

COMMISSION OF INQUIRY
INTO FORENSIC DNA TESTING IN QUEENSLAND

Brisbane Magistrates Court
Level 1/363 George Street, Brisbane

On Tuesday, 25 October 2022 at 9.30am

Before: The Hon Walter Sofronoff KC, Commissioner

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

1 THE COMMISSIONER: Yes Mr Hodge.

2
3 MR HODGE: Thank you.

4
5 <LARA JANE KELLER, recalled, on former oath: [10.37 am]

6
7 <EXAMINATION BY MR HODGE:

8
9 Q. Ms Keller, when we finished yesterday we were looking
10 at an email exchange that you'd had with Dr Moeller. I
11 just wanted to go back to that. Operator, are we able to
12 bring up the last document we were looking at. Can we
13 again blow up the email at the bottom of the page. Do you
14 accept, Ms Keller, that had you alerted the
15 Director-General on about 17 June 2022 that the process
16 that had been implemented 11 days earlier on 6 June 2022
17 was not in fact the pre-2018 process, that doing so likely
18 would have resulted in an immediate change?

19 A. Possibly.

20
21 Q. When you say possibly, do you have - given what you
22 know happened, which is that when the information was
23 ultimately revealed in mid-August?

24 A. M'mm.

25
26 Q. That it resulted in a near immediate change, do you
27 have a reason to think that that wouldn't have happened if
28 you'd informed the Director-General on about 17 June?

29 A. No, I mean I just - that was the advice that I'd been
30 given by Cathie so I accepted that.

31
32 Q. I understand what you're saying, which is Ms Allen told
33 you that the process pre-2018 was straight to amplification
34 and that was what you communicated to the Director-General?

35 A. That was in the email, that's the words that she - well
36 she put through to profiling in the email.

37
38 Q. Yes, and then we've looked at this already. You talked
39 with her and Ms Slade and you further crafted the email to
40 make clear that the pre-2018 process was straight to
41 processing as distinct from a different process, which was
42 concentration first?

43 A. That's what the email said.

44
45 Q. Yes, your email?

46 A. Had my name on it but as I've said it was constructed
47 using Cathie's scientific advice.

1
2 Q. Yes, and what I just want to understand is whether you
3 accept that had you passed on the information that
4 Dr Moeller provided you on 17 June, which was that actually
5 the process pre-2018 was to go to concentration and then
6 amplification, that likely would have resulted in an
7 immediate change?
8 A. You could say that. I've repeatedly said that I took
9 the advice from Cathie. I did not offer my scientific
10 opinion. I referred Ingrid back, Dr Moeller back to Cathie
11 or Justin. That was my role in it.
12
13 Q. Did you ever connect Dr Moeller's email to Ms Allen's
14 claimed error as to what the process was?
15 A. No, not - no.
16
17 Q. Never? So until I asked you questions about it
18 yesterday it never occurred to you?
19 A. No.
20
21 Q. Did you ask Ms Allen at any stage how she could have
22 made the error?
23 A. That happened while I was on leave and the day that I
24 returned from leave was when Ms Allen advised me that she'd
25 made that unintended error.
26
27 Q. Yes. My question is did you ask Ms Allen how she could
28 have made that error?
29 A. No.
30
31 Q. You weren't curious about that?
32 A. I accepted that she took responsibility for it?
33
34 Q. I understand. I'm interested in, at this stage you're
35 still the Executive Director. Tell me if you agree with
36 this. You provided information to the Director-General
37 which resulted in him making a decision on the basis of
38 incorrect information?
39 A. As I've repeatedly said I'm a medical scientist. I
40 rely on Cathie to provide me with the scientific advice.
41 That is what I did and that is what I referred to the
42 Director-General in good faith at the time based upon that
43 advice.
44
45 Q. I understand. At the moment I'm not challenging that,
46 but it seems to me you must agree with the proposition,
47 tell me if you agree with this: the Director-General made a

1 decision based on information you provided?
2 A. It would seem that way, yes.
3
4 Q. When you say it would seem that way, you know that
5 that's the case, don't you?
6 A. I don't know who made the decision.
7
8 Q. Very well. You know that a decision was made --
9 A. A decision, yes.
10
11 Q. -- based on the information that you provided?
12 A. Yes, a decision.
13
14 Q. And you know that the information that you provided was
15 wrong?
16 A. I do now. I do now.
17
18 Q. And I want to understand did you personally take any
19 steps to ascertain how it was that you ended up providing
20 incorrect information to the person who made the decision?
21 A. I accepted that Cathie had made an error.
22
23 Q. And you didn't enquire beyond that?
24 A. He was clearly very upset about the situation so I
25 accepted that she acknowledged that she'd made an error.
26 She was very upset about it.
27
28 Q. Were you upset about it?
29 A. Of course I was.
30
31 Q. And do you take any responsibility for it?
32 A. Not for the scientific part. That, as I've repeatedly
33 said, I'm not the super scientist. I take my advice from
34 those people who are. My job's to manage the campus. I
35 just happened to be a scientist.
36
37 THE COMMISSIONER: Ms Keller, how did the error come to
38 your attention actually?
39 A. When I returned from leave Ms Gregg, who was doing the
40 hand-over, advised me of the situation and what had
41 happened and gave me the memo and we talked through the
42 flow chart that explained where the error had arisen.
43
44 Q. How did the error come to be discovered by anyone, do
45 you know?
46 A. I don't know. That occurred whilst I was on leave.
47

1 Q. I see, thanks.
2

3 MR HODGE: You didn't make any inquiries to understand how
4 the error had been discovered?

5 A. No, because I was on leave and Helen Gregg was in the
6 management role and Cathie had admitted that she'd made an
7 error. She was very upset about it and, you know, I
8 accepted that. She was genuinely upset.
9

10 Q. Did you consider, for example, what inquiries if any
11 had been made to check what the process was pre-2018?

12 A. No.
13

14 Q. Did you make any inquiries to understand what the
15 consequence could be of putting these low quant samples
16 straight to amplification without going through
17 concentration?

18 A. No.
19

20 Q. Why not?

21 A. Because I've said that I take my advice from the
22 experts.
23

24 Q. I understand, but I --

25 A. So that's what I did.
26

27 Q. As I understand it no one even provided you with advice
28 about that, no one said to you this is what the consequence
29 is?

30 A. No, no.
31

32 Q. I'm interested in understanding whether as the
33 Executive Director of Forensic and Scientific Services you
34 were at least mildly curious to understand what the
35 scientific consequences were of the error that had been
36 made based on information that you had communicated?

37 A. Yes, I was concerned. My role was to make the change
38 as smooth as possible, so the operationalisation of it,
39 yes, I was concerned.
40

41 Q. Make what as smooth as possible?

42 A. Any change over from that process onwards, from that
43 memo which Helen had initiated, or the process that had
44 been initiated from the Acting DG.
45

46 Q. What about what had happened for the preceding two
47 months when samples had been going straight to

1 amplification rather than concentration, did you put in
2 place some process for dealing with that?

3 A. No, because I'm not a DNA expert. And repeatedly I've
4 said that I'm not, that I was being told that no samples
5 that needed to be profiled were missing, being missed. I
6 was under the impression the whole way through that there
7 was opportunity for either the scientists in DNA or a
8 police officer who knew the case to request that sample to
9 be further processed.

10
11 Q. I'm sorry, I think --

12 A. That's what I knew at the time.

13
14 Q. I think what you're telling me is not an answer to my
15 question and you're trying to explain something about what
16 was the case pre-June 2022. What I'm asking you about is
17 for the period for 6 June 2022 until mid-August 2022, when
18 the samples were going straight to amplification rather
19 than concentration, so when you returned from leave and
20 discovered that this error had been made and that the
21 consequence of the error was that you had provided
22 incorrect information to the decision maker, and the wrong
23 decision had been made in the view of the decision maker,
24 having discovered all of that, did you then put in place
25 any process or make any investigations to try to understand
26 what the consequence had been for testing during the two
27 month period?

28 A. Helen was in the role when that change happened. She
29 implemented the change. I did not second-guess that. So
30 no is the answer to your question.

31
32 Q. If we can go back up to the top of that page. You
33 remember I was asking you yesterday about when this
34 handwriting was put on the document?

35 A. M'hmm.

36
37 Q. And maybe if we just take a step back. This document
38 looks to be a scan or a copy of a hard copy that you've
39 written on?

40 A. Well it would be.

41
42 Q. And that must mean that at some stage you printed the
43 email out?

44 A. It was probably as part of putting my statement
45 together I would have.

46
47 Q. Well let's just think about that. Is it likely that

1 you printed out this email for the purpose of putting
2 together your statement and wrote in handwriting at the
3 top:

4
5 *Possibly linked to email advice to Acting*
6 *Director-General 3 June 22.*
7

8 A. I don't know. I don't know when I wrote that on.
9

10 Q. Well, do the best you can for us, Ms Keller. Think
11 about the preparation of your statement. Is it likely that
12 in preparing your statement you were annotating documents
13 that were going to be exhibited to your statement?

14 A. I don't know.
15

16 Q. Do you remember doing that?

17 A. I printed out and kept a lot of documents, and you can
18 see that I kept notes, so that was not an uncommon thing
19 for me to do, was to print an email, add comments, keep
20 that in the filing cabinet.
21

22 Q. So if that's the case you weren't doing that for the
23 purposes of - you weren't printing those documents out in
24 anticipation of a Commission of Inquiry at some later time?

25 A. No, that was something that I did.
26

27 Q. So it's probably not the case that this document was
28 printed out for the purpose of preparing your statement and
29 then you added the handwriting for the purpose of your
30 statement?

31 A. I don't know. I don't know when I wrote that.
32

33 Q. So you really just can't assist us?

34 A. I do this regularly. You can see from my submissions
35 that I do that regularly, so I don't know when I wrote
36 that.
37

38 Q. Just think about this distinction if you would. Is
39 this a document where the hard copy came into existence
40 during an ordinary course of you discharging your duties,
41 or was it a hard copy which only came into existence for
42 the purpose of your statement to the Commission of Inquiry
43 in response to a notice required?

44 A. I don't know.
45

46 Q. You really don't know?

47 A. No.

1
2 Q. So, it is the case though that your ordinary practice
3 is to printout emails and write handwriting --
4 A. Only some, only some that I think are significant.
5
6 Q. Yes, that's right?
7 A. Not everything.
8
9 Q. For significant emails you will print it out and make a
10 handwritten note?
11 A. If I feel I need to.
12
13 Q. Can we put that document on one side of the screen and
14 then can we put up on the other side of the screen
15 FSS.0001.0051.5400. You see this is the copy of the email
16 that you sent to Mr Drummond on 3 June?
17 A. Yes.
18
19 Q. You see there's handwriting at the top of that which
20 says:
21
22 *3/6/22 email constructed under advice from*
23 *Cathie Allen.*
24
25 A. Yep.
26
27 Q. And do you know when you wrote, put that handwriting on
28 the document?
29 A. Not long after.
30
31 Q. Not long after what?
32 A. Not long after that date.
33
34 Q. So not long after 3 June?
35 A. Yes.
36
37 Q. Tell us why you printed out the email to Mr Drummond
38 and wrote in handwriting not long after the date:
39
40 *Email constructed under advice from Cathie*
41 *Allen.*
42
43 A. Because it was going out in my name and it was a
44 scientific advisory document I felt I needed to do that.
45 That's the kind of diary note I would do.
46
47 Q. Is what's blacked out there your signature?

1 A. It's just an initial.
2
3 Q. You sent this email to Mr Drummond on 3 June. You see
4 how it has the date at the top, does that mean - when you
5 say not long after it's actually on that day, is that
6 right?
7 A. Yes, probably.
8
9 Q. So on that day you took care to print out that email
10 and date it and, to put it bluntly, nail Cathie Allen with
11 responsibility for it?
12 A. That's your words, that's not my words.
13
14 Q. But that's the point of it, isn't it?
15 A. No, that is not the point.
16
17 Q. What was the point?
18 A. I explained, explained --
19
20 Q. Tell us what the point was of saying:
21
22 *Email constructed under advice from Cathie*
23 *Allen*
24
25 On the hard copy email?
26 A. I just need to say that is not the way I operate. I
27 want to be clear about that. I don't nail people. And the
28 note - that was because, I think it's probably the very
29 first time that I had to put my name to any scientific
30 advice to anybody. That was why I did that. If you go
31 back through all my records you will see that while I've
32 been at FSS I do not offer scientific advice. This was an
33 example of that, that is why I wrote that.
34
35 THE COMMISSIONER: You're recording the source of the
36 knowledge?
37 A. Yes, because I was very careful not to do that because
38 that is not my role. So that is why I did that. I do not
39 nail people. I'm sorry, I do not do that.
40
41 MR HODGE: I want to understand it though. You had an
42 email from Cathie Allen with the information?
43 A. It was slightly reworked so by the time I sent it.
44
45 Q. I see. You wanted to make sure that you'd made a
46 contemporaneous note that the information in the exact form
47 you were providing it to the executive, to the

1 Director-General, was done under advice from Cathie Allen?
2 A. I explained why I did that.

3
4 Q. But that's what you wanted to do, you wanted to make a
5 contemporaneous note that the information that you were
6 providing to the Director-General in the exact form it was
7 going to the Director-General was done under advice from
8 Ms Allen?

9 A. As I've said I have not offered scientific advice.
10 This was one of if not the first time I ever did that so
11 therefore I kept that note. That is why.

12
13 Q. Sorry, what's the scientific advice in this?
14 A. The reversion to the process.

15
16 Q. When you say the scientific advice, you mean the fact
17 of what the pre-2018 work method was?
18 A. Yes, the scientific advice.

19
20 Q. So you printed it out and made the handwritten
21 annotation to connect Cathie Allen to it?
22 A. That was because - I've explained it to you. I can say
23 it again. That is what I did and that is why I did it.

24
25 Q. Did you have a concern about the accuracy of the advice
26 that you were providing to Mr Drummond?
27 A. No, I trusted Cathie implicitly. She's the expert.

28
29 Q. And why print it out and write at the top
30 contemporaneously:

31
32 *Email constructed under advice from Cathie*
33 *Allen.*

34
35 Rather than, for example, just putting in the body of the
36 email to Mr Drummond:

37
38 *Ms Allen has informed me that.*

39
40 A. Can you suggest that if you wish. That's not what
41 happened at the time.

42
43 Q. I understand that, but why?
44 A. Because that is what I did. I've explained it to you.
45 That is what I did. That is why I did it.

46
47 THE COMMISSIONER: I think we've pretty much covered that

1 aspect, Mr Hodge.
2
3 MR HODGE: The email on the left-hand side, which is the 17
4 June email?
5 A. M'hmm.
6
7 Q. Seeing your handwritten note on the 3 June email, does
8 that help you in any way to identify when you made the note
9 on the 17 June email?
10 A. No.
11
12 Q. I see. Is it likely though that it was at about the
13 time that you received the email from Dr Moeller?
14 A. I don't know.
15
16 Q. You can see you've got your 3 June email on the
17 right-hand side and the email from Dr Moeller on the
18 left-hand side. I didn't give you the opportunity to do
19 this yesterday but when you see the two documents
20 side-by-side can you see how the email from Dr Moeller is
21 linked to your advice to Mr Drummond on 3 June?
22 A. I can now.
23
24 Q. It's not just that you can see it now, you must have
25 seen it at some earlier time because you wrote down in your
26 own handwriting:
27
28 *Possibly linked the email advice to Acting*
29 *Director-General.*
30
31 A. Yes, that's why I wrote it.
32
33 Q. So that must mean that at an earlier point in time you
34 saw that --
35 A. On or around that time likely.
36
37 Q. That is on or around 17 June?
38 A. Yep. Bear in mind though this was the only person that
39 had raised anything with me at all about the process so
40 that's why I wasn't sure.
41
42 Q. You weren't sure of what?
43 A. Whether there was confusion about the process, hence
44 the question mark I guess.
45
46 Q. So when you got it - given what appears to have been
47 the case, you tell me if you disagree with this, but it

1 appears that when you got the email from Dr Moeller, at
2 about that time you realised that what she was saying was
3 linked to the advice that you'd given to Mr Drummond?

4 A. Not necessarily, that's why I've got a question mark
5 there. Again it was scientific.

6

7 Q. Did you ask Ms Allen about it?

8 A. No, I did not.

9

10 Q. Why not?

11 A. Because it was scientific. It was highly technical
12 advice that Dr Moeller was requesting.

13

14 Q. You could not - I'm sorry, you cannot possibly believe
15 that what Dr Moeller was saying to you was highly
16 technical. If you say that I'll need to blow it up and you
17 can point me to the part of the email that you say is
18 highly technical. Let's do that. Can we blow up the email
19 at the bottom of the page. Can you point me to the part
20 that you say is highly technical, Ms Keller?

21 A. This is a scientific question.

22

23 Q. Which part of the email is highly technical?

24 A. If Dr Moeller was confused --

25

26 Q. Which part of the email is highly technical?

27

28 THE COMMISSIONER: Just point to the words that were then
29 beyond your understanding?

30 A. Okay. At that stage I didn't realise that amplifying -
31 that where the process steps were to get to the profile. I
32 just assumed that, again, profiles were done for those that
33 needed to be done.

34

35 *Did the Minister know we used to*
36 *concentrate samples?*

37

38 So I didn't know that at that stage they used to
39 concentrate the samples. I do now.

40

41 *Any chance we can get some clarity on this?*

42

43 Therefore I went this is scientific, this is not in my
44 lane, I refer it back.

45

46 MR HODGE: I need to ask you two questions about that. The
47 first is I want to make sure that you maintain what you

1 say. So can we just pull that email, the blow up down just
2 so Ms Keller can see the email on the right-hand side of
3 the page. You see you sent an email on 3 June where you
4 used the word concentrate multiple times, you bold it, you
5 underline it. Do you really say that you did not
6 understand that they concentrated samples?

7 A. Yes.

8
9 Q. And then the second question I have is do you accept
10 that if the Commissioner accepts that your evidence is
11 true, that you have demonstrated over the last 12 months no
12 interest in seeking to understand the merits of the science
13 that was put in doubt or questioned by the police and by
14 scientists who came to you to report issues?

15 A. I think that's a very unreasonable thing to be saying,
16 given that I was brought in to lead and manage the
17 organisation and I just happen to be a scientist. I think
18 that's very unreasonable given what we know now.

19
20 Q. Isn't the case that you regard, to use your own words,
21 science as outside of your lane?

22 A. Science is outside of the role that I'm employed to do
23 at the present time.

24
25 Q. My question then is do you accept, if your evidence is
26 true, that you have demonstrated no interest over the
27 course of the last 12 months in seeking to understand the
28 merits of the science that was put in question by the
29 police and by the scientists who came to report issues to
30 you?

31 A. I trusted my scientific experts, that was what my job
32 was.

33
34 Q. I'm not seeking to dispute that. What I'm asking is
35 whether you accept that on your own evidence you
36 demonstrated no interest over the course of the last 12
37 months in seeking to understand the merits of the science
38 that was being put in issue by the police and the
39 scientists who were reporting issues to you?

40 A. I don't believe that you have any knowledge of what
41 goes on at FSS because if you did you would know that I've
42 got seven scientific disciplines to try and get my head
43 around, this is just one of them.

44
45 Q. I'm not debating why the reason is?

46 A. So In answer to that I would say I absolutely had the
47 interest. Did I have the time? Possibly not. Would I go

1 back and read all the textbooks now? Of course I would.
2 That is what it is. I did my best.

3
4 Q. I'm not debating with you that you did your best. But
5 can you see that there is something fundamentally awry with
6 an organisation that has a person in charge of Forensic and
7 Scientific Services where when police and scientists come
8 to you and say:

9
10 *There is an issue with the science that*
11 *goes to the heart of DNA testing, that in*
12 *turn is very important to the criminal*
13 *justice system in Queensland.*
14

15 And that person is too busy or incapable of investigating
16 and understanding the merits of those issues, that that is
17 a problem?

18 A. I think that's a very long bow to draw but --

19
20 THE COMMISSIONER: Could I put the question another way,
21 Ms Keller. FSS, as you've explained, is more than a DNA
22 lab. Just tell me what's involved in it. There's this DNA
23 section with which we're familiar?

24 A. Yes.

25
26 Q. What else is there?

27 A. We have the whole Coronial service for the state, which
28 is the mortuary, the forensic pathology service, the
29 Coronial service which we work with police.

30
31 Q. Just pause there. What you've called the Coronial
32 part?

33 A. Yes.

34
35 Q. Is the mortuary where certain dead bodies go?

36 A. Yes.

37
38 Q. What else pertains to the Coronial part?

39 A. So Coronial - there's forensic toxicology, so that
40 relates to causes of death that are drug related, for
41 example, or poisonings.

42
43 Q. Yes. We're speaking about examinations of deaths,
44 direct examinations of deaths?

45 A. Yes.

46
47 Q. Go on?

1 A. We have an anatomical pathology laboratory where they
2 do the sectioning and the anatomical pathology.
3
4 Q. That's autopsies and things like that?
5 A. Yes.
6
7 Q. Yes?
8 A. And we have CT service as well, so that's a huge --
9
10 Q. What's that?
11 A. Where they do the scanning of the deceased. That's a
12 huge body of work that we've been working on in the last 12
13 months with police.
14
15 Q. So that's the examination of deaths and dead bodies?
16 A. Yes.
17
18 Q. What else is there?
19 A. We have public and environmental health, which includes
20 all of the COVID response which we were well and truly
21 overwhelmed with from December through to about, gosh,
22 recently.
23
24 Q. Just pause there. Just so I understand it, the COVID
25 response was governmentally - it was a response across a
26 lot of areas of government no doubt?
27 A. Yes.
28
29 Q. What's the role of FSS in that, what was the role of
30 FSS in that?
31 A. We actually do the genotyping of the genomics on the
32 different --
33
34 Q. I see?
35 A. So we're now talking BA1, BA2, that lab does that.
36
37 Q. I see. When we hear about examinations being done into
38 this virus and that virus, that's what you're talking
39 about; is that right?
40 A. Yes. Monkey pox, Ebola, all of those things, that's
41 our high containment lab.
42
43 Q. Right?
44 A. We also have specialised microbiology where if there's
45 an outbreak of a certain bacteria in the community, from
46 eggs for example, we do that testing. We have inorganics
47 and organics chemistry where we do the testing for, for

1 example water testing and dialysis waters from across the
2 State. We also have a radiation and nuclear sciences unit
3 which does testing on land, for example, if there's going
4 to be building, so they'll go out and do the radioactive
5 testing.
6

7 Q. Just pause there because I want to keep it
8 compartmentalised so I can remember it. So the second
9 thing you mentioned apart from the Coronial is - and you
10 related it COVID but of course it's laboratory work
11 involved in the examination of viruses and germs and
12 matters of that kind?

13 A. And public health, yes.
14

15 Q. Public health, right. Then you moved on to the
16 environmental side of it which is what, is that distinct
17 from what we're talking about here?

18 A. It's in the same stream, we call that public and
19 environmental health. So that's the public health with
20 outbreaks and things like that. And then environmental
21 side is the radiation, the water testing, so the Great
22 Barrier Reef testing for chemicals, those sorts of things.
23

24 Q. Right?

25 A. Quite varied, down to things like testing fish in fish
26 shops to see if they're really barramundi. So that kind of
27 thing. So very, very broad. That's all public and
28 environmental health. That's basically, you know, if
29 there's a surge within the community then our team will do
30 that. They also do things like environmental spills.
31

32 Q. Yes?

33 A. It's quite broad.
34

35 Q. Yes?

36 A. That's the public and environmental health stream.
37

38 Q. Yes?

39 A. Then we have the police services stream, which is not
40 only forensic DNA analysis it's also forensic chemistry.
41 So we have the forensic chemistry, which is the road - or
42 partly the roadside drug testing for police. We also have
43 the illicit drugs team where all of the seizures are coming
44 in where our people will quantitate the different types of
45 drugs in the community.
46

47 Q. Yes?

1 A. Also we have the trace evidence area, which is the
2 people who, for example, if there's something like a
3 kidnapping and a rope is used those will be the people that
4 will identify where that rope was manufactured, et cetera.
5 So that's very specialised as well.
6

7 Q. Where do fingerprints fit in?

8 A. They're in the police, they're not with us.
9

10 Q. That's not with FSS?

11 A. No.
12

13 Q. Right. And then DNA; is that right?

14 A. DNA. We also have Specialist Scientific Services, so
15 we've got our forensic property points, our public health
16 property points.
17

18 Q. What is that? What are you referring to there?

19 A. So the forensic property point is where forensic items
20 like exhibits are dropped off. The public health property
21 point is where things like dialysis waters or samples of
22 food are dropped for analysis.
23

24 Q. Who drops off those samples, the last ones you
25 mentioned?

26 A. Our clients. Councils will drop off at public health,
27 hospitals will drop off their dialysis waters.
28

29 Q. That's not a part of the public and environmental
30 health part?

31 A. It stands alone but it's very closely linked to it.
32

33 Q. Anything else?

34 A. Yes. Up until 17 October we also had the clinical
35 forensic medicine unit.
36

37 Q. What is that?

38 A. That's a team of specialist forensic medical officers
39 and nurses and they deliver watch-house care models across
40 the State north of Logan. They also do - they work with
41 the apparent natural causes deaths. They do statements for
42 the DPP for toxicology and the like. They do - they run
43 the Sexual Assault Nurse Examiner program and the SAIKs, so
44 that was under the FSS remit until 17 October.
45

46 Q. What happened to it then?

47 A. It's moved over as part of the business case for change

1 over to the office of the Chief Medical Officer, so that
2 they've got good clinical governance models in place and
3 they do the sexual assault examinations as well. So
4 there's about 380 people and so as you can see it's quite
5 broad scientifically.
6

7 Q. All right. The Coronial part of it is the, really if I
8 can put it broadly, the examination of deaths; is that
9 right?

10 A. Yes.
11

12 Q. And the public and environmental health covers
13 everything from epidemics to pollution?

14 A. Yes.
15

16 Q. Then the sexual assault part of it, was that part of
17 FSS?

18 A. CFMU which was part of FSS, yes, up until recently.
19

20 Q. The Coronial part and the public and environmental part
21 were the first two subjects you touched on?

22 A. M'mm.
23

24 Q. Was that part of what we've been calling FSS or not?

25 A. Yes. Yes, it's all part of FSS.
26

27 Q. I see. So everything we've discussed is technically
28 part of - is actually part of FSS as a matter of
29 administration, is it?

30 A. Yes, yes. I'm responsible for all of that.
31

32 Q. And so you're the Executive Director responsible for
33 all of those things; is that right?

34 A. Yes.
35

36 Q. So is it possible to think separately about the part of
37 FSS that deals with roadside alcohol, illicit drugs, trace
38 evidence, forensic property and DNA, is it possible to
39 bracket those and say they're different because they belong
40 to a category, each of them is different from all the other
41 work at FSS because they pertain to matters that might end
42 up in court?

43 A. Well the forensic - the Coronial side of it all, so
44 because the forensic pathologists will give evidence about
45 deaths.
46

47 Q. So if we add Coronial to that?

1 A. Yes.
2
3 Q. Would my statement be true?
4 A. Yes.
5
6 Q. So would it be possible to say that the public and
7 environmental health part of it, the watch-house care, the
8 clinical forensic medicine as you've described it?
9 A. Yes.
10
11 Q. The apparent cause of natural deaths and the sexual
12 assaults, apart from the DNA aspect of it?
13 A. Yes.
14
15 Q. That we can put those to one side and put this
16 category, roadside alcohol, illicit drugs, trace evidence,
17 DNA, forensic property, we can put those together as linked
18 to court work, is that possible?
19 A. Quite possibly, yes, yes.
20
21 Q. All right, I understand. Yes, Mr Hodge.
22
23 MR HODGE: Thank you. Can we just pull up the email on 3
24 June, or the just the text of those, I need to ask
25 Ms Keller about some aspects of that. Thank you.
26 Ms Keller, do you agree that in this text there's no
27 identification of the difference in terms of usable
28 profiles between Option 1 and Option 2?
29 A. That's right.
30
31 Q. Do you agree there's no identification of the types of
32 samples which would benefit or had benefitted from
33 concentration?
34 A. Yes.
35
36 Q. Do you agree there's no identification of the level of
37 risk of exhaustion of samples for Option 2?
38 A. Yes.
39
40 Q. Do you agree there's in fact no scientific risks and
41 benefits identified at all?
42 A. Yes.
43
44 Q. Do you agree that the total focus is on costs and
45 resources?
46 A. No.
47

1 Q. What is the other part of the focus?

2 A. Well we were asked for that so we provided that. It
3 was the scientific reversion of the work flow. So there
4 was three components to that.

5

6 Q. Just tell us what the three components are?

7 A. There's the scientific aspects, the impact in terms of
8 what we might need with scientific staff, and also the
9 costs.

10

11 Q. When you say the scientific impacts, I thought that you
12 had agreed with me there's no consideration in these two
13 options of any of the scientific risks or benefits?

14 A. No, but they're presenting scientific information in
15 that email.

16

17 Q. And is the scientific information - you just tell us
18 what is that, what's the scientific information?

19 A. Everything except the turnaround times, costs, overtime
20 and number of staff.

21

22 Q. By that you mean the description of what the work flow
23 is is scientific?

24 A. Yes.

25

26 Q. And do you agree that in making a decision between two
27 scientific options, understanding the scientific risks and
28 benefits would be relevant?

29 A. I do now.

30

31 Q. And when you say that, that seems to imply that at the
32 time you regarded this as scientific issues, but you didn't
33 think that it was relevant to understand the scientific
34 risks and benefits in making the choice, but I'm not sure
35 if that could really be what you mean. Is that what you
36 mean?

37 A. As I've said, I took advice from Ms Allen. That is
38 what I did.

39

40 Q. No, I understand.

41 A. So I did not ask her for the other information. She
42 provided that information. We had a very short time frame.
43 That's what we did.

44

45 Q. I understand. Again, I'm interested in understanding -
46 and I understand you had a short time frame and, as you
47 diarised on the day, you constructed the email on advice

1 from Ms Allen. I understand your evidence to be you didn't
2 ask Ms Allen about the scientific risks and benefits of the
3 two options?

4 A. I did not.

5

6 Q. And I'm interested then in understanding, is that
7 because it didn't occur to you that the scientific risks
8 and benefits would be relevant, or is there some other
9 reason?

10 A. I trusted her to provide the information I asked her
11 for.

12

13 Q. I understand .

14 A. That's all I can say to you.

15

16 Q. I understand, and I think we're not fighting over this.
17 You didn't ask her for information about the scientific
18 risks and benefits and I'm just interested in understanding
19 why not?

20 A. Well, I did not ask her. It's that simple. You can
21 ask her whether she would have or not but I didn't ask her.

22

23 Q. It's not about whether she would have provided it, I'm
24 just interested in understanding --

25 A. I did not ask her.

26

27 Q. You're providing advice to the Director General?

28 A. Yes, in good faith.

29

30 Q. I understand. About what you regard as scientific
31 issues and I'm interested in understanding why you didn't
32 ask about what the scientific risks and benefits were?

33 A. I didn't.

34

35 Q. No, I understand that.

36 A. So that's the answer, I didn't.

37

38 Q. Is it because it didn't occur to you to ask?

39 A. Yes, that's correct.

40

41 Q. Okay. Did it occur to you that whatever the processes
42 and equipment in the lab were pre 2018, they might be
43 different now?

44 A. I didn't then.

45

46 Q. You didn't then?

47 A. I didn't then.

1
2 Q. Sorry, do you say "I didn't then"?

3 A. I didn't realise that they might be different then.
4

5 Q. I see, all right. Now, can I then ask you about a
6 different issue and that is yesterday you gave some
7 evidence which was about - we might bring this up. Can we
8 bring up TRA.500.017.0093 and .0094. At the bottom of
9 p2151 you said:

10
11 *I expected that and I was fully by this*
12 *time, I was confident that a review was*
13 *going to happen. I might have had, I had*
14 *had some input into the terms of reference*
15 *which I put in thresholds and DIFP into*
16 *that.*
17

18 A. No, I put in, I added the extra comment about DNA
19 insufficient for further processing. There's an email that
20 it's read where I've said "and add that in".
21

22 Q. I just want to try to understand. So maybe we'll just
23 check this documents then because I'm genuinely puzzled by
24 this. Can we bring up first Exhibit LK-133, which is
25 WIT.0017.0235.0001. So this is an email from Nicola Lord
26 to several people, including you, on 22 February 2022?

27 A. Okay.
28

29 Q. And you see it says:
30

31 *Megan and I have also reviewed the draft*
32 *terms of reference and have marked some*
33 *additional changes/queries for FSS to*
34 *consider and provide us with your further*
35 *instructions in relation to. See attached.*
36

37 A. H'mm.
38

39 Q. Then if we bring up the draft terms of reference, which
40 I'll just need to get the - I think, actually, if we keep
41 scrolling down it should just be the one PDF. There we go.
42 So there's the draft terms of reference and if we go to
43 paragraph 4.2, which is over the page, see it says:
44

45 *In assessing the matters set out in*
46 *paragraph 4.1 above, the Reviewers are to*
47 *specifically consider and address in their*

1 *report the following.*

2

3 And then we go over the page again, we'll see (l) is:

4

5 *The approach leading up to and reporting of*
6 *no DNA detected or DNA insufficient for*
7 *further processing at the quantification*
8 *stage.*

9

10 And then there's more detail. (M) is:

11

12 *The appropriateness of the established*
13 *limits or thresholds of detection below*
14 *which samples at a quantification level are*
15 *reported as no DNA detected or DNA*
16 *insufficient for further processing.*

17

18 And (n) is:

19

20 *Whether any additional steps ought to be in*
21 *place prior to reporting no DNA detected or*
22 *DNA insufficient for further processing,*
23 *including, but not limited to,*
24 *circumstances where it might be expected*
25 *that DNA would be detected from the*
26 *samples.*

27 A. That's what it says.

28

29 Q. So that seems to be the terms of reference as drafted
30 by Minter Ellison and amended not by you, but by others?

31 A. There was multiple conversations about what would go
32 into the terms of reference.

33

34 Q. Right.

35 A. Over a number of days, and Minter Ellison were taking
36 advice on all of the different components of that.

37

38 Q. So just to come back to your evidence, which I
39 understood to be that you had - I might have misunderstood
40 it, but I thought you were saying that you had added it in
41 to the terms of reference to add thresholds and DIFP. When
42 I say I might not have understood that, that's because
43 that's literally what you said yesterday, but is that not
44 right?

45 A. So I thought that I had sent an email where I offered
46 suggestions about the terms of reference. We did not
47 communicate directly with Minter Ellison, that was done

1 through the Legal team. We were asked to review and offer
2 suggestions and comments on that. I thought that there was
3 evidence that I had done that.

4
5 Q. I see. I haven't seen that?

6 A. Okay.

7
8 Q. But I'm sure if Mr Holt has an email he can deal with
9 that. In any event, your recollection is you had raised
10 the issue of it going into the terms of reference that
11 there should be an evaluation of the thresholds and DIFP?

12 A. Amongst other things. Amongst other things. I was
13 very keen for it to be a very comprehensive review.

14
15 Q. I see. In terms of your keenness for it to be a very
16 comprehensive review, was there a reason why, if you were
17 providing feedback by - it must have been by mid-February,
18 was it, or by about 22 February?

19 A. I think it might have been.

20
21 Q. Was there a reason why you hadn't, as part of that,
22 identified the concern from the police?

23 A. Well it would have all been part of that review. Any
24 of the testing that we delivered for police would be part
25 of that review because it was meant to be an end-to-end.

26
27 Q. I understand, I'm just - perhaps I'll put the question
28 a different way. Obviously at this stage I haven't seen
29 what the input is, and so Mr Holt might have it and then
30 that will explain it better for the benefit of the
31 Commissioner?

32 A. That would be good.

33
34 Q. But as part of the input did you identify that the
35 police had raised an issue about the thresholds being
36 applied resulting in missing samples or missing profiles?

37 A. It may have been part of the consideration for the
38 wording around the terms of reference.

39
40 Q. Your consideration?

41 A. Well it was something I was aware of so it could very
42 well have formed part of the suggestions moving forward but
43 I wasn't the only one, there was a number of us who were
44 putting suggestions forward to make sure that we had a very
45 comprehensive review.

46
47 Q. I understand. But you were the only one who is putting

1 forward suggestions who knew about the issue that had been
2 raised by police?

3 A. Okay.

4

5 Q. Who else knew about it?

6 A. I don't know.

7

8 Q. Was there anyone that you can think of? We can go back
9 to the email?

10 A. No, let's not. No, it probably was me, but I'd been
11 talking to a number of people about what we were putting
12 into, what we were hoping to put into the terms of
13 reference.

14

15 Q. Sorry, I just want to understand, because this will
16 become important in a moment. Do you say that in February
17 you told other people within Queensland Health or
18 Queensland Health Legal about the issue that had been
19 raised by police?

20 A. I think we've established that I couldn't identify a
21 time that I did that.

22

23 Q. Okay. All right. So then let's then come forward
24 slightly. You gave some evidence yesterday about what
25 you'd said to police about the report and whether it would
26 be provided. Can we bring up TRA.500.017.0120. Could we
27 blow up for Ms Keller lines 26 to lines 47. You'll
28 remember this is where I was trying to understand what
29 somebody at Queensland Health Legal had said to you and
30 you'd said you'd had a conversation with Megan Fairweather?

31 A. Yes, and I went on to say that I understood that to be
32 legal advice, which it clearly is not, so I've already
33 stated that.

34

35 Q. I understand. You see at line 36 to 40 you said:

36

37 *It was about the timing of releasing the*
38 *report, which I still didn't have it, to*
39 *the Queensland Police and the commencement*
40 *of the review, so I misunderstood that as*
41 *legal advice, as I've said.*

42

43 Then can we go over the page to TRA.500.017.0121. This is
44 where you're continuing to explain what it is that you'd
45 discussed with Ms Fairweather and you say that:

46

47 *It would be best for us to, for me to speak*

1 *with Superintendent McNab, explain the*
 2 *situation and say the external review is*
 3 *imminent. This report, to receive this*
 4 *report now when we know we're going to have*
 5 *this comprehensive review, the timing, it*
 6 *was a matter of timing.*

7
 8 Then you go on and you give a further explanation at 9 to
 9 16?

10 A. Yes.

11
 12 Q. Just read your explanation at 9 to 16 and then I need
 13 to ask you some questions.

14 A. Yes.

15
 16 Q. I want to show you two documents that you won't have
 17 seen before because they're internal emails from QPS, but
 18 they record things that were apparently said by you and I
 19 just want to understand what you say about them. Can we
 20 bring up first QPS.0150.0010.0001. So can we go down to
 21 p2. Actually, we'll go down to p3 first just so you can
 22 see the context. So this - relevantly you'll see there's a
 23 chain of emails where on 6 April 2022 Inspector Neville
 24 emails Superintendent McNab and he is saying, that is
 25 Inspector Neville is saying to Superintendent McNab:

26
 27 *I'm hesitant to accept any delay in*
 28 *responding to this concern raised by QPS in*
 29 *December last year.*

30
 31 So this isn't the thresholds issues. And he says:

32
 33 *As you will be aware, the Women's Safety*
 34 *and Justice Task Force has now raised the*
 35 *same matter as an issue and has requested*
 36 *advice from QPS as to the impact of DNA*
 37 *testing thresholds on Justice outcomes.*

38
 39 And Inspector Neville goes on to explain that based on a
 40 request from the Task Force he's undertaken an analysis.
 41 Now we then go up to p2. You'll see Superintendent McNab
 42 responds to Inspector Neville on 7 April and he says:

43
 44 *I've spoken to Lara and their Legal Unit*
 45 *has asked all such reporting (your request)*
 46 *is held until the review of FSS is*
 47 *commenced at the direction of Government.*

1
2 So if we just pause on that sentence. Is that an accurate
3 reflection of what you said to Superintendent McNab?

4 A. Well that's his impression but, as I said, I did speak
5 to him.
6

7 Q. Did you say something different from what he's reported
8 there?

9 A. Not the first sentence.

10
11 Q. Then he says:

12
13 *I've expressed to Lara that as the client*
14 *we're very uncomfortable that such a*
15 *serious matter would be delayed for the*
16 *same reasons you outlined, and not just*
17 *from a public optics point of view, but*
18 *also as you outlined from a potential risk*
19 *of victims, particularly those who are*
20 *victims of sexual assault. She is going to*
21 *speak to our Legal department and get back*
22 *to me.*
23

24 A. That's not my recollection of the conversation at all.
25

26 Q. So just to be clear, you don't recall Superintendent
27 McNab expressing any dissatisfaction with this course?

28 A. No, and I said that yesterday.
29

30 Q. And you don't recall telling him that you would speak
31 to your Legal department and get back to him?

32 A. I don't remember that.
33

34 Q. Is it possible that you said that?

35 A. I don't recall that.
36

37 Q. So as at the beginning of April of this year you
38 understood that based on what you say Ms Fairweather had
39 said to you, that you should, is it hold providing the
40 report until the review was undertaken, or that there would
41 be no report and it would just be wrapped up into the
42 review?

43 A. No, hold the report.
44

45 Q. Yes.

46 A. Well, not release the report while the, to allow the
47 investigation to commence.

1
2 Q. So there would be a report but it would be held on to?
3 A. Not necessarily at that stage. We didn't know when the
4 report would be prepared.
5
6 Q. Did you tell Ms Allen:
7
8 *You can stop preparing your report until*
9 *the review?*
10
11 A. No, I did not. No, I did not.
12
13 Q. So you thought the report was still being prepared?
14 A. I did.
15
16 Q. So you must have thought there's a report, it's being
17 done separately from the review?
18 A. Ms Allen had told me that previously.
19
20 Q. No, no, no. I'm talking about your knowledge?
21 A. So yes is the answer to that.
22
23 Q. You had Ms Allen preparing the report?
24 A. Yes. Yes.
25
26 Q. And there was separately a review?
27 A. Yes.
28
29 Q. So you thought these two things were going to happen
30 simultaneously?
31 A. Yes.
32
33 Q. In fact you thought the report, as far as you know, was
34 on the verge of being finalised?
35 A. I hoped so, yes.
36
37 Q. You understood, though, you say from Ms Fairweather,
38 that you should not provide the report to QPS until the
39 external review had been - and then this is the question -
40 was it started or completed?
41 A. Not completed. It would have taken too long.
42
43 Q. So you should hold it until the external review had
44 started?
45 A. So it's quite likely that I misunderstood what
46 Ms Fairweather was saying. I'm not here to say what she
47 said or not, she can say that to you. My understanding

1 from our conversation was that it would be good to allow
2 the external review to get going, understanding that that
3 was going to encompass all of the scientific aspects, and
4 that the report would ultimately, in my mind, the report
5 would ultimately go into that. Whether we discussed when
6 the report would be available and when - it was a matter of
7 timing of release and getting the external review started.

8
9 Q. I don't understand, but I'm not sure you can explain.

10 A. Okay, good. Fine.

11
12 Q. So there's a report Ms Allen is preparing?

13 A. Yes.

14
15 Q. The report is to go to QPS?

16 A. Yes.

17
18 Q. There's also an external review that Queensland Health
19 is contemplating for the DNA lab?

20 A. At that time I was hoping it was going to start very
21 soon.

22
23 Q. You never thought, "We won't release the report until
24 the external review is concluded "?

25 A. No, I did not.

26
27 Q. And you never thought the report is now to be something
28 that is wound into the external review?

29 A. I thought it could be, because it was covering off on
30 the science, so I thought that they would be going at the
31 same time.

32
33 Q. You were hoping the report would be, you thought it
34 hopefully would be finished the week before?

35 A. Absolutely.

36
37 Q. (Indistinct words).

38 A. Absolutely.

39
40 Q. So you must have thought the report is going to be
41 finished and then, I can understand, you might have thought
42 that information, that's then something we can provide to
43 the external reviewers?

44 A. As well, yes.

45
46 Q. But what I don't understand is why did any of that mean
47 that you couldn't provide a report to QPS, who had been

1 clambering for this information since mid-December?
 2 A. It was all about the timing and, you know, as I said to
 3 the Commissioner yesterday, in hindsight should we have
 4 given it to the police straight away? Of course we should
 5 have, you know.
 6
 7 Q. You tell us if this is right: at the beginning of
 8 April of this year you thought, based on something that
 9 Ms Fairweather had said, that you needed to hold the
 10 report, even once it was finished, at least until the
 11 external review had started?
 12 A. To discuss that with police.
 13
 14 Q. Sorry, to discuss what with police?
 15 A. You're trying to have me throw - implicate
 16 Ms Fairweather. It's likely I understood this.
 17
 18 Q. I'm not trying to have you implicat Ms Fairweather?
 19 A. Well you're sort of saying that.
 20
 21 Q. I'm trying to understand what you'd heard about it.
 22 A. And I'm not saying - I'm saying that I understood --
 23
 24 Q. So you just explain it to us?
 25 A. I'm telling you what I understood of the conversation
 26 and I was the one that spoke to Superintendent McNab.
 27 Ms Fairweather had nothing to do with that part of it.
 28
 29 Q. I understand. Let's come back. Beginning of April
 30 you thought this report is about to be finalised, but we
 31 will hold on providing it to police until some future time?
 32 A. Till the external review was commenced.
 33
 34 Q. I see. You thought that was going to be imminent?
 35 A. I did.
 36
 37 Q. So do you say that actually you thought you were
 38 imminently going to provide the report to police?
 39 A. Yes, and that was going to all sort of happen quickly.
 40
 41 Q. I'm struggling with this, but can you tell me what was
 42 the logic of why, once the report was finished, it couldn't
 43 be provided to police until the external review started?
 44 A. I think we've examined that multiple different ways.
 45 That's what happened. That's what happened. In hindsight,
 46 yes, it's easy to critique in hindsight. That's the
 47 decision that was made at the time. And I do not recall -

1 Superintendent McNab and I had a very good professional
2 relationship. If he was unhappy, I would have known, and I
3 don't recall him being unhappy.

4
5 Q. Now, I want to then - Commissioner, I tender that chain
6 of emails. Sorry, actually, can I just go up to the first
7 page just to show you one other thing. You see that
8 Superintendent McNab responds also to Inspector Neville a
9 bit later on 11 May and says:

10
11 *I've got a meeting in a couple of weeks*
12 *with Lara, I'll have a chat to her then.*
13 *Whilst that time frame mightn't appeal, I*
14 *know they will be reluctant without legal*
15 *advice which last time I spoke to Lara*
16 *hadn't been forthcoming.*

17
18 Do you say you just don't know what that's about?

19 A. We did have a meeting scheduled for a couple of weeks
20 but that was - a couple of weeks was around 1 June when the
21 Women's Safety and Justice Task Force report was released,
22 and then subsequent to that I got sick and I think Bruce
23 was sick at the same time, but we certainly, we spoke to
24 each other from our homes and we agreed that we would get
25 together and talk through the issues. So I don't, I don't
26 know what the second part of that means. But we talked
27 frequently. We had a very good relationship.

28
29 Q. Just so I understand, though, did you at some stage say
30 to Superintendent McNab that you needed to get further
31 legal advice about all these things?

32 A. I don't remember that.

33
34 Q. I see. I tender that document, Commissioner.

35
36 **EXHIBIT #138 EMAIL CHAIN ENDING WITH THE EMAIL FROM**
37 **SUPERINTENDENT McNAB TO INSPECTOR NEVILLE ON 11 MAY 2022.**

38
39 MR HODGE: And then I want to show you another document,
40 again something you haven't seen before. Can we bring up
41 QPS.0150.0004.0001. So if we just blow up the email at the
42 top, which is from Superintendent McNab internally. You'll
43 see this is on 6 June 2022. Superintendent McNab is
44 saying:

45
46 *This is the EBN (that's executive briefing*
47 *note) we have completed recently.*

1
2 Then he says:

3
4 *After submitting this and engaging further*
5 *with Health I briefed up in March that*
6 *Health had advised they would produce a*
7 *report to us by 25 March outlining their*
8 *internal review of the threshold questions.*
9

10 Now just pausing on that. That's true, that Health had
11 advised that they would produce a report to police by
12 25 March outlining their internal review of the threshold
13 questions. Do you agree with that?

14 A. Yes.

15
16 Q. Then he says:

17
18 *As a consequence, the matter was returned*
19 *to me to progress as I believe through*
20 *further engagement we could rectify the*
21 *issue.*
22

23 And then he says:

24
25 *QPS were later advised that Health would*
26 *not reveal their own review till they*
27 *received their own legal advice.*
28

29 A. Okay. That's his interpretation.

30
31 Q. That's his interpretation because you had communicated
32 to him that at that point, back in April, you couldn't
33 provide the report based on what you understood to be legal
34 advice?

35 A. We didn't provide the report.

36
37 Q. No, I understand. But you communicated to him that the
38 reason for it was because of legal advice?

39 A. And, again, I've said that was my understanding.

40
41 Q. I'm not quibbling with that, but that's what you told
42 him?

43 A. So it seems.

44
45 Q. So when you say so it seems --

46 A. Yes.
47

1 Q. That's what you told him, isn't it?

2 A. Yes.

3

4 Q. And then he says:

5

6 *We continued our requests. This then led*
 7 *to the commitment of Ms Keller of Health on*
 8 *30 May, that she was committed to engaging*
 9 *further with QPS to explore the issues*
 10 *after a email was sent from QPS on 30 May*
 11 *requiring a change of thresholds.*

12

13 A. That's what I was saying earlier, that Superintendent
 14 McNab and I had frequent conversations and we committed
 15 before, certainly before I got sick, and I believe he was
 16 ill at the same time, that we would get together and we
 17 would talk about this, because, you know, we were both
 18 committed to working through it. This was at - I believe
 19 this was about the stage where there was a discussion in
 20 changing the thresholds, rather than removing any
 21 thresholds.

22

23 Q. Let's just focus on one part of it. Is it true that on
 24 30 May you committed to engaging further with QPS about the
 25 threshold issues?

26 A. Quite likely.

27

28 Q. And is it true that the reason that you did that was
 29 because QPS finally reached the point of requiring a change
 30 in thresholds?

31 A. No.

32

33 Q. Let me show you an email. Sorry, I tender that email,
 34 Commissioner.

35

36 **EXHIBIT #139 EMAIL FROM SUPERINTENDENT McNAB TO OTHERS ON 6**
 37 **JUNE 2022.**

38

39 WITNESS: Mr Hodge, can I just mention one thing that I
 40 think is very important here, that it says here:

41

42 *As I believe through further engagement we*
 43 *can rectify the issue.*

44

45 That to me speaks to the favourable engagement that the
 46 superintendent and I had, that we wanted to both work
 47 through this issue.

1
2 MR HODGE: Can we bring up WIT.0017.0083.0001. This is an
3 email that Inspector Neville sent on 30 May 2022 to you and
4 Ms Allen?

5 A. Yes.

6
7 Q. Did you read it at the time?

8 A. Briefly.

9
10 Q. Briefly. Does that mean - sorry, what does that mean,
11 that you read it and you - you actually read the words of
12 it, you just skimmed it, you can't actually remember it,
13 what was it?

14 A. I get hundreds of emails a day, Mr Hodge. I would have
15 read it.

16
17 Q. Now to be fair to - to be fair, though, this wasn't
18 just some random email that you were receiving about an
19 issue that wasn't consuming your attention, this was the
20 day before things were about to explode in relation to the
21 threshold, wasn't it?

22 A. Well that's your word, not mine.

23
24 Q. This was the day before a very significant public issue
25 was about to arise in relation to the thresholds?

26 A. That's the day before the - are you referring to the
27 Women's Safety and Justice Task Force report?

28
29 Q. Yes. And you were summonsed in to speak to the
30 Minister?

31 A. I wouldn't call it summonsed. So that was the day
32 before.

33
34 Q. So you see in this email Inspector Neville says to you
35 in the first paragraph:

36
37 *Since January 2021 QPS have requested 393*
38 *samples to continue with testing and found*
39 *that 33 per cent of these samples returned*
40 *a usable profile. The success rate was*
41 *66 per cent for the samples that pertained*
42 *to sex offences. The attached spreadsheet*
43 *provides information on the samples and the*
44 *results received.*

45
46 A. Yes.

1 Q. Just tell me, when you read that email, did that cause
2 you alarm?

3 A. From what I can recall I spoke to Ms Allen about this
4 and she said that she thought that this was cherry picked
5 based on the fact that these were known sex offences and
6 the police knew the outcome. So she felt that that was -
7 first of all, my understanding was that she said that she
8 didn't understand how they identified that data, but that
9 it was probably cherry picked because it related to known
10 sex offences which had an outcome.

11
12 Q. All right. So when you say you had this conversation
13 with Ms Allen, that must have been, what, on that day?

14 A. It would have been.

15
16 Q. So when you said before to me you read it briefly and
17 you receive hundreds of emails a day, you were deliberately
18 underplaying it, weren't you, because you got this email
19 and it was so striking what the information was, that
20 Inspector Neville was providing to you, that you spoke to
21 Ms Allen and said what does this mean?

22 A. I am not a dishonest person, so I'm telling you what
23 happened. I spoke to Ms Allen about the 66 per cent. When
24 I did that --

25
26 Q. It was so striking, you must have instructed her?

27 A. That's why I spoke to her.

28
29 Q. When you said before that you briefly read the email,
30 you read it, you saw what it said and you went and spoke to
31 her about it?

32 A. Okay.

33
34 Q. Isn't that your evidence?

35 A. That's what happened.

36
37 Q. Okay. And then you see in the second paragraph
38 Inspector Neville says:

39
40 *The success rate observed for samples*
41 *relating to sex offences is disturbingly*
42 *high and raises the risk that we may be*
43 *missing evidence that could identify an*
44 *offender. The QPS needs to take steps to*
45 *mitigate this risk. Based on the results*
46 *being achieved, the QPS is no longer*
47 *comfortable with the automatic*

1 *discontinuation of testing of samples below*
2 *the .008 ng/uL threshold.*

3
4 THE COMMISSIONER: Do you remember what you - can you just
5 tell me, you got this email and read it. So what prompted
6 you to see Ms Allen and tell me, if you can recollect, how,
7 what happened then? Did you call her? Did you meet her?
8 What happened?

9 A. I went and saw her from my memory. There was a
10 spreadsheet attached to that and it had some --

11
12 Q. Yes, there's something attached to it, yes.

13 A. It had some data in it and it looked like a lot of
14 data. And I said, from memory, I said to Ms Allen where
15 would that be coming from, that's such a high result? And
16 she said she didn't know where they got that, how they
17 worked out that data, that she didn't know where they got
18 that data and that it was likely that because they knew
19 that these were known sexual offences, then that's why it
20 was falsely high. That was my understanding from her.

21
22 Q. That it was, to put it another way, that the results
23 were skewed?

24 A. Based on a known outcome.

25
26 Yes.

27
28 MR HODGE: Did you have any more questions, Commissioner,
29 about that?

30
31 THE COMMISSIONER: No. No.

32
33 MR HODGE: And then you see that Inspector Neville says:

34
35 *This matter needs to be discussed as a*
36 *matter of priority between both agencies to*
37 *find a suitable solution.*

38
39 A. Yes.

40
41 Q. And he believes the next meeting has been changed for
42 later in June, which may be too far away to discuss this
43 important matter?

44 A. H'mm.

45
46 Q. So tell me if this is right: when you got this email
47 you understood that the police were saying you cannot use

1 this threshold any more?

2 A. That we wanted to discuss as a matter of priority, yes.

3

4 Q. That they were not comfortable with the automatic
5 discontinuation of testing a sample below the .008 ng/uL
6 threshold?

7 A. Yes, and that it needed to be discussed.

8

9 Q. So then that email, or receiving that email, prompted
10 you to then reach out to Superintendent McNab?

11 A. I think I did around this time. Like I said, we did
12 agree to talk about the thresholds and then one or both of
13 us took ill.

14

15 I'll tender that email, Commissioner.

16

17 **EXHIBIT #140 EMAIL FROM INSPECTOR NEVILLE TO MS KELLER**
18 **DATED 30 MAY 2022.**

19

20 MR HODGE: And then can we bring up QPS.0150.0001.0001_R.
21 So you then email Superintendent McNab less than an hour
22 later, and just him, and say:

23

24 *Hello Bruce. Based upon this email I'm*
25 *wondering if we can convene a meeting soon,*
26 *please?*

27

28 A. Yes.

29

30 Q. Did you speak to him, do you remember?

31 A. We did talk about thresholds. I know that I was at
32 home and he was at home and we were, we'd had a Teams
33 meeting, but I don't know whether it was that day.

34

35 THE COMMISSIONER: So you got his email with the
36 spreadsheet and the 66 per cent figure?

37

38 A. H'mm.

39

40 Q. Spoke to Ms Allen, and you then contacted him to talk
41 to him, is that right?

42

43 A. Yes.

44

45 Thanks.

46

47 MR HODGE: And so then --

A. If I may just say, it was directly to Superintendent
McNab because we were the equivalent level, so we would

1 talk to one another about issues. So that's why it was
2 only to him.

3
4 Q. Then the next day was when the QPS submission to the
5 Women's Safety and Justice Task Force was published?

6 A. Yes.

7
8 Q. And that contained the same data that Inspector Neville
9 had emailed you that morning?

10 A. Yes.

11
12 Q. I think you say in your supplementary statement that
13 QPS's submission was judicial to the Forensic DNA Analysis
14 Unit and there was adverse media exposure as a result?

15 A. Yes.

16
17 Q. You were then, I think I used word summonsed, but you,
18 I think, would prefer to say you were asked to attend a
19 meeting with the Minister?

20 A. And the Acting Director General.

21
22 Q. Yes. On 2 June?

23 A. Yes.

24
25 Q. Can we bring up your supplementary statement and can we
26 go to p33. In paragraph 113 you explain that at the
27 meeting the Minister asked you questions about the QPS's
28 submission?

29 A. She did.

30
31 Q. And she asked you when you became aware of the
32 submission and you said you became aware of it on
33 1 June?

34 A. Yes.

35
36 Q. Did you tell her that the data had been provided to you
37 on 30 May?

38 A. No.

39
40 Q. Did you tell her that the QPS had been raising this
41 issue with you about what percentage of samples they were
42 obtaining usable profiles from within the range since
43 mid-December of the previous year?

44 A. No.

45
46 Q. Why not?

47 A. I didn't.

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Q. Why not?

A. I didn't. I didn't. At the time I did not.

Q. It was obviously relevant, wasn't it?

A. It's easy to say that now.

Q. It's not just easy to say that now, you know it was obviously relevant, didn't you?

A. I did not at the time raise that with the Minister.

Q. Did you think that if you raised it with the Minister you would get in trouble?

A. No. No, I don't operate like that.

Q. Tell me if you agree with this: what it looks like is that this problem had been repeatedly brought to your attention by Inspector Neville for the preceding almost six months and you had failed to act on it?

A. No, that's, that's not how it occurred and that is not how I operate. Sorry, I do not do that.

Q. And then you see in (b) you've noted how the data presented by the QPS in the report was derived?

A. H'mm.

Q. And you said:

Based upon advice from Ms Allen, I said that this was not known to me.

A. Yes.

Q.

And in a previous meeting with the QPS it was suggested that as the cases were known sexual assaults, perhaps there had been some cherry picking of cases.

A. Yes, that's what I was told.

Q. I just want to understand that. That cherry picking of cases, that's a reference back to either the February or the March meeting with QPS?

A. Okay.

Q. Do you agree or not?

1 A. There was some talk about it and there was subsequently
2 some difference of interpretation as to whether those were
3 the words that were used.

4

5 Q. And you see then the next question was:

6

7 *Is the data in the submission by the QPS*
8 *accurate?*

9

10 And you've said:

11

12 *I said I cannot confirm this as we do not*
13 *yet know how the data was derived and we*
14 *could need to collaborate with the QPS to*
15 *determine this.*

16

17 A. Yes, I did say that.

18

19 Q. And you didn't at that point say:

20

21 *But Inspector Neville did send me a*
22 *spreadsheet two days earlier which had the*
23 *data in it.*

24

25 A. No.

26

27 Q. Why not.

28

29 A. I did not.

30

31 Q. I understand you didn't, my question is why?

32

33 A. I didn't.
34 Q. Then you see in (d) you say "The status of any follow
35 up about thresholds". So that is the Minister has asked
36 you what the status was of any follow up about thresholds
37 and you said:

38

39 *I understood a follow-up report was in*
40 *draft and that I had been told the findings*
41 *identified a slightly higher national*
42 *criminal investigation DNA database upload*
43 *rate compared with the 1.86 per cent in the*
44 *2018 options paper. Mr Drummond and*
45 *Minister D'Ath then requested that after*
46 *the meeting I send them a copy of the draft*
47 *report data about reworks and a time line*
of events.

1
2 A. H'mm.
3
4 Q. Did you tell them:
5
6 *I told the police back at the beginning of*
7 *April that I was holding the report based*
8 *on legal advice because of an external*
9 *review that we were going to do.*
10
11 A. No.
12
13 Q. Why not?
14 A. I did not.
15
16 Q. It was obviously relevant, wasn't it?
17 A. In hindsight you can say that, yes.
18
19 Q. Do you say it wasn't obvious to you at the time?
20 A. No.
21
22 Q. And then after the meeting - sorry, just before we do
23 that can we just go down, Mr Operator, just so Ms Keller
24 can see the top of the next paragraph, and then over the
25 page. So you see you then add some detail of what you said
26 to the Minister and Mr Drummond?
27 A. H'mm.
28
29 Q. And that you said to the Minister and Mr Drummond - you
30 see in (a) you say:
31
32 *The key statistic being reassessed in the*
33 *follow up paper was the 1.86 per cent*
34 *upload to NCIDD.*
35
36 A. Yes.
37
38 Q. Then you add:
39
40 *This had been the figure I had been*
41 *repeatedly advised by Ms Allen as being the*
42 *most relevant.*
43
44 A. Yes.
45
46 Q. I just was interested in understanding, does that mean
47 you can recall have said to the Minister and Mr Drummond

1 that the 1.86 per cent figure was the one you'd been
2 repeatedly advised by Ms Allen as being the most relevant,
3 or is it just the first thing that you said to them?

4 A. Yes, I said the 1.86, because that was what I
5 understood was, the second paper was going to assess or
6 compare.

7
8 THE COMMISSIONER: Shall we adjourn at this point? It's
9 11 o'clock.

10
11 MR HODGE: Yes, sure.

12
13 THE COMMISSIONER: We'll adjourn until 20 past.

14
15 **SHORT ADJOURNMENT**

16
17 THE COMMISSIONER: Yes Mr Hodge.

18
19 MR HODGE: Thank you. Just before the break, Ms Keller, we
20 were looking at the 1.86 per cent upload to NCIDD
21 information that you provided. Can you just explain to us
22 by this time did you have an understanding of what 1.86
23 per cent upload to NCIDD meant?

24 A. I believe so.

25
26 Q. Did you understand whether the QPS's statistic of 30
27 per cent or 36 per cent related to NCIDD upload?

28 A. No.

29
30 Q. As in you didn't know whether it did or didn't or you
31 knew that it --

32 A. I thought they were two different things.

33
34 Q. Okay. Had you formed a view by this stage as to which
35 statistic was the relevant one?

36 A. As I say in my statement 1.86 was what I was told.

37
38 Q. By Ms Allen?

39 A. Yes.

40
41 Q. Then after the meeting you sent a couple of emails to
42 the Minister and Mr Drummond?

43 A. Yes.

44
45 Q. And can we bring up WIT.0017.0144.0001. This is the
46 email that you sent on 2 June to the Minister and also to
47 Mr Drummond which attached the original Options Paper, or

1 attached amongst other things the original Options Paper
2 and also the new report that was being prepared by Ms Allen
3 and Mr Howes?

4 A. Yes.

5
6 Q. And in that email you said:

7
8 *Papers attached as discussed. 2018 Options*
9 *Paper, 1.86 per cent was suitable to be*
10 *uploaded to the National Criminal*
11 *Investigation DNA Database. 2022 review*
12 *paper 5.3 per cent (but note smaller number*
13 *assessed).*

14
15 A. Yes.

16
17 Q. You must have had Ms Allen send you a copy of the
18 current version of the update report?

19 A. That's what's attached to the email that I forwarded
20 on.

21
22 Q. So she'd emailed it to you?

23 A. Yes.

24
25 Q. Do you remember when you first got it?

26 A. That day.

27
28 Q. The information that you've put in there about the 1.86
29 per cent and 5.3 per cent, was that information you put in
30 by looking at the reports yourself?

31 A. So given the timelines the report, we were looking for
32 1.86 and then the corresponding number which in that report
33 was 5.3.

34
35 Q. Sorry, I'm just trying to understand who the we is,
36 does that mean you?

37 A. With Ms Allen.

38
39 Q. So you and Ms Allen looked at it?

40 A. Yes, that email was prepared together. Well, she was
41 standing with me as I prepared that. I checked with her is
42 the 5.3 the correct number and she said yes.

43
44 Q. I'm interested in understanding at this stage on 2 June
45 you trusted her?

46 A. Of course.

47

1 Q. Well the reason I ask that is because as I'd understood
2 it back in mid-March you'd become concerned about why it
3 was that she'd been so - in fact early March, become
4 concerned about why it was that she'd been so slow to
5 obtain the BDNA quote?
6 A. That doesn't mean I don't trust her.
7
8 Q. Okay. You were comfortable with the way she was
9 dealing with this issue?
10 A. Yes, she was the expert.
11
12 Q. In terms of that 1.86 per cent and 5.3 per cent, I'm
13 just interested in understanding did you make any attempt
14 to understand whether either of those papers contained
15 statistics measuring the same thing as what the QPS was
16 getting 30 per cent or by then 66 per cent for?
17 A. Not at that stage, no. Not when that was prepared.
18
19 Q. So at some later stage did you try to --
20 A. I did go back, yes.
21
22 Q. When was that?
23 A. I don't recall exactly when. This was prepared very
24 quickly obviously.
25
26 Q. And then you also send another email in accordance with
27 the request that had been made by the Minister and
28 Mr Drummond for a timeline?
29 A. Yes.
30
31 Q. And can we bring up - we might bring up two documents.
32 The first is WIT.0017.0148.0001. You see this is another
33 email you send on 2 June at 3.46 where you say, and again
34 to the Minister and Mr Drummond:
35
36 *As requested kindly find attached timeline*
37 *regarding QPS and FSS engagement regarding*
38 *thresholds.*
39
40 A. Yes.
41
42 Q. And then some other attachments. If we just bring up
43 on the right-hand side the timeline which is
44 WIT.0017.0149.0001. This timeline document, can you tell
45 us who prepared that?
46 A. Ms Allen.
47

1 Q. I see. If we go to the last page of that document.
2 You see the very last item on the page is 5 April 2022?

3 A. Yes.

4
5 Q. You see it says:

6
7 *Lara Keller, Acting Executive Director FSS*
8 *advised Superintendent McNab that FSS was*
9 *unable to provide the follow up report due*
10 *to legal advice.*

11
12 A. That's Cathie's interpretation, yes.

13
14 Q. Yes, when you say Cathie's interpretation, Cathie's
15 interpretation of something that you'd told her?

16 A. I don't know whether the word I'm able or whether it
17 was, yeah, so she prepared the document.

18
19 THE COMMISSIONER: What is this document, Mr Hodge, that
20 we're looking at?

21
22 MR HODGE: This is a timeline that Ms Keller sent to the
23 Acting Director-General and the Minister of what had
24 happened in relation to the engagement between FSS and QPS.

25
26 THE COMMISSIONER: I see, thanks.

27
28 WITNESS: This was at the request of the Acting
29 Director-General and the Minister at the time for a
30 timeline.

31
32 THE COMMISSIONER: I see, thank you.

33
34 MR HODGE: I understand Ms Allen prepared the document?

35 A. M'mm.

36
37 Q. But she wasn't part of the conversation that you had
38 with Superintendent McNab?

39 A. No.

40
41 Q. Where you said you can't provide the report?

42 A. No, she wasn't there, no.

43
44 Q. So the only way she could include this is based on
45 something that you'd said to her?

46 A. Yes, I guess so.

1 Q. You must have looked at the document before you sent it
2 to the Minister and the Director-General?
3 A. Yes.
4
5 Q. So you must have thought it was accurate?
6 A. Within the time constraints, yes.
7
8 Q. This is the one piece of information that you're able
9 to specifically contribute and are the only one who knows
10 about, you must have regarded it as accurate, surely?
11 A. I trusted Cathie as she prepared it. I did not prepare
12 the document.
13
14 Q. But you looked at it before you sent it?
15 A. Yes, I did.
16
17 Q. Can I suggest to you at the time you must have thought,
18 "That accurately reflects what I had communicated to
19 Superintendent McNab"?
20 A. Okay, yes.
21
22 Q. And do you agree with me what she is recording in this
23 timeline is what you communicated to Superintendent McNab
24 appears to be pretty similar to what Superintendent McNab
25 recorded internally as to what you'd said to him, that is
26 you were unable to provide the report due to legal advice?
27 A. Okay.
28
29 Q. Do you agree with that?
30 A. Okay.
31
32 Q. Do you agree with me the most likely explanation for
33 that is because what you said to Superintendent McNab is:
34
35 *I can't provide the report to you because*
36 *of legal advice.*
37
38 A. I've explained the conversation with Superintendent
39 McNab to you previously.
40
41 Q. This timeline doesn't have the further entry or the
42 entry in relation to what happened on 30 May, two days
43 earlier?
44 A. No.
45
46 Q. Is there a reason for that?
47 A. I don't know, you'd have to ask Cathie.

Q. No, I'm asking you because this is a document you sent to your Minister and your Acting Director-General. It is, I'm sure you'd agree, an appropriate question for you. Do you have an explanation for why it wasn't included?

A. No.

Q. We can take those documents down. I then want to move to something that happened after that.

THE COMMISSIONER: Are you tendering that?

MR HODGE: They're already tendered as part of Ms Keller's statement.

THE COMMISSIONER: I see, thank you.

MR HODGE: You're aware that when Mr Drummond gave evidence he was critical of you on the basis that the QPS weren't advised about the 6 June decision until 21 June?

A. I understand that now.

Q. In your supplementary statement, if we bring that up, at paragraph 131 which is on page 37, you see in 131 you say:

I understand it has been suggested in the evidence given in the Commission of Inquiry that I did not communicate with QPS about the 6 June decision. That is incorrect. On 9 June 2022 I sent an email to Superintendent McNab of the QPS with the subject line re inter-agency sexual assault response guidelines working group. This email confirmed the return to pre-threshold processes.

If we then bring up LK137, which is WIT - thank you. You'll see if we blow up the email at the top of the page that you send - you respond to an email from Superintendent McNab on 9 June and you respond referring to the thing that he's been emailing you about, and then there's a line in the, about the sixth line of the email where you say:

Presumably you're aware of the return to pre-threshold processes. FYI I'm sick with COVID so I will not be in until next

1 Wednesday.

2
3 I take it from your statement that you're saying by the
4 line:

5
6 *Presumably you're aware of the return to*
7 *pre-threshold processes*

8
9 That was how you notified Superintendent McNab of the 6
10 June decision?

11 A. The 6 June decision, I communicated that to Ms Allen.
12 I expected that she would formalise that with QPS, hence
13 why I'm saying presumably you are aware because at that
14 stage I presumed that QPS would be aware.

15
16 Q. We'll take that in stages. In paragraph 131 of your
17 supplementary statement you refer to the issue raised by
18 Mr Drummond in his evidence that you did not communicate
19 with QPS about the 6 June decision and you say that is
20 incorrect:

21
22 *On 9 June 2022 I sent an email to*
23 *Superintendent McNab. This email confirmed*
24 *the return to pre-threshold processes.*

25
26 Do you say that by this email you communicated to
27 Superintendent McNab the 6 June decision?

28 A. On the basis that I had assumed that Ms Allen had
29 initiated the process, yes.

30
31 Q. I see. Do you agree with me you don't say that or
32 offer that explanation in your statement?

33 A. Okay.

34
35 Q. I'll show you your statement. Can we bring back up
36 131. The explanation you've given, which is you reject the
37 proposition that you didn't communicate with QPS about the
38 6 June decision because in fact you had assumed Ms Allen
39 had already told them and therefore you sent an email just
40 saying:

41
42 *I assume you already know about the return.*

43
44 That's not something that appears in your statement?

45 A. Okay.

46
47 Q. Do you agree with that?

1 A. Okay, if you look at it that way.

2
3 THE COMMISSIONER: Mr Hodge, in paragraph 133 --

4
5 MR HODGE: I was about to come to that.

6
7 THE COMMISSIONER: Thanks.

8
9 MR HODGE: And then can we blow up paragraph 133. You see
10 you say:

11
12 *Also prior to my meeting with Professor*
13 *McNeil and Dr Derrington on 6 June where*
14 *Mr Drummond communicated the decision to*
15 *proceed with Option 1, I emailed Ms Allen*
16 *inquiring what would be required to*
17 *implement the decision that was yet to be*
18 *made. The email exchange on 6 June between*
19 *Ms Allen and me about this matter is*
20 *attached at Exhibit LK-138. After*
21 *communicating the 6 June decision to*
22 *Ms Allen I trusted Ms Allen to make all*
23 *arrangements to implement Option 1. It was*
24 *my expectation that Ms Allen would*
25 *communicate with the QPS, other relevant*
26 *stakeholders and her staff about the 6 June*
27 *decision.*

28
29 A. Yes.

30
31 Q. Tell me if you agree with this, or do you accept that
32 it was your role to communicate with the QPS?

33 A. I guess I expected Ms Allen to do that. You could say
34 that it was. Please keep in mind that I had also
35 contracted COVID then so that - in my previous roles if
36 there was to be a change to a process, because I was at one
37 time a scientist at the level that Ms Allen is at, if
38 someone said to me please make this happen, I would make it
39 happen, I would communicate with the stakeholders. I
40 expected the same of Ms Allen. And I trust that she
41 probably has, I haven't seen any of the communication she
42 had with the staff or QPS.

43
44 Q. Did you tell Ms Allen she should communicate it to QPS?

45 A. It's inferred given her role.

46
47 Q. Does that mean the answer is no, you didn't tell her

1 that but you say it's inferred given her role?

2 A. She's a very senior scientist. She knows how to
3 implement a change in procedure I'm quite sure of that. So
4 that includes communicating with stakeholders and staff so
5 I trusted that's what she would do and she may very well
6 have done that.

7

8 Q. And subsequently you did send an email to
9 Superintendent McNab?

10

11 THE COMMISSIONER: Mr Hodge, is there evidence QPS didn't
12 know until much later, can you remind me?

13

14 MR HODGE: There's evidence I'll bring up now which is
15 Ms Keller emailed Superintendent McNab on 21 June 2022 to
16 explain what the change in process was.

17

18 THE COMMISSIONER: But is there evidence from Inspector
19 Neville, for example, that he didn't know there'd been a
20 purported reversion? Does anybody from police say they
21 didn't know?

22

23 MR HODGE: I think there's two different issues. One is
24 there is of course a press conference that the Premier
25 gave.

26

27 THE COMMISSIONER: Yes.

28

29 MR HODGE: That they were going to abandon the threshold.
30 But then subsequently the issue that emerged as you might
31 remember from Inspector Neville's evidence is that he then
32 detected the fact that they weren't concentrating samples
33 and then raised an issue about that, which is I think was
34 on about 20 July.

35

36 THE COMMISSIONER: There are two things. One is there was
37 this reversion to something that was said to be the
38 pre-2018 process. So there was a change in the process,
39 right?

40

41 MR HODGE: Yes.

42

43 THE COMMISSIONER: Then there was a realisation later that
44 it omitted the concentration step.

45

46 MR HODGE: Yes.

47

1 THE COMMISSIONER: The questioning of Ms Keller is did she
2 inform police or did anybody inform police that there was a
3 change in the process from the 2018 process to something
4 else, that's what you're asking about, did you tell them?
5

6 MR HODGE: No, no, I should explain. Mr Drummond gave
7 evidence and one of the things that I think you'd have to
8 say he was critical of Ms Keller about, was about not
9 having communicated with the QPS. I think in fairness to
10 Ms Keller I think she should be --
11

12 THE COMMISSIONER: I understand that, I understand that.
13 But the question is when did QPS know that the process that
14 was in operation up to that point in accordance with the
15 2018 protocol had changed?
16

17
18 MR HODGE: They must have known something from when the
19 Premier --
20

21 THE COMMISSIONER: That's right. And he gets an email from
22 Ms Keller saying:
23

24 *I assume you know*
25

26 Whatever it was:
27

28 *Presumably you're aware of the return to*
29 *pre-threshold processes.*
30

31 MR HODGE: Yes, and so I would have logically thought that
32 that reference in Ms Keller's email was a reference to:
33

34 *Presumably you've seen the Premier's press*
35 *conference.*
36

37 THE COMMISSIONER: Yes, that's right.
38

39 MR HODGE: But that's not Ms Keller's evidence that you've
40 just heard her give. The evidence that she's just given in
41 order to respond to Mr Drummond's criticism is to say:
42

43 *I expected Cathie Allen to do it, it's her*
44 *role.*
45

46 THE COMMISSIONER: Yes, no, I understand that. Hence the
47 presumption.

1
2 MR HODGE:

3
4 *And when I sent that email I assumed that*
5 *it was Cathie Allen.*
6

7 THE COMMISSIONER: That's right. But do we know whether
8 Ms Allen informed the police there was going to be this
9 change to something, I mean we know it wasn't pre-2018 but
10 do we know? Or did Mr Drummond simply assume that police
11 were not officially informed?
12

13 MR HODGE: We'll see in a moment when they were officially
14 informed.
15

16 THE COMMISSIONER: All right, thanks.
17

18 MR HODGE: Can we bring up FSS.0001.0051.7365?
19

20 WITNESS: I think it's important to say that I haven't seen
21 any evidence of whether Ms Allen advised QPS so she may
22 very well have done that.
23

24 MR HODGE: You see this is the email that you send to
25 Superintendent McNab on 21 June 2022?

26 A. Yes.
27

28 Q. You say:
29

30 *FSS advice regarding DNA reporting.*
31

32 A. Yes.
33

34 Q. You copy Ms Allen?

35 A. Yes.
36

37 Q. And you say:
38

39 *Good afternoon, Bruce. On Monday 6 June*
40 *2022 the Premier announced a Commission of*
41 *Inquiry into forensic DNA testing in*
42 *Queensland. The Premier also announced*
43 *that moving forward samples that fall into*
44 *the category of DNA insufficient for*
45 *further processing samples would be*
46 *profiled. On 6 June the forensic-register*
47 *was amended to ensure that all crime scene*

1 *samples with a quantitation value above*
2 *.001 ng/μL are amplified and results*
3 *provided electronically to the QPS. I*
4 *would appreciate if you could circulate*
5 *this advice to your QPS colleagues.*

6 A. Yes.

7
8 Q. Just tell us, if you'd assumed that Ms Allen was going
9 to undertake this communication why did you send this email
10 to Superintendent McNab?

11 A. Ms Allen had sent me that email I believe that morning
12 or the afternoon before, and I thought it was more a
13 confirmation of what was happening as a formality. So I
14 think I sent an email back to her saying would you like to
15 send this on or would you like me to, she replied back
16 saying you can. So I forwarded on, and she's copied in
17 because she authored the information.

18
19 Q. I see. So you say she emailed it to you, you copied
20 the text into a new email and copied her into it?

21 A. Essentially.

22
23 Q. On 21 June?

24 A. Yes.

25
26 Q. I see. Did you ask her about what communications had
27 already happened with QPS?

28 A. Not at that stage.

29
30 Q. Did you ask her about whether they'd been told the
31 detail of what was happening in relation to concentration?

32 A. Not at that stage, no.

33
34 Q. Are you aware that the evidence that the inquiry has
35 heard is that when Inspector Neville and Inspector Pobar
36 found out that the lab wasn't concentrating the low quant
37 samples was about 20 July 2022?

38 A. Okay.

39
40 Q. Do you have a view as to whether it was important for
41 Queensland Health to communicate this issue of
42 concentration to QPS?

43 A. Say that again, sorry?

44
45 Q. Yes. Do you have a view about whether it was important
46 for Queensland Health to communicate this issue of
47 concentration to QPS?

1 A. As in the change of the process, yes.

2
3 THE COMMISSIONER: Mr Hodge means about the fact that the
4 concentration step was omitted?

5 A. Oh, that - I think that falls into the realm of what I
6 expected from Ms Allen to communicate, which I interpreted
7 as pre-2018 threshold or lifting of that.

8
9 MR HODGE: Just so we understand though, what steps if any
10 did you take in order to supervise or ensure that Ms Allen
11 had done that?

12 A. I trusted her to do that.

13
14 Q. Okay?

15 A. I don't micromanage people, I trust them.

16
17 Q. I tender that email, Commissioner.

18
19 THE COMMISSIONER: Exhibit 141.

20
21 **EXHIBIT #141 EMAIL FROM MS KELLER TO SUPERINTENDENT MCNAB**
22 **OF 21 JUNE 2022.**

23
24 MR HODGE: And then I want to just ask you about one more
25 topic in your supplementary statement. Can we go to page
26 40 of the supplementary statement. Here you deal with the
27 request to pause testing?

28 A. Yes.

29
30 Q. You explain in paragraph 149 that you received an email
31 from Inspector Neville on 20 September requesting a
32 temporary pause of testing?

33 A. Yes.

34
35 Q. On 20 September you replied to Inspector Neville?

36 A. Yes.

37
38 Q. I don't know if you're aware but the evidence from
39 Mr Drummond is that he wasn't told about the request from
40 QPS to pause testing until 29 September?

41 A. Okay.

42
43 Q. Well, that's nine days after the request has come in
44 from Inspector Neville?

45 A. Okay.

46
47 Q. The request has come in to you?

1 A. Yes.

2
3 Q. So who did you tell about the request to pause testing?

4 A. Multiple people. At this point in time a task force
5 within Queensland Health had been established to assist
6 with any - essentially any recommendations or items
7 relating to DNA, forensic DNA analysis unit. So those
8 persons were - they were advised. And then a series of
9 steps were put into place once Inspector Neville formalised
10 that request, because at that stage we were still adopting
11 the previous process. So that's why I wanted to make sure
12 that I had something formal on behalf of Queensland Police.
13 So that's when we started to plan for how that might look
14 because that represented yet another change to process, so
15 I wanted to be very careful about how we did that so we
16 didn't - we weren't being seen to be changing process when
17 we didn't have a validated process underneath that. So I
18 told multiple people and there was certainly conversations
19 with the members of the task force.

20
21 Q. In paragraph 151 over the page you note that Inspector
22 Neville confirmed on 20 September that this was a formal
23 request from the QPS?

24 A. Yes.

25
26 Q. And then in paragraph 153 you say:

27
28 *Over the course of the next two weeks the*
29 *pause was enacted.*
30

31 A. Yes.

32
33 Q. The pause was enacted on 30 September?

34 A. Okay.

35
36 Q. Do you know that?

37 A. I'd have to go back through my records to see exactly
38 when that was.

39
40 Q. Mr Drummond's evidence is he was not told about the
41 request for the pause until 29 September?

42 A. Okay.

43
44 Q. I'm just interested in understanding whether there
45 would be any particular reason why he would not be told
46 about the request for the pause until nine days later?

47 A. Because there's a series of processes within, you know,

1 within the organisation. This particular one we attempted
2 to essentially learn from the findings of the Commission in
3 that we - to date - in that we wanted to, if we were going
4 to pause we wanted to make sure we consulted appropriately
5 with our staff who were the ones who were actually enacting
6 any change moving forward, with the pause and the
7 subsequent restart. So there was a lot of communication
8 about how to go about that so that we weren't just making a
9 reactive change without an appropriately validated process
10 behind that.

11
12 Q. But the request for feedback from your staff is
13 referred to in paragraph 155?

14 A. Further on.

15
16 Q. That was on 6 October?

17 A. That's all part of the considerations.

18
19 Q. You did the pause on 30 September?

20 A. M'hmm.

21
22 Q. So you weren't waiting for feedback from staff in order
23 to decide when to do it?

24 A. No, that's subsequent. I'm giving you context about
25 how this happened.

26
27 Q. Is what happened that on 29 September Mr Drummond
28 became aware for the first time of this request for a pause
29 and so immediately the next day he caused a pause to
30 happen?

31 A. Okay.

32
33 Q. Is that what happened?

34 A. Seems to be.

35
36 Q. And so then what I'm just trying to understand is
37 everything you've said about going through a validated
38 process, what was it that happened between 20 September and
39 29 September that delayed informing the Director-General
40 about it?

41 A. I don't brief up automatically to the Director-General
42 on every single aspect of FSS. I think we've established
43 that. So the conversations were happening and by this time
44 I believe I had a different line manager in place as well.
45 I briefed up, I don't automatically - in my role I don't
46 automatically brief up to the Director-General on every
47 single matter. In this case the task force had been

1 established and they were undertaking a lot of the
2 consultation with us and on our behalf, which was really
3 great.
4
5 Q. The consultation that you refer to in 155, that was
6 about how to lift the pause?
7 A. No, I'm talking about the consultation around how to
8 enact the pause and what that might look like.
9
10 Q. You say there was a consultation with staff?
11 A. That was afterwards.
12
13 Q. The task force undertook in order to determine how to
14 enact the pause?
15 A. No.
16
17 Q. Are you saying there was a consultation between you and
18 the task force about how to enact the pause?
19 A. Myself and others, yes.
20
21 THE COMMISSIONER: Just in paragraph 152?
22 A. Yes.
23
24 Q. You say:
25
26 *We began to plan for this.*
27
28 A. Yes.
29
30 Q. Can you just tell me what that meant, what that means?
31 A. So things are a little bit different now in that we
32 have the task force in place.
33
34 Q. Yes, what is that?
35 A. So it's a collection of, it's getting bigger and
36 bigger, it's a collection of legal experts as well as key
37 scientific representatives and --
38
39 Q. From where?
40 A. They've engaged a specialist, I think he's a biologist,
41 to give them advice as well. He hadn't started at that
42 stage I don't think, or he hadn't consulted with us. But
43 what they had done is everything that comes through as a
44 formal part of the process is basically filtered through
45 that task force. I guess they represent a central point of
46 contact for any changes moving forward. So, for example,
47 they have taken on much more of a role in communicating

1 directly with a representative from QPS. So in this case
2 there was a lot of consideration about the risks in terms
3 of immediately pausing and what that might look like and
4 how we would consult around that. So they did a lot of
5 that for us. Also there was some consideration about
6 whether or not --

7
8 Q. So how many - I think I'm understanding. This is a
9 task force that was established because the work of this
10 Commission is obviously having a very great effect?

11 A. Yes.

12
13 Q. Upon decision-making?

14 A. Yes.

15
16 Q. So the task force is established partly to assist in
17 decision-making, taking into account the existence of the
18 Commission, what the Commission is doing, yes?

19 A. Yes, they are.

20
21 Q. Does that mean that when QPS asked, as in this case, to
22 pause testing, that step is then considered by the members
23 of the task force?

24 A. Yes.

25
26 Q. I see. How many members are there, just to give me a
27 sense of what's happening, I'm not being in the slightest
28 degree critical of the establishment of a body like that?

29 A. I think there might be about six.

30
31 Q. Yes, and they involve - it doesn't matter. I
32 understand. Thanks Mr Hodge?

33 A. May I just say one consideration was because this had
34 been a request from police to formally pause testing there
35 was discussion, for example, about whether that because
36 police are the custodians of the samples.

37
38 Q. Yes?

39 A. And we are testing, whether or not irrespective of how
40 that looked we had to immediately do that. So they were
41 giving us advice about all different aspects of it.

42
43 Q. All right, thanks?

44 A. They've been very helpful.

45
46 Q. Thank you.

47

1 MR HODGE: I just wanted to check though that my
2 understanding is correct, at 155 when you're talking about
3 consultation, the consultation was in relation to lifting
4 the pause?

5 A. Yes.

6
7 Q. And what changes of work flow could be made as part of
8 the immediate concerns of QPS?

9 A. Yes, and we met with QPS and that's what led to a lot
10 more consultation, which was great.

11
12 Q. And the pause has now been lifted?

13 A. We've recommenced.

14
15 Q. One last thing, if we just go to paragraph 52 of your -
16 actually it's your 20 September statement. It's
17 WIT.0017.0003.0001. If we go to paragraph 52. You see you
18 say:

19
20 *I consider that the culture of the forensic*
21 *DNA analysis unit could be enhanced. I*
22 *reached this view after reading the*
23 *Queensland Health Working for Queensland*
24 *2021 survey report and through informal*
25 *conversations with some of the staff at the*
26 *unit.*

27
28 A. Yes.

29
30 Q. Do you remember whether you ever received the free text
31 sections of those surveys?

32 A. You're talking about a different survey.

33
34 Q. I don't think so. Isn't as part of the Working For
35 Queensland survey there are free text boxes that staff can
36 put in --

37 A. We as manager's don't get to see that level of detail.

38
39 Q. No, that's my question. Anyway, it doesn't matter why
40 you said I'm talking about a different survey. My question
41 is did you get to see the free text part, because another
42 witness has said that in your position it wasn't possible
43 to see it, and you're confirming you couldn't see it?

44 A. I just need to correct you there. There are two
45 surveys here. There's the Working for Queensland survey
46 and there's the Workplace Harmony survey. The Workplace
47 Harmony survey I initiated, I circulated, yes I've seen all

1 the results. The Working for Queensland survey is
2 initiated by Queensland Health and the detail of the free
3 text of staff is not available to us as managers. So yes
4 to the comment about my survey, no to that one.

5
6 Q. Thank you, I don't have any further questions.

7
8 THE COMMISSIONER: Thank you. Mr Hunter.

9
10 <EXAMINATION BY MR HUNTER:

11
12 Q. Ms Keller, I act for the Queensland Police Service.
13 Can I start by asking you about your present understanding
14 of the problem with the decision that was made on 6 June.
15 You understand now, don't you, that the problem with the
16 process that was adopted consequent upon the decision of 6
17 June was that samples were amplified without being
18 concentrated first?

19 A. Yes.

20
21 Q. With the risk of (indistinct) evidence, yes?

22 A. Yes.

23
24 Q. And knowing what you know now you also understand that
25 when it comes to what I'll call the DIFP process that was
26 adopted in early 2018?

27 A. Yes.

28
29 Q. The problem with that is that samples in that low quant
30 range are simply not being tested at all, correct?

31 A. Yes.

32
33 Q. With a risk that evidence could be missed?

34 A. Yes.

35
36 Q. Do you accept that you don't have to be a DNA scientist
37 to understand those problems? I recognise this is with the
38 benefit of hindsight but do you accept that when it's
39 properly explained the problems with each of those matters
40 is really quite straightforward or quite evident?

41 A. With the benefit of hindsight, absolutely. Yes,
42 absolutely, of course.

43
44 Q. I suppose my question then is did you at any stage ask
45 for anyone in the laboratory to explain to you what was
46 going on?

47 A. I did subsequently, yes.

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Q. But not at the time?

A. No, I did not.

Q. Because of course you knew that --

THE COMMISSIONER: When did you ask, Ms Keller?

A. Oh, this was - things were being put together. When I came back from my leave, on the very first day I came back from my leave I sat down with Ms Gregg and Ms Slade and we went through the flow chart that existed back then, so that's when I could visualise exactly what steps were happening during the process.

Q. And why, that is their nature, their significance?

A. Yes, so then I understood microcon to 35 and microcon to full. I didn't know that before that.

Q. Yes, thank you.

MR HUNTER: My point is when, for example, you're receiving emails from reporting scientists about what they see as problems, you didn't seek to have them try and step you through the science?

A. In some respects they did when they spoke to me but at that stage, no, I did not.

Q. Because of course I mean you might not be a DNA scientist but you've got a scientific background?

A. So I'm a manager who's a scientist. The scientific side of it is coming right into all of this as being part of it but I am a manager.

Q. I'm not talking about your role, I'm talking about your educational qualifications and your prior experience?

A. Is in medical science.

Q. Yes. You have previously managed laboratories?

A. That don't do DNA testing.

Q. No, no, I understand that. I'm not talking about --

THE COMMISSIONER: Mr Hunter just means that you have --

A. Yes, I understand.

Q. -- a slight advantage or an advantage over the rest of us because you have a science background?

1 A. However we now have the benefit of all the information
2 we have now.

3
4 MR HUNTER: All right. Can I go to the 6 June decision.
5 Do you accept that what occurred when you, based upon the
6 advice you'd received from Ms Allen, sent the email, I
7 won't ask for it to be brought up, but do you accept that
8 that was a really serious error that occurred?

9 A. Yes.

10
11 THE COMMISSIONER: What's a serious error, Mr Hunter?

12
13 MR HUNTER: The fact that the Director-General was given
14 that incorrect advice?

15 A. Yes.

16
17 Q. Notwithstanding that it was based upon what you'd been
18 told, did you regard it as being personally embarrassing?

19 A. I felt - and I have since spoken with the
20 Director-General and said that it was never my intention to
21 give the wrong information.

22
23 Q. I'm not suggesting --
24 A. May I please.

25
26 Q. Of course. I'm not suggesting you intentionally did
27 anything misleading, so I just make --

28 A. I just - if I may?

29
30 Q. Sure?

31 A. It was never my intention to mislead them or give them
32 the wrong information and I feel dreadful about the fact
33 that that happened because that's not me, I would never do
34 that. So if you're saying do I feel embarrassed, of course
35 I do.

36
37 Q. You were horrified that that --

38 A. Yes, I was.

39
40 Q. That the email had gone out with your name on it with
41 the consequences that we now know?

42 A. Absolutely.

43
44 Q. Presumably you would have been interested to know what
45 on earth had happened to result in you being given that
46 incorrect advice?

47 A. M'hmm.

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Q. Did you sit down with Ms Allen?

A. I haven't had the chance as yet.

Q. What about in the immediate aftermath of the discovery of the error?

A. I was on leave when that was discovered so I couldn't.

Q. When you returned to work was Ms Allen still in the position of laboratory manager?

A. I believe so.

Q. She wasn't suspended until I think 21 September, was she?

A. Okay.

THE COMMISSIONER: Mr Hunter, can you remind me of the dates? The date that the error was discovered and the date that Ms Allen --

MR HUNTER: Ms Allen was suspended on 21 September. The date of the discovery I'll have to --

THE COMMISSIONER: Let me know when you know.

MR HUNTER: Around 19 August.

THE COMMISSIONER: Thank you.

MR HUNTER: 15 August I'm told by Mr Hodge.

THE COMMISSIONER: Thank you.

MR HUNTER: So when did you come back to work?

A. 1 September.

Q. So there was a period of three weeks before Ms Allen was suspended. Did you at any time during that period try to sit down with her and ask her what on earth went wrong?

A. Not at that stage. I intend to.

Q. Not at any stage?

A. No, not at this point in time.

Q. Can I ask you why not? Given that you were personally embarrassed and horrified about what had happened, you'd been effectively misled by Ms Allen, deliberately or

1 otherwise, why on earth wouldn't you want to know why she
2 would have told you something that was just so obviously
3 wrong?

4 A. She told me it was an unintended error so I accepted
5 that from her.

6

7 Q. Really? Knowing what you now know about the work flow
8 that was in place before 2018?

9 A. M'hmm.

10

11 Q. Did you really think that she could have made an
12 unintentional mistake such as that?

13 A. Yes, I did. Yes, I did.

14

15 Q. That she just completely forgot that the pre-2018
16 process involved micro concentration of low quant samples?

17 A. I believe that she provided that information in good
18 faith and that she made an error. We are yet to sit down
19 and talk it through.

20

21 Q. Okay. You've been asked just a moment ago about the
22 request by Inspector Neville for a pause?

23 A. Yes.

24

25 Q. Again, I won't go through each of the documents. You
26 recall that there was a sequence of emails where you
27 received an email from Mr Neville requesting a pause?

28 A. Yes.

29

30 Q. Then there was another email, that was on 20 September.
31 On the 21st you responded saying that you'd briefed up?

32 A. Yes.

33

34 Q. And then on 26 September he requested confirmation from
35 Helen Gregg but also CC'd you?

36 A. M'mm.

37

38 Q. Asking confirmation that the pause was in place?

39 A. M'hmm.

40

41 Q. And he did not, can I suggest, get a reply to that
42 email?

43 A. That's unusual. I generally would reply to him
44 promptly.

45

46 Q. Well could it be you didn't reply because you weren't
47 the direct recipient, you were merely CC'd?

1 A. Possibly.

2

3 Q. He gave evidence on 28 September before this inquiry?

4 A. Yes.

5

6 Q. That he had asked for pause and had not received a
7 response to his query?

8 A. Okay.

9

10 Q. And it wasn't until the following day that there was a
11 letter sent from the Director-General of Queensland Health
12 to the Commissioner of Police confirming that the pause was
13 in place?

14 A. Yes.

15

16 Q. Do you accept that that sequence of events might
17 suggest to the Queensland Police Service and to Inspector
18 Neville in particular that the concerns weren't being given
19 the level of attention that they merited?

20 A. No. I believe that I've always tried to engage. So,
21 no. And I know that that was being discussed within the
22 Task Force as to how to manage that process, hence the
23 briefing to them, informally.

24

25 Q. The Police Service, who had asked for the pause, in
26 circumstances where there was concern that evidence might
27 be missed as a result of the procedures that were in place,
28 don't get a response until Inspector Neville gives evidence
29 in public about it?

30 A. Okay. Well that's unfortunate.

31

32 Q. My question is: do you accept that that might tend to
33 convey to the QPS that their concerns about that issue were
34 not being given the attention that they deserved?

35 A. I don't agree with that but you may, you may --

36

37 Q. All right. Can we go back to a series of emails that
38 you were ultimately copied into and if we could please have
39 QPS.0001.1312.0001 on the screen, Mr Operator. Now you
40 weren't copied into this until I think 17 December?

41 A. I'm not sure that's the same one.

42

43 Q. Can you go to page 13?

44 A. That's 1 April.

45

46 Q. Yes. That's it. If we could scroll back to p13,
47 please. You'll see here there's an email from Inspector

1 Neville to Ms Allen, but you're CCed in on it, and I'm
2 suggesting that was - I'm sorry, there was an earlier one.
3 Go back to p15, please. And if you then go forwards to p14
4 we'll see the start of that email. We can see there it's
5 an email of 17 December to Cathie Allen and again you were
6 copied into it. Yes?

7 A. Yes, yes.

8
9 Q. If we go back then to p16, we can see you're being
10 copied into an email sent to Ms Allen on 16 December?

11 A. Yes.

12
13 Q. That was in fact the first time you were copied into
14 this email trail. But you were able, weren't you, to see
15 what had preceded, what correspondence had preceded it,
16 weren't you?

17 A. Yes.

18
19 Q. Could we please go to p20. And can I take it that you,
20 when you were first copied into this email chain, you would
21 have read it?

22 A. Yes.

23
24 Q. I'm not suggesting you necessarily understood all of
25 it?

26 A. Thank you.

27
28 Q. But you at least - it starts off with Inspector Neville
29 asking Ms Allen if she might be available to have a
30 discussion about that Operation Tango Amunet?

31 A. Yes.

32
33 Q. And then some further detail was given at p19 at the
34 bottom. And he explains that it had been raised with him
35 that 33 items that were examined with the advice being DNA
36 insufficient for further testing had been re-tested and ten
37 of them had come back with results with likelihood ratios
38 in excess of 100 billion. And when you read that you might
39 not be an DNA scientist, but you understood the
40 significance of a likelihood ratio in excess of 100
41 billion?

42 A. No, I did not. I do now.

43
44 Q. Right. Did you ask what an LR in excess of 100 billion
45 was?

46 A. Not at that time.

47

1 Q. When did you find out?

2 A. I don't recall when I found out.

3
4 Q. Was it this year?

5 A. I don't recall when that was. I've subsequently built
6 on that knowledge over time in amongst all of the other FSS
7 knowledge that I've been accumulating.

8
9 Q. Okay. But you would have understood, surely, that 33
10 items had been reported as having DNA insufficient for
11 further testing, but when a request had been made for them
12 to be further worked, ten of them had produced a result?

13 A. Yes.

14
15 Q. Because he then goes on to say:

16
17 *I wondered if there was a particular reason*
18 *for this case as to why approximately 33*
19 *percent of the samples yielded a result*
20 *after the work was requested.*

21
22 A. Yes.

23
24 Q. So obviously he's raising a concern about the fact that
25 when further work was done on samples that were reported as
26 DIFP, there was a result?

27 A. Yes.

28
29 Q. Correct? Now, Ms Allen responded at p18. At the
30 bottom you'll see there Ms Allen's talking about, the very
31 bottom of the page, "After we conducted a review of a large
32 dataset" and so on, right?

33 A. Yes.

34
35 Q. Further up the page then Inspector Neville asks about
36 some detail concerning that dataset, correct?

37 A. Yes.

38
39 Q. Now, did you ever ask Ms Allen what that dataset was?

40 A. No.

41
42 Q. You knew, though, later on that she was telling you
43 there would need to be some interrogation of the Forensic
44 Register to get some data out of it?

45 A. Yes, she said to assess the - yes.

46
47 Q. But this email suggests that there's a dataset already

1 in existence?

2 A. I thought that that was relating to the previous, to a
3 previous, because that was 2008. That was way before I
4 arrived.

5

6 Q. Sorry. So you think that when she says, "After we'd
7 conducted a review of a large dataset" she was referring to
8 a dataset from 2008?

9 A. Well I didn't know when it was from, so - I didn't know
10 when it was from.

11

12 Q. You see, my point is that on the one hand you've got
13 Ms Allen telling you that there needs to be a project
14 that's going to cost money requiring the obtaining of a
15 quote to extract data from the Forensic Register, right,
16 but here she is, as early as December 2021, telling
17 Inspector Neville that there is a large dataset that's
18 already been reviewed. Did you not pick up that --

19 A. No, I did not.

20

21 Q. All right. Did you come to understand that this was
22 something about which the police were becoming increasingly
23 concerned?

24 A. Yes, I think I've already said that.

25

26 Q. Because as you read through the email chain, things
27 become, I won't say heated, but Inspector Neville becomes a
28 little bit more strident I suppose?

29 A. I wouldn't have called that heated, no, but --

30

31 Q. Strident is the term that I used?

32 A. Okay.

33

34 Q. Would you accept that?

35 A. He was asking the question, absolutely.

36

37 Q. You see, if we go to p17, the bottom, second-last
38 paragraph, he says:

39

40 *I think that the 30 per cent success rate*
41 *of retesting warrants a little further*
42 *examination to make sure we are maximizing*
43 *our chances of solving crime, particularly*
44 *for major crime matters.*

45

46 A. Yes, this was put to me yesterday.

47

1 Q. When you read that at the time, it would have occurred
2 to you that this was no trivial matter?

3 A. At this point in time, as I said yesterday, I hadn't
4 put that, the 2 per cent and the 30 per cent together. I
5 think we established that yesterday, and the emails were
6 being sent to Ms Allen and I was hoping, and now I know,
7 that there was different work being done.

8

9 Q. But when you read that paragraph at the time, surely it
10 raised in your mind a concern that perhaps what was being
11 done at the laboratory was not maximizing the chances of
12 solving crime, particularly major crime?

13 A. Okay.

14

15 Q. It did?

16 A. It did.

17

18 Q. That did occur to you?

19 A. Well, I guess - I mean it's easy to look back now.
20 Bearing in mind I started on 5 October, and I didn't have
21 any knowledge of any background for this at all.

22

23 Q. But it's a pretty alarming statement, isn't it?

24 A. Okay.

25

26 Q. That he wants to "make sure we're maximizing our
27 chances for solving our crime, particularly major crime
28 matters"?

29 A. That's always important.

30

31 Q. You don't understand, don't you, indeed you understood
32 when these events were taking place, that the Queensland
33 Police Service was trusting the laboratory to use its best
34 endeavours when it came to the testing of samples
35 submitted?

36 A. Absolutely.

37

38 Q. Can we go then please to p16. The response to what had
39 been a fairly lengthy email from Inspector Neville was two
40 lines from Ms Allen?

41 A. Yes.

42

43 Q. And his response 14 minutes later was to advise that
44 this was a high priority for the Queensland Police Service.
45 Again, when you read that, that would have alerted you,
46 indeed you were copied in on it, it would have alerted you
47 to the fact that this was a matter of considerable

1 importance insofar as the Police Service was concerned?

2 A. Yes.

3

4 Q. Then we go to p15. Do you recall seeing this at the
5 time? We have this graphic image of a piece of glass with
6 what looks like a bloodstain on it?

7 A. Yes.

8

9 Q. You understood that what Inspector Neville was saying
10 about this was that the result for that came back as
11 insufficient DNA for further processing, yet when it was
12 tested they got a full profile which solved the crime?

13 A. Yes.

14

15 Q. Did that ring alarm bells for you at that stage?

16 A. Yes, that's concerning, it is.

17

18 Q. Did you talk to Ms Allen about it?

19 A. That's when, I believe that's when I asked her what
20 would be required to review the dataset. That's when she
21 said about the Forensic Register, as far as I can recall.

22

23 Q. Did you ask her, though, for an explanation as to how
24 something like this could happen, that the lab could report
25 DIFP, yet when it was re-tested you got a result that
26 solved the crime?

27 A. Not at that stage.

28

29 Q. Can you tell me why you didn't ask her to explain to
30 you how that could have happened?

31 A. Because I didn't have enough information or I didn't
32 have enough knowledge at that time to know what the
33 laboratory processes were.

34

35 Q. But why didn't you ask her and try and find out?

36 A. It's easy to say that now.

37

38 Q. Well, can I suggest to you that seeing this graphic
39 image and the relatively simple explanation which is DIFP
40 re-tested 20 loci profile, crime solved, that that of
41 itself ought to have been sufficient to prompt you to ask
42 Ms Allen to explain how on earth that could be happening?

43 A. It's easy to say that now.

44

45 Q. It just didn't occur to you?

46 A. At that time I was still - I'd only just arrived in the
47 job. I'm not going to make excuses. It did not happen. I

1 trusted Cathie. I thought that she would handle the
2 enquiries. That's what happened.
3
4 Q. One of the first things you did when you joined the
5 lab, and I'll come back to this document in a moment, one
6 of the things first things you did when you joined the lab
7 was take over responsibility for flexible working
8 arrangements?
9 A. That's not - I didn't take over, I asked to see them as
10 a delegate.
11
12 Q. So, what, that meant that you would be the person
13 making the decision?
14 A. That's right.
15
16 Q. So you took the decision making away from Ms Allen?
17 A. I actually believe that I've got the delegation anyway.
18 So I wanted visibility of the flexible working
19 arrangements.
20
21 Q. And you did that because people had complained to you
22 about the way Ms Allen had been handling it?
23 A. They were concerned about the rigour that was applied
24 to a request for a flexible working arrangement, yes.
25
26 Q. It appeared to you that it might have been that
27 Ms Allen was taking an unduly restrictive approach to
28 flexible working arrangements?
29 A. Quite strict in my view, but - well, requiring
30 additional information that perhaps other units did not
31 require.
32
33 Q. Sure. And that was also at about the same time as you
34 received an email from a staff member who was making quite
35 detailed complaints to you about the management style of --
36 A. Sorry, which one are you referring to, may I --
37
38 Q. I'll just find that now. Just bear with me a moment.
39 A lady by the name of Clare Gallagher?
40 A. Yes.
41
42 Q. Do you recall that? Again, I don't need to bring it
43 up, unless you want to see it. But she raised issues with
44 you concerning the management of the laboratory?
45 A. She did.
46
47 Q. Yes. And that identified what she said was a clear

1 leadership problem?

2 A. Yes.

3

4 THE COMMISSIONER: When was that, Mr Hunter?

5

6 MR HUNTER: 5 November 2021. It's FSS.0001.0082.2955. We
7 think that has not been tendered. So we'll tender it.

8

9 THE COMMISSIONER: That's the email the number of which you
10 just mentioned, is it?

11

12 MR HUNTER: Yes, that's the email dated 5 November 2021
13 from Ms Gallagher.

14

15 **EXHIBIT #142 EMAIL DATED 5 NOVEMBER 2021 FROM 2021**
16 **MS GALLAGHER.**

17

18 MR HUNTER: That's it on the screen now?

19 A. Yes, yes.

20

21 Q. Again, I won't take the time to go through it in
22 detail?

23 A. No. No, there's a lot of very confidential information
24 there.

25

26 Q. But she complained --

27

28 THE COMMISSIONER: Just a moment. I direct that the email
29 of 5 November 2021 from Ms Gallagher to Ms Keller not be
30 published.

31

32 WITNESS: Thank you.

33

34 MR HUNTER: It was a detailed --

35 A. Yes.

36

37 Q. -- complaint about the way the laboratory was being
38 managed?

39 A. It was a reflection, it was her impressions about what
40 was happening at the time, yes, and she was under
41 considerable stress.

42

43 Q. All right. And is it right that although Ms Allen was
44 herself a qualified DNA scientist and had been a reporting
45 scientist, her management role did not require her to go to
46 court?

47 A. I don't think so, no.

1
2 Q. But there were reporting scientists who went to court
3 regularly?
4 A. I believe so, yes.
5
6 Q. And you understood that when those scientists went to
7 court they would have to give evidence on oath about
8 opinions that they held about matters of science?
9 A. Yes.
10
11 Q. And so when you heard complaints from people who were
12 reporting scientists about the way the lab was being run,
13 did that prompt you to raise those concerns or complaints
14 with Ms Allen?
15 A. So I think we need to put some context here that this
16 was almost - well, four weeks after I arrived. I had been
17 given no information about any of, if there were any human
18 resource management issues in that laboratory. I had
19 received a hand-over manifesto from my predecessor,
20 Mr Docherty, who did not raise any issues about the
21 management of that unit, so this was the first that I
22 became aware that there may be issues. So also I had
23 contacted, this is, this is - I didn't have any of that
24 information that there might be any issues at all, so this
25 was the first, potentially around about the first time that
26 I became aware.
27
28 Q. You had an email from Ms Moeller on 28 October 2021
29 where she said that problems with process and procedure are
30 ongoing. Do you recall that?
31 A. Yes.
32
33 Q. You were referred to that. And then there's the Clare
34 Gallagher email on 5 November 2021?
35 A. Yes.
36
37 Q. Then on 17 March you received complaints from both
38 Ms Rika and Ms Moeller?
39 A. Correct.
40
41 Q. And these are the things that resulted in you raising
42 them as a PID?
43 A. Yes. Sorry, I received them to ESU. I think the
44 terminology is important.
45
46 Q. Sure, on the basis that they might be a PID?
47 A. Yes.

1
2 Q. So having felt the need to do that, do you still say
3 that as at the date you did that, that you had complete
4 trust in Ms Allen?
5 A. Absolutely.
6
7 Q. So nothing that Ms Rika and Ms Moeller told you on
8 17 March 2022 had caused you to doubt Ms Allen?
9 A. So I think we need to be clear, we're talking - in
10 talking about science and management, I trusted Ms Allen
11 implicitly with the scientific aspects. At that point I
12 only had a very small number of staff making, raising
13 concerns and I had no background of any issues prior, so I
14 needed to get more information to be able to form a view
15 about that.
16
17 Q. All right.
18 A. I was concerned though.
19
20 Q. Concerned - so what were you concerned about?
21 A. I was concerned that certainly Dr Moeller was saying
22 that, you know, there was some fear within, you know, from
23 her perspective. That concerned me. And, you know, that's
24 not, that's not how I would hope a workplace would be -
25 that's not optimal.
26
27 Q. Did it concern you, given that she was expressing this
28 fear of reprisal --
29 A. Yes.
30
31 Q. -- that there might be other people who were unwilling
32 to come forward to talk to you because they had similar
33 concerns?
34 A. Possibly, yes.
35
36 Q. Can we go back to that email trail, please,
37 Mr Operator, that's QPS.0001.1312.0014. Go to p14. We can
38 see there that Ms Allen explains at the top of the page
39 that when DIFP samples are processed further they undergo a
40 concentration step for amplification?
41 A. Yes, I can see that.
42
43 Q. Did you ask Ms Allen to explain to you what
44 concentration and amplification was?
45 A. I think we've established that I did not.
46
47 Q. And over the page at 13, at the bottom, we have an

1 email from 17 December. He said that he understood that -
2 he was of the belief that the lab stopped doing this as a
3 matter of routine for low quant samples because there was a
4 lower of 2 per cent chance of success.

5
6 *However, QPS has found the success rate to*
7 *be 30 per cent. It's the difference*
8 *between those success rates that I'm*
9 *interested in.*

10
11 Now, again, do you say that you didn't sufficiently
12 understand the science and therefore weren't alarmed by
13 what Inspector Neville was reporting?

14 A. I think we've established that from yesterday.

15
16 THE COMMISSIONER: This is a little repetitive, Mr Hunter.
17 You may have a purpose in doing it, but if it's only to
18 re-establish it --

19
20 MR HUNTER: I suppose my questioning is this: you've seen
21 all of these emails, all right, and you've seen that
22 Inspector Neville is repeatedly raising concerns about what
23 was going on and he wasn't getting a satisfactory response,
24 was he?

25 A. Well, I was - Ms Allen was responding to him.

26
27 Q. But she wasn't answering his questions, was she?

28 A. And she was, in my, as far as I understood it,
29 subsequently was extracting some data to assess that.

30
31 Q. Right. But that was the data that was contained in the
32 report that was ultimately provided after the exchange with
33 Superintendent McNab, correct?

34 A. Yes. So --

35
36 Q. So in this email exchange up to 1 April 2022 Inspector
37 Neville had not received any sort of meaningful response to
38 the queries that he'd been raising, do you agree?

39 A. Well it would appear so.

40
41 THE COMMISSIONER: Am I right in thinking that you regarded
42 this email exchange, which was copied to you, as a
43 discussion between two scientists who were familiar with
44 the process about issues that had arisen that were, not to
45 put it too highly, controversial and that they were
46 engaging in resolving them?

47 A. Yes, that was my understanding, because they were

1 equivalents working together.

2

3 Q. Yes.

4 A. I hoped.

5

6 MR HUNTER: When it came to the point of drafting the terms
7 of reference for the review, that's something you played a
8 hand in?

9 A. Yes. I didn't write them.

10

11 Q. Did you provide any sort of input into them at all?

12 A. I thought I did.

13

14 Q. You'd been provided by Inspector Neville with a
15 spreadsheet that set out the results of the re-working that
16 had been requested by the police, that is showing the
17 relative success rates?

18 A. That he sent to Cathie that copied me in.

19

20 Q. Yes?

21 A. Ms Allen.

22

23 Q. Did it occur to you that it might have been helpful to
24 include that, some of that data, in the terms of reference?

25 A. I guess looking back, possibly.

26

27 Q. Thank you.

28 A. The whole review was meant to be very comprehensive.
29 That was designed to be touching on all aspects.

30

31 Q. Those are the questions. Thanks, Commissioner.

32

33 THE COMMISSIONER: Thank you, Mr Hunter. Mr Rice, did you
34 want to go next?

35

36 MR RICE: No thank you.

37

38 THE COMMISSIONER: No. Mr Hickey?

39

40 MR HICKEY: Yes. Thank you, Commissioner.

41

42 <EXAMINATION BY MR HICKEY:

[12.41 PM]

43

44 Q. Ms Keller, yesterday you gave some evidence about a
45 meeting that occurred in December 2021 between you and
46 Mr Howes and Ms Allen. Do you remember talking about that?

47 A. Are you talking about - can you give me a bit more

1 information please?

2
3 Q. I can. Perhaps it would assist if we bring up the
4 transcript, day 17's transcript, please. We looked at it
5 earlier today. The relevant page is 2098. If we could
6 blow up, please, line 25 to 44. So you see here -
7 actually, maybe if we can just scroll a little bit up.
8 Sorry, Mr Operator. Just to give you some context of what
9 you were being asked about, you've given some evidence that
10 you'd spoken to Cathie and Justin. My learned friend
11 Mr Hodge says was that back in December. You say, yes, it
12 was. You then go on to give some evidence that ordinarily
13 you had regular catch ups meetings with Ms Allen and you
14 recalled there was a particular meeting that you'd had with
15 both of them, and I think the evidence you give is that you
16 thought Mr Howes might have been acting for a period and
17 because of that there'd been a meeting with all three of
18 you?

19 A. Yes. I wasn't quite sure if that's why. But I mean,
20 you know, Mr Howes was always welcome to join our
21 conversations. So he may have been there at the time but
22 it may have been that he - he had been acting but I'm not
23 quite sure about the time.

24
25 Q. For my purposes nothing really turns on that, I'm just
26 grounding you to where the answer is.

27 A. No. No.

28
29 Q. And I think you said that the idea of an external
30 review being undertaken within the lab didn't occur until
31 some time later?

32 A. Round about February I believe.

33
34 Q. I think that's what I had in mind too. Can I suggest
35 to you that in fact there was a discussion at that
36 December 2021 meeting between you and Ms Allen and Mr Howes
37 and that it was suggested during that meeting either by
38 Mr Howes or by Ms Allen that the lab should have somebody,
39 a representative of one of the labs in one of the other
40 State jurisdictions to come and review the laboratory
41 practices in order to be on the front foot?

42 A. Okay.

43
44 Q. Do you recall any discussion about that?

45 A. I don't recall that but that's not - yep, that's fine.

46
47 Q. Can I suggest to you that during the course of that

1 meeting you said to Mr Howes and Ms Allen that you would
2 take that up with Mr Bricknell, the general manager?

3 A. Okay.

4
5 Q. Do you recall that?

6 A. No, I can't, but that's fine.

7
8 Q. Do you recall that the discussion, particularly in
9 respect of the interstate jurisdiction that would be
10 brought in to review the lab, was that Western Australia
11 would be the appropriate jurisdiction given its similarity
12 with the Queensland lab?

13 A. I'm not sure if this was around about the same topic
14 but that's fine, yes.

15
16 Q. Sorry, are you saying you do remember that discussion
17 or --

18 A. No, I don't remember that discussion but I certainly
19 remember we talked about the testing, you know, that there
20 were other laboratories. At this point in time there was
21 media attention, so we were talking a lot about, you know,
22 other laboratories.

23
24 Q. Your recollection is that that discussion occurred in
25 December 2021?

26 A. I can't recall when that was.

27
28 All right, thank you.

29
30 THE COMMISSIONER: Mr Hickey, are you putting that these
31 matters were put by Mr Howes or who?

32
33 MR HICKEY: The evidence will be that there is a
34 contemporaneous note recorded by Mr Howes that this was the
35 substance of the discussion between these three people in
36 December 21. It's not clear to me who --

37
38 THE COMMISSIONER: I understand.

39
40 MR HICKEY: That's why I framed it that way.

41
42 THE COMMISSIONER: No, I understand. Thank you.

43
44 MR HICKEY: That's the extent of it.

45
46 Q. My second and final question to ask you is: do you
47 recall telling Mr Howes at some point that Mr Neville had

1 told you that he, Mr Howes, was the best guy that he'd ever
2 worked with at the lab?

3 A. Yes, absolutely.
4

5 Q. And your impression was that, at least insofar as
6 Mr Neville was concerned, he was quite satisfied with the
7 work of Mr Howes?

8 A. Absolutely. He said that on more than one occasion.
9

10 Q. And similarly your impression of Mr Howes' work was
11 that he was always diligent?

12 A. Oh, very - yes.
13

14 Q. And trustworthy?

15 A. Yes.
16

17 Q. And to this day you have no reason to doubt his bona
18 fides?

19 A. No. Not at all.
20

21 Thank you. Those are the questions, Commissioner.
22

23 THE COMMISSIONER: Thank you. Yes.
24

25 MS FREEMAN: Commissioner, I just have some questions.
26

27 THE COMMISSIONER: Yes, yes.
28

29 **<EXAMINATION BY MS FREEMAN:** [12.45 PM]
30

31 Q. Ms Keller, I act for Helen Gregg. I just have some
32 questions for you about her role. You might recall
33 yesterday you were asked some questions earlier in the
34 morning about that. Now, as we know, Ms Gregg was in the
35 role of quality manager.

36 A. Yes.
37

38 Q. Part of the quality manager's role is to manage the
39 Scientific Support Services Unit?

40 A. Yes.
41

42 Q. Is that right?

43 A. Yes.
44

45 Q. So the Scientific Support Service Unit has a number of
46 teams within it?

47 A. Yes.

1
2 Q. They include the Forensic Property (indistinct words)
3 about today?
4 A. Yes. Yes.
5
6 Q. And the Public Health Property (indistinct)?
7 A. Yes.
8
9 Q. It also includes the library?
10 A. Yes.
11
12 Q. It (indistinct words).
13 A. Yes.
14
15 Q. It has a call centre (indistinct words)?
16 A. Yes, yes, yes.
17
18 Q. And is ultimately training them?
19 A. Yes.
20
21 Q. All right. The role of quality manager also involves
22 maintaining and improving the organisation's quality
23 management (indistinct words)?
24 A. Yes. Yes.
25
26 Q. It also involves maintaining and improving the
27 organisation's managing and development frameworks?
28 A. Yes.
29
30 Q. And as well as ensuring effective liaison between FSS
31 and key clients.
32 A. Yes.
33
34 Q. To promote the FSS services?
35 A. Yes, absolutely.
36
37 Q. And Ms Gregg reports to you directly?
38 A. Yes, she does.
39
40 Q. So in terms of the organisation's quality management
41 system, Ms Gregg's role as quality manager covers the whole
42 of the FSS?
43 A. It does. Yes, it does. Comprehensive.
44
45 Q. And as we've heard from you today, that is both the
46 Forensic and Public Health (indistinct)?
47 A. Yes, it is.

1
2 Q. (Indistinct words).
3 A. Yes, it is.
4
5 Q. And that covers a number of different areas?
6 A. Yes, it does.
7
8 Q. As you explained to the Commissioner this morning?
9 A. It's equivalent of what I do but she manages the
10 quality.
11
12 Q. That involves, as I understand it, about nine different
13 laboratories?
14 A. Yes.
15
16 Q. All right. So as part of Ms Gregg's role then as
17 quality manager of such a large and diverse organisation,
18 she has to make sure that there are systems put into place
19 to ensure the quality of the individual units or labs
20 (indistinct), is that right?
21 A. Yes.
22
23 Q. And that would include ensuring there is, for example,
24 training for people doing the work?
25 A. Yes.
26
27 Q. A system to make sure documents are updated?
28 A. Yes.
29
30 Q. A system to make sure that there is tracking of
31 positive and negative controls within the lab?
32 A. Yes. Yes.
33
34 Q. A system for checking calculations that are undertaken?
35 A. Yes.
36
37 Q. Peer review and results prior to release?
38 A. Yes.
39
40 Q. And recording and investigating problems?
41 A. Yes.
42
43 Q. Ms Gregg's not there making sure that these people are
44 doing this?
45 A. No, no.
46
47 Q. Is she?

1 A. No.

2
3 Q. She's just making sure that the systems are in place
4 for those things to happen?

5 A. Correct.

6
7 Q. And then also as part of her role she has to make sure
8 those systems are regularly audited?

9 A. Yes.

10
11 Q. And that's by both internal and external audit?

12 A. Yes.

13
14 Q. Is that right?

15 A. Yes.

16
17 Q. And then if issues are identified by those audit
18 processes they are then addressed?

19 A. Yes.

20
21 Thank you.

22
23 THE COMMISSIONER: Thank you. Just before - is there
24 anybody else, apart from Mr Holt? Mr Holt.

25
26 MR HOLT: Yes, thank you, Commissioner.

27
28 <EXAMINATION BY MR HOLT:

[12.48 pm]

29
30 Q. Just a few matters, Ms Keller. You gave some very
31 helpful evidence to the Commission this morning about the
32 nature of FSS overall?

33 A. Yes.

34
35 Q. And I think perhaps if we can shorthand some of this.
36 If we could bring up Ms Keller's supplementary statement
37 please, and in particular paragraph 16 on page 4 of that
38 statement. There, using those headings that you gave the
39 Commissioner this morning, can we see there the operational
40 business areas, forensic pathology, Coronial Services, 87
41 employees, and then so on and so forth?

42 A. Yes.

43
44 Q. Thank you. And if we just scroll through to look at
45 them. I won't go through the sub-headings but clinical
46 forensic medicine, 17 employees; public environmental
47 health, 128 employees.

- 1 A. Yes.
2
3 Q. Police Services, 103 employees?
4 A. Yes.
5
6 Q. Campus services, 20 employees. And then if we keep
7 going down, Scientific Support Services and your office,
8 about 32 employees?
9 A. Yes.
10
11 Q. So those categories you were talking about with the
12 Commissioner this morning are set out there helpfully in
13 your evidence?
14 A. Yes.
15
16 Q. Overall, even on my poor maths, and I don't think
17 there's any dispute about this, does that end up at about
18 350 staff ballpark, FTE?
19 A. Yes.
20
21 Q. And about a \$73 million budget that you're managing as
22 Executive Director?
23 A. Yes.
24
25 Q. A really interesting theme you'll have picked up has
26 emerged during the course of the evidence which is the idea
27 of your scientific background and scientific leadership
28 versus organisational or administrative leadership. Have
29 you picked up that theme (indistinct words)?
30 A. Yes, I have.
31
32 Q. Excellent. Is that something you've thought about in
33 the course of your time, I guess, at FSS, the idea of
34 providing perhaps an additional layer of scientific
35 leadership.
36 A. No, it isn't. I consider that my role at FSS has
37 always been to lead the organisation and when I joined FSS
38 I was lead to believe there was a need for a strong
39 management presence and refocusing the organisation. That
40 - and that did not have to be by a scientist necessarily, I
41 just happened to be a scientist.
42
43 Q. In light of your experience, particularly in pathology,
44 did you go - indeed, in fact at one point come up with a
45 proposal for the idea of providing additional discipline
46 support within science?
47 A. Yes. Yes, I did.

1
2 Q. Can you just explain that to the Commissioner in case
3 it's of assistance in terms of (indistinct)?

4 A. So, yes, around about February last year I drafted a
5 paper which was to, was designed to go to the Pathology
6 Queensland and FSS Clinical Advisory Group. I felt that at
7 that stage there - I was familiar with a model whereby a
8 principal scientist worked with a pathologist to manage the
9 science within the particular disciplines and so I felt
10 that model worked very well because we had a scientist who
11 was the peak scientist, but we also had that level of
12 clinical responsibility and accountability and support and
13 so those two persons managed that particular scientific
14 stream within pathology. When I arrived at FSS I realised
15 that essentially the most senior person is a scientist and
16 there's no --

17
18 THE COMMISSIONER: I'm sorry, I didn't - there's just
19 something I'm not following. The model that you had
20 proposed had two people, is that what you said?

21 A. It has a - yes, essentially.

22
23 Q. And who were they?

24 A. So in pathology we have a pathologist and a scientist.

25
26 Q. Yes?

27 A. So at FSS there was no equivalent.

28
29 Q. Now, when you say a pathologist and a scientist, what's
30 the virtue of that? Obviously you want a pathology, but
31 what's the virtue of having a pathologist and a scientist
32 of some other kind?

33 A. So it's a layer of support. In pathology it's clinical
34 but it's also the extra knowledge and a different approach
35 to assessing data, for example. So essentially the
36 scientific aspects would be determined by the principal
37 scientist and then the pathologist would do the overarching
38 assessment of the suitability of the clinical relevance.
39 When I got to FSS I realised there wasn't that in some of
40 the streams, one being Police Services, so I prepared a
41 paper that suggested that there needed to be some kind of
42 additional specialist support for, forensic DNA analysis
43 was one of the areas, but I also had the chemistry areas
44 also. And what I foresaw was having a specialist maybe
45 forensic biologist or geneticist or something like that
46 kind of individual to support the management of the science
47 in that area. That's what I was proposing.

1
2 Q. But why isn't Ms Allen in that position? Why doesn't
3 she fulfil that requirement as a person with DNA
4 experience?
5 A. I thought - she does.
6
7 Q. Or do you mean that there ought to be somebody
8 supporting her?
9 A. I thought at the time that there could have been
10 another level of support in terms of another level of
11 expertise that was specific.
12
13 Q. What about this, if you wouldn't mind thinking about
14 it. If one takes the DNA lab alone for the moment, just to
15 keep it clear?
16 A. Yes.
17
18 Q. That one of the difficulties that the DNA lab faced was
19 that the managing scientist had responsibility for the
20 science being undertaken and the processes, and I include
21 in that how the processes work and the way it's all
22 organised from a scientific perspective, and also for the
23 administrative and financial part of it. We've heard some
24 evidence about flexible working hours --
25 A. Yes.
26
27 Q. -- conflicts and so on. And I think that there might
28 be an argument that the demands of science might sometimes
29 conflict with administrative constraints and so to have the
30 same person have to make a decision, taking into account
31 the purely scientific considerations which are driven by
32 the need for absolute integrity in the outcome, may
33 conflict with resource allocation impediments, restraints
34 and constraints, which demand cutting part of the work and,
35 of course, it's not beyond a person's ability to balance
36 those factors and to make the right decision, but what
37 would you think of a model in which the ultimate head of,
38 say, the DNA laboratory, just as a hypothesis, was a
39 scientist who understood the work, had done the work and
40 had, is at a senior position in the scientific community,
41 and is backed up by an Administrative Chief Executive
42 Officer who is responsible to the scientist so that the
43 scientist must make decisions based upon financial
44 constraints, but the ultimate duty of that managing
45 scientist is to the science, not to the finance?
46 A. Yes.
47

1 Q. So the role of somebody in Ms Allen's position would be
2 split into a managing scientist with overall
3 responsibility, supported by a Chief Executive Officer?

4 A. So certainly --

5
6 Q. Because you fulfil the role of the administrator, and
7 you've said you don't need to know the science, all right,
8 but you are superior to the scientist. So in a sense the
9 money drives the science, whereas the science should drive
10 the outcome, and if there's an insoluble conflict a
11 politician will have to resolve it?

12 A. Yes.

13
14 Q. So what do you think of that proposition that I've put
15 to you?

16 A. I have thought about that, Commissioner. I think this
17 presents us with an opportunity to reassess how we manage
18 our science versus our operational requirements and I think
19 the concept of having - and I've mentioned this to others
20 in the past, whether we have additional support for the
21 managing scientist role in terms of specialist advisors,
22 bio mathematicians, experimental design officers, and
23 potentially a forensic biologist/geneticist, whatever is
24 required, I think we need to go back and look at the
25 science that we are delivering and make sure that that is
26 absolute best practice, absolutely, you know, delivering
27 the outcomes, particularly for, you know, criminal justice
28 matters. If that costs us more then we need to actually
29 make arrangements to attempt to fund that. That's how I
30 see it.

31
32 Q. Yes. So it seemed to me that - just excuse me a
33 moment - what we have is what used to be the John Tonge
34 Centre and is now FSS. We've got a historical position
35 that we've reached in that there used to be a Government
36 Medical Officer, one man - I'm talking about the 19th
37 century - and that developed into a range of medical
38 services that were offered at a public health level, at a
39 general level like what we would call epidemiology and
40 matters of that kind?

41 A. Yes.

42
43 Q. And you've described them in evidence earlier and it's
44 in your statement. And that's the result of an organic
45 historical process, but they seem to fall into, the tasks
46 that you oversee seem to fall into two categories. We can
47 put a public and environmental, testing of foods, the

1 apparent causes of natural deaths and even the doctors and
2 nurses who serve watchhouses into one category. They all
3 involve the application of science to public health
4 problems and public issues of a broad kind. So there's no
5 single patient, no single person involved, things are done
6 because you have to stop diseases and you have to make sure
7 the foods are safe and so on. But then you have another
8 category of work which is done in relation to court
9 processes, and forensic means court, and that's the
10 coronial aspect?

11 A. Yes.

12
13 Q. And the Police Services stream?

14 A. Yes.

15
16 Q. The demands of those streams of work, the factors that
17 one would take into account in deciding how to do them and
18 whether to tolerate a lack of funding --

19 A. Yes.

20
21 Q. -- are quite different from what you tolerate when
22 working out testing of the safety of waters and matters of
23 that kind, would you agree?

24 A. Yes.

25
26 Q. So if we were starting as though there were no history
27 you wouldn't naturally put the forensic scientific work
28 within the Department of Health.

29 A. Possibly not.

30
31 Q. Because the Department of Health is broadly concerned
32 with the public health and the avoidance of disease and the
33 avoidance of lack of good health because of pollution, food
34 and other things of that kind, whereas here we're concerned
35 with finding out the truth about human behaviour in
36 relation to leaving aside - I put it in those terms to
37 include the coronial aspect of it which might not involve
38 offences, but if we put that to one side we're concerned
39 with a victim?

40 A. Yes.

41
42 Q. Identifying an offender?

43 A. Yes.

44
45 Q. Dealing with somebody accused of a crime?

46 A. Yes.

47

1 Q. The needs of lawyers?

2 A. Yes.

3

4 Q. The needs of judges and of juries?

5 A. Yes.

6

7 Q. And all of the things that impinge upon the criminal
8 justice system?

9 A. Yes.

10

11 Q. Including fairness, sureness and certainty, the
12 integrity of the outcome?

13 A. Yes.

14

15 Q. None of those things have anything to do with the
16 Department of Health really. So what I want to put to you
17 is as a matter of first impression, since you haven't had a
18 chance to think about it, to the proposition that these
19 Forensic Services ought be managed in a way separate from
20 the way matters are managed - they ought to be managed
21 separately from the management of matters that fall rightly
22 within the province of the Department of Health? What do
23 you say about that?

24 A. That's a sensible approach. My thoughts have been -
25 within the - we've got so many clients for the criminal
26 justice services as part of what we do.

27

28 Q. Now, can I pick you up on that. Sorry to interrupt
29 you. You used the word client, and I've seen the word
30 client used a lot in this Inquiry, and FSS in this
31 connection, in the connection with DNA, has people there
32 referred to police as a client. Now, that strikes, that
33 would strike many lawyers, it strikes me, as completely
34 inapposite because if you regard police as your client,
35 then you can justifiably and reasonably approach them and
36 say we're going to cut this work and get their agreement.
37 But if you regard your function as serving the system of
38 the administration of criminal justice, then you couldn't
39 possibly think that it's up to the police to decide that,
40 or to the lab to decide that this work won't be done. Do
41 you see what I mean?

42 A. Yes.

43

44 Q. So in public health sometimes you can think of a
45 patient, or a client, but would you see that, would you
46 accept that in terms of the work that is done by the DNA
47 lab in particular, the notion that police are the client or

1 the main client is a model that muddles your thinking?
2 A. Yes.

3
4 Q. And that one of the problems that I saw that you faced
5 in the way that you gave your evidence, the problem that
6 you faced in your work, which I infer from some of your
7 evidence, is that you were required to administer this
8 aspect of what happens to be in the Department of Health,
9 but you have no grounding in the kinds of considerations
10 that pertain to the system of justice. Thinking about it
11 now, would you regard that as something that might have
12 made it difficult for you in 2021 and earlier this year to
13 recognise the issues and what they meant?
14 A. Yes, Commissioner.

15
16 Q. Thanks. Mr Holt?

17
18 MR HOLT: I have no further question. Thank you,
19 Commissioner.

20
21 THE COMMISSIONER: Thanks. Mr Hodge.

22
23 MR HODGE: Actually, I do have something I need to raise
24 with Ms Keller. Just a further document we've found.

25
26 <EXAMINATION BY MR HODGE: [2.05 PM]

27
28 Q. Can we bring up FSS.1000.0095.8988. I think there's an
29 email file that's been sent to you, Mr Operator. I have it
30 as just a doc ID as FSS.1000.0095.8988.msg. I think
31 Ms Hedge sent it to you a moment ago. We can go to the PDF
32 if that would help.

33
34 THE COMMISSIONER: Just while they're looking for that, for
35 example, one of the considerations pertaining to the
36 administration of criminal justice from the police point of
37 view is this: it was put to police in 2018 and throughout
38 that you're only getting one and a half per cent results or
39 say 20 per cent results or only 30 per results and
40 therefore we can cull this work, although they use the word
41 triage, and if you were fishing for sardines, then if
42 you're only getting a 30 per cent catch, well you might
43 stop fishing. But I have been told by a senior police
44 officer that in murder cases a one per cent chance is
45 enough, that he would take the one per cent. So in the
46 course of your administration of this area, until this
47 Commission arose, did considerations of that kind ever

1 occur to you as something that you had to take into
2 account?

3 A. Yes, and I obviously that would be very concerning for
4 any missed evidence. I was being told, though, that there
5 was this safety net in place, that no evidence was - there
6 was always an opportunity to get an outcome, so I believed
7 that. So, yes, I consider that anything, any - zero per
8 cent is the optimal.

9
10 Q. One other aspect is this: that if you have - I'll take
11 it up another time. It doesn't matter, I won't waste
12 everyone's time today. I won't take up time today. You go
13 ahead, Mr Hodge.

14
15 MR HODGE: Can we just go to the bottom of the chain of
16 email. Ms Keller, if you look on the screen - I hope
17 that's big enough for you to read - the first email in time
18 in the chain is an email from Ms Allen to you on 2 June
19 2022?

20 A. Yes.

21
22 Q. You see it has the subject line, "Options paper", the
23 first one and "Draft" for the second.

24 A. Yes.

25
26 Q. Operator, if you just scroll up. So then - just keep
27 going a little bit. So then you can see you reply,
28 Ms Keller, the next day, the Friday, at 6.24 am to Ms Allen
29 and say:

30
31 *Could you please advise the status of the*
32 *second report. This copy states draft. I*
33 *am certain to be asked if it is ready to be*
34 *shared with QPS. If it is not yet ready*
35 *when can I advise that it will be?*
36

37 A. Yes.

38
39 Q. And then if you then scroll up a bit further. You see
40 Ms Allen responds and says:

41
42 *Hi Lara. When Legal provided advice on*
43 *this you asked me to add draft to it.*
44

45 So just pausing on that. Is that what happened?

46 A. I don't recall that.

47

1 Q. I see. Is it possible that that's what happened?
2 A. It's possible.
3
4 Q. And then if we scroll up a little bit further, you see
5 you respond and say:
6
7 *Hello Cathie. Could you kindly arrange for*
8 *the final version of the second paper to be*
9 *sent to me by close of business Tuesday*
10 *please. I am confirming with Megan in*
11 *terms of provision to QPS.*
12
13 A. H'mm.
14
15 Q. Now you don't respond to her and say "I never told you
16 that"?
17 A. No.
18
19 Q. And you say:
20
21 *I'm confirming with Megan in terms of*
22 *provision to QPS?*
23
24 A. Yes.
25
26 Q. I assume Megan is a reference to Megan Fairweather?
27 A. Yes, it would appear so.
28
29 Q. Did you then have a discussion with Ms Fairweather in
30 June as to whether you could now provide the report to the
31 QPS?
32 A. I don't remember.
33
34 Q. I see. Did you discuss it with anyone in June,
35 providing it to the QPS?
36 A. I can't recall.
37
38 Q. Thank you, Commissioner. I tender that chain of
39 emails. And I might - we'll put it in as an PDF, and so
40 I'll just read out the doc ID which is FSS.1000.0095.8988.
41 That report has subsequently been provided by myself to
42 Superintendent McNab.
43
44 **EXHIBIT #144 [FSS.1000.0095.8988].**
45
46 MR HODGE: Thank you.
47

1 THE COMMISSIONER: That's it?

2

3 MR HODGE: Yes.

4

5 THE COMMISSIONER: Thank you for your assistance, Ms Keller,
6 you're free to go.

7

8 <THE WITNESS WITHDREW

9

10 THE COMMISSIONER: Now, what's happening, Mr Hodge? We'll
11 adjourn for lunch, of course.

12

13 MR HODGE: Yes. And then Mr Howes will start after lunch.

14

15 THE COMMISSIONER: What time would you like to start?

16

17 MR HODGE: 2.30.

18

19 THE COMMISSIONER: 2.30 it is. Thank you.

20

21 LUNCHEON ADJOURNMENT

22

23 THE COMMISSIONER: Mr Hodge.

24

25 MR HODGE: The next witness is Mr Howes.

26

27 <JUSTIN ANTHONY HOWES, sworn:

[2.33pm]

28

29 <EXAMINATION BY MR HODGE:

30

31 Q. Would you state your full name, please?

32

33 A. Justin Anthony Howes.

34

35 Q. What is your occupation?

36

37 A. I am a team leader, Forensic and Scientific Services

38 within the Forensic DNA Analysis team.

39

40 Q. I think you've provided I think five statements to the

41 Commission. I'll just bring those up in turn. Can we

42 first start with the statement of 9 August 2022, which is

43 WIT.0016.0074.0001. Mr Howes, that's one of your

44 statements. I'll just show you, if we go to page 11 of

45 that document, you can see that's declared by you on 9

46 August 2022?

47

A. Correct.

Q. I take it you've reviewed all your statements before

1 coming to give evidence today?

2 A. Yes.

3

4 Q. Is this statement true and correct to the best of your
5 knowledge and belief?

6 A. Yes.

7

8 Q. Are there any corrections to it?

9 A. I think there's a duplication of that sentence within
10 this one.

11

12 Q. Okay. Do you know what paragraph that is?

13 A. I don't, Mr Hodge, sorry.

14

15 Q. That's fine. I tender that statement, Commissioner.

16

17 THE COMMISSIONER: Exhibit 144.

18

19 **EXHIBIT #144 STATEMENT OF JUSTIN HOWES DATED 9 AUGUST 2022.**

20

21 MR HODGE: Then the next statement in time I think is a
22 statement of 16 August 2022. That's WIT.0016.0001.0001.

23 If we go to page 27 of that statement, you see that's
24 declared by you on 16 August 2022?

25 A. Correct.

26

27 Q. Do you know if there's any corrections to that
28 statement?

29 A. I think that's okay.

30

31 Q. And it's true and correct to the best of your knowledge
32 and belief?

33 A. Yes.

34

35 Q. I tender that statement, Commissioner.

36

37 THE COMMISSIONER: Exhibit 145.

38

39 **EXHIBIT #145 STATEMENT OF JUSTIN HOWES DATED 16 AUGUST**
40 **2022.**

41

42 MR HODGE: The next statement is a statement of 25 August
43 2022, that's WIT.0016.0184.0001. If we go to page 9 of
44 that statement. That's a statement for which you made the
45 declaration on 25 August 2022?

46 A. Correct.

47

1 Q. Is that statement true and correct to the best of your
2 knowledge and belief?

3 A. Yes.

4

5 Q. Are there any corrections to that statement?

6 A. No.

7

8 Q. I tender that statement, Commissioner.

9

10 THE COMMISSIONER: Exhibit 146.

11

12 **#EXHIBIT #146 STATEMENT OF JUSTIN HOWES DATED 25 AUGUST**
13 **2022.**

14

15

16 MR HODGE: The next statement is 16 September 2022, and
17 that's WIT.0016.0185.0001. If we go to the 27th page of
18 that statement, you'll see the declaration is made on 16
19 September 2022?

20 A. Yes.

21

22 Q. Are there any corrections to that statement?

23 A. No.

24

25 Q. Is it true and correct to the best of your knowledge
26 and belief?

27 A. Yes.

28

29 Q. I tender that statement, Commissioner.

30

31 THE COMMISSIONER: Exhibit 147.

32

33 **#EXHIBIT #147 STATEMENT OF JUSTIN HOWES DATED 16 SEPTEMBER**
34 **2022.**

35

36 MR HODGE: Then finally there's a statement of 6 October
37 2022, so that's WIT.0016.0188.0001. If we go to page 39 of
38 that statement, you'll see that's the declaration made by
39 you on 6 October 2022?

40 A. Yes.

41

42 Q. And are there any corrections to that statement?

43 A. No.

44

45 Q. Is it true and correct to the best of your knowledge
46 and belief?

47 A. Yes.

1
2 Q. I tender that statement, Commissioner.

3
4 THE COMMISSIONER: Exhibit 148.

5
6 **EXHIBIT #148 STATEMENT OF JUSTIN HOWES DATED 6 OCTOBER**
7 **2022.**

8
9 MR HODGE: Thank you. I want to begin, Mr Howes, by
10 talking about the Options Paper and the lead up to the
11 Options Paper. I wonder if we might begin in this way.
12 You've obviously had a lot of time now to reflect on the
13 Options Paper?

14 A. I have, yes.

15
16 Q. And I take it you're familiar with the evidence that's
17 been given during the course of the Commission?

18 A. No.

19
20 Q. You haven't watched any of the evidence?

21 A. Not a second.

22
23 Q. Okay. You've looked through the documents though that
24 are available in relation to the material that you're going
25 to be dealing with?

26 A. I've looked through the Options Paper, yes.

27
28 Q. Do you regard the contents of the Options Paper as a
29 fair and accurate reflection of the information required to
30 consider the question as to whether to discontinue
31 processing samples between .001 ng/μL and .0088 ng/μL?

32 A. I think with this benefit of hindsight and the
33 reflection that I have had I think that there are some
34 elements within the Options Paper that could have been
35 improved, that could have been clarified or expanded upon.
36 So that's my opinion now.

37
38 Q. When did you first come to hold that opinion?

39 A. I would say when I guess information came to light
40 around the Commission of Inquiry. I started to read it
41 again, I didn't have reason to read it before then, and
42 that's when I could see that look, there were some elements
43 that I could have expanded upon in relation to that
44 document.

45
46 Q. I see. Tell me, and we'll come in due course to the
47 detail of this, but do you agree with me that back in 2018

1 scientists within the laboratory raised concerns about this
2 course of not processing as a matter of routine samples
3 between .001 ng/μL and .0088 ng/μL?

4 A. I do recall there were a couple of comments after
5 implementation of the process, yes.

6
7 Q. And when you say a couple of comments does that mean
8 scientists expressing concerns about it?

9 A. I guess at that point the concerns were around the
10 logistics of how the implementation would occur and how I
11 guess risks would be mitigated.

12
13 Q. We'll come back to those. By the end of last year,
14 that is by the end of 2021, you knew that the police were
15 raising concerns about the process that had been adopted
16 pursuant to the Options Paper?

17 A. Yes.

18
19 Q. And they were raising questions about the accuracy of
20 the data?

21 A. I'm not sure whether the questions were specifically on
22 the accuracy of the data presented. I think the questions
23 were in relation to the data that they had collected
24 themselves in comparison to the data that was presented in
25 2018.

26
27 Q. And those questions continued into this year?

28 A. I believe so, yes.

29
30 Q. And you knew this year that there were media stories
31 about a variety of things within the laboratory but
32 including the use of testing thresholds?

33 A. Yes.

34
35 Q. You knew that the concern that had been expressed by
36 police had reached the point where you were undertaking
37 work for an update paper to police?

38 A. Yes.

39
40 Q. And then ultimately you knew on 6 June 2022 that the
41 original decision made back in 2018 was to be abandoned?

42 A. Yes.

43
44 Q. And as those things have happened have any of them
45 caused you to wonder about the quality of the Options Paper
46 to begin with?

47 A. It was around that time that I started to look back at

1 that Options Paper that was written in 2018 and I could see
2 there were some elements that, as I mentioned before, that
3 could have been expanded upon that weren't necessarily that
4 clear.

5
6 Q. And when you say there were some elements that you
7 thought could be expanded upon, could you tell us what
8 those are?

9 A. Yes. The point that comes to mind is around the 10
10 per cent figure that was provided which was describing the
11 percentage of samples in that dataset that were determined
12 to be suitable for comparison. So these are suitable for
13 comparison to our National Criminal Investigation DNA
14 Database, NCIDD for short. As well as samples that are
15 suitable for comparison to any reference samples within
16 that particular matter. I think I could have expanded upon
17 that a bit more to make that clear that that is something
18 that not just the NCIDD profiles that would be missed, but
19 that other element, the 10 per cent, would be missed if the
20 decision was that we would go with Option 2 in that paper.

21
22 Q. I see. Let me ask you a few general questions about
23 that. When you prepared the Options Paper did you do it
24 primarily by yourself?

25 A. Yes, I did primarily, yes.

26
27 Q. And did you provide drafts of it to Ms Brisotto and
28 Ms Allen?

29 A. I believe I did.

30
31 Q. And did you provide drafts of the Options Paper to
32 anybody else?

33 A. I think Paula Brisotto, the other team leader, was
34 absent one period and I think around that time, if I
35 remember correctly, and so I think I got someone from her
36 team and I think it was senior scientist Luke Ryan to look
37 over the Options Paper.

38
39 Q. Could you explain to the Commissioner why you didn't
40 provide the Options Paper or feedback to anybody else
41 within the lab?

42 A. Okay. I think that at that point I had provided - I
43 had done a change management process before that and had
44 provided a couple of versions to members within the
45 management team for review. In terms of the conversion to
46 the Options Paper, no, it wasn't provided further than
47 those people I spoke to.

1
2 THE COMMISSIONER: No, you were asked why it wasn't
3 provided?
4 A. I don't think I can - I don't know, Commissioner, to
5 answer that question specifically. I don't know why it
6 wasn't provided at this stage.
7
8 MR HODGE: You say having reflected on it you just can't
9 remember why you didn't provide it?
10 A. That's a way to explain it, yes, Mr Hodge. I can't
11 explain why it wasn't.
12
13 Q. I see. I want you to take a moment to think about
14 this. I'll ask you some questions and then I'll come back
15 to that question about why it wasn't provided. Do you
16 agree with me that in terms of the operating procedures
17 within the lab, the commencement of the document that
18 became the Options Paper was a draft report for Project
19 184?
20 A. It was a report, yes, there was then converted to an
21 Options Paper style.
22
23 Q. And do you agree with me that the commencement of
24 Project 184 was conventional within the operation of the
25 lab, that is you went through the conventional processes of
26 having a project plan and a project proposal and those
27 things were signed off on?
28 A. Yes, it was.
29
30 Q. And do you agree with me that following and in
31 accordance with what had been proposed and planned, that
32 you prepared a first draft of the project report that you
33 circulated in about November of 2017?
34 A. Yes.
35
36 Q. And do you agree with me that you received feedback on
37 that draft report from members of the senior management
38 group?
39 A. Yes, I did.
40
41 Q. And do you agree with me that that was conventional in
42 the way that you would deal with projects within the lab,
43 to circulate a draft report and receive feedback?
44 A. Yes.
45
46 Q. And do you agree with me that ordinarily the way in
47 which a project would then come to a conclusion was that

1 ultimately a report would be adopted and signed off on by
2 all of the senior management?

3 A. Yes.

4
5 Q. And do you agree with me that in this case you did not
6 go through to having a final report signed off on by all of
7 the senior management?

8 A. That's correct.

9
10 Q. And do you agree with me that instead, after you had
11 circulated version 2 of the report, you abandoned the
12 continuation of the project in the ordinary way in which
13 you would do a project in the lab?

14 A. Yes.

15
16 Q. And instead you did this, didn't you: you discussed
17 this idea of switching to an Options Paper with Ms Brisotto
18 and Ms Allen?

19 A. Yes.

20
21 Q. And on 12 January 2018 you were at home and you emailed
22 Ms Brisotto and asked her to send you the previous version
23 of the second version of the draft report so that you could
24 convert it to an Options Paper?

25 A. I think so, yes.

26
27 Q. And this was a point in time at which you abandoned the
28 ordinary processes in the lab?

29 A. Yes, at that point.

30
31 Q. And was that something that you had ever done before?

32 A. I don't believe in that way, no.

33
34 Q. And so this was an unusual event that you had never had
35 the experience of having before in the lab?

36 A. To go from a --

37
38 Q. To abandon the project before having it signed off on
39 and switch over to this Options Paper?

40 A. Yes.

41
42 Q. And so reflecting on that, take your time, do you
43 really want to say to the Commissioner you just don't know
44 why that happened?

45 A. I think - if I can explain the lead up to that. So we
46 got the version 1 reviews back from our management team. I
47 incorporated what I could from version 1 into a version 2

1 report and sent that for a review. Version 2 report was
2 reviewed by the management team and when I received the
3 feedback for that I was at a point where I didn't know how
4 to take that, so I consulted Ms Brisotto and I consulted
5 Ms Allen and we had a meeting about well, what do we do
6 here? I was after some guidance. And it was in that
7 meeting that Paula Brisotto had the, I guess the clarity of
8 mind at that point to go let's just wait a second. What is
9 the purpose of this work? The purpose of this work is to
10 provide options for consideration to Queensland Police.
11 It's not about providing recommendations that we were
12 working on and seeking feedback on within this document.
13 So with that in mind it became clear that that's right, we
14 should really convert this to an Options Paper and have
15 that presented for discussion with Queensland Police.

16
17 Q. Let's focus on what you mean when you say you didn't
18 know how to take it forward. Is what you mean by that that
19 after two rounds you had received negative feedback from
20 some members of the senior management team about the
21 correctness of the recommendations that were being made?

22 A. Not on the version 1. The reviews of the version 1
23 were in my opinion positive and I incorporated what I could
24 into version 2. The version 2 review did have some newer
25 information and included some information from another
26 staff member. That sort of set me back and I didn't know
27 how to take that forward. I wasn't expecting that. That's
28 when I wanted to have a discussion with Paula Brisotto and
29 Cathie Allen.

30
31 Q. I see. Let's just speak for a moment about the
32 feedback you received. Do you recall that you sent an
33 email to the management team asking for feedback on the
34 version 2 report the following day, that is asking for
35 feedback on 9 January 2018?

36 A. Yes, that's right.

37
38 Q. You received back some joint comments that had come
39 from Kylie Rika and Amanda Reeves?

40 A. Yes, I did.

41
42 Q. And they also told you that they were incorporating
43 feedback from Rhys Parry?

44 A. Yes.

45
46 Q. And the joint feedback that they provided, amongst
47 other things, was to not agree with the recommendation that

1 you wanted to put forward?

2 A. I believe so, yes.

3

4 Q. That is you wanted to recommend to the police that they
5 discontinue testing as a matter of routine priority 2
6 samples in the range of .001 to .0088?

7 A. At that stage, yes.

8

9 Q. And they disagreed with that?

10 A. Yes, I believe that the feedback was really to see how
11 we'd go with priority 3 instead of priority 2.

12

13 Q. And they provided various reasons for why they
14 disagreed with it?

15 A. Yes, there were some reasons.

16

17 Q. And you got that feedback at about 1 pm on 9 January?

18 A. I think so.

19

20 Q. Or at least on the afternoon of 9 January?

21 A. Yes.

22

23 Q. Some time between the afternoon of 9 January and the
24 morning of 12 January you say you and Ms Brisotto and
25 Ms Allen had a meeting about what to do?

26 A. Yes, I believe it was on that day.

27

28 Q. And do you agree with me one of the things that you
29 could have done was to stick to the usual processes within
30 the lab?

31 A. Yes.

32

33 Q. And that would mean that you would never get the senior
34 management staff, or at least without incorporating or
35 dealing with the feedback that had come from Ms Rika and
36 Ms Reeves, you would never get the senior management staff
37 to sign off on the recommendation you wanted to make?

38 A. Yes, well on reflection one other way - I mentioned
39 there were some different ways it could have been done, one
40 other way that I've reflected on is that we could have
41 presented the report as it was and declare that not
42 everyone in the management team was happy with the approach
43 as described, and then to provide the alternative approach
44 that was being proposed.

45

46 Q. Well that's about what you might communicate to the QPS
47 but that again assumes that you would do something that

1 would depart from following through on completion of a
2 project?

3 A. It would depart in that not everyone would have signed
4 the report as it was. However what we don't know is if I
5 had have declared those differences whether all of the
6 management team would have signed it off with those
7 declarations.

8
9 Q. And did you or Ms Allen or Ms Brisotto raise the
10 possibility of telling the police that there was
11 disagreement within the lab about this?

12 A. I don't recall that discussion, no.

13
14 Q. And when you say you don't recall it, that was never
15 even contemplated, was it?

16 A. I don't think that was contemplated by myself. I came
17 to that through my reflection.

18
19 Q. Do you agree with me given what we've just spoken about
20 it appears that you wanted the police to agree to
21 discontinue as a matter of course the processing of samples
22 between .001 ng/ μ L and .0088 ng/ μ L?

23 A. I thought that the idea was worthwhile putting to the
24 police to consider, so in that sense I think that --

25
26 Q. Why?

27 A. I think that we have an approach to continually looking
28 to ways of improving our business, our service to them. In
29 this way in theory it could have provided some assistance
30 in being able to get a lot of results out quickly, and I
31 think that that alongside the status quo is still I think
32 important for us to put to our client whether that's
33 something they would entertain as a process.

34
35 Q. Do you agree with me if you wanted to genuinely inform
36 the QPS so that they could make a fair and rational
37 assessment about whether this was an appropriate process,
38 one of the key pieces of information you would have
39 provided to them was that at least two of the senior
40 management scientists thought that it was inappropriate to
41 do this?

42 A. Yes, I agree. In addition to one other scientist who
43 actually wanted to go to a higher level, so I guess there
44 were three comments.

45
46 Q. And it must be the reason that you didn't provide that
47 information was that you didn't want the police to make

1 fair and rational assessment about whether it was
2 appropriate to adopt this process?

3 A. I think it didn't come to mind. It didn't come to mind
4 to provide that as a way forward at that point.

5
6 Q. Why not?

7 A. I don't know, I don't think we thought of it. It
8 wasn't - as I mentioned, I don't think it was part of a
9 discussion and I don't think we - certainly I didn't think
10 about that until reflection.

11
12 Q. Can you explain to us what the urgency was?

13 A. I've looked through to see whether I had any
14 information around that and I don't. But what I can say to
15 that I believe is that the urgency was probably related to
16 an interdepartmental meeting that might have been scheduled
17 and that's - I don't have any concrete evidence of that.

18
19 Q. Sorry, did you say an interdepartmental meeting between
20 whom?

21 A. Sorry, between FSS and QPS. So usually there's a
22 meeting held periodically between the Executive Director
23 and managing scientists at FSS and also QPS Superintendent
24 Forensic Services and Inspector DNA Management section.

25
26 Q. Have you seen some email that has suggested to you that
27 there was a prescheduled meeting and the paper needed to be
28 prepared in time for that meeting?

29 A. No, I haven't been able to find something.

30
31 Q. Have you seen any document that records that?

32 A. No, I haven't.

33
34 Q. Is the real reason that there was urgency because for
35 priority 3 samples you were about to switch from using
36 Profiler Plus to PP21?

37 A. Look, as I said I don't know the actual reason. I
38 thought it was a bit to do with an interdepartmental
39 meeting but certainly that was coming. That was coming I
40 believe in March.

41
42 Q. You tell me how did you come up with this idea that it
43 was about an interdepartmental meeting?

44 A. They were held regularly, periodically, whether it was
45 quarterly or something similar to that.

46
47 Q. What made you come up with this idea?

1 A. Upon reflection trying to think well what was that
2 urgency? I couldn't find anything else to help me out with
3 that. That's where I thought well maybe it's to do with
4 one of the periodical meetings that may have been scheduled
5 around that time.
6
7 Q. So this is recent speculation by you to try to explain
8 the urgency?
9 A. Sure, because I haven't had that - I guess that need to
10 go back to that period prior to the inquiry.
11
12 Q. You know, don't you, that the reason for the urgency
13 was because there was about to be a change from using
14 Profiler Plus to PP21 for P3 samples?
15 A. Like I said that was something that was coming in March
16 but I've come to the thought that it was to do with an
17 interdepartmental meeting that might have been scheduled
18 around that time.
19
20 Q. You haven't seen any document to support that?
21 A. No.
22
23 Q. And what I'm suggesting to you is that is a reason that
24 you have fashioned, as part of giving evidence, to try to
25 explain the urgency, when you know that the real reason for
26 the urgency was that there was about to be this shift from
27 Profiler Plus to PP21 that was going to push out turn
28 around time?
29 A. No. Like I said, I think that it was to do with a
30 meeting that might have been scheduled.
31
32 Q. It's a peculiar proposition for this reason: you know,
33 don't you, that a specific meeting was scheduled for
34 Mr Showbarn and Ms Allen to present and talk about the
35 options paper with Superintendent Freiberg?
36 A. Yes, they did have a meeting.
37
38 Q. But it's not just that they had a meeting. It wasn't
39 that they went to a pre-scheduled meeting, they had a
40 specific meeting to talk about this issue?
41 A. Yes, they did.
42
43 Q. And so it doesn't really make sense that there was an
44 urgency to try to get the options paper done for a
45 pre-scheduled meeting if instead they went and had a
46 specific meeting just to talk about the options paper?
47 A. Look, I don't know what else might have been discussed

1 at that meeting, perhaps there were other things.

2
3 Q. No one has ever suggested to you that there was some
4 other discussion about some other topic at that meeting?

5 A. Not that I recall.

6
7 Q. No one has ever suggested to you that the reason for
8 the urgency was because of some prescheduled
9 inter-departmental meeting?

10 A. I thought that that was perhaps the reason. I don't
11 necessarily know what is discussed at those meetings. I'm
12 not part of the attendees.

13
14 Q. I have to put to you regrettably that this explanation
15 is one that you have concocted for the purpose of giving
16 evidence?

17 A. No, that's the reason that I thought.

18
19 Q. I want to then ask you about the content of the options
20 paper. Can we bring up FSS.0001.0001.0891. Can we go to
21 the page .0899. You see at the top of that page is the
22 sentence:

23
24 *This 1.45 per cent of auto-microcon samples*
25 *is considered to be the pertinent value for*
26 *the client to assess if the auto-microcon*
27 *process was not performed.*

28
29 A. Yes.

30
31 Q. You wrote that?

32 A. Yes.

33
34 Q. You believe it's true?

35 A. I believe it is, yes.

36
37 Q. Why?

38 A. Okay, so I think it's one of the great advances that
39 has come with DNA testing, is the ability to use a national
40 criminal investigation DNA database out of NCIDD. To find
41 an NCIDD link, without a DNA profile that goes to NCIDD for
42 a major crime case is a very big deal, and a very important
43 one, and as we believe, we do celebrate these. The reason
44 why I thought those are pertinent, because in those
45 situations you have the 1.45 per cent of the samples that
46 were analysed. That's the risk. So if an option was
47 chosen to proceed to a, I guess the option 2 in this case,

1 this 1.45 per cent of samples would not be, would not be
2 obtained, you would not get something for the database that
3 would lead to a link and in this situation perhaps that
4 information was not known to the police before the DNA link
5 was established.
6

7 Q. You agree with me that for priority 2 samples it's far
8 more common to be making a match against a reference sample
9 as compared to against the NCIDD database?

10 A. Yes. Far more common, I'd agree with that.
11

12 Q. And so do you agree with me that in assessing the major
13 thing that you would loose by discontinuing the automatic
14 processing of priority 2 samples within the DIFP range, it
15 would not be a loss of NCIDD results, it would be a loss of
16 matches to reference samples?
17

18 THE COMMISSIONER: By that you mean - when you say the
19 major thing, you mean the most common thing, the most
20 frequent thing?
21

22 MR HODGE: Yes. Do you agree with that?

23 A. Yes, it would be the most frequent thing.
24

25 Q. And do you agree with me you knew that at the time you
26 prepared this options paper?

27 A. Yes, that's correct.
28

29 Q. And do you agree with me that nowhere in this paper do
30 you say that?

31 A. I don't - I do explain the definition of success, I
32 believe on one of the first pages, which does describe
33 matching two reference profiles. As I explained before, on
34 reflection there were some things that I could have
35 expanded upon and clarified a little bit further.
36

37 Q. Mr Howes, you knew at the time that the most common way
38 in which a match was made using priority 2 samples was
39 against a reference sample?

40 A. In major crime, yes.
41

42 Q. Priority 2 is major crime?

43 A. Correct.
44

45 Q. And do you agree with me that nowhere in the paper do
46 you say that the majority of matches that are made for a
47 priority 2 sample are to a reference sample, not through

1 NCIDD?

2 A. I agree with you.

3

4 Q. And do you agree with me that not saying that - I'm
5 sorry, I withdraw that. Do you agree with me that your
6 knowledge of the fact that the majority of matches for
7 priority 2 samples are made to reference samples, not NCIDD
8 upload, must mean that you know that that statement we see
9 on the screen is false?

10 A. No, I don't believe that it's false, I think that it
11 is, in my opinion, an extremely pertinent value.

12

13 Q. No, you see, you don't say it's a pertinent value, you
14 say it's the pertinent value?

15 A. That was my (indistinct).

16

17 Q. Do you really say to us, to the Commissioner, that you
18 today hold the opinion that the pertinent value for
19 assessing whether to discontinue processing priority 2
20 samples is NCIDD upload, rather than matching to reference
21 samples?

22 A. I think it is an extremely pertinent value.

23

24 Q. No, no.

25

26 THE COMMISSIONER: You really won't get anywhere if you
27 don't answer the question, Mr Howes.

28

29 MR HODGE: You know that the statement that you put in the
30 options paper was that this 1.45 per cent of auto-microcon
31 samples is considered to be the pertinent value?

32 A. That was - - -

33

34 Q. You don't say a pertinent value, along with the much
35 more common way that we obtain matches for priority 2
36 samples is by matching to reference samples, you say this
37 is the pertinent value. So my question to you is: do you
38 say on your affirmation to the Commissioner that today you
39 hold the opinion that that statement is true?

40 A. I believe that that is the pertinent value in my
41 opinion.

42

43 Q. Why?

44 A. As I mentioned before, perhaps I wasn't that clear, but
45 this is major crime work finding a DNA profile for the
46 database where from a scientist's point of view in the
47 laboratory it doesn't appear that that knowledge was known

1 before that link was established and that to me is why I
2 consider, and I considered, this to be the pertinent value
3 because this is the information that would not be obtained
4 whatsoever. In the sense of the reference profiles, those
5 reference samples are taken from people who for some reason
6 to the investigators are thought to be associated to the
7 matter. Now, I'm not discounting that, but in my opinion
8 this is new information, information that would not have
9 been known if it wasn't for DNA, from where we sit in our
10 laboratory.

11
12 Q. Mr Howes, I have to put to you the evidence that you
13 are giving is untrue and unbelievable, it is not possible
14 that you genuinely hold the opinion that the pertinent
15 value for assessing whether or not to discontinue
16 processing priority 2 samples is NCIDD upload?

17 A. That's my opinion, Mr Hodge.

18
19 THE COMMISSIONER: How many cases - what percentage of
20 cases are samples submitted in which police don't have a
21 suspect?

22 A. For major crime? I don't have that data, Commissioner.

23
24 Q. Sorry?

25 A. I don't have that information, Commissioner. Yes, what
26 information do I have? Most of the cases that we work on
27 in the laboratory without suspects, without reference
28 samples, are volume crime and just to try and find some
29 sort of data to help with your question, we aim for about
30 100 to 120 uploads per week. That's of all crime type and
31 we report about 80 to 100 links per week. Now that's not
32 all cold links, these are all some seam to seam links. So
33 I don't have the actual data on how many major crime --

34
35 Q. So what's your impression then of how many cases are,
36 in how many cases are samples submitted in which you have
37 been supplied with reference samples? Would that help you
38 arrive at a proportion of cases in which there is a
39 suspect?

40 A. No, I really, I really would be just grappling at
41 numbers and I don't have those numbers, Commissioner.

42
43 Q. The reason I'm asking is that let us say hypothetically
44 that in 90 per cent of cases police have a suspect and have
45 submitted samples for testing with a view to comparing a
46 crime scene profile with a reference profile. That might
47 suggest that the ability to get a profile in those cases is

1 extremely important to police, wouldn't you say?

2 A. Yes.

3

4 Q. Whereas if the number of cases in which a reference
5 sample is provided because there's a suspect of only 10 per
6 cent, whereas in 90 per cent of cases they don't have a
7 suspect, then one might conclude that it's the cold links
8 that are much more important?

9 A. Yes.

10

11 Q. So how did you come to the view that the ability to
12 make a cold link on the national database is the pertinent
13 factor since you aren't aware of what proportion of cases
14 belong in each category and haven't identified any, so far
15 you haven't identified any other criterion or basis for
16 your conclusion that that is the pertinent factor?

17 A. Yes. Look, I was, I was really thinking about what
18 information would be missed, what are the risks.

19

20 Q. One of the things that would be missed would be a
21 comparison between a reference sample and a crime scene
22 profile. That's the sort of thing that would be missed?

23 A. It would be missed.

24

25 Q. And I would suggest to you in many more cases than
26 police looking for cold links?

27 A. I would agree with you, Commissioner.

28

29 Q. So how did you come to the view that the inability to
30 forge a cold link is the pertinent factor? What was your
31 reasoning is what I'd like to know?

32 A. I just think it is a critical finding when we have a
33 cold link in a major crime case.

34

35 Q. It's also a critical finding when you link a suspect to
36 a crime scene?

37 A. That's correct. I guess where I was coming from,
38 Commissioner, was that this --

39

40 Q. What was your reasoning then, just help me with that?

41 A. Yes. The reasoning that I thought was that this is
42 information, as far as we were concerned, that wasn't known
43 whatsoever. So in those other situations with the suspect
44 reference profile, for some reason unbeknownst to us that
45 suspect reference sample was taken for that case and
46 thought to be associated in some way. What I was getting
47 at here was in this situation these are DNA profiles that

1 have been obtained that seemingly to us have not been known
2 or that information was unknown before to police and so
3 that's where I thought that it was - it was critical that
4 it was explained that this would be missed if they went
5 with option 2.

6
7 Mr Hodge.

8
9 MR HODGE: Thank you. I need to ask you some more
10 questions about that, Mr Howes. Did you know how many
11 NCIDD uplinks you made across all priority 2 cases?

12 A. No.

13
14 Q. Okay. And so can we take it that had you, for example,
15 found that in only 2 per cent of cases across all priority
16 2 cases where you're making NCIDD uploads, would it follow
17 by your logic that you should discontinue processing all
18 priority 2 samples?

19 A. Could you ask that again sorry?

20
21 Q. Yes. I'm just trying to understand. You apparently
22 formed the view on the basis that in only 1.45 per cent of
23 these DIFP range cases were you getting a successful or
24 meaningful upload to NCIDD. So that was the piece of data
25 that you fixed on. But as I understand it you don't know
26 how that compared to all priority 2 cases?

27 A. Yes, that's right.

28
29 Q. And so, for example, you don't know if across all
30 priority 2 cases you, on average, only got 2 per cent
31 successful upload to NCIDD?

32 A. I accept your point, yes.

33
34 Q. So I'm just interested, do you say to the Commissioner
35 if I'd found that across all priority 2 cases in only 2 per
36 cent of cases were we getting a successful upload to NCIDD,
37 I would have recommended we just stop doing DNA testing on
38 priority 2 cases?

39 A. No. I don't think we should stop DNA testing.

40
41 Q. Stop as a matter of routine, testing priority 2 cases?

42 A. No. You mean, do you mean --

43
44 Q. Why not?

45 A. I don't think that's reasonable, Mr Hodge.

46
47 Q. So why is this reasonable?

1 A. Look, I just, I thought that it's reasonable to make it
2 clear that there was some data analysis into how many
3 (indistinct) percentage of samples in this range they'd be
4 missing out cold link information.

5
6 Q. It's more than that, you see, because it's not just
7 that you're presenting this information to the police, it's
8 that to begin with you had wanted to recommend to the
9 police that they would discontinue processing of samples
10 within the DIFP range as a matter of routine, do you agree
11 with that?

12 A. Yes.

13
14 Q. And the only reason that you didn't put it forward to
15 the police as a recommendation, do you agree with me, is
16 because you couldn't get the senior management team to sign
17 off on it?

18 A. Yes. Not all members of the management team were
19 willing to sign off, it appeared that way.

20
21 Q. If they were willing to sign off on it then you would
22 have put to the police a written document that recommended
23 that they discontinue the processing as a matter of routine
24 of samples in the DIFP range?

25 A. I guess we can't go back to that but I think that's a
26 reasonable thing to suggest.

27
28 Q. But we can go back to it. That was what the plan was,
29 wasn't it, that was in the project plan and the project
30 proposal, that was the expected outcome?

31 A. I think the - yes, the plan, I believe, did say to put
32 - I don't believe it said the word options, but to put
33 recommendations to Queensland Police.

34
35 Q. So when we come to the options paper, you're not just
36 putting this piece of data in because you wanted to inform
37 the police as to what they would be missing out on, this
38 was the piece of data that you were prepared to use as the
39 foundation for a recommendation if you could have got the
40 rest of the management team to sign off on it?

41 A. This is part of it, yes.

42
43 Q. What are the other parts of it?

44 A. Well, I'll explain. It's hard now to go back to that
45 period, as opposed to now I've had this time to reflect. I
46 could have expanded upon the 10 per cent, which was related
47 to the reference sample comparisons, as well as the NCIDD

1 comparisons. So I guess that value could have been
2 expanded upon a bit more and made clear to Queensland
3 Police that that is also what they would be missing out on.
4

5 Q. You've gone back and looked at the documents, and I'll
6 show them to you if you need me to, but do you agree with
7 me that actually what you did between version 1 of the
8 draft report and this report is that you removed the focus
9 on the number of successes as part of the conclusion?

10 A. I don't think so, I think it was --
11

12 Q. Let me show you. Can we bring up FSS.0001.0001.0914.
13 And then can we go to the page is which is .0931. This is
14 the conclusions and recommendations. This is version 1 of
15 your report?

16 A. Thank you.
17

18 Q. And do you see that in the conclusions and
19 recommendations there you don't mention the 1.45 per cent
20 NCIDD upload?

21 A. It appears that way, yes.
22

23 Q. You do mention it in other parts of the report, and
24 I'll just show you that. So if we go to page .0929. You
25 can see that in the middle of that page under the figure 8
26 there's the words "approximately 1.45 per cent of samples"?
27

28 A. Yes.
29

30 Q. But you see, and I'll just show you this so you're able
31 to match it up with what I'll take you to in a moment, so
32 that's that page, and then, operator, could you just go to
33 the next page. So you see on the next page it becomes
34 "datamine of the difference in pre and post microcon
35 qualification values"?
36

37 A. Yes.
38

39 Q. Then if we go back to the option paper which is
40 FSS.0001.0001.0891, and let's go first to the options for
41 consideration, which replaced the conclusion. So can we go
42 to .0900. So these are the options to consider. And you
43 see option 1 is continue with auto-microcon process for
44 priority 2 casework. Option 2 is cease the auto-microcon
45 for priority 2 casework?

46 A. Yes.
47

Q. Then you see then below that it says:

1 *In considering continuing or discontinuing,*
2 *some key elements to consider include, but*
3 *are not limited to.*

4
5 A. Yes.

6
7 Q. And then the first item is the opportunity to link DNA
8 profiles on NCIDD?

9 A. Yes.

10
11 Q. And then if we go back to p.0899, you see this is the
12 page where at the top of the page that sentence has been
13 added, the 1.45 per cent of auto-microcon samples is
14 considered to be the pertinent value?

15 A. Yes.

16
17 Q. And then the heading has been added - sorry, it hasn't
18 been added. You see it's the same heading that we looked
19 at before, the numbering has moved up with that heading
20 about datamine of the differences is now 7.2?

21 A. Yes.

22
23 Q. So between version 1 of the report and this options
24 paper, do you agree with me that you've focused attention
25 on the NCIDD uploads?

26 A. Yes, it appears I've drawn that out and put some words
27 around it, yes.

28
29 Q. And it was a deliberately choice, wasn't it, to focus
30 attention on NCIDD uploads, rather than other successes and
31 the obtaining of a profile?

32 A. Yes, I wanted to explain how important the NCIDD
33 information was.

34
35 Q. Now, if we go back to the page .0900. Sorry, when you
36 say that, I mean that's just a lie, isn't it, Mr Howes?
37 You did not want to explain how important the NCIDD upload
38 information is because had you wanted to do that one of the
39 basic pieces of information you would have provided is a
40 comparison so that the reader could know what is the
41 percentage number of ordinary P2 cases where we have NCIDD
42 upload success?

43 A. I didn't have that data and I don't believe I lied
44 there.

45
46 Q. So when you said you wanted to explain how important it
47 was, how in this paper did you explain how important NCIDD

1 upload was to priority 2 cases?

2 A. I thought I explained that in the key consideration in
3 the first one that they miss out on.

4

5 Q. That is, when you say you wanted to explain how
6 important it was, if we go back to that page which is
7 .0900, you mean you wanted to point out again that what
8 they would miss out on is 1.45 per cent of NCIDD uploads?

9 A. 1.45 per cent of the samples that would lead to NCIDD
10 cold link.

11

12 Q. Yes?

13 A. Yes, I wanted to point that out, that that is a risk,
14 that was information that would be lost.

15

16 Q. Did you point out any other risks?

17 A. In this case, no, and this is where I had said that I
18 could have explained more around the 10 per cent, so the
19 comparison reference samples that could have also been
20 explained here.

21

22 Q. You didn't want the police to be informed in truth
23 about what all the risks were that they faced by adopting
24 this process, did you?

25 A. I don't agree with that, no.

26

27 Q. Because had you wanted to do that you could have
28 provided them with that information?

29 A. Look, with this benefit of hindsight I could have put
30 that in, but at that point in time I was thinking about
31 NCIDD as the main point there for --

32

33 Q. Now if you say that, that you were thinking about NCIDD
34 upload as the main point, tell me if you also agree with
35 this, that Mr Parry had challenged you seven months, no,
36 I'm sorry, four months earlier on whether this was even a
37 proper statistical way of analysing it?

38 A. I asked Rhyce to have a look at the data and check the
39 data first of all and see if there was another way that it
40 could be expressed.

41

42 Q. And is one of the things that he pointed out to you, as
43 you recall it, that it was entirely inaccurate to be using
44 a single percentage figure across that whole range of .001
45 to .0088 nanograms?

46 A. I think he might have used those words, I can't confirm
47 but, yes, he thought that he found another way to be able

1 to explain the data.

2

3 THE COMMISSIONER: No, it wasn't a question of another way.
4 Do you recall that Mr Parry said that it was inaccurate or
5 invalid to derive a percentage figure from that wide range
6 from 001 to 0088?

7 A. I'm not sure if he used those words, Commissioner.

8

9 Yes.

10

11 MR HODGE: But you understood that he was challenging the
12 accuracy of taking a single percentage figure across that
13 whole range?

14 A. I understood that was what his view was, yes.

15

16 Q. And is there anywhere in the options paper where you
17 identify that issue with the statistical analysis?

18

19 A. No.

20

21 Q. Was there a reason why you didn't bring that to the
22 attention of the police?

23

24 A. The reason - I had considered his point, that's why I
25 asked for Rhyce to have a look at the data, because I
26 respect his view on the statistics. The way that I ended
27 up writing this was to explain and show a graph, and I
28 believe it's in this document, of all of the results which
29 per quant value which came back with something suitable or
30 unsuitable.

31

32 Q. That is figure 2. Maybe we'll go to that. Can we go
33 to page .0898. What you're noting about this graph is that
34 as the quantity of DNA increases, the likelihood of
35 obtaining a profile increases?

36

37 A. Yes, it does.

38

39 Q. Can you explain to us then how did you form the view
40 that it made sense to not, as a matter of course, process
41 samples below .0088. Why .0088, rather than some lower
42 level?

43

44 A. Well the data that I was looking at here were samples
45 that were coming through in the auto-microcon process. So
46 that was the data that was reviewed previously in a
47 different project, but also this time it's in this project,
and I look at all of those samples that went through that
process and to see what they came back with. So it was
really to look at that whole range and to see how many
samples were suitable after the interpretation and review,

1 and how many samples were unsuitable.

2
3 Q. Yes, but you didn't answer my question. Why .0088, why
4 not a much lower number, why not down at .002?

5 A. Okay. So the .0088 value goes back to our original
6 PowerPlex 21 validation where we founded that quant value.
7 Below that value we found that samples were exhibiting what
8 are known at stochastic effects. So variability within the
9 DNA profile which can complicate and make it difficult to
10 interpret. So that value was chosen - up to that value we
11 had a work flow for major crime which would go through an
12 auto-microcon process. So the actual figure 0088 came back
13 to the original PowerPlex 21 validation.

14
15 Q. I understand how it is that the figure of .0088
16 originally started being used in the lab under project 163.
17 What I'm interested in - or was validated as part of
18 project 163 and the auto-micro concentration. What I want
19 to understand is how do you come to the view as a scientist
20 that you should recommend to police that they should
21 discontinue auto processing of samples up to .0088, rather
22 than some lower level ?

23 A. I guess I came to that view within the versions that
24 were submitted to the management, not within the options
25 paper, but I came to that view that - look this is the data
26 that was interrogated. These are the samples that had had
27 gone through an auto-microcon process and I guess what then
28 became an option was to consider whether they could be held
29 and then processed at a later stage or continue processing
30 through the auto-microcon step.

31
32 Q. I'm sure you realise that doesn't answer my question.
33 How did you as a scientist come to the view that an
34 appropriate threshold to recommend to police for not
35 processing as a matter of course was .0088 rather than
36 something lower?

37 A. I'm sorry, I'm trying to answer your question as best I
38 can.

39
40 THE COMMISSIONER: I think Mr Howes said, correct me if I'm
41 wrong, that the .0088 number was the number below which
42 they found that they were getting stochastic effects that
43 the were prone to interfere with interpretation and above
44 that less so, so that was the reason for the cut off.

45
46 MR HODGE: That was the original reason for the cut off.
47 My question for him, and it may be that there simply is no

1 answer other than you just continued to use the cut off
2 that had been developed for another purpose, but why
3 recommend this as the cut off for not automatically
4 processing samples?

5 A. That was the number and that was the dataset that was
6 interrogated as part of the auto-microcon process.

7
8 Q. Now if we come to page.0900. The Options Paper now
9 doesn't recommend a particular option on its face?

10 A. That's right.

11
12 Q. Was there a reason for that?

13 A. Yes.

14
15 THE COMMISSIONER: I'm sorry, what was the question,
16 Mr Hodge?

17
18 MR HODGE: I'd said to Mr Howes the Options Paper doesn't
19 recommend an option on its face, was there a reason for
20 that, and Mr Howes is about to explain I think?

21 A. Yes. So the meeting that I described before with Paula
22 Brisotto and Cathie Allen, that's when we reset and thought
23 look, let's just keep this simple, let's just present
24 options, present the information, the data that we had at
25 that time and not have any recommendations within this
26 briefing paper.

27
28 Q. Wasn't the reason that you didn't put any
29 recommendations in because you knew that the other members,
30 or at least some other members of the senior management
31 team disagreed with recommendations being made?

32 A. Yes, but it was also as I mentioned, it was a resetting
33 on what the purpose of the work was, and that was to put
34 some options forward for consideration to Queensland
35 Police.

36
37 Q. When you say a resetting of the purpose of the work,
38 tell me if I'm wrong but I had understood the purpose of
39 the work was always to evaluate whether a change ought to
40 be made, and if it should be made to then recommend it to
41 police to seek their agreement to it?

42 A. I think yes, within the plane - you're right, they were
43 - it was focused on providing recommendations. Until we
44 had this meeting, that's when I thought that - no, that's
45 right, these are options to put to police for
46 consideration.

1 Q. But the resetting was because you couldn't get
2 agreement and so therefore you just wanted to put the
3 options to police?
4 A. Yeah, I'd agree with that.
5
6 Q. And the outcome that you wanted was the police to agree
7 to the options?
8 A. Look, that was an outcome that was - if the outcome was
9 option 1 we would have worked to make that happen. Whether
10 it's option 1 or option 2 we would have done our best.
11 Certainly within --
12
13 Q. I'm sorry, did you not hear my question? The outcome
14 that you wanted was for the police to agree to option 2?
15 A. Not when we converted that to an Options Paper, no.
16
17 Q. You were indifferent you say?
18 A. We would have made any option work.
19
20 Q. No, the option that you wanted the police to agree to
21 was option 2?
22 A. No, I didn't - whatever option came through discussion.
23
24 Q. You say notwithstanding that you had already formed the
25 view that what should be recommended and what was
26 appropriate was option 2, but nevertheless when you
27 prepared the Options Paper you were totally indifferent to
28 which option the police chose?
29 A. Yes, that's right.
30
31 Q. I see. So when you drafted the Options Paper and you
32 drafted this section at the end about options for
33 consideration, do you think that a rational reader of that
34 could come to the view that option 1 was sensible to go
35 with?
36 A. Well I don't know. I guess that's where we could have
37 explained a little bit more around what the option 1
38 provides. So further information there on reflection,
39 yeah, it could have been added.
40
41 Q. When you say you could have provided more information,
42 you mean at a bare minimum what you could have identified
43 was that in fact in most cases for priority 2 samples a
44 match was made not through NCIDD but to a reference sample?
45 A. Yes, we could have explained that more, yes.
46
47 Q. When you say explained it more, you could have

1 explained it full stop. You didn't explain it at all?
 2 A. Not directly, I think you're right.
 3
 4 Q. I'm sorry, again, your qualifiers are troubling me.
 5 When you say not directly, you didn't explain it at all?
 6 A. I said not directly because I had given a definition of
 7 success within the document and explained about the
 8 reference samples and then explained around the 10
 9 per cent. So not directly I think. I thought was
 10 answering your question, Mr Hodge.
 11
 12 Q. The definition of success, is this what you're
 13 referring to, this is DNA profile information that was
 14 obtained that was suitable for comparing to reference DNA
 15 samples and other case work samples?
 16 A. Yes.
 17
 18 Q. I see. That's the thing you were saying, that was the
 19 percentage of samples where it was suitable for comparison?
 20 A. Yes.
 21
 22 Q. But what you didn't explain was that in most cases for
 23 priority 2 samples we get a match to a reference sample,
 24 not to NCIDD upload?
 25 A. Correct.
 26
 27 Q. Do you agree with me that if you provided that
 28 information, the statement that the pertinent value was
 29 NCIDD upload would have looked ridiculous?
 30 A. I don't know, Mr Hodge.
 31
 32 Q. Do you then see the other dashes, they refer to time
 33 and cost for processing all samples?
 34 A. Yes.
 35
 36 Q. And it seems like, you tell me if you disagree - and it
 37 might be helpful, Mr Operator, if Mr Howes can also see the
 38 next page. That of the seven points that are made, six of
 39 them are about the benefits of adopting option 2?
 40 A. Yes.
 41
 42 Q. And one of them, the first one, is about the cost of
 43 adopting option 2 which is concerned with loss of NCIDD
 44 upload?
 45 A. Yes.
 46
 47 Q. I want to suggest to you, you could not have believed

1 at the time that this provided an evenhanded assessment for
2 police of relevant information to choose between option 1
3 and option 2?

4 A. I think that there is - I would agree with you there,
5 yes.

6
7 Q. This was crafted in this way in order to direct police
8 to choosing option 2?

9 A. I don't believe, no.

10
11 Q. You say it's just unfortunate inadvertence that it
12 missed out this piece of information that you knew that in
13 most priority 2 samples a match is made to a reference
14 sample, not by NCIDD upload?

15 A. Yes, so that should have explained that, yes.

16
17 Q. You say it's just unfortunate that even though you went
18 through two versions of a report before doing this Options
19 Paper, and even though the three most senior scientists in
20 the laboratory, you and Ms Allen and Ms Brisotto, on your
21 evidence collaborated in order to produce this Options
22 Paper and review multiple versions, that you left out that
23 critical piece of information?

24 A. I don't think deliberately, no.

25
26 Q. No, no. You collaborated in order to - I'm sorry,
27 you're saying you don't think you deliberately left it out,
28 it's just unfortunate?

29 A. Yes, that's what I thought your question was.

30
31 Q. I see.

32
33 THE COMMISSIONER: How can that be? Of course it's
34 unfortunate, we all think it's unfortunate, but how can it
35 be other than deliberate to omit what was contained in
36 version 1 of the drafts?

37 A. Was the 10 per cent as part of the recommendations,
38 sorry, was it --

39
40 Q. There was a reference in paragraph 7 of version 1 to
41 the 89 per cent figure, do you remember that?

42 A. Yes.

43
44 MR HODGE: We can bring it up. Do you want to see it
45 again?

46
47 THE COMMISSIONER: You'd better bring it up again,

1 Mr Hodge, in case I've got it wrong but that was my
2 recollection.

3
4 MR HODGE: FSS.0001.0001.0931. It says 89 per cent did not
5 yield meaningful results.

6
7 THE COMMISSIONER: The argument in the first paragraph
8 under subtitle number 7 conclusions and recommendations in
9 the first draft of Project 184 is that there was minimal
10 value because what you were getting was 11 per cent
11 meaningful results, that is 89 per cent not meaningful
12 results, and it's minimal value so you're not going to lose
13 much. That's then converted to you're losing 1.45
14 per cent, you see? Or rather in the equivalent paragraph
15 when options are put forward rather than recommendations,
16 what's put forward is the 1.45 per cent figure is the value
17 that represents the loss if you didn't continue with the
18 existing process. So it can't be accidental, there must
19 have been a deliberate decision made by the draftsman, who
20 was you, it was you, to change the argument about what was
21 being lost from one to the other. So why did you do that?

22 A. Look, I don't recall that to be deliberate,
23 Commissioner. I think that I omitted --

24
25 Q. What do you mean - that paragraph that we're looking at
26 beginning with the words "the data analysis demonstrated"
27 was written, it's not an accident, you wrote it, you
28 crafted it, you drafted it?

29 A. Yes.

30
31 Q. And you put it as the first paragraph under the
32 ultimate section and then in the Options Paper version you
33 wrote something, crafted it, drafted it, took that
34 paragraph out from the document and put the new one in, so
35 it wasn't inadvertent. Please don't tell me that?

36 A. I don't recall and I don't believe that I would have
37 done that deliberately to make the 1.45 per cent stand out.
38 1.45 is important to stand out, I don't want to get that
39 wrong, but I could have explained that more about the 89
40 per cent.

41
42 MR HODGE: Let me then understand something about the
43 process of doing this. You have this document now, an
44 Options Paper, that you and Ms Brisotto and Ms Allen are
45 the ones looking at?

46 A. Yes.

1 Q. And tell the Commissioner why it is that you didn't
2 share a draft of that with the other members of the senior
3 management team?

4 A. Eventually it was but I don't know why it wasn't at
5 that stage.
6

7 Q. When you say eventually it was, you never shared a
8 draft of the Options Paper with the senior management team?

9 A. Correct, yes.
10

11 Q. What happened was after the police had already agreed
12 to adopt option 2, Ms Allen then provided a copy of the
13 Options Paper to the rest of the senior management team?

14 A. I believe so, yes.
15

16 Q. And you say you just don't know why it was that you
17 didn't send out a draft of your Options Paper to members of
18 the senior management team?

19 A. That's right, I don't know.
20

21 Q. Well let's think about what the reasons could be. One
22 reason could be because you knew that some members of the
23 senior management team would criticise it as being
24 inaccurate?

25 A. I don't know if that might have occurred with the
26 Options Paper format.
27

28 Q. Well, you know that at least two of the members of the
29 senior management team were critical of the recommendation
30 you wanted to put forward?

31 A. Yes.
32

33 Q. And you know that they were critical of the reasoning
34 process by which you had arrived at the recommendation?

35 A. I think that they - the opinions were that they wanted
36 to focus on the P3, so the volume crime rather than the
37 major crime, however had both said it was a good idea.
38

39 Q. They were critical of the reasoning process by which
40 you reached the conclusion that you should recommend
41 discontinuing processing P2 samples in the DIFP range as a
42 matter of course?

43 A. I think so, yes.
44

45 Q. And they were critical of the way in which you were
46 using data to try to support that conclusion?

47 A. I'm not sure if they were, Mr Hodge. I think that

1 Mr Parry looked at the data as such.

2

3 Q. I understand. Your point is insofar as there was a
4 criticism of the way that you were using data, Ms Rika and
5 Ms Reeves might have been a conduit for Mr Parry's
6 criticism?

7 A. Yes, I think so.

8

9 Q. And in any event you understood that there was a
10 criticism of the way that you were using data to support
11 the recommendation you wanted to make?

12 A. In any event, yes.

13

14 Q. And you were in your Options Paper without actually
15 including the recommendation, you were setting out the same
16 process of reasoning and the same data?

17 A. It was similar, yes.

18

19 Q. And it was inevitable, wasn't it, that if you showed a
20 copy of the Options Paper in draft to them, they would be
21 critical of the Options Paper as not presenting a balanced
22 view of the issue?

23 A. Look, I think that's a safe assumption to make.

24

25 Q. And so what I'm suggesting to you is when we're looking
26 at reasons, you say you can't remember why it was, when
27 we're looking at reasons for why you might not have shared
28 the Options Paper with the rest of the senior management
29 team, one possible explanation is that you knew that you
30 would receive negative feedback from Ms Reeves and Ms Rika
31 about your reasoning process and the use of data within the
32 Options Paper?

33 A. I can't disagree with that.

34

35 Q. And can you think of any other explanation for why you
36 would not have shared the Options Paper with the other
37 members of the management team?

38 A. I think at this point perhaps - look, I can only be
39 making assumptions at this stage because I don't know, but
40 I guess that by taking out recommendations and keeping it
41 simple as options perhaps there wouldn't be that
42 disagreement, we just won't know.

43

44 Q. I understand what you've said but to come back to my
45 question. Can you think of any other explanation for why
46 you might not have shared the Options Paper with other
47 members of the senior management team other than the one

1 that I've suggested to you?

2 A. I think I just gave another reason but I think that
3 that's - I just don't know. I just don't know, Mr Hodge.

4

5 Q. You do though, don't you, Mr Howes? You know that the
6 reason that you didn't share it with them was because you
7 didn't want them to again criticise the reasoning and use
8 of data that you were going to put forward to the QPS?

9 A. No, I don't know the reason and it could be as you're
10 suggesting but it could also be that perhaps there wouldn't
11 be any disagreement to it if there's only (indistinct) as
12 options.

13

14 THE COMMISSIONER: If a project is completed with the final
15 project report and those who have to sign all sign it with
16 approval, that becomes the position of the laboratory,
17 doesn't it?

18 A. Yes.

19

20 Q. So the original Project 184 was a project that might
21 have led, if everybody had signed it, to a position of the
22 laboratory where the laboratory, I'm using the language
23 from the draft reports you see, recommended a particular
24 change to the process relating to the samples in the DIFP
25 range and if everybody approved it then that would become
26 the position of the laboratory?

27 A. Yes.

28

29 Q. So I think the draft papers that you circulated said to
30 the effect that this would be the recommendation and that
31 then this would be put to QPS to explain it to them, do you
32 remember that?

33 A. Yes, I do.

34

35 Q. That was a possible course assuming you got the
36 approval of the management team and it would be possible
37 then to present this new work process as the position of
38 the laboratory that was going to be undertaken and police
39 would be informed that that was happening so that they
40 knew. I guess if they had objections to it they could then
41 raise it, but this would be the position of the lab; is
42 that right?

43 A. Yes.

44

45 Q. However having received Ms Rika's and Ms Reeves'
46 feedback, which were really objections to the scientific
47 validity of part of the work that had been done, it became

1 impossible to - unless you answered those criticisms, to
2 arrive at a position where it was the position of the lab
3 that this process would be undertaken; is that right?

4 A. Yes.

5
6 Q. So it follows then that it wasn't possible to say to
7 the police truthfully, "This is the view of the laboratory
8 as an institution. This should be adopted". So instead it
9 was put to police that, "This is a possibility that you can
10 consider and if you want it done we'll do it"?

11 A. Yes, you're right.

12
13 Q. So that raises the question why was the criticism that
14 was raised, why were the scientific points that were raised
15 by Ms Rika and Ms Reeves with the aid of Mr Parry not
16 confronted and addressed?

17 A. So some of the criticism was around making it a P3 and
18 not P2. So making it the violent crime and not the major
19 crime. The priority 3 work was --

20
21 Q. Just excuse me, Mr Howes. Mr Hodge, could we put on
22 the screen the version of the document that interlineated
23 Ms Reeves' and Ms Rika's feedback?

24
25 MR HODGE: Yes. You mean the version 2 response?

26
27 THE COMMISSIONER: The one where they interlineated their
28 feedback.

29
30 MR HODGE: Yes, just give me one moment, Commissioner.

31
32 THE COMMISSIONER: Were you going to deal with this aspect
33 anyway, Mr Hodge?

34
35 MR HODGE: I was only going to deal with it very briefly,
36 Commissioner.

37
38 THE COMMISSIONER: We may as well deal with it now.

39
40 MR HODGE: I think you should ask some questions about it
41 that will assist you. FSS.0001.0001.0789.

42
43 THE COMMISSIONER: While that's being obtained --

44
45 MR HODGE: Sorry, Commissioner.

46
47 THE COMMISSIONER: No, go on.

1
2 MR HODGE: I think this is what you were looking for. If
3 we go to page.0793. There's the red text from what they
4 refer to as --

5
6 THE COMMISSIONER: Yes, that's it.

7
8 MR HODGE: And then I think the other part that you may
9 want to look at is in the conclusions which is on
10 page.0809.

11
12 THE COMMISSIONER: Yes. If you look at the page on the
13 left-hand side, which is page 4 of the draft with the
14 feedback in red, paragraph 1 of the feedback suggests that
15 the data is wrongly being relied upon for the reasons that
16 are explained there. Paragraph 2 raises a question about
17 whether enough work has been done to test the assumptions.
18 Paragraph 3 suggests a cautionary approach to introduce the
19 new process for P3 and then to consider the results before
20 introducing it to samples involved in serious offences. So
21 on their face they seem to be reasonable propositions. I
22 don't recall that they were ever answered. Were they ever
23 answered?

24 A. I guess not specifically.

25
26 Q. Well in any way, were they ever answered?

27 A. No.

28
29 Q. So not having been answered, you said in your evidence
30 earlier that "the feedback set me back", I think that was
31 the expression you used, words like that. Why did that set
32 you back?

33 A. Yes, I was taken aback.

34
35 Q. You were taken aback. Why did that take you aback?

36 A. Because I thought the feedback in the first version was
37 supportive, so when I received this then as a combination
38 it was - yeah, I felt it took a different tone and it also
39 included information from Rhys Parry which I didn't have a
40 separate document from Rhys on. So that's where it took me
41 aback.

42
43 Q. Yes, but somebody once said that science is about
44 challenging science, asking questions. These are three
45 challenges to the content of the paper. Why as a scientist
46 don't you resolve those rather than put them to one side
47 and ignore them?

1 A. So the P3 samples, so the priority 3 samples --

2
3 Q. No, no, I don't want answer to it?

4 A. Okay.

5
6 Q. I want to know why you didn't answer it back then? If
7 they had no validity the answer would be they have no
8 validity for these reasons. If they have some validity you
9 can deal with them and respond and either put them to one
10 side or acknowledge that they are good objections and
11 proceed in a different way. But instead as I understand it
12 you ignored them and ignored the critics and proceeded
13 behind their backs to put the process that did not have the
14 imprimatur of the laboratory to police, obtain the
15 agreement of police to that process and then instructed the
16 lab staff that this is the process that would be adopted,
17 over their objections really. So I'm just curious as to
18 why that course was adopted. I haven't seen in the tens of
19 thousands of documents that we've received anything like
20 that having happened before?

21 A. I don't know. I think to put a few things into context
22 as well, I think, look, this was a very difficult time. We
23 were under a lot of stress within the laboratory at the
24 time and I think that as a human that had to play on one's
25 mind. And I think that having - I'm just speaking for
26 myself - having challenges that were coming with the
27 frequency that were happening it was extremely exhausting.
28 At this point I was taken aback because it felt like it was
29 another challenge, but it didn't really feel like it was
30 just on science. I think at that point in time, because I
31 was certainly affected by that and I needed to get some
32 grounding from my colleagues, being Paula Brisotto and
33 Cathie Allen. I think that in that discussion and
34 resetting to thinking what's the purpose, the purpose is to
35 look into a change or not and to provide that to police.
36 That to me seemed like a reasonable outcome and then, look,
37 so the actual difficulties and the challenges that we had
38 that I didn't think were specifically and only on science,
39 would not occur, would not have occurred, and that to me
40 would have been for me like a better approach. Looking
41 back I should have had those discussions a little bit more
42 with the people involved but it didn't happen.

43
44 Q. You said, as I understood you, that you felt that these
45 criticisms were not necessarily based on science?

46 A. Not just, I think that there were a lot of
47 circumstances surrounding this period, this point in time.

1
2 Q. Did you think they were criticisms made for the sake of
3 making criticisms? Did you think they were based on
4 personalities or hidden agendas?
5 A. Look, I can't exclude that from being part of it. It
6 was a very --
7
8 Q. I'm just concerned about your thinking, not what was
9 actually behind it?
10 A. Yes.
11
12 Q. I understood you to say that you thought it wasn't
13 entirely based on science, that is to say it shouldn't be
14 taken entirely at face value, that there might be some
15 other purpose behind making the criticisms. Did I
16 understand you correctly?
17 A. Yes, you did, Commissioner.
18
19 Q. And your reference to other issues at the time must be
20 to issues surrounding the sequel to the spermatozoa
21 microscopy controversy, and Ms Reeves' agitation about that
22 issue and matters of that kind, is that what you're
23 referring to?
24 A. That was around that time.
25
26 Q. So nevertheless, even if they were, the critics were
27 motivated by some kind of antipathy, they had raised in
28 print scientific issues, or they look to me like scientific
29 issues, and instead of addressing them, what you and your
30 colleagues decided to do was to move forward with this
31 process with a view to getting the approval of police to it
32 without addressing apparently valid objections and without
33 giving the critics any notice that that's what you were
34 doing. That's true, isn't it?
35 A. I'd have to agree with you.
36
37 Q. So I don't understand why a scientist of your
38 experience would adopt an approach that seems to me to be
39 contrary to scientific method and really not in keeping
40 with the tradition of what we would expect from a
41 Government laboratory?
42 A. Look, as I mentioned, Commissioner, I really think at
43 that point in time - look, I really think --
44
45 Q. Just be candid, think is through?
46 A. Yes. I really can't exclude the fact that a lot of the
47 other circumstances around the laboratory at that point in

1 time for many years, I don't think as a human you can't
2 have that effect in some way, subconsciously, and I think
3 that that effected me. I certainly felt that effect not
4 long after this and sought some help for that, but I think
5 there was, there was a lot of atmosphere, a lot of
6 environmental challenges that I think did play on our mind
7 and I think did effect some decisions at that point in
8 time.

9
10 Yes, I follow. Yes Mr Hodge.

11
12 MR HODGE: Could you explain to the Commissioner why you
13 say you thought there was general agreement after version 1
14 of the paper?

15 A. Well that was my recollection, yes.

16
17 Q. Can I show you the feedback from Ms Rika. Bring up
18 FSS.0001.0011.1834. It should be an email from Ms Rika to
19 Mr Howes. Yes, you see that's an email that Ms Rika sent
20 you on 3 January?

21 A. Yes.

22
23 Q. And it has an attachment, "Report evaluation of the
24 efficacy of microcon version 1 KDR feedback"?

25 A. Yes.

26
27 Q. Then if we bring up FSS.0001.0011.1925. And this is
28 the document that Ms Rika then tracked comments into and
29 I'll just show you some of those comments. Can we go first
30 to p.1936. Do you see in the middle - if we just blow up
31 that paragraph in the middle of the page. You see this is
32 the paragraph in version 1 where you talk about the 1.45
33 per cent and 1.86 per cent?

34 A. Yes.

35
36 Q. And you see Ms Rika's feedback in red was:

37
38 *True but only relevant for volume crime,*
39 *not major crime where LR's (that's*
40 *likelihood ratios) can be calculated.*

41
42 A. Yes.

43
44 Q.

45 *The definition of success here is only*
46 *relevant for volume crime, not major.*
47

1 A. I think that the 1.45 per cent was based on the major
2 crime data and so that is relevant to the major crime data.

3
4 Q. I understand, but she specifically raised with you as a
5 criticism of version 1 of your report that looking at NCIDD
6 uplink or upload success was not relevant to major crime as
7 compared to volume crime?

8 A. I think that the view there was that it was more
9 relevant for volume crime simply because they are generally
10 no suspect cases.

11
12 Q. Let's go over the page. You see on 1937 - do you see
13 under figure 4 she says:

14
15 *Is the NCIDD outcome relevant? For*
16 *example, a profile might sit on NCIDD for*
17 *years and not link.*

18
19 And then you see, if we go a bit further down, she
20 highlights that whole text about NCIDD and then says:

21
22 *Only relevant if considering intel only*
23 *samples. For major crime we need to think*
24 *about how many samples gave good LR's but*
25 *no upload.*

26
27 A. Yes, so that's correct.

28
29 Q. So she specifically drew your attention to this absence
30 of information and she did that on 3 January 2018?

31 A. Yes.

32
33 Q. So, again, this wasn't, it wasn't something that you
34 didn't think about, because it was brought specifically to
35 your attention?

36 A. Yes, and I thought that it was explained elsewhere in
37 the paper around the 10 per cent and the 90 per cent.

38
39 Q. Now, we've looked at version 1 of the report. This is
40 the comments on version 1 of the report. She's
41 specifically drawing your attention to the fact that it's
42 not providing information about what matters in the case of
43 major crimes, which is likelihood ratios, which is
44 something that's calculated by matching to reference
45 samples?

46 A. Yes.

1 Q. And what I'm suggesting to you is, and you tell me if
2 you disagree, this point having been specifically drawn to
3 your attention on 3 January 2018, the only explanation for
4 why you would not have sought to include that information
5 in either version 2 of the report, which you prepared and
6 circulated five days later, or in the options paper, which
7 you circulated to police within the following month, is
8 because you chose not to include that information?

9 A. I think, as I've mentioned, it's not, it was not a
10 deliberate omission, I think that on reflection I should
11 have made that clear and should have included that
12 specifically within the options paper.

13
14 Q. If you go to p.1994. So this is the conclusion and the
15 recommendation that was offered?

16 A. Yes.

17
18 Q. You don't really say, do you, that Ms Rika was
19 supportive of a recommendation to cease the auto-microcon
20 process for priority 2 samples?

21 A. I think based on the data it was ceased, so ceased with
22 the following exceptions of the following P2, so she wasn't
23 supportive, correct.

24
25 Q. She was only supportive of ceasing auto-microcon for P3
26 samples?

27 A. I believe so, yes.

28
29 Q. She was excluding priority 1 and priority 2 samples?

30 A. Yes.

31
32 Q. And then in recommendation 4 she amends the
33 recommendation to say:

34
35 *Re-analyse priority 2 samples in the range*
36 *after a six month period using non intel*
37 *criteria to assess the results.*

38
39 That is, she is again returning to that point that you're
40 using the wrong criteria to assess priority 2 samples?

41 A. Yes.

42
43 Q. And I'm interested then in understanding, and maybe
44 your explanation is you just haven't gone back to look at
45 the feedback, but how you could have said that you thought
46 it was generally positive after version 1 of the paper?

47 A. That was the view that I took in looking back at where

1 I addressed these points within my feedback with my track
2 changes back to these points. If you've got that document?

3
4 Q. You want to look at your response to Ms Rika?

5 A. Yes, if you do --

6
7 Q. Can we bring up FSS.0001.0001.0834. So this I think is
8 your response to Ms Rika's feedback. So if we go - I might
9 need to do this by page numbers. So perhaps if we go
10 first - we'll go to the end. So can we go to p19 of the
11 document. So you've responded to her comment on item 2 by
12 saying "have re-evaluated ranges"?

13 A. Yes, I did.

14
15 Q. And you responded to her comment to number 4 by saying
16 "have re-evaluated ranges"?

17 A. Yes.

18
19 Q. And then if we go to p11 of the document. We should
20 probably go to the preceding page. So you respond to one
21 of the comments she makes there about implying the reason
22 for success?

23 A. Okay, so that is in relation to re-works, so that was
24 some data that I did within that version looking at the
25 number of re-works that were conducted for samples in this
26 range that had an auto-microcon first. The re-work section
27 was removed.

28
29 Q. And if we go to the next page. So where you say "see
30 above", that's referencing back to the re-working point?

31 A. Correct.

32
33 Q. And then if we go down the page where she raises her
34 point about relevant for volume crime rather than major
35 crime, you say "warm links are captured here"?

36 A. Yes, so that's warm links within that NCIDD work and
37 the LR values, the percentage there.

38
39 Q. But you knew, didn't you, that warm links is NCIDD
40 uplink, upload, and on top of that it being matched to
41 somebody who's already known to the case?

42 A. Yes. So --

43
44 Q. And if we go to the next page you see her fundamental
45 point which is:

46
47 *Only relevant if considering intel only*

1 *samples for major crime. We need to think*
2 *about how many samples gave good LR's but*
3 *no upload.*
4

5 And you say "captured in warm link data". That's not
6 correct though, is it?

7 A. It is. That's the data that matches to the reference
8 samples, so that's the 10 per cent.
9

10 Q. Is it both NCIDD uplink and also there's a match to
11 somebody who is already a reference sample?

12 A. Okay, so yes. So warm link being - I guess the word
13 "link" there is for the database, matching to somebody, a
14 reference sample for that case.
15

16 Q. It doesn't address the point that Ms Rika was making,
17 which is that, as you well knew, for major crimes the most
18 common situation is you just make a match to a reference
19 sample?
20

21 THE COMMISSIONER: Irrespective of the database?

22 A. I thought it did because I did explain around the add
23 in 9.4 per cent. So meaning the 10, approximately 10 per
24 cent that runs suitable. If you scroll up, I think.
25

26 MR HODGE: What is it there you're pointing to?

27 A. Okay. So there is NCIDD warm link but there's also I
28 guess, and that's what I haven't explained there more
29 around the warm link, and it's is the reference sample
30 matching which is part of the 10 per cent.
31

32 Q. Sorry, Mr Howes, I don't understand what you're saying.
33 You understood that the point being made by Ms Rika was
34 that for major crime what needs to be thought about was how
35 many samples gave good likelihood ratios but no upload.
36 Those are the words that she used?

37 A. Right, and then - look, I see your point, whereas then
38 I replied back with "warm link" which has the inference
39 with NCIDD. I should have explain that DLR value - the
40 value of the LR matches, the likelihood ratio matches, is
41 found within the 10 per cent, I should have made that
42 clearer.
43

44 Q. Now, tell me if you agree with this: her point is how
45 do you actually judge whether this is a good idea? It
46 should be based not on what she refers to as intel, which
47 is NCIDD uplink, it should be based on this likelihood

1 ratio which means to matching to reference samples?

2 A. Yes, that's a point.

3

4 Q. And you don't, when you come to redraft the paper and
5 then prepare the options paper, you don't in any way seek
6 to bring that to the attention of the reader?

7 A. No, I should have made that clearer.

8

9 Q. What I'm suggesting to you is it must have been that
10 that was deliberate?

11 A. I don't, I don't believe so, Mr Hodge.

12

13 Q. And one of the other points that was made in the
14 document that the Commissioner was asking you about, which
15 is the join feedback from Ms Rika and Ms Reeves, is that a
16 partial profile can also be relevant in relation to a major
17 crime?

18 A. A partial profile, yes.

19

20 Q. Because it might be a way of excluding a suspect?

21 A. Yes.

22

23 Q. And, again, do you say that's information that you put
24 in your options paper?

25 A. It's part of the suitable profiles. So if something
26 has been interpreted, whether it's partial or complete, if
27 it's been interpreted to be able to be matched to
28 something, whether that's a reference sample or to the
29 database, that's within the definition of the success.

30

31 Q. I see. I want to move to another part of this saga.
32 Can we bring up FSS.0001.0011.2115. You see this is a
33 chain of emails and the earliest email in time is an email
34 from Superintendent Freiberg to Ms Allen and it says:

35

36 *Hi Cathie and Paul. Thank you for your*
37 *time this afternoon.*

38

39 Et cetera. And then it says:

40

41 *As discussed, I am in agreement that.*

42

43 And then it has some bullet points?

44 A. Yes.

45

46 Q. And you see number two is:

47

1 *Option 2, cease the auto-microcon process*
 2 *for priority 2 casework. Would appear to*
 3 *be a more productive and efficient choice.*
 4

5 A. Yes.
 6

7 Q. And Ms Allen forwards this email on to you that
 8 afternoon, we can see that at the top?

9 A. Yes, that's right.
 10

11 Q. And she says:
 12

13 *I will send out further information to*
 14 *management team but I will not be sending*
 15 *the below email. This is just for your*
 16 *information only at this stage.*
 17

18 A. That's right, yes.
 19

20 Q. Did you have an understanding of why Ms Allen wasn't
 21 going to send out the email?

22 A. No, I don't know if it's marked as confidential, I
 23 don't know.
 24

25 Q. When you look at the email, when you saw the email from
 26 Superintendent Freiberg and she was saying "I am in
 27 agreement that", and then sets out some points, did that
 28 surprise you?

29 A. I can't recall at that time, no.
 30

31 Q. Who did you think she was agreeing with?

32 A. I don't recall even thinking about that word.
 33

34 Q. Did you believe that Ms Allen was going to be neutral
 35 as between the two options?

36 A. Yes.
 37

38 Q. Why?

39 A. I just think that that was the case. I think that that
 40 was, the point of an options paper there was to provide the
 41 two options.
 42

43 Q. Did you discuss it with her beforehand?

44 A. Not before, directly before going to the meeting, but
 45 we did discuss it in that meeting though, spoke about it.
 46

47 Q. That is back on, some time between the 9th and the 12th

1 of January you had a discussion about doing it as an
2 options paper?

3 A. Yes.

4
5 Q. And you say at that meeting you discussed it being
6 neutral?

7 A. I believe so, to take out the recommendations and to
8 present the options to police.

9
10 Q. And just, I want to make sure that I'm understanding it
11 though. Is it your evidence that you actually remember the
12 three of you, Ms Brisotto, Ms Allen and you discussing that
13 you would do it neutrally?

14 A. Yes, that's my recollection.

15
16 Q. And so does that mean you remember why you were going
17 to do it neutrally?

18 A. I think because the insight that was shared by Paula
19 was that, look, it's not for us, it really is - these are
20 considerations or these are options that we really need to
21 put to the police.

22
23 Q. And again, just do the best you can for us: why would
24 you have suddenly accepted that it was not for you to put
25 forward recommendations when you'd been running a project
26 for, by then, seven months designed to put forward
27 recommendations?

28 A. I think at that time it's really - just think about it.
29 Let's just think about these as options to put forward and
30 not recommendations.

31
32 Q. And then if we bring up FSS.0001.0011.2147. You see
33 this is a chain of emails between you and Ms Brisotto and
34 Ms Allen?

35 A. Yes.

36
37 Q. And this is on the Monday after the email you received
38 from her on the Friday that we looked at a moment ago?

39 A. Yes.

40
41 Q. And you see that Ms Allen writes to you and Ms Brisotto
42 and says:

43
44 *Regarding the options paper, my intention*
45 *was to email management team letting them*
46 *know that the options paper was presented*
47 *to the QPS and that they have elected*

1 *option 2 for us moving forward and I was*
 2 *going to attach the options paper. Do you*
 3 *see any issues with this?*
 4

5 A. Correct.
 6

7 Q. Did you understand why Ms Allen was asking you whether
 8 you saw any issues with attaching the options paper?

9 A. I think she was just asking whether we saw any issues,
 10 just to identify if there was anything in our mind.
 11

12 Q. You see the response by Ms Brisotto in the middle of
 13 the page is to say:
 14

15 *The options paper shows information that*
 16 *was presented to the QPS. Did not offer*
 17 *opinions or recommendations, only options*
 18 *for them to consider. The decision is*
 19 *there theirs (so to speak).*
 20

21 A. Yes.
 22

23 Q. Did you understand why Ms Brisotto was saying those
 24 things?

25 A. I think she was just giving her reason, that the
 26 options paper shows the information that was presented.
 27

28 Q. Did you understand when you read Ms Allen's query as to
 29 whether the options paper should go out, and Ms Brisotto's
 30 response, why it would be relevant to deciding whether to
 31 send out the options paper that it showed the information
 32 that was presented but did not offer opinions or
 33 recommendations?

34 A. Sorry, can you please ask that again.
 35

36 Q. Yes. I'm trying to understand whether when you read
 37 this chain of emails you could understand why, in response
 38 to Ms Allen's question, about whether she ought to send out
 39 the options paper, Ms Brisotto was writing back to say,
 40 well, I think the options paper shows information but
 41 doesn't present opinions or recommendations?

42 A. Yes, I think that's Paula's explanation, that the
 43 options paper, it is what it is.
 44

45 Q. You understood, didn't you, that what Ms Brisotto was
 46 saying was we should send out, we can send out the options
 47 paper because for the senior management team it won't

1 suggest to them that recommendations were made to the QPS?

2 A. Yes, that's right.

3
4 Q. Because you understood that it would be controversial
5 with the senior management team if they thought that
6 recommendations were made?

7 A. That's because, yes, they hadn't signed that off,
8 that's right.

9
10 THE COMMISSIONER: I'm sorry, Mr Hodge. Does it get down
11 to this, that in late 2017 and early 2018 the atmosphere at
12 the laboratory was very bad and that you had a sense that
13 there was a split in the camps and that you had the
14 impression that Ms Rika and Ms Reeves, to take two people,
15 were combative against you and Ms Allen and Ms Brisotto and
16 that the criticism that Ms Rika and Ms Reeves put into the
17 documents when they returned them to you were regenerated
18 by that kind of antagonism, rather than by what would have
19 come from a cooperative scientific attitude and so knowing
20 or believing that you wouldn't get them to agree, that they
21 would just obstruct you, it was best to proceed in a way
22 that would get you where you wanted to go, which is to
23 achieve the result that you did achieve, and so it was
24 important for that reason to ensure that they could never
25 say that the laboratory had put forward as its position
26 that this ought to be done, rather you had to leave it up
27 to the police to make a decision so that nobody could
28 complain that this was a process advocated by the lab
29 without the support of the management team and so for that
30 reason then, there was sensitivity about whether the
31 options paper should be shown to the staff, including
32 people who you regarded as your opponents, and there was
33 sensitivity about ensuring that, as Ms Brisotto put there,
34 the options paper could be shown because nobody will find a
35 recommendation in it or an opinion in it and so nobody
36 could accuse you of representing something to be the view
37 of the lab when it wasn't. Is that the reason for all
38 this?

39 A. I think that's a fair summary, yes.

40
41 MR HODGE: Can we bring up FSS.0001.0011.2119. See this is
42 an email from Ms Allen to the senior management team sent a
43 little later that morning on 5 February?

44 A. Yes.

45
46 Q. And you see she attaches the options paper and she
47 says:

1
2 *The superintendent has indicated verbally*
3 *and by email that the QPS's preferred*
4 *option is option 2. No automatic*
5 *concentration of priority 1 or priority 2*
6 *samples.*

7
8 A. Yes, I can see that.

9
10 Q. This email, was this the first time that you had seen a
11 suggestion that you would cease automatic micro
12 concentration of priority 1 samples?

13 A. Yes, I believe it is.

14
15 Q. And you know we've looked at the email, it wasn't in
16 the email that had come from the superintendent?

17 A. That's correct.

18
19 Q. And you knew that you and Ms Brisotto had the email
20 from the superintendent but the other members of the senior
21 management team didn't have it?

22 A. That's correct.

23
24 Q. When you got this email were you surprised then to see
25 the suggestion that you were going to cease automatic
26 concentration of priority 1 samples?

27 A. I don't remember what was, what I thought at that time,
28 but, look, it also mentioned it was indicated verbally or
29 by email, so perhaps there was a verbal mention of
30 priority 1.

31
32 Q. I'll show you another email. Mr Ryan then followed up
33 with you. So if we bring up FSS.0001.0011.2149. You see
34 he sends an email to you and says:

35 *I'm putting in the VSTS request to change*
36 *quant transition. Is auto mic ceasing for*
37 *P1 and P2 as per Cathie below or just P2 as*
38 *per options paper?*

39
40 A. Yes.

41
42 Q. So he was directly raising with you that ceasing P1 as
43 well was not what was the second option in the options
44 paper?

45 A. Yes.

46
47 Q. And did you respond to him?

1 A. I don't know, I don't remember.

2

3 Q. Did you speak to Ms Allen to understand what had
4 occurred?

5 A. I don't recall, I don't know.

6

7 Q. You just have no recollection of it?

8 A. No.

9

10 Q. Have you since then turned your mind to the question of
11 how it was that the lab was ceasing auto micro
12 concentration for P1 samples?

13 A. No. Look, at that time - look, I really, I really
14 can't remember.

15

16 Q. Was it the case that for - when you were using Profiler
17 Plus, that you were not using the DIFP process for P3
18 samples?

19 A. Correct.

20

21 Q. And so was it the case that if you were to take the end
22 of 2017, at the end of 2017 you weren't using DIFP for
23 anything?

24 A. That's correct, yes.

25

26 Q. And so at the beginning of 2018 what was going to
27 happen, potentially happen, were two things: one was you
28 were going to switch to using PP21 for P3 samples and in
29 doing so you would want to switch back to doing what you'd
30 been doing some years earlier, which was using the DIFP
31 process for P3 samples?

32 A. Yes.

33

34 Q. The other thing that you were proposing was to cease
35 auto-micro concentration for P2 samples?

36 A. Yes, that's right.

37

38 Q. And so do you remember whether - what was actually
39 happening at the time was that you need, that is the lab
40 needed to go back to police to reconfirm that you could
41 cease auto-micro concentration for P3 samples in the DIFP
42 range along with asking them whether they would agree to
43 Option 2 for P2 samples?

44 A. I'm not sure if that conversation happened.

45

46 Q. I'm just wondering is it possible that what happened
47 was that there was an error made and that that email that

1 Ms Allen sent out referred to ceasing for P1 and P2 when it
2 should have said ceasing for P2 and P3?

3 A. At that point in time we were still using Profiler Plus
4 I believe for P3, so I think because of that I don't think
5 there was an error.
6

7 Q. Okay?

8 A. In relation to the P2 and P3 instead of P1 and P2.
9

10 Q. Do you know then how it is that the Superintendent
11 agreed to extend the ceasing of micro concentration to P1
12 samples?

13 A. No, I don't.
14

15 Q. Is that a convenient time, Commissioner?
16

17 THE COMMISSIONER: Yes, we'll adjourn until what time,
18 Mr Hodge?
19

20 MR HODGE: 9.30.
21

22 THE COMMISSIONER: 9.30, does that suit everybody? 9.30.
23

24 <(THE WITNESS WITHDREW)
25

26 AT 4.31PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 26
27 OCTOBER 2022 AT 9.30AM