yes Mr Holt.

1  
2 MR HOLT: My friend's referred to that sentence.  
3  
4 THE COMMISSIONER: I'm sorry, can you speak up a little.  
5  
6 MR HOLT: I'm sorry, Commissioner. My friend's referred to  
7 that paragraph now on multiple occasions and yet seems  
8 unable to refer to the phrase in the middle:  
9  
10 *As a matter of practice no other*  
11 *information.*  
12 And so on.  
13  
14 THE COMMISSIONER: I'm sorry, which part?  
15  
16 MR HOLT:  
17  
18 *As a matter of the practice no other*  
19 *information that isn't subject of an ESU*  
20 *referral is referred to the Acting*  
21 *Director-General.*  
22  
23 I wonder if the passage is going to be put if it could be  
24 put completely to the witness rather than the first and  
25 last parts of --  
26  
27 THE COMMISSIONER: I'm sure Mr Hodge is going to cover all  
28 of it.  
29  
30 MR HOLT: I would hope so, and that's what I was hoping but  
31 it's --  
32  
33 THE COMMISSIONER: He's still working.  
34  
35 MR HOLT: We've had the first clause and the last,  
36 Commissioner, and not from the middle on four occasions. I  
37 simply want it to be put fairly.  
38  
39 THE COMMISSIONER: And if he doesn't you will.  
40  
41 MR HOLT: I will, thank you.  
42  
43 THE COMMISSIONER: Yes Mr Hodge.  
44  
45 MR HODGE: Ms Keller, your barrister would like you to read  
46 the whole of the sentence. You tell me what it looks like  
47 and what is the criticism that had been implicitly made of

1 you by Mr Drummond, you said the reason that you didn't  
2 provide that information was because (a) of the  
3 independence of the ESU's functions, (b) because as a  
4 matter of practice no other information that is the subject  
5 of an ESU referral is referred to the Acting  
6 Director-General, and (c) the confidentiality obligations  
7 that you understood applied to you by virtue of section 65  
8 of the PID Act?

9 A. That's what it says there.

10  
11 Q. And is that true?

12 A. That's how I understood it, and certainly I don't  
13 recall ever in any of my roles briefing up to the  
14 Director-General about an ESU referral.

15  
16 Q. Yes, but you understand the issue and the criticism of  
17 you is about not having briefed up the information?

18 A. Well I would say that I did brief up to, and that's  
19 part of my supplementary statement from yesterday.

20  
21 Q. Let's bring up your supplementary statement. Can we  
22 leave the statement, the first supplementary statement on  
23 one side of the screen and then bring up the other  
24 supplementary statement where the file note is, which is  
25 WIT.0017.0249.0001. This is the further supplementary  
26 statement?

27 A. Yes.

28  
29 Q. Is what happened you discovered an email that you'd  
30 sent to Professor McNeil and Ms Derrington?

31 A. Yes, Dr Derrington.

32  
33 Q. Dr Derrington, I'm sorry. In that email to Professor  
34 McNeil and Dr Derrington you'd referred to the two  
35 referrals discussed in the previous week?

36 A. Yes.

37  
38 Q. And we'll bring that up. Again, we'll do that on the  
39 left-hand side of the screen. So this is - I only have a  
40 name of it, it's LK-146, it should be the only attachment  
41 to that further supplementary statement. So you email them  
42 on 20 March in the morning and say:

43  
44 *FYI the two referrals discussed last week*  
45 *have not been determined to constitute*  
46 *PIDs.*  
47

1 A. Yes.

2

3 Q.

4 *Can be managed as part of the review.*

5

6 A. Yes.

7

8 Q. And do you remember the discussion that you'd had with  
9 them about the two referrals?

10 A. Not specifically. Certainly we were discussing the  
11 review quite frequently at that stage.

12

13 Q. So you don't remember what you told them about what the  
14 content of the complaints were?

15 A. I expect that I would have - no, but I expect that I  
16 would have told them that we had some challenges to the  
17 scientific processes and that again I was confident the  
18 review would be part of that assessment.

19

20 Q. Did you tell them the names of the complainants?

21 A. No, I don't believe so.

22

23 Q. In your paragraph 72 when you said:

24

25 *I did not refer the information to the*  
26 *Acting Director-General because of the*  
27 *independence of the ESU's functions.*

28

29 Do you see that?

30 A. Yes, you've brought it my attention a number of times.  
31 Yes, I can see that.

32

33 Q. That statement was rendered untrue by virtue of the  
34 email that you sent to Professor McNeil and Dr Derrington,  
35 wasn't it?

36 A. How is that untrue?

37

38 Q. Because you had referred the information to Professor  
39 McNeil and Dr Derrington notwithstanding --

40

41 THE COMMISSIONER: Maybe the context is different,  
42 Mr Hodge?

43 A. Very.

44

45 Q. In paragraph 72 she's speaking about closeting the  
46 information because it's going to the ESU and not wishing  
47 anybody to - any unnecessary people to know that that's



1 happened so that there can be no suggestion of any  
2 interference, and this is after the ESU had rejected the  
3 complaints and so it's necessary to consider whether they  
4 can be addressed otherwise. So she's putting it, she's  
5 informing them that she intends to see that it's addressed  
6 as part of the review.

7  
8 MR HODGE: I understand that, Commissioner. Did you inform  
9 the Acting Director-General of it after the ESU complaints  
10 had been sent back?

11 A. No.

12  
13 Q. Do you say paragraph 72 explains why you didn't refer  
14 it up to the Acting Director-General after the complaints  
15 had come back from ESU?

16 A. As I said in my statement as a matter of practice no  
17 other information that is subject to an ESU referral is  
18 referred to the Acting Director-General, that is, as I said  
19 earlier, very infrequent. In fact I don't think I can  
20 recall any circumstances where I would refer an ESU  
21 referral to the Director General. That's not, the Director  
22 General has - I can't understand how the Director General  
23 could cope with being briefed on every single ESU referral,  
24 so I briefed up to my two, two of my seniors, to the  
25 Director General I did not.

26  
27 Q. You understand the criticism that was made of you by  
28 Mr Drummond was that you did not refer up to him, not the  
29 fact of the ESU referral, but the information that gave  
30 rise to the ESU referral, and that's why in your statement  
31 you deal with the information?

32 A. Yes, of course. That's his view.

33  
34 Q. At the time you'd had a meeting, as I understand it,  
35 with the Acting Director General on 8 March?

36 A. About the external review?

37  
38 Q. Yes?

39 A. Yes.

40  
41 Q. And about issues in relation to the DNA lab?

42 A. About, about consolidating the approach to the external  
43 review.

44  
45 Q. I'm now getting slightly confused. Perhaps if we can  
46 then bring up that supplementary further statement again on  
47 the left-hand side screen, which is WIT.0017.0249.0001 and

1 go to p2. You see in paragraph 8 you say.

2  
3 *I wish to clarify that the information that*  
4 *I was referring to in that paragraph (and*  
5 *that's referring to paragraph 72 of your*  
6 *preceding statement) was the identity of*  
7 *the disclosers?*

8 A. Yes.

9  
10 Q.

11 *That is, I would not refer the name of a*  
12 *discloser to the Acting Director General*  
13 *because of the confidentiality obligations*  
14 *that I understood applied to me.*

15  
16 A. Yes.

17  
18 Q.

19 *This consideration would not however*  
20 *preclude me from referring the subject of a*  
21 *disclosure to the Acting Director General.*

22  
23 A. That's right.

24  
25 Q. So in paragraph 72, when it refers to the information,  
26 are you saying you never intended that to refer to the  
27 information, you just intended it to refer to the identity  
28 of the disclosers?

29 A. That was my concern, was the identity of the  
30 disclosers. I felt that I was addressing the scientific  
31 disagreements or challenges as part of the review.

32  
33 Q. All I'm trying to do now is just understand what your  
34 evidence is. In 72 when you say, "I did not refer the  
35 information to the Acting Director General",  
36 we should read that as, "I did not refer the identity of  
37 the disclosers to the Acting Director General because of  
38 the independence of the ESU's function. As a matter of  
39 practice no other" - I guess this should now be - "identity  
40 of the disclosers that is the subject of an ESU referral is  
41 referred to the Acting Director General and the  
42 confidentiality obligation that I understood applied to me  
43 by virtue of s65 of the PID Act"?

44 A. So just to be really clear, I was very concerned about  
45 the identification of the disclosers based on what they had  
46 told me. I did not brief the Director General. The  
47 information that's been disclosed to me is still - it was

1 briefed in concept form to Dr Derrington and Professor  
2 McNeill. At no time did I brief the Director General about  
3 the content of the conversations with those disclosers or  
4 their names. I briefed up to the two more senior people  
5 above me.  
6

7 Q. Just again, though, if you look at paragraph 72 of your  
8 supplementary statement, I just want to understand, should  
9 we read that last sentence of 72 as meaning.

10  
11 *I did not refer the identity of the*  
12 *disclosers to the Acting Director General*  
13 *because of the independence of the ESU's*  
14 *functions. As a matter of practice the*  
15 *identities of no other discloser that is*  
16 *the subject of ESU referral is referred to*  
17 *the Acting Director General and the*  
18 *confidentiality obligations that I*  
19 *understood applied to me by virtue of s65*  
20 *of the PID Act.*  
21

22 A. I think I've answered why I didn't. It's a combination  
23 of those things.  
24

25 Q. Well, we can read paragraphs 8 of your further  
26 supplementary statement and paragraph 72 and the  
27 Commissioner can make his own mind up. Can I then bring up  
28 QPS.001.1312.0001.  
29

30 THE COMMISSIONER: Are we moving on to a different subject?  
31

32 MR HODGE: Yes. Commissioner.  
33

34 THE COMMISSIONER: Do you want a break, Ms Keller? We  
35 often break in the afternoon for 15 minutes, so if you want  
36 a break we can have one?

37 A. Thank you, Commissioner.  
38

39 THE COMMISSIONER: We'll break for 15 minutes.  
40

41 **SHORT ADJOURNMENT**  
42

43 THE COMMISSIONER: Yes, Mr Hodge.  
44

45 MR HODGE: Can we bring up QPS.0001.1312.001. If we look  
46 at the bottom of the page first we see this is an email  
47 Inspector Neville sent on 16 March to Cathie Allen and

1 copied to you and Superintendent McNab and you see he says.

2  
3 *I've been continuing to track success rates*  
4 *of samples that were originally reported as*  
5 *DNA insufficient for further processing,*  
6 *but then yielded a useable profile when QPS*  
7 *requested testing to continue. I am still*  
8 *seeing a similar success of rate of nearly*  
9 *30 per cent.*

10  
11 A. Yes.

12  
13 Q. That was 16 March. That was the day before you had  
14 your meeting with the QPS I think on 17 March?

15 A. Okay.

16  
17 Q. Then on 1 April, if we go to the top of the page,  
18 Inspector Neville writes again, and again copies it to you  
19 and Superintendent McNab and says

20  
21 *Previously you indicated that you would*  
22 *provide a report in response to issues*  
23 *raised by QPS around the thresholds used to*  
24 *triage continuation of DNA testing. I*  
25 *spoke to Bruce who indicated that he has*  
26 *not received this as yet (unless he missed*  
27 *it amongst other many emails). In any case*  
28 *can you confirm whether or not this has*  
29 *been provided yet please. If not, do you*  
30 *have an expected date of release? Bruce*  
31 *has also requested that the report be*  
32 *provided to me as the responsible officer*  
33 *for DNA in the QPS please.*

34  
35 I take it that last part was because Ms Allen had displayed  
36 some lack of interest, to put in mildly, in sending things  
37 to Inspector Neville?

38 A. I'm not going to comment on Cathie's intentions. I can  
39 read that email.

40  
41 Q. You were aware of the emails and copied into the email  
42 between Ms Allen and Inspector Neville?

43 A. I was.

44  
45 Q. Was it the case that she was emailing Superintendent  
46 McNab rather than emailing Inspector Neville, or can't say?

47 A. No, normally it would be Cathie and David direct to one

1 another.

2  
3 Q. In any event he's indicating that the report should go  
4 to him?

5 A. Okay.

6  
7 Q. As at 1 April 2022, what did you understand was the  
8 situation in relation to the report?

9 A. Well, at that stage, from memory, I thought that, you  
10 know, the exec summary was being prepared, so I thought it  
11 was - well I hoped it was close.

12  
13 Q. On 1 April?

14 A. Yes.

15  
16 Q. As far as you know was it provided to the police?

17 A. By Ms Allen?

18  
19 Q. Yes?

20 A. Not to my knowledge.

21  
22 Q. Do you know why it wasn't provided?

23 A. You'd have to ask her that.

24  
25 Q. So you're saying you understood that Ms Allen was going  
26 to provide it and your understanding never changed?

27 A. I understood that it would be provided to me initially  
28 and subsequently the document I did receive I sent to  
29 Superintendent McNab.

30  
31 Q. Was that in June?

32 A. That was in June.

33  
34 Q. Just do the best you can for us: were you involved in  
35 a decision not to provide it to the police in April?

36 A. So in my statement --

37  
38 Q. You can just answer the question. Were you involved in  
39 a decision in April not to provide the report to police?

40 A. I was.

41  
42 Q. Could you just tell us about that involvement?

43 A. So because at the time I was under the impression that  
44 the external review was imminent, I spoke with someone in  
45 QH Legal and we talked about the timing of releasing a  
46 report, given that the external review was about to happen,  
47 and I now know that when you speak to a lawyer it's not

1 legal advice unless it's formal. I did not know that at  
2 the time.

3  
4 THE COMMISSIONER: No, it can be informal but privilege has  
5 been waived here you see?

6 A. Okay. So I guess I took legal advice as advice from a  
7 legal person and I subsequently said to Superintendent  
8 McNab that the report would be held and be part of the  
9 external review. So that was my misunderstanding. But  
10 that's how I recall it happening.

11  
12 Q. So rather than pursuing an inquiry and dialogue with  
13 QPS, your view was that it would be better if it was  
14 subsumed in the external review that you were expecting?

15 A. Yes, because that was going to be, as far as I  
16 understood it, very comprehensive.

17  
18 MR HODGE: Is what you told Superintendent McNab that your  
19 Legal Unit had asked that all such reporting on Inspector  
20 Neville's request be held until the review of FSS is  
21 commenced at the direction of the Government?

22 A. Sorry, can you say that again.

23  
24 Q. Yes. Is what you told Superintendent McNab that your  
25 Legal Unit had asked that all such reporting be held until  
26 the review of FSS was commenced at the direction of  
27 Government?

28 A. That's an interesting way to put that. I simply said -  
29 it was a very informal conversation with Bruce during a  
30 tour of the forensic facility at QPS and I said to him, you  
31 know, I've received legal advice that we should wrap up  
32 this report as part of the review and I said, you know, how  
33 did he feel. He said he was happy with that at that stage.  
34 It was a very informal conversation. So that's - not that  
35 I'd requested, that I'd been given legal advice to stop any  
36 documentation, just that that report being provided to the  
37 police would, you know, we would hold off on that pending  
38 the review. That's my understanding at the time.

39  
40 Q. So, again, just do the best you can for me. Maybe  
41 we'll start in the middle with what you told Superintendent  
42 McNab. You told Superintendent McNab that you'd received  
43 legal advice to hold off on providing a supplementary  
44 report until the external review is completed?

45 A. For it to be included in that. So we weren't going to  
46 provide that report at that stage and that the external  
47 review was about to commence.

1  
2 Q. I'll show you what you said in your supplementary  
3 statement. So can we bring up - this is the first  
4 supplementary statement, so it's - great. If we can go  
5 to - it's p26 and 27, paragraph 87. You see in  
6 paragraph 87 you say.

7  
8 *On 5 April 2022 I had not received the*  
9 *supplementary report but mentioned to*  
10 *Superintendent McNab of QPS that I had*  
11 *received legal advice to hold the*  
12 *supplementary report until the findings of*  
13 *the external review were known .*  
14

15 A. Well, it was going to be included in that.

16  
17 Q. Do the best you can, which one did you tell  
18 Superintendent McNab?

19 A. As I said, I said to him that the - you know, that I'd  
20 received legal advice that we should hold off providing  
21 that report to Queensland Police and that the external  
22 review was imminent. I didn't know when the external  
23 review would be concluded. It's probably my wording not  
24 being as clear as it could be.

25  
26 Q. But when you prepared this supplementary statement were  
27 you shown an internal email between Superintendent McNab  
28 and Inspector Neville?

29 A. Not that I recall.

30  
31 Q. What was it that prompted you to include this paragraph  
32 in your supplementary statement?

33 A. I guess I wanted to clarify that foolishly I thought  
34 legal advice was legal advice and that that's what  
35 happened. Because it's been, it's been raised since that I  
36 perhaps referred to legal advice as being reasons not to do  
37 certain things. It was just - it was advice from a legal  
38 colleague and so I did say that to Superintendent McNab.  
39 At the time he was comfortable with that and because we  
40 were - well, I kind of, I think I inferred to him that the  
41 external review was imminent.

42  
43 Q. Can I suggest to you it's not true that Superintendent  
44 McNab was comfortable, that in fact what he said to you was  
45 something to the effect that QPS was very uncomfortable  
46 that such a serious matter would be delayed?

47 A. No.

1  
2 Q. You don't remember that?  
3 A. No.  
4  
5 Q. So you say you told him, based on legal advice, the  
6 supplementary report is going to be wrapped up into the  
7 external review?  
8 A. I didn't say wrapped up into the external review.  
9  
10 Q. What did you say?  
11 A. I can't remember exactly what I said. I said to him,  
12 as I said to you before, that the follow-up report would -  
13 providing it to them now in the face of a, the beginning of  
14 an external review, was not necessarily recommended. I do  
15 not recall him saying he was uncomfortable with that.  
16  
17 Q. Sorry, why was it not recommended?  
18 A. That was the - we had talked about the fact that the  
19 external review was about to commence and so to provide  
20 that report to police when we knew that thresholds were  
21 going to be reviewed, that the whole process from the  
22 moment of receipt of an exhibit to reporting was going to  
23 be assessed, it would be part of a review by an external  
24 expert.  
25  
26 Q. Somebody from Queensland Health Legal said this to you?  
27 A. We had a conversation.  
28  
29 Q. Who was it?  
30 A. Megan Fairweather.  
31  
32 Q. So Megan Fairweather said to you - just do the best you  
33 can for us. I'm assuming if there's any privilege claim  
34 somebody will claim it. What is it that she told you about  
35 providing the report to the QPS?  
36 A. As I said, we talked about the timing. It was about  
37 the timing of releasing the report, which I still didn't  
38 have it, to the Queensland Police and the commencement of  
39 the review. So I misunderstood that as legal advice, as  
40 I've said.  
41  
42 Q. I'm not interesting in what you understood as legal  
43 advice. What did she tell you?  
44 A. So if I could finish. That's what I was led to believe  
45 from our conversation.  
46  
47 Q. Led to believe what?



1 A. That it would be best for us to, for me to speak with  
2 Superintendent McNab, explain the situation and say the  
3 external review is imminent, this report, to receive this  
4 report now, when we know we're going to have this  
5 comprehensive review, the timing, it was a matter of  
6 timing.

7  
8 Q. But what's the matter of timing?

9 A. Because what had been, or what I was presuming was  
10 going to be included in the review, in the - yes, in the  
11 review, was going to be what was part of the follow-up  
12 report and so that, in the terms of reference it had  
13 specific mention of, you know, the DIFP or the thresholds,  
14 so, you know, we were confident in our conversations that  
15 it would be all encompassing and include that as part of  
16 the review.

17  
18 THE COMMISSIONER: I guess the question is why not do both?

19 A. Yes.

20  
21 Q. Let the police have the document?

22 A. Yes.

23  
24 Q. And carry on with the review?

25 A. Yes, in hindsight that's what should have happened,  
26 yes. Yes, absolutely.

27  
28 MR HODGE: All right, I tender the email, Commissioner,  
29 which is QPS.0001.1312.0 001. That's Inspector Neville's  
30 email of 1 April.

31  
32 THE COMMISSIONER: Did you want to tender Inspector  
33 Neville's email of 16 March?

34  
35 MR HODGE: That's part of the chain which is --

36  
37 THE COMMISSIONER: Is it? All right.

38  
39 **EXHIBIT #137 EMAILS OF INSPECTOR NEVILLE OF 16 MARCH AND**  
40 **1 APRIL 2022 TO MS ALLEN, COPIED TO MS KELLER.**

41  
42 MR HODGE: Now, I note the time. I might just try to deal  
43 with one part of one topic before we break if that's  
44 convenient.

45  
46 THE COMMISSIONER: How long are you going to be tomorrow do  
47 you think, Mr Hodge?

1  
2 MR HODGE: I think about an hour.  
3  
4 THE COMMISSIONER: We'll leave it until tomorrow then  
5 because - unless you think you can finish it?  
6  
7 MR HODGE: I definitely can't finish it, but there's one  
8 part that I think it might be convenient to ask about.  
9  
10 THE COMMISSIONER: All right, you go ahead if you think so.  
11 Go ahead.  
12  
13 MR HODGE: I want to move forward in time. In June of this  
14 year you received a phone call from Mr Drummond asking for  
15 advice about reverting to the work flows that were in place  
16 prior to the 2018 change?  
17 A. Yes.  
18  
19 Q. After you received the phone call and you spoke to  
20 Ms Allen?  
21 A. Correct.  
22  
23 Q. You asked her to put together a proposal?  
24 A. I did.  
25  
26 Q. You understood that what Mr Drummond was seeking was to  
27 know what the work flow was before the 2018 decision so  
28 that in effect you could undo the 2018 decision?  
29 A. That's what I thought, yes.  
30  
31 Q. That's what you explained to Ms Allen?  
32 A. That's what I believe I asked Ms Allen for.  
33  
34 Q. Then she sent you an email, and can we bring this up,  
35 this is WIT.0017.0153.0001. You see this is the email late  
36 that afternoon from Ms Allen to you?  
37 A. Yes.  
38  
39 Q. She says, "Option 1 preferred, revert to pre 2018 work  
40 flow"?  
41 A. Yes.  
42  
43 Q. And, "Option 2, not the preferred, discontinue 2018  
44 work flow"?  
45 A. Yes.  
46  
47 Q. You read that, I assume?

1 A. Quickly.

2  
3 Q. You see in the - tell me if you understood at the time  
4 that in option 1, samples within the relevant range would  
5 not be concentrated before amplification and in option 2  
6 they would be concentrated before amplification?

7 A. Not at that time.

8  
9 Q. You didn't understand that at the time?

10 A. It wasn't in what was provided to me there so, no, I  
11 missed that part of it.

12  
13 Q. What you did understand was that option 1 was said to  
14 be the pre 2018 work flow and option 2 was said not to be  
15 the pre 2018 work flow?

16 A. That's how I understood it.

17  
18 Q. You understood that what Mr Drummond was asking you for  
19 was the pre 2018 work flow?

20 A. I believe so.

21  
22 Q. You then copied and pasted that information into an  
23 email that you sent to Mr Drummond. Can we bring up  
24 WIT.0017.0154.0001. This is the email that you sent later  
25 that afternoon to Mr Drummond where effectively you made  
26 some edits but you copy what was said by Ms Allen?

27 A. Yes, I didn't change any of the scientific wording. I  
28 don't believe I did.

29  
30 Q. You sort of edited it a little bit and added some  
31 emphasis I think?

32 A. It was discussed but, yes, yes, it was presented in  
33 slightly different formatting.

34  
35 Q. So, for example, in option 2, "Concentrate and  
36 process", you specifically identified that option 2 was  
37 concentrating and processing?

38 A. Upon Cathie's advice, yes.

39  
40 Q. So you must have, by the time you sent this email to  
41 Mr Drummond, you must have understood that option 1 was  
42 said to be process only and option 2 was said to be  
43 concentrate and process?

44 A. That's what I was told by Ms Allen.

45  
46 Q. And option 1 was said to be reverting to the pre 2018  
47 work flow and option 2 was said to be discontinuing the

1 2018 work flow?

2 A. That's what I was told.

3

4 Q. So that afternoon you must have understood that what  
5 you were communicating to Mr Drummond was that not  
6 concentrating was consistent with what had been doing pre  
7 2018?

8 A. That's what I was told by Ms Allen. That's what her  
9 email said.

10

11 Q. That's what you communicated to Mr Drummond?

12 A. Correct.

13

14 Q. And you tightened up the wording so that was absolutely  
15 clear?

16 A. Just the formatting.

17

18 Q. It's a bit more than that, isn't it? If we put that on  
19 one side of the page and on left-hand side of the page put  
20 up WIT.0017.0153.0001, you see Ms Allen's email to you just  
21 had option 1 preferred, option 2 not the preferred, but  
22 your email to Mr Drummond makes absolutely clear that  
23 concentration is the least preferred option 2 part, which  
24 was not consistent with the old work flow, and option 1 is  
25 process only, no concentration and that's preferred and  
26 that was the pre 2018 work flow.

27 A. That's what Ms Allen told me. That's what she sent me.

28

29 Q. Again --

30 A. The scientific side of it was unchanged.

31

32 Q. Did you, between getting that email from Ms Allen and  
33 sending it to Mr Drummond, did you speak to Ms Allen to  
34 have her explain it to you further.

35 A. No, we were constructing an email and I trusted her  
36 with the scientific component.

37

38 Q. I understand. Just listen to me if you can. Did you  
39 speak to Ms Allen between her sending you her email at  
40 3.57 pm and you sending your email to Mr Drummond?

41 A. Yes.

42

43 Q. She was in the room with you?

44 A. Yes.

45

46 Q. So she sent you this text, you copied it over and then  
47 the two of you tightened up the language?

1 A. Three of us, yes.  
2  
3 Q. There was also Ms Slade there, is that right?  
4 A. That's right.  
5  
6 Q. So the three of you tightened up the language so there  
7 could be no doubt the pre 2018 work flow, no concentration?  
8 A. That's your impression. My impression is that the  
9 science was presented by Cathie with the formatting and  
10 some of the key points were added to by myself with the  
11 assistance of Ms Allen and Ms Slade.  
12  
13 Q. When did you first realise that the process that was  
14 adopted, which was option 1, was not in fact the pre 2018  
15 work flow?  
16 A. I think it was when I came back from leave.  
17  
18 Q. I see. But you never realised before that?  
19 A. No. No, I did not.  
20  
21 Q. When you got Dr Moeller's email, and we'll bring that  
22 up, FSS.001.0083.0043\_R, the redacted version.  
23 A. That's not it.  
24  
25 Q. Sorry, that's the wrong - it's FSS.0001.0083.0034\_R?  
26 A. Yes.  
27  
28 Q. Can we just blow up the email at the bottom. You see  
29 Dr Moeller emails you on 17 June 2022?  
30 A. Yes.  
31  
32 Q. She says she's been away sick for two weeks. And you  
33 see she says.  
34  
35 *I've been away sick for two weeks and so I*  
36 *have missed out on the conversations*  
37 *surrounding the process change where DIFP*  
38 *samples are now going through to*  
39 *amplification without undergoing a*  
40 *concentration step. Concentrating the*  
41 *samples is what we used to do prior to the*  
42 *DIFP process. I'm confused, as are others.*  
43 *I would have thought these samples should*  
44 *go through to concentration immediately.*  
45  
46 A. That's what it says.  
47

1 Q. And you read the email?

2 A. Oh, briefly.

3

4 Q. Did you read it enough to know she was raising an issue  
5 about the process?

6 A. Yes.

7

8 Q. Did you read it enough to know she was raising an issue  
9 and saying:

10

11 *We're going through to amplification*  
12 *without concentration.*

13

14 A. Not really, no.

15

16 Q. How is that possible?

17 A. Because what I have done, and hopefully it's - well  
18 maybe it isn't - when it came to the scientific aspects I  
19 did not offer comment. I did not try and clarify anything  
20 because, as I said earlier today, I trusted the experts to  
21 provide me with advice so therefore in this case this  
22 represented a scientific question, which I'm not a DNA  
23 scientist, so I was - I immediately thought this is a very  
24 scientific technical question, this is not in my expertise,  
25 so that's why I said, as you'll see, I said, "I'm not a  
26 forensic DNA scientist, please refer to this someone who  
27 is".

28

29 Q. I'll come to what you did in a moment, I just want to  
30 focus on my question, which was how could you not have  
31 understood that the issue she was raising was that samples  
32 were now being processed straight through to amplification  
33 without undergoing concentration?

34 A. As I've said, you know, it's - I didn't understand all  
35 of that. I accepted what I was being told. So I now know,  
36 and I think the benefit of the Commission has been that  
37 I've been rapidly educated, at that point I just took what  
38 was told and accepted it.

39

40 Q. Do you think it's adequate that for you in your role as  
41 Executive Director it takes a Commission of Inquiry to  
42 educate you as to the function of the DNA lab?

43 A. I think that that is not my role to be a DNA scientist  
44 and as I've said the Director of EDFSS, or the EDFSS does  
45 not have to be a scientific expert in DNA analysis. There  
46 are very few of them and I'm not one.

47

1 Q. So you see in the next paragraph Dr Moeller says:

2  
3 *There is a concern among some of the*  
4 *scientists that we are amplifying DIFP*  
5 *samples sub-optimally so when we get poor*  
6 *profile management can say "we told you so,*  
7 *there is nothing to see here".*  
8

9 Did you read that?

10 A. Briefly.

11  
12 Q. Then you see it goes on to say:

13  
14 *Apparently Cathie has said it was a*  
15 *Ministerial decision. Did the Minister*  
16 *know we used to concentrate the samples and*  
17 *that the new process is not reflective of*  
18 *normal processing for these types of*  
19 *samples? Many questions here I realise.*  
20

21 A. I can see that.

22  
23 Q. Do you say you read this email but you didn't  
24 understand that Dr Moeller was saying to you the process  
25 that has been adopted is not the pre-2018 process?

26 A. No, at the time.

27  
28 Q. Doing the best you can for us can you explain how it  
29 could be that you could have read this email and not  
30 realised that?

31 A. Thank you. I think it's quite clear that that was -  
32 the science was not where I intervened.  
33

34 Q. But this is not the science, you don't need to know any  
35 detail of the science whatsoever, Ms Keller. You're  
36 smiling at me, I just don't understand. You got an email  
37 from Dr Moeller saying:

38  
39 *Why have we adopted this process because*  
40 *it's not the process that was used*  
41 *pre-2018.*

42 A. That's why I referred to the scientists who are the  
43 experts. I was not qualified nor should I offer my  
44 scientific opinion.  
45

46 Q. When you read:  
47

1           *There is a concern amongst the scientists*  
 2           *that this will mean we can say "we told you*  
 3           *so, there is nothing to see here".*  
 4

5           What did you make of that?

6           A. I didn't know what that meant.  
 7

8           Q. Let's have a look at what your response was at the top  
 9           of the page. You wrote back to her and said:

10                     *Hello Ingrid. As you know I'm not an*  
 11                     *expert on DNA analysis. Have you put this*  
 12                     *to Justin or Cathie for clarification?*  
 13                     *They are the people who should confirm this*  
 14                     *for you, sorry.*  
 15

16           A. That's right.  
 17

18           Q. Just to be clear, Dr Moeller had told you three months  
 19           earlier that she was afraid of Ms Allen and believed that  
 20           Ms Allen punished people?  
 21

22           A. That's why I added Justin. Those are the two experts.  
 23

24           Q. I'm struggling to understand. What is the question you  
 25           thought you were sending her off to ask Mr Howes and  
 26           Ms Allen?

27           A. I took this that she was actually asking for  
 28           clarification because she'd been on leave since the  
 29           implementation of that process So she was asking for it to  
 30           be clarified. And I hadn't given any instruction as to how  
 31           that process would be enacted. I expected Cathie to do  
 32           that. I wasn't copied into any of the correspondence to  
 33           Cathie and the staff so I said:  
 34

35                     *You need to speak with Cathie or Justin*  
 36                     *about this.*  
 37

38           Q. She wasn't sending an email asking for clarification of  
 39           the process?

40           A. Yes she was, that's how I took it.  
 41

42           Q. Let's bring that email up. What part of this email did  
 43           you take as her requesting clarification on what the  
 44           process was?

45           A. The last sentence.  
 46

47           Q.



1           *Is there any chance we can get some clarity*  
2           *on this?*

3  
4           A. Yes.

5  
6           Q. But what is this?

7           A. The question she's asking.

8  
9           Q. Which is?

10          A. The process that was put into place.

11  
12          Q. She's asking:

13  
14                 *Why did the Minister make this decision?*

15  
16          A. I don't know where she got that from.

17  
18          Q. You don't know where she got what from?

19          A. The Minister making the decision.

20  
21          Q. She tells you because that's what Ms Allen said?

22          A. That's fine, but I saw:

23  
24                 *Is there any chance we can get clarity on*  
25                 *this?*

26  
27          Therefore my mechanism for her to get clarity on this was  
28          to ask the experts. That's what I did.

29  
30          Q. But when you look at this exchange of emails in  
31          hindsight, do you regard this as demonstrating even the  
32          most basic level of competence that could be expected from  
33          somebody in your position?

34          A. I think we've now got the benefit of hindsight and the  
35          ability to assess huge amounts of information in a short  
36          period of time and then apply that to people who are in  
37          circumstances that were a long time ago and different, and  
38          different, and I made the decision I did at the time. It's  
39          easy to look back and superimpose all of the things that we  
40          know now. I did not know that at the time. I trusted my  
41          experts. So that is what I did.

42  
43          THE COMMISSIONER: Do I understand the substance of your  
44          evidence to be this: that having been told that there are  
45          these two possibilities and this is the one, a reversion to  
46          2018, whatever it meant, which you didn't know, that you  
47          put that to the DG and the DG accepted that and said do

1 that. Then you got an email from Ms Moeller and weren't in  
2 a position then to understand the scientific or any  
3 ramifications of what she was putting and so you didn't  
4 understand that there was any particular angst or intensity  
5 about it and rather regarded it as a not unnatural question  
6 from somebody who's been away for a couple of weeks?

7 A. Yes.

8  
9 Q. Wanting to know what the score was and on that footing  
10 said:

11  
12 *You better ask somebody who knows what the*  
13 *score is.*  
14

15 A. I did. And Ingrid, Dr Moeller was the only person that  
16 contacted me so at that time I had no reason to do anything  
17 other than refer it to the experts who would give that  
18 clarification.

19  
20 Q. Because as I understand it all you would be able to say  
21 would be well that's the pre-2018 position and they wanted  
22 to go back to that?

23 A. That's what I knew at the time.

24  
25 Q. Could I just ask you something in relation to the  
26 meeting you had with Mr Drummond?

27 A. Yes.

28  
29 Q. Don't go to your statement but you say that having sent  
30 that email to him you then met with him and Professor  
31 McNeil and Dr Derrington?

32 A. (Indistinct words).

33  
34 Q. On 6 June at half past 12?

35 A. Yes.

36  
37 Q. Mr Drummond then said his decision is go with Option 1?

38 A. The decision, yes.

39  
40 Q. And you then told Ms Allen that. In your statement you  
41 say:

42  
43 *Immediately after my meeting with*  
44 *Mr Drummond, Professor Derrington and*  
45 *McNeil.*  
46

47 Do you remember that?

1 A. Yes.

2  
3 Q. Did you say anything that could have led Ms Allen to  
4 believe that this was a Ministerial decision as opposed to  
5 a decision by the Director-General?

6 A. No, I think that there was misunderstanding because at  
7 the same time I believe the Minister or the Premier was  
8 making an announcement and I think that's where the  
9 confusion was.

10  
11 Q. I see, thanks?

12 A. It was almost at exactly the same time.

13  
14 Q. I see.

15  
16 MR HODGE: Can we see the top of that document? That  
17 handwriting at the top, is that your handwriting?

18 A. It is.

19  
20 Q. You've put:

21  
22 *Possibly linked to email advice to Acting*  
23 *Director-General 3/6/22?*  
24

25 A. Yes.

26  
27 Q. When did you make that note?

28 A. I don't know.

29  
30 Q. Did you make it on about 17 June or at some other  
31 stage?

32 A. Possibly.

33  
34 Q. It's just if you made it on 17 June this year then it  
35 would suggest that you understood that Dr Moeller's query  
36 was linked to the email advice that you provided to  
37 Mr Drummond on 3 June?

38 A. That's my note that I kept. I knew what the advice was  
39 at that stage. I understood that Dr Moeller was  
40 questioning what had been enacted.

41  
42 Q. Yes?

43 A. At that stage what I knew was that I'd been told that  
44 Option 1 was selected. I'd immediately mentioned to  
45 Ms Allen to enact that. And then I received the email from  
46 Dr Moeller asking about, asking for clarification around  
47 that. So that's how I linked that up with that because

1 that was, Dr Moeller had been on leave after it had been  
2 enacted. That's what I understood.

3  
4 Q. I don't understand. What's the link from the issue  
5 that Dr Moeller has raised in your view to the advice you'd  
6 given the Acting Director-General on 3 June?

7 A. Because she said - could you please --

8  
9 Q. Yes, can we go down to the bottom half?

10 A. So she said she's been away sick for two weeks so I  
11 took that she may have missed out on the conversations,  
12 could we get some clarity on this. That's how I understood  
13 it. And then in my mind I thought okay, that was around  
14 the time of the decision, she's asking for clarification,  
15 it must be linked to that. Which was a change in process.

16  
17 Q. No, no, but if we go back to the note. The note isn't  
18 this is linked to the decision on 6 June. The note is  
19 possibly linked to email advice to Acting Director-General  
20 3 June 2022?

21 A. Yes.

22  
23 Q. So what is the link in your view between Dr Moeller's  
24 email to you and the advice you gave to the  
25 Director-General on 3 June 2022?

26 A. The change in the process. I knew I'd sent that email.  
27 That was the change in that process, and that Dr Moeller  
28 had been away. That's what that means.

29  
30 Q. Is that a convenient time?

31  
32 THE COMMISSIONER: Yes, 9.30.

33  
34 THE WITNESS WITHDREW

35  
36 AT 4.43PM THE COMMISSION WAS ADJOURNED TO TUESDAY, 25  
37 OCTOBER 2022 AT 9.30 AM.