COMMISSION OF INQUIRY
INTO FORENSIC DNA TESTING IN QUEENSLAND

Brisbane Magistrates Court
Level 8/363 George Street, Brisbane

On Wednesday, 26 October 2022 at 9.30 am

Before: The Hon Walter Sofronoff KC, Commissioner

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

<JUSTIN ANTHONY HOWES, recalled, on former affirmation:
[9.32 AM]

THE COMMISSIONER: Mr Hodge.

MR HODGE: Thank you. Mr Howes, do you recall yesterday when we finished I was asking you some questions which were about Ms Allen's email saying that the police had agreed to discontinue auto microcon for both priority 1 and priority 2 samples?
A. Yes.

Q. I think at the end of the day, certainly the questions I was asking might have suggested to you that, would have suggested to you that I was suggesting that perhaps Ms Allen had simply made a mistake when she put P1 and P2, that she'd actually meant P2 and P3. Insofar as that might be in your mind, you can forget about that. I accept that it was a completely deliberate decision by Ms Allen to say P1 and P2, and I'll deal with that with her.

What I want to ask you about is your understanding of how it was that P1 was supposedly included. So tell me if you agree with this: you knew back in February of 2018 that P1 cases were the most serious and time critical cases for police?
A. Yes.

Q. And that meant they were beyond merely the very serious crimes that were in priority 2, they were ones that either fell within a particular classification of seriousness or were ones that the police deemed were of such importance that they were to be treated as the most urgent?
A. Yes.

Q. And the most needing to have attention to try to solve?
A. Yes.

Q. And you knew that the Options Paper had not recommended or had not suggested discontinuing the auto microcon process for P1 samples?
A. Yes.

Q. And you must have, I want to suggest to you, been at least mildly curious to understand how it was that the police had apparently decided to discontinue the auto microcon for P1 samples?

A. I think I was mildly curious, yes.

Q. And so did you ask Ms Allen about that?
A. I believe I did. I believe I did clarify as for P1 as well and my assumption was that was part of the discussion that I wasn't part of.

Q. You thought, from something she said to you, that it had been part of the discussion?
A. That's what I recall, yes.

Q. I want to try to understand that. You'd seen, unlike other members of the senior management team, you'd seen the email that Superintendent Freiberg had sent?
A. Yes, I did.

Q. And we can look at that again, but you know it doesn't mention anything about P1 samples?
A. Correct.

Q. Do you remember thinking about that at the time, that what Superintendent Freiberg had put in writing had only referred to P2 samples?
A. No, I think that it was, I think my interpretation was that was referring to that second option as it was written.

Q. I understand, but the second option was not discontinuing the auto microcon process for P1 samples?
A. Correct.

Q. And it might be, I think in fairness to you, it might be helpful if we bring up the email that was sent. Can we bring up FSS.0001.0011.2115. And I want to direct your attention to two parts of this. The first is at the bottom of the screen, when we look at the email from Superintendent Freiberg, you can see in the highlighted bullet point:

> *Option 2, cease the auto microcon process for priority 2 casework.*

A. Yes.

Q. And the first bullet point also refers to priority 2 cases?
A. Yes.

Q. And there's no reference to priority 1 cases?
A. Correct.

Q. And then if we go to the top of the page, the email from Ms Allen to you and Ms Brisotto forwarding that email from Superintendent Freiberg said that:

> *QPS have agreed with option 2, so we can proceed with that option.*

A. Yes.

Q. And you knew that option 2 didn't include ceasing the auto microcon process for priority 1 samples?
A. As it was written, yes.

Q. When you say as it was written, you mean the Options Paper, in describing what was option 2, didn't include ceasing the auto microcon process?
A. No, that's correct.

Q. And so it must have been the case that the first time that you realise that Ms Allen was claiming that the police had also agreed to discontinue priority 1 samples for auto microcon was when she sent that email to all of the senior management team?
A. Yes.

Q. And you knew, or you must this known, that that was not consistent either with the email that you'd seen from Superintendent Freiberg or what Ms Allen had email you by email on the Friday afternoon?
A. That's right.

Q. And so what I'm interested in understanding is: what did you come to understand was the way to resolve that apparent inconsistency?
A. Yes, look, as I've mentioned, I do recall clarifying to see whether that is also for priority 1. I can't remember what was exactly said but my feeling is it was something from the discussion that was had at QPS.

Q. Let me put that back to you to see if I've understood it. You're saying you think you must have spoken to Ms Allen and your feeling was that Ms Allen said to you that it was something to do with the discussion that she'd had with the QPS?

A. That was my feeling, yes.

Q. That is, that it was agreed orally and not put in writing?
A. That's what I - yes.

Q. Do you agree with me that at a minimum, at a minimum, in terms of proper process in dealing with what you regarded as the client, which was QPS, and process within the lab, that it is bizarre that a decision to cease the auto microcon process for priority 1 samples, the most critical samples, was never recorded in writing?
A. Well, whether it's bizarre - look, I just think that perhaps it was part of an oral discussion and wasn't put into writing.

Q. Did you say to Ms Allen:

Should you at least write back to Superintendent Freiberg and confirm that in writing.

A. I don't recall saying that.

Q. Did that thought occur to you?
A. I don't, I don't know, Mr Hodge. I can't remember.

Q. But when you reflect on this process, by which the police apparently agreed to this, do you regard it as an acceptable process for the proper functioning of the laboratory?
A. I think when I reflect, as you ask, I think that priority 1s as - I think it would be beneficial for priority 1s to have gone through the auto microcon process.

Q. I understand that, which is you, even when you drafted your versions of the Project 184 paper, and when you drafted the Options Paper, you had never put forward ceasing priority 1 samples for the auto microcon process?
A. That's right.

Q. So you didn't regard it as a good idea?
A. I thought that it would be better that they would proceed through the auto microcon as an indication that these are the most critical samples in the laboratory.

Q. And what I'm interested in understanding then is when

you reflect on the actual process that was adopted within the lab, do you regard it as an adequate process that an approach or a change was made that you would not have recommended and that was not recorded in writing?
A. I think it would certainly have been beneficial that it was recorded in writing.

Q. Did that occur to you at the time?
A. I don't think it - I can't remember if it did occur or not.

THE COMMISSIONER: Mr Howes, yesterday you said that there was a lot happening at that time?
A. Yes.

Q. Late 17, early 18. I think Ms Reeves' position was being addressed and dealt with. Was that at that time?
A. I'm not sure.

Q. What was happening at the time that made everyone so busy?
A. Look, there were a number of conflicts within the laboratory, Commissioner. Conflicts that - they weren't necessarily the positive conflicts that can be robust scientific discussions, they were more negative conflicts that are really interpersonal based and I guess lead to elements of distrust, discomfort, you know, water cooler conversations, that sort of thing. So there was a lot of that negative conflict around in the atmosphere at the time, absolutely.

Q. All right. I recall seeing an email that you sent to Ms Brisotto at the time that you were working to prepare the Options Paper, a couple of emails. One said something like:

I'll have my door shut today.

Do you remember that?
A. Yes, yes.

Q. What was that in relation to? What was the context of you sending that email? Do you remember your state of mind and what you were doing?
A. Look, I think that that was an approach to concentrate on the task at hand that I was doing and I believe that was to update to version 2 of the 184 Project.

Q. So for some reason you felt under pressure to get that done?
A. Yes, yes.

Q. Can you remember why?
A. I think, as I mentioned, upon reflection I thought it was to do with an interdepartmental meeting and I think that that was the time frame that I was working under.

Q. All right. And then I also saw an email that you sent to Ms Brisotto asking her, I think, to send you the latest version or something like that, and you said something like, "I'm exhausted". Do you remember sending that?
A. I do remember sending something, I can't remember the actual details. This is from my private --

Q. No, no, no. You're asking her --

MR HODGE: I think it is, Commissioner. I think Mr Howes' --

THE COMMISSIONER: From a Yahoo account?

MR HODGE: Yes, Mr Howes is talking about the email you're --

THE COMMISSIONER: I see, right. So it must have been from your private account at home?
A. Yes.

Q. And I just wondered whether your exhaustion had to do with work?
A. Absolutely, yes.

Q. Can you remember why it was that you were so exhausted that you'd say it in your email to Ms Brisotto?
A. Look, I'm not even sure whether there was also some sickness at that point. If I was home it would have either been for my children or for my myself.

Q. I see. So it might have been a combination of home pressures and work pressures?
A. Yes, but certainly my home pressures would have been just sickness, not any stress.

Q. No, I understand.

A. But certainly work stress was absolutely apparent and I was feeling a lot of work stress for a long time.

Q. A long time before that?
A. Yes.

Q. Was the source of that stress - I can understand that if the lab, if the people in the lab were in a state where they felt that there were camps, you know, that people were divided into camps, that that would create unpleasantness and stress. Were there any other stressors that you can recall, workplace stressors?
A. I think it's - look, I think - in my position, I feel I'm approachable and I have my door open most of the time, which is why I wrote to say the door would be shut. I think a lot of staff at that time were coming to say:

Look, I thought I'd let you know but I don't want you to do anything about it.

I think that in itself adds pressure. I mean I could have said if you don't want me to do anything about it, you know, perhaps --

Q. Don't tell me about it?
A. Correct. So I think that I took on a lot of that and that, I guess, became stress, an additional stress to me. But, yeah, look the atmosphere and the number of people who were feeling tense and anxious at that time was, was in a number of people. Now I make it clear, I don't believe it was in every team that was within Forensic DNA Analysis, but certainly around the people that I had dealings with daily.

Q. Because it seems to me in your answers to Mr Hodge, in your acknowledgements, in hindsight that you weren't thinking at your best at the time?
A. I think that's fair to say, Commissioner.

Thanks. Go ahead, Mr Hodge.

MR HODGE: Thank you, Commissioner. So just to return to this issue of priority 1. Can we bring up FSS.1000.0076.0951. Mr Howes, this is a chain of emails where you see at the bottom it's email from Ms Allen to everyone, that's the one we've looked at before?
A. Yes.

Q. Then can we go to the email at the top of the page. This is - you respond to Ms Allen that day and say:

Hi Cathie, option 2 has P1 proceeding with auto mic.

A. Yes.

Q. And then you go on to say:

Perhaps that point isn't crystal clear in the doc as (a) has two sentences where the second sentence has scientists order manually for other samples if wanting to rework.

A. Yes, I can see that.

Q. So just pausing on that. You picked up, it seems, immediately as well, that option 2 didn't include priority 1 samples ceasing auto microcon?
A. Yes.

Q. Then you see you then have a line which says "PTO fix". What does PTO stand for?
A. I don't know what that's referring to (indistinct) please turn over.

Q.

PTO fix, please retract. Add (b) before second sentence and re-send?

A. I don't know, Mr Hodge.

Q. Why don't we put that email up on one side of the screen and then on the other side of the screen can we bring up the Options Paper which is FSS.0001.0001.0891. And then can we go to the page .0900. What you're identifying, it seems, is that there might have been some ambiguity in the Options Paper because there's a subparagraph (a) which we can see in the screen which has two sentences, where the first sentence says:

Priority 1 samples could proceed with the auto microcon process.

And then the second sentence says:

> *If a DNA concentration rework is required the microcon process can be ordered manually by the scientist.*

A. Yes.

Q. And it seems like what you're doing is actually implicitly challenging Ms Allen, that is you're pointing out to her that option 2 wasn't intended to have auto microcon ceasing for priority 1 samples and you thought, giving presumably her at least the benefit of the doubt, that it might have been that there was some misunderstanding because of the text and you're suggesting that the text of the Options Paper be amended and resent so that it's clear that priority 1 samples would proceed with auto microcon?
A. I'm trying to (indistinct) it for you, Mr Hodge. Yes, I think I'm trying to show that I think that we need to be clearer with the P1s, were recommended to be part of this option anyway, to be part of an auto microcon process.

Q. Yes. And did you get a response from Ms Allen?
A. I don't know. I couldn't remember this, this email on 5 February.

Q. To your knowledge there wasn't a reissued version of the Options Paper that went to police?
A. That's right.

Q. And I know you've said you think that you spoke to Ms Allen and she told you something about the police having agreed at the meeting, but I just want to check that. Do you actually remember that as a discussion you had with her in February?
A. I do recall having a chat, yes.

Q. And so do you remember whether you discussed with her this potential ambiguity in the Options Paper?
A. I don't remember that, no.

Q. And do you remember whether anything further happened in relation to the issue in February of 2018?
A. No, I don't.

Q. You know, don't you, that no one went back to the police to check the issue?

A. I assume that nobody did because we proceeded with priority 1s.

Q. And you know, and we can come to this in due course, that when the police realised ten months later, or nine months later that you weren't doing auto microcon for priority 1 samples, they told you to start doing it?
A. Yes.

Q. Again, reflecting on it, and I accept that for whatever the reason was you may not have been reflecting on these things at the time, but reflecting on it do you accept that this is an unacceptable process within the laboratory to cease the auto micro concentration of priority 1 samples in these circumstances?
A. I think that we could have had a better work flow, yes.

Q. I just want to understand when "we could have had a better work flow", people will often say we could have done something better, that's almost always true, but it can be hard to acknowledge that what was actually done was not simply something that could be done better, it was something that was done in a way that was not acceptable practice. And my question to you is directly: do you accept that this is not acceptable practice?
A. In my opinion, yes, priority 1s would have been best to have been auto microconed.

Q. Even beyond that, beyond whether they ought to have been auto microconed, in order to have the police agree not to undertake auto microcon do you accept that this is not an acceptable way to go about it?

THE COMMISSIONER: What Mr Hodge is really asking you is do you accept now that it shouldn't have been done?
A. For my priority 1s?

Q. Yes?
A. Correct.

MR HODGE: Now, just while I'm on that, I take it that email that I've just shown you on the left-hand side of the screen, you hadn't looked at that in the course of preparing to give evidence?
A. No, I don't recall seeing that.

Q. We're interested in just understanding something about

the process by which documents were obtained and produced to the Commission. You know that for some months the Commissioner has been issuing notices that require documents to be produced?
A. Yes.

Q. And back in July of this year when notices were issued requiring documents to be produced that, for example, went to the preparation of the 2018 Options Paper and the implementation of the quantification thresholds following the 2018 Options Paper, can you just explain to us what the possess was within the laboratory for identifying those documents?
A. Okay. So with all of the notices that we've received to find information what we've tried to do is to search within our inboxes, sent items, to find, yes, key words and to see whether that meets what the notice is requesting, according to our interpretation of the notice.

Q. So was the process that staff within the laboratory were having to search their own inboxes?
A. If that went to staff, yes.

Q. If it went to Queensland Health, who then informed the laboratory of the notice, what was the process within the laboratory for obtaining the documents? Was somebody higher coming in and obtaining the documents or were staff being asked to undertake searches?
A. Yes, so staff were being asked. Okay, so at the beginning I guess - it went through a few stages. So at the beginning it was, there were meetings most morning, I believe, and if there was something that looked like it would have more, it involved more people, for example, a particular team or all teams, myself, Paula Brisotto, the other team leader, we'd identify, look, I think this might be something that you'd have to send to all staff, and that's the way that would then come out to all staff. Then I wasn't involved any further with those meetings, and that was around August, end of August, I believe, so then it was Paula who was holding that part of it and coordinating that part. So you mentioned July. So if you were mentioning July - is that correct, sir?

Q. Yes. Perhaps I'll just clarify a couple of things with you. One is was it the case that you were at some point in time perhaps more than once asked to search your own mailbox for emails?

A. Yes.

Q. And was it the case that when you identified emails you would then put them into a central repository?
A. Yes, we would try to package it - I think in July whether it was, we'd add it to a Teams location or we'd email something through to a dedicated email address and, yes, that was the process.

Q. And who then had access to that central repository?
A. I believe it was - I know myself and Paula did.

Q. And Ms Allen?
A. I think she did, yes.

Q. I'm interested then in this email. Did you at any stage do a search of your mailbox for the words "Options Paper"?
A. I think I would have tried to search everything that - microcon, for example.

Q. And do you remember finding this email?
A. I don't remember finding that. Maybe I did. I don't remember.

Q. If you'd found it, would there have been a reason why you wouldn't have produced it to the Commission?
A. No.

Q. And so is it the case - because I'll tell you how we found this email. An officer working for the Commission searched your mailbox for the words "Options Paper" and the date 5 February 2018 and found this email yesterday. But I'm just interested in understanding how it is that it wasn't produced to us earlier?
A. I explained, I guess within my search I didn't see it, didn't find it.

Q. I want to then understand - if we just jump forward in time - what happens at the end of 2018. The police raise an issue about the fact --

THE COMMISSIONER: Just before you move on, Mr Hodge. The email from Ms Allen that we looked at just a moment ago --

MR HODGE: Yes.

THE COMMISSIONER: -- what date was that, was that 2 February?

MR HODGE: Are you talking, Commissioner, about the one at the bottom of the screen?

THE COMMISSIONER: No, Superintendent Freiberg.

MR HODGE: That's 2 February, yes.

THE COMMISSIONER: Superintendent Freiberg sent that email?

MR HODGE: Yes.

THE COMMISSIONER: Ms Allen then forwarded it to Mr Howes and Ms Brisotto.

MR HODGE: On 2 February.

THE COMMISSIONER: On 2 February, thanks.

MR HODGE: And then on the morning of 5 February - we looked at this yesterday - this chain of emails, but also Ms Allen emails Ms Brisotto and Mr Howes to ask if they see any issue with sending the Options Paper off.

THE COMMISSIONER: On the 5th?

MR HODGE: On the 5th.

THE COMMISSIONER: Yes, thanks.

MR HODGE: Is it possible that you --

THE COMMISSIONER: Sorry, and on the 5th Ms Allen was asking whether it was in order to send the Options Paper. Is that what she asked in that email?

MR HODGE: Yes.

THE COMMISSIONER: Yes, thanks. Carry on, please.

MR HODGE: Is it possible that you did find the email in July or August and put it in a central repository, or you don't know?
A. I just don't know.

Q. Okay. Now, I want to then jump forward in time, and I'm apologising, I'm going to move forward and then come backwards, but I want to jump forward in order to understand or deal with this issue about P1 samples and the process within the laboratory. So at the end of 2018, as you know the police raise an issue about priority 1 samples?
A. Yes.

Q. And when that issue is raised did you discuss it - when that issue was raised did you discuss it with Ms Allen?
A. I'm not sure. I guess there might have been discussions. I don't have a clear recollection of that.

Q. Well, let's bring up FSS.0001.0051.4999. We can take down the email on the left-hand side of the page. So you see this is a chain of emails where the last email in time is from Ms Allen to you and Ms Brisotto on 15 November and she says:

> *Hi Paula and Justin. FYI - on latest email from Inspector Neville. Thanks Justin for finding that email for me - really helped me out.*

A. Yes.

Q. Do you know what email it was that you found for her?
A. No, I don't.

Q. We just noticed one other thing which is, you see Ms Allen says "FYI on latest email from Inspector Neville"?
A. Yes.

Q. And was it the case that she was keeping you informed of her correspondence with Inspector Neville?
A. I think, yes, with FYI, that's what that means, yes.

Q. Was it likely that you were having discussions with her at the time about this issue with Inspector Neville?
A. Yes, it's likely, yes.

Q. Is it your evidence, though, that you just can't remember now what the contents of those discussions were?
A. That's right, yes.

Q. Do you agree with me that at this time it must have

been obvious to you that something had gone awry in relation to the approval process if the police were surprised to discover that priority 1 samples were not being auto microconed?
A. Okay. I think that - so could you just rephrase that question again, please, or just ask it again, please.

Q. Yes. Do you agree with me that by this time, that is by mid-November 2018, it must have been apparent to you that something had gone awry with the process of obtaining the agreement of the QPS if they were surprised to discover that P1 samples were not being auto microconed?
A. I think it was either, as you suggest, something had gone awry or there'd been further reflection and that P1 should be part of the auto microcon process.

Q. Sorry, what was the - you said something had gone awry or?
A. It's either something had gone awry - to try to answer that question it's either, as you suggest, it could be that something had gone awry or that perhaps Queensland Police, because, remember, it's my understanding that was part of the agreement, that Queensland Police had wanted the priority 1s to be part of the auto microcon process.

Q. Well, tell me if you agree with this: it wasn't the case when the issue was first raised that the QPS were saying "We've changed our mind about it", they were expressing surprise to discover that there wasn't auto microconing of priority 1 samples?
A. Surprised in November?

Q. Yes?
A. I think that might have been the case, yes. Again, I don't have a clear recollection of that.

Q. Well, I'll show you. If we go to p.5001. So this is part of that chain of emails that Ms Allen is forwarding you for your information and you see that Inspector Neville says:

> *During the course of the investigation into Operation Clarify over 15 samples were submitted as priority 1.*

And then he notes that four came back as DIFP and if you look at the paragraph at the bottom of the screen you see

he says:

> *Could you also confirm if the microcon step has been removed from the work flow as a matter of routine for P1 samples. My understanding as per the below was that it was only to occur for P2. If this process has been removed from the P1 work flow, could it please be reintroduced as it will stop delays in obtaining results that are considered urgent, please.*

A. Yes.

Q. Did you read this email at the time?
A. I think I would have, yes.

Q. I want to suggest to you it must have been obvious to you that the police were not saying "We've changed our minds", the police, by Inspector Neville, were expressing surprise to discover that it seemed as if the auto microcon process had ceased for P1 samples?
A. Yes, it seems to be a surprise for Inspector Neville, yes.

Q. What I'm interested in understanding then is, it would seem that at this point, (a) you're discovering that Inspector Neville is surprised that there's been this change, and (b) you had always been of the opinion that this change was not one to be recommended anyway, do you agree?
A. It wasn't part of the options so, yes, I agree to that.

Q. So did you or anyone else suggest that the laboratory ought to look internally at the adequacy of its processes for dealing with police?
A. I can't recall if I suggested that.

Q. Do you think it's likely you did?
A. I really can't recall.

Q. Think about it in this way: how do you think Ms Allen would have responded if you'd said "I think we need to look at how you", because it was Ms Allen, "dealt with police"?
A. I don't know.

Q. You don't know?

A. No.

Q. You've worked with Ms Allen for a number of years?
A. Yes.

Q. More than a decade?
A. Yes.

Q. So you have a lot of experience with her management style?
A. Yes.

Q. You have a lot of experience with how she treats and deals with dissent?
A. Yeah, I guess, yes.

Q. How do you expect she would have reacted if you had said, "I think we need to look at how you have communicated with police"?
A. I really don't know because I can't imagine I would suggest something like that.

Q. Why not?
A. I just, I just don't know whether that's something that I would suggest to Cathie.

Q. But this is obviously a profound failure of communication?
A. Yes.

Q. At best, it's a profound failure of communication?
A. I guess the - one thing I'm trying to remember is whether Inspector Neville was present for the initial discussions. I'm not sure if he was.

THE COMMISSIONER: He wasn't .
A. Okay. So perhaps there is some communication link broken there as well. I'm not quite sure.

Q. I gather it wouldn't have occurred to you at the time, naturally, that P1 was included without the agreement of police?
A. Yes.

MR HICKEY: Could we just clarify the answer to the Commissioner's question please.

THE COMMISSIONER: My question was it would not have occurred to Mr Howes at the time, in 2018, when this email was forwarded for his information.

MR HICKEY: I just wanted to be clear that his yes is that, no, it wouldn't have occurred (indistinct words) --

THE COMMISSIONER: Yes, it would not have occurred to him. Yes, that's how I understood it, that it would not have occurred to him.

MR HICKEY: Thank you, Commissioner.

THE COMMISSIONER: Thanks Mr Hickey.

Q. That's what you meant?
A. Yes.

MR HODGE: Now if we then go to p.4999 and also bring up .5000 so we can see the email that Ms Allen sends back. So it's a long email but you'll see Ms Allen has replied and she's then forwarded it on to you and Ms Brisotto on the same day?
A. Yes.

Q. One minute after she sent it?
A. Yes.

Q. And if we blow up then the large body of text that's on the right-hand side, I want to ask you about some aspects of this. You see that she says:

> *During a meeting on 1 February Paul Csoban and I met with Superintendent Freiberg.*

And she says that:

> *During the discussion the second part of option 2, section A was discussed, which related it priority 1 samples and the superintendent indicated that priority 1 samples should be processes the same as major crime and volume crime samples which is not to be automatically progressed through the microcon process.*

A. Yes, I can see that.

Q. And was that the first time that she'd provided that information to you or had she told you that at an earlier time?
A. I think, as I mentioned before, I think it was a conversation where I had asked about the priority 1, is what I had recalled. So this is in writing then.

Q. This is her putting it in writing?
A. Yes.

Q. And then you see that in the next paragraph says:

> *Automatic progression of samples through the microcon process means that all available DNA extract will be consumed so no further testing can be conducted on these samples after this step.*

A. Yes, I can see that.

Q. At the time that Ms Allen said that was that statement true?
A. Not entirely.

Q. When you say "not entirely", it's binary, isn't it, it's either true or it's untrue. It was untrue?
A. After the first amplification after the microcon, it's untrue.

Q. Now, I'm not sure I understand what that means. Ms Allen has stated baldly to the police:

> *Automatic progress of samples through the microcon process means that all available DNA extract will be consumed.*

So she is setting up that as between the choice between auto microconing and not auto microconing, if you auto microcon then the consequence is that all of the available DNA extract will be consumed?
A. Yes. So it is saying that with that automatic progression, that it will be consumed, correct.

Q. That it will all be consumed?
A. Yes.

THE COMMISSIONER: The auto microcon process as it existed before February 2018 was that all samples within that range were microconed to 35 microlitres?
A. Approximately that, yes.

Q. Approximately that?
A. Yes.

Q. And so it wasn't a discretionary matter, it was a case of a standard process being adopted for samples with the low quants, microcon step to around 35, which means that a portion of the sample is always retained?
A. Yes.

Q. And the process can be done again if you have to?
A. Correct.

Q. And it follows then that to say that the automatic progression of samples through microcon means that the sample is exhausted is not true because the auto microcon process meant that part of the sample was retained?
A. That's right, it's not re-amplified after that, correct.

Q. So to tell police:

Automatic progression of samples through the microcon process means that all. Available DNA extract will be consumed.

And if you would pay attention to the word "means", it follows that that statement's not true, doesn't it?
A. As it is there, correct.

MR HODGE: You see that the further words in the sentence are:

So no further testing can be conducted on these samples after this step.

A. Yes.

Q. And do you agree with me the potential explanation you offered, which is:

Well it would all be consumed if it went through micro-concentration and

amplification once and then you went through another step of a further amplification and that would all consume it.

That possible explanation is ruled out by those words there which say:

So no further testing can be conducted on these samples after this step.

Because it is saying at the first auto-micro-concentration that would be the end of it?
A. You're right, yes.

Q. I want to suggest to you you must have known at the time that that was not true?
A. Look, I can't remember. I mean I really can't remember to answer that question.

Q. Let me phrase the question in a more general way. Again having worked with Ms Allen over a number of years and been copied into or forwarded communications that she's had with other people, have you formed a view about whether she is consistently truthful with people and the things that she says to them?
A. I think that she is.

Q. So can you explain how it could be that something like this, which you know is untrue, could be sent to police?
A. I think that she - look, in reading that I think that she just got the details wrong.

Q. You think she got the details wrong?
A. I think that she thought that perhaps the auto-microcon did completely exhaust the sample.

Q. Did you ask her about that at the time?
A. I don't recall if I did.

Q. We'll come back to an email. You see then that it says in the next paragraph:

As the decision on the automatic microcon process was made last financial year the budget for this financial year has been adjusted for that consumable so this will

increase the cost.

A. Yes, I can see that.

Q. Do you know whether that was true?
A. I don't know, I don't look at the financials.

Q. Are you aware of what the arrangement is between the QPS and the laboratory as to how the testing - I'm sorry, how the extraction of samples from crime scenes works?
A. Am I - sorry, am I aware of --

Q. Yes, are you aware of how the arrangement for payment in relation to the extraction of profiles from crime scene samples works?
A. Yes, I believe there's a sum of money relating to volume crime.

Q. To volume?
A. I believe so, yes.

Q. Do you know how the extraction of samples for P1 samples works?
A. No, I don't think that there is a specific.

Q. I see. And then you see then Ms Allen goes on to say:

If the QPS wishes the P1 samples to be automatically processed through the microcon process, which leaves no available extract for other testing, this process can be reintroduced. Please confirm if the QPS requires the reintroduction of this step.

A. Yes.

Q. You tell me if you disagree with this, but reading this email it's quite obvious that Ms Allen is seeking to discourage the police from asking for the reintroduction of auto-microcon for P1 samples?
A. No, I think that she's suggesting that it can be done and I think it speaks about - well I guess a couple of things there. That P1s, I think it's confirming that she misunderstood the process in the complete consumption of the extract.

Q. Sorry, just to come back to my question. When you read

this email do you honestly --

THE COMMISSIONER: I don't know that Mr Howes has had a chance to read it all.

MR HODGE: I'm sorry, would you like to read all of the email, Mr Howes?

THE COMMISSIONER: Just take your time and read it because Mr Hodge is going to ask you questions about it?
A. Okay. Thank you.

MR HODGE: What I'm asking is whether reading this email you agree that Ms Allen was seeking to discourage the police from asking for the reintroduction of the auto-microcon process for priority 1 samples?
A. I don't read it that way. I think she's just providing a lot of information around the process.

Q. You think it's not directed, it's not constructed to discourage them from seeking it?
A. Look I don't think it is.

Q. You think when it says:

> *If the QPS wishes for P1 samples to automatically be processed through the microcon process, which leaves no available extract for other testing, this process can be reintroduced. Please confirm if the QPS requires the reintroduction of this step.*

You think it's neutral?
A. I think she's identifying a potential risk according to her understanding of what the automatic microcon process was, in that the risk is that there's no available extract for testing.

Q. Does she say anywhere in this email so far as you can see what is lost by not auto-micro-concentrating?
A. No.

Q. You see in that second-last paragraph she says:

> *Whilst the microcon process has not been automatically applied to major crime samples since mid-Feb, scientists have*

reviewed those results and requested a microcon process if in the context of the case it could have been of potential benefit.

A. Yes.

Q. Is that statement or was that statement at the time true?
A. Yes. Scientists do have the ability to perform microcons if they see the case as requiring it.

Q. No. The sentence says:

Whilst the microcon process has not been automatically applied to major crime samples since mid-Feb, scientists have reviewed those results and requested a microcon process if in the context of the case it could have been of potential benefit.

I'm asking you if that sentence is true or was true at the time?
A. Okay. I guess if that's referring to all of the results that have not been automatically microconned, I don't believe that's true, no.

Q. When you say if it's referring to all of the results, do you think it's true if it was referring to the majority of the results?
A. I don't think so, no.

Q. Do you think it could only be true in the sense that there might be some results that had been deemed DNA insufficient and if they had gone through to a reporting scientist because they went through with other results that were not DIFP, that in that circumstance it was possible that a scientist had reviewed the results and requested a microcon process?
A. Yes.

Q. Do you agree with me that would be at best a fraction of the samples that were deemed DIFP?
A. I don't know the data but I think that's a reasonable point you make.

Q. I want to suggest to you when you read this email you could not have thought that that sentence was true?
A. I can't remember what I was thinking at that time.

Q. I want to suggest to you that the only way of understanding - I withdraw that. I want to suggest to you that what you must have understood at the time on reading this email was that Ms Allen was providing a false assurance to police that DIFP samples were being reviewed and therefore continuing with the DIFP process was not a risk?
A. I think that it's showing that she misunderstood the process.

Q. You understood the process so did you tell her:

You know, Ms Allen, that's just wrong".

A. I can't remember if I did.

Q. Have you ever said to Ms Allen:

What you're saying to someone is wrong.

A. I think I have over the course of many years.

Q. Can you give us an example?
A. I can't. I can't give you an example.

Q. Have you ever told Ms Allen that you consider the way that she's treated a member of staff to be inappropriate?
A. No, I don't think I have.

Q. Have you ever thought that the way that Ms Allen has treated a member of staff was inappropriate?
A. I don't - I don't have any specific recollections of something like that.

Q. Have you ever turned your mind to the way in which Ms Allen has treated members of staff?
A. I often think about the pressures involved in that position and the, you know, the difficulties in dealing with people in that role. So that's where I have turned my mind to that.

Q. And just explain that, what do you mean by that, the difficulties involved in that role?

A. I just think that there is a lot of pressure involved in that role and having done that role in some acting capacities.

Q. Does that mean there are behaviours that Ms Allen has demonstrated that you have explained to yourself as her responding to the pressures of the role?
A. No, I think that what I'm trying to explain, perhaps not that clear, is that I think with that role there is a lot of stress involved in that particular role and if that has exacerbated and come out in some way that people have interpreted as, you know, negative well then I can understand that stress having that effect.

Q. Yes, I just - if you can be as clear for us as you can. When you say you've often thought about that, what that seems to suggest, and this is what I'm interested in understanding, is that Ms Allen has behaved in ways that you regard as inappropriate but in your own mind you've explained that on the basis that she is under a lot of stress?
A. Look, I can't remember examples but I just know that there is a lot of stress in that role and that can manifest in some ways, and if that's been interpreted as negative well then I can understand that.

Q. Have you ever challenged Ms Allen in any way about her behaviour?
A. Not about behaviour, no.

Q. Have you ever challenged Ms Allen in any way about her knowledge of the science?
A. I'm sure I would have clarified on some points. At this point I can't remember if I have.

Q. This email contains two statements to police that you know and agree are not true?
A. I can see that.

Q. She forwarded her email to you so you knew about the statements that were made to police?
A. Yes.

Q. I want to try to understand, accepting for the moment that you don't have a specific memory of it, is it likely that you would have challenged Ms Allen on the fact that she has made two statements to police that you know are not

true?
A. I think I might have raised - I really can't remember with this situation.

Q. You know, don't you, that you didn't raise it with her?
A. No, I don't know. I don't have a recollection.

Q. Is it the case that you're being honest with the Commissioner you would accept that you know that if you had raised it with her she would have reacted extremely negatively to it?
A. I don't think so.

Q. Can you explain why it is that these statements to police were never corrected?
A. No, I can't explain that.

Q. Could we go to earlier in the chain, which is - if we bring up .5002. So just explain what you're seeing on the screen here. What's in the bulk of the top two-thirds of the screen is an extract or an image I think that Inspector Neville has taken of the email from Superintendent Frieberg to Ms Allen, which as you know nine months earlier Ms Allen had forwarded to you. But do you see at the bottom of the screen there's some more text from Inspector Neville where he says:

> *The removal of the microcon step in the process was agreed to on 2 February 2018 by Superintendent Frieberg based on the advice included in the attached paper.*

And the attached paper is the Options Paper, and you see he says:

> *This paper estimates that there would be less than a 2 per cent reduction in the number of usable results if the step was eliminated.*

A. Yes.

Q. Then he goes on to say:

> *Based on the fact that three out of four samples for this case yielded a result when testing was continued, anecdotally it would*

seem that we may be missing out on more than 2 per cent of results.

A. I can see that, yes.

Q. Again, you tell me if I'm right in thinking you must have read this email tennis that was occurring between Ms Allen and Inspector Neville when she forward it on to you?
A. I don't recall reading this part at the bottom of the email. Maybe I did.

Q. Do you agree with me what Inspector Neville is indicating as the understanding or his understanding of what the Options Paper shows is not accurate, that is the Options Paper does not show that there would be a less than a 2 per cent reduction in the number of usable results if this step was eliminated?
A. Yes, the Options Paper doesn't speak about 2 per cent of this, more of the 10 per cent.

Q. You know, don't you, that the less than 2 per cent is a reference either to the 1.45 per cent or the 1.86 per cent which is about NCIDD upload?
A. I'd assume that, yes.

Q. What I want to suggest to you is at the latest you must have realised in November that the police had been misled by the way in which the Options Paper was constructed into thinking that what they would miss out on was less than 2 per cent of usable results, rather than what you believed to be the truth which was 10 per cent of usable results.

THE COMMISSIONER: Mr Hodge isn't putting to you that you misled anyone or Ms Allen misled anyone, at least not yet. What he's putting is that you can see from that email that police had been misled in the sense that they had a mistaken view about the content of the Options Paper, the mistake being that the paper stated or represented that there would be a 2 per cent reduction in the number of usable results, whereas we know that the paper stated there would be a less than 2 per cent in uploads with cold links?
A. Yes.

Q. That's what he's putting to you, that objectively one can see police had a wrong belief, that they read the paper and concluded something wrong, that's what's being put to

you?
A. It seems to be a misunderstanding, yes.

MR HODGE: When you say it seems to be a misunderstanding, the misunderstanding, do you agree with me "obviously arose from the way in which the Options Paper was drafted"?
A. It must have arisen from there, yes.

Q. And the way in which the Options Paper was drafted was to suggest that the pertinent value was based on NCIDD upload?
A. Yes.

Q. And that was your drafting?
A. That's right.

Q. And it was drafted in that way so that the reader would think that what was of significance that was being missed out on was less than 2 per cent?
A. It was drafted in that way to outline the risk to NCIDD if the option was chosen.

Q. Yes, but tell me if you agree with this: you could have chosen to draft the paper to make clear that what would be missed out on was about 10 per cent of usable profiles?
A. I think yesterday, yes, I accepted that that's what could have been made clearer within that draft.

Q. And you chose in drafting it to instead focus on less than 2 per cent of NCIDD uploads?
A. I did choose that, yes.

Q. It seems that at least by November you must have realised that those choices that you made had led to the police misunderstanding the consequence of the decision that they'd made?
A. I think that, yeah, around that time I think I would have seen that no, no, it's actually 10 per cent and not the 2 per cent.

Q. And so did you say to Ms Allen, "We should tell the police this"?
A. I can't recall whether I did. I might have.

Q. Do you think you did?
A. I don't know.

Q. Have you got any record of having done so?
A. I don't know, Mr Hodge.

Q. I want you to think about this because we're going to come in due course to documents that you drafted this year. When you drafted the documents this year did you focus on usable profiles?
A. Okay, which --

THE COMMISSIONER: That question's a bit broad, Mr Hodge.

MR HODGE: I'll put it in a slightly different way because I just want to be careful and I want Mr Howes to be very careful in answering my question. By the end of last year Inspector Neville was saying:

> *When we're requesting the re-processing of DIFP we're getting 30 per cent of samples with a profile.*

Do you recall that.
A. Yes.

Q. And throughout the beginning of this year he was saying:

> *We're getting 30 per cent, sometimes higher.*

A. Yes.

Q. He eventually got to the point of saying to you:

> *For some sexual assault cases we're getting 66 per cent.*

A. I think that was mentioned.

Q. And when Inspector Neville would write to you on those occasions and say:

> *We're getting 30 per cent.*

He would contrast that with what he understood to be the predicted outcome from the Options Paper which was less than 2 per cent?
A. Yes, I do recall that.

Q. It must have been obvious to you at that time that when he was talking about 30 per cent he was not talking about the same measure that you used to arrive at less than 2 per cent?
A. Yes, I think it did become obvious to (indistinct).

Q. And it must have been obvious to you that what he was concerned with was the percentage that you knew mattered for priority 2 cases, which was matching crime scene samples to reference samples?
A. Yes, I think when he was talking about the 30 per cent I think I saw that no, no, it's not the 2 per cent, it's the 10 per cent.

Q. And so did you ever point that out to Inspector Neville?
A. I don't know whether Inspector Neville was writing to me directly but I think I did point it out to - I think to Lara Keller.

Q. You spoke to Lara Keller and pointed it out?
A. I think there was an email, whether it was to Lara or to Cathie, where I had said:

No, it's 10 per cent we're talking about.

Q. Do you recall that in March of this year you started drafting what I think is sometimes referred to as the Updated Options Paper?
A. Yes, from the beginning of March.

Q. When you started drafting that you must have recognised by that point that what the police were concerned with for priority 2 samples was not NCIDD upload, they were concerned with matching crime scene samples to reference samples?
A. I think they'd be concerned with both, but certainly that - yeah, making it clear about the usable profiles for major crime would be important then.

Q. I just want to be clear about this, that was the issue by March of this year that Inspector Neville had been raising for four months, not about a difference in NCIDD upload profiles but a difference in usable profiles?
A. Yes, yes.

Q. And he was saying:

We're getting 30 per cent when we asked for retesting.

A. Yes.

Q. And so when you came to draft the updated Options Paper you must have recognised by then that what mattered to police, who were the people who had made the original decision, was matching crime scene samples to reference samples?
A. Yes, I know that's important.

Q. So when you came to draft the updated Options Paper, did you focus on that issue of matching crime scene samples to reference samples?
A. I think it was part of it, yes.

Q. Did you focus on that issue or did you continue to focus on the issue of NCIDD upload?
A. I think I would have found both sets of data.

Q. I see. Why would were you continuing to be concerned with NCIDD upload when you knew that the issue being raised by police was about matching crime scene samples to reference samples?
A. I think that going back to yesterday I think I described that NCIDD or major crime cases is an incredible finding, so having something put to the database. So that is major risk going down that path.

Q. Tell me if you agree with this: if you are auto-micro-concentrating all priority 2 samples within the DIFP range then you will not lose any NCIDD profile uplift?
A. Yes.

Q. And tell me if you agree with this: if police decide to continue the auto-microcon process for all priority 2 samples because the loss of usable profiles is so high, then it will also mean that they will not lose this much smaller percentage of NCIDD uplift?
A. That's right.

Q. So focusing on the much smaller number or percentage rather than the much larger percentage, you must - I just, I need to put it to you, you must have understood and have always understood would lead police or would likely police

to make a bad decision?
A. I guess that wasn't on my mind. I just wanted to provide the data and I certainly did focus, as I mentioned, on NCIDD as being the most critical.

Q. I regret this but I have to put this to you: the evidence that you are giving about this is not true, that you have understood, you understand now, you have understood throughout the course of this year and you understood at the beginning of 2018 that not focusing attention on the loss of usable profiles to match against reference samples would be likely to lead the police to make a bad decision?
A. Look, I don't think - truly I think what I've said is that I did focus on NCIDD as being a most critical measure there but I accept that I could have made it clearer around the 10 per cent.

THE COMMISSIONER: Could I ask you a related question, Mr Howes. Having regard to the nature of the work that the lab does, why is it justifiable not to test samples - I'll start again. Why is it valid to determine whether or not to do work by reference to the criterion how many usable results do we get, whether it's NCIDD or matching? Why is it valid to determine whether or not the lab does testing work that the criterion used is the likelihood of getting a result? Why does that even enter into reasoning that will determine whether or not testing is done?
A. Okay. I think to answer that question, Commissioner, I'll take you back a step to we had that automatic microcon process for some time. We've had some anecdotal feedback from staff look, we're not getting anything from this, so that's where we looked into the data and we looked into it again in 184. So the first time in 163 project and 184. I guess in both times looking at the data it was looking into what was the final result after a peer reviewed interpretation. Was it something usable, in that was it something that was able to be compared to the database or to reference samples? Or was it something not usable? So unsuitable is the way we determine that. So was it something where the scientist and a peer reviewer were not able to reach any suitable conclusion about the DNA profile? So that's where these two I guess explorations of the data was to look into whether results were suitable or unsuitable, usable or unusable in other words. So they were the final results that were used to look and to generate that data.

Q. Yes, I understand that what you and others did was to consider what proportion of tests resulted in usable data, however you define that. Let's not worry about that. And you came to the conclusion that, to put it in terms of probabilities, the probability - it is improbable that you get usable data. In fact your numbers showed that only in one out of ten cases do you get usable data. Let's assume that that's true. Why is that a reason to stop testing 100 per cent of those samples?
A. I guess the theory was that if that was held and available for testing upon request or if a case manager came across a sample to request that microcon, the theory was that that was held and we'd report back that line to say look, low-levels of DNA were detected please contact through the laboratory if you wish that to be processed. It would provide in theory the opportunity for other samples to move across the process, with a higher yield of DNA, and to be processed quicker. The theory was --

Q. Yes, I understand that. If you were conducting a business enterprise that kind of reasoning might follow that you should concentrate your efforts where they're more successful, more likely to be successful. But what you're dealing with here is an investigation in order to see if you can arrive at evidence in violent offences. So why does it matter whether your chance of getting an outcome is low? Why is that at all a relevant criterion?
A. I guess, Commissioner, it's just to --

Q. And I know you can spend more time on the work with higher probability if you don't do the work with low probability, why does it matter?
A. I guess in order to provide and improve turn around time for the overall system is where - and really just trying to be more efficient with the processing is where that theory was.

Q. But you define efficiency then in terms of turn around time?
A. Yes, efficiency is part of that, yes.

Q. Well, is it anything else for you?
A. Well I guess it's using our resources wisely and that's --

Q. How do you measure wisely?

A. Okay, sure. I guess if we can have processes set up that, you know, we look for redundancy in the system. So an example of that might be with the way that we have laboratory technicians who perform some of our statistical tests, who are simply running the tests instead of reporting scientists running the tests for a large number of samples. So it's their job to keep running and then provide those results to reporting scientists for interpretation. So that's a use of resources to be efficient with (indistinct) as an example.

Q. How do you measure efficiency, what's the criterion?
A. I guess with that it's just trying to get through the bulk of the work quicker.

Q. That's right. So speed, turn around time?
A. Yes, yes. It all contributes, yes.

Q. Which means that adopting that criterion, anything that obstructs turn around time for most cases you get rid of it and then you have the best turn around time for most cases, is that how you would look at it?
A. Yes, so I guess the - I think I understand what you're asking.

Q. I'm not putting to you anything. I want to understand the thinking, you're thinking now and historically, which I understand to be that you ought to run the lab as efficiently as possible but efficiency it to be measured by turn around time, and if one says well the analytical team should do the testing and retesting rather than involving the reporting team before it's ready, that's an efficient use of resources, and by efficient you mean that that would mean the least time is taken by staff as a whole if you adopt that method, and the least time taken translates into turn around time for the bulk of results?
A. Yes.

Q. So if the criterion is we get the turn around time down for the bulk of results, that's the most efficient method you can adopt, is that the reasoning?
A. We certainly are striving where we can to improve our turn around time, so yes.

Q. But that is the measure of efficiency that you and others in the lab adopted. Is there any other measure of success or efficiency? If you say the lab is working in

the best way possible and I ask how do you know that, you would say our turn around time is great?
A. We actually don't have our KPIs for us to actually measure at the moment. We have requested those to be developed for us. So we do find out the turn around from Queensland Police and that is a measure on sample received to NCIDD result, for major crime and for volume crime. So yes, so turn around time and through put.

Q. And through put, volume. That is how many cases you do?
A. That's right.

Q. So a mixture of how many cases you do and the turn around time resulting, and so if you can get the best mix of those two things, the volume of work and the speed with which you do the work, that's the success, is that right?
A. They would be good indicators of how efficient the system is, yes.

Q. Well it would be easy to increase efficiency if you get rid of part of the work?
A. If we held part of the work and we're able to look into other samples, that would improve the efficiency, might be a --

Q. But from the point of view of an investigation, forget the lab for a moment, from the point of view of an investigation, success is measured by getting evidence, whatever trouble it takes to get that evidence?
A. I accept your point.

Q. And so do you see that there's a conflict between the measurement of success in an investigation and the measurement of success that the lab adopted?
A. Yes, I guess you're right.

Q. Yes Mr Hodge.

MR HODGE: Thank you. Now I want to show you another document. Can we bring up FSS.0001.0066.4600. This is another chain of emails. You'll see it's at least on this first page a chain of emails between you and Ms Allen and Ms Brisotto on 20 November?
A. Yes.

Q. And if we go though to the page which is .4603, you'll

see this is an email from Acting Inspector Simpfendorfer which says:

> *As per the attached document could the QPS request that all priority 1 samples now proceed with the auto-microcon process.*

A. Yes.

Q. Then if we then go to the page before and at the bottom of that page we see an email back from Ms Allen saying:

> *Thank you for your confirmation regarding the automatic progression of P1 samples.*

And then you see the next sentence says:

> *As previously advised once the microcon-concentration step has been undertaken this will completely consume the sample and no DNA extract will be available for any further testing that the QPS may wish to use.*

A. Yes, I can see that.

Q. And then if we then go to page .4601, you see in about the middle of that page Ms Allen forwards that email to you and Ms Brisotto and says:

> *Seems the QPS have reversed the Feb decision regarding microcon. This means that for each case that has a P1 the allocated case manager will need to touch base with the RFSC to ensure they want the microcon to occur.*

Can you just explain what's the RFSC?
A. That's the Regional Forensic Science Coordinator.

Q. At QPS?
A. Yes.

Q. Then you see you reply, and if we go to the first page which is - at the bottom of the email of that page you send an email back saying:

I assume this is just for the P1 samples rather than the case. And the question really is proceed to full microcon or to 35 litres?

A. Yeah, I can see that.

Q. You say:

The better microcon is the full but will take all the sample as you mention as a process and given these are P1 and therefore allocated should we have the full versus 35 microcon decision with the allocated reporter or just proceed with standard microcon to full for all P1 samples in this range?

A. Yes.

Q. So do you agree with me on 20 November 2018 you were well aware that Ms Allen was representing to the police that for all P1 samples they would be going to full microcon which would consume all of the sample?
A. I think that, yes, I think it appears from this that Cathie was thinking that it would be full microcon.

Q. We'll come in a moment to her reply, but you knew that as a standard process you didn't go to full microcon?
A. That's correct, yes.

Q. You knew that on any view what seemed to be being put forward was a change from what was the accepted practice within the laboratory, and in that - do you agree?
A. Yes, I think that what we're getting at here is whether it's a full microcon or the standard 35 microcon and I think I was seeking clarification then.

Q. Do you agree that what you were putting forward was two possible processes for P1 samples, one of which was to have the allocated reporter consider whether to do a full microcon versus 35 microcon-concentration?
A. Yes.

Q. And the other of which was to just as standard practice do a microcon to full for all priority 1 samples?
A. That's right, yes.

Q. And both of those propositions were departures from the conventional practice within the lab, which was to microcon to 35 microlitres?
A. To 35, that's right.

Q. And then you see Ms Allen responds, if we go to the top of the page:

Given that microcon to full is the best option to obtain a profile, then all P1s for any case should be microconned to full.

A. Yes, I can see that

Q. Then it says:

For future cases the moment that we are requested to process P1 samples the allocated reporter or yourself should contact the RFSC to confirm the microcon on all P1s and get that in a writing.

A. I can see that, yes.

Q. Tell me if you agree with this: Ms Allen is telling you that for priority 1 samples the most important samples - sorry, the samples in the most important cases, you are going to depart from the standard practice for micro-concentration within the lab?
A. I think here she is suggesting to go to microcon on full for those P1s, yes.

Q. And you know that she has not explained to the police that this is a departure from the standard practice?
A. I don't know if she has --

Q. Now, Mr Howes, you've seen the emails. You know that she hasn't explained it to police. You've seen two different emails where she's said something which is untrue to the police, which is that if you do auto-micro-concentration all of the sample will be consumed?
A. That's right. If that's all the communications, yes, it did say that.

Q. Do you think you saw some other communication where she

said to the police:

> *What I've been telling you isn't true. Actually that's a departure from the standard practice.*

A. No, I just don't know if there were other communications that I wasn't part of.

THE COMMISSIONER: Mr Howes, I think I've seen some evidence that you from time to time, although you're a team leader, from time to time you signed witness statements and gave evidence in court in relation to them?
A. Yes.

Q. Is it that although you had your duties as team leader you functioned as a reporting scientist from time to time?
A. Yes.

Q. So you kept up your skills as a profile interpreter?
A. Yes.

Q. I know that Ms Allen has had experience in the general work of the lab in the past, but having regard to her duties as the managing scientist of the police services stream at FSS, how much of that kind of work was she able to do in the last say four years?
A. I don't think that she has been trained to the extent of reporting scientist in the use of STRmix, so if we use that as a time.

Q. Yes.
A. So that goes back to, we implemented that at the time of PP21, PowerPlex 21, sorry, which was the end of 2012.

Q. Yes. So having regard to her duties she did not do any work after the implementation of PowerPlex 21 and STRmix on the reporting side, on the interpreting side?
A. That's right, that's my understanding.

Q. So one problem that emerges of course is that when it comes to making decisions about processes that might lead to the best outcome in terms of the potential for interpretation of profiles, Ms Allen might not be the best judge of that advice?
A. I think Ms Allen as a --

Q. I don't mean that she ought to be doing the work, I mean that as a matter of fact having regard to her duties which prevent her from doing that work which others are doing she might not be in the best position to make a judgment about the most desirable process. What do you say about that?
A. Yes, look I think that she has very good general awareness but I don't think that she has the current competence in the actual DNA profile interpretations that people do. So in that sense I'd have to agree with you, yes.

Q. Because what you had proposed is that either you can do microcon to 35 or you can leave it to the case manager to decide having regard to the fact that this is P1 we're talking about, to make a decision in relation to a sample in the context of the case whether 35 or full is best?
A. Yes.

Q. And we see that Ms Allen states that given microcon to full is the best option, and I've heard evidence that microcon to full may be the best option for a sample, but it might not be the best option for a sample, for example, a sample at the top of the DIFP range?
A. Yes.

Q. Might be one where you don't need to microcon to full, whereas at the bottom of the range that might be the only option. So to say microcon, given that microcon to full is the best option to obtain a profile isn't scientifically valid, that's a view that one might come to, and she's speaking as a scientist to two scientists, and I wondered whether you have any view about whether that's something that as a statement of science ought to have been challenged at the time?
A. Well I guess at the time yes, I think that you're right. To go back, I agree with what you're saying, that in the range of the upper end of that microcon to full may not be the best option there. Although I don't think we've got hard data on whether a full is better or a 35, but just in theory. And also I guess accepting the fact that in that range I know some scientists have actually just gone with an amplification towards the top of that range.

Q. Yes, that's right?
A. Yes. So as a standard microcon to full where you might have a sample come with a quantification to the top of the

range, I don't think it's --

Q. What I'm thinking is that that statement, given that microcon to full is the best option, is challengeable in that really the best option is to let the reporter decide what is the best option, would you agree with that?
A. I think that's a fair statement.

Q. So we come back to this then: Ms Allen, having regard to what she'd been doing since her appointment to the position until late November 2018, was not in the best position, was not the person best placed to make a judgment about the best process here, in this matter, and as you've agreed her statement of what is the best option isn't true in the sense that it doesn't represent best practice. I mean it in that sense. But nobody challenged it. I would have thought that at the time at least you knew better, you know, if you'd stopped to think about it, you knew better but you didn't challenge it and obviously didn't even consider, I would think, didn't even consider putting to her that that's wrong, actually the best option is to let discretion be exercised. And I'm puzzled as to why you were operating - of course you're a team leader but you're also a practising technical scientist, and why the technical scientist part of Justin Howes didn't come to the fore and assert itself? Can you help me with that?
A. I don't know if I can, Commissioner. I can't remember.

Q. Mr Hodge, it's 11.06, did you want to take a break at this point or later?

MR HODGE: What I might do is I might just ask Mr Howes about one more chain of emails and then I'll ask you to take a break if that's convenient, Commissioner.

THE COMMISSIONER: Yes.

MR HODGE: I might tender that chain of emails, Commissioner. I don't think I tendered it.

THE COMMISSIONER: How would you describe it?

MR HODGE: Perhaps if we call it the last email in the chain, it's from Ms Allen to Mr Howes and Ms Brisotto on 20 November 2018.

THE COMMISSIONER: Exhibit 149.

EXHIBIT #149 LAST EMAIL IN THE CHAIN FROM MS ALLEN TO MR HOWES AND MS BRISOTTO ON 20 NOVEMBER 2018.

MR HODGE: Thank you. Then can we bring up FSS --

THE COMMISSIONER: By the way, Mr Hodge, the emails of 2 February and 5 February that you were dealing with earlier this morning, are they exhibited anywhere?

MR HODGE: Yes, I believe - I'll have that checked but I think tendered them during the course of Ms Brisotto's examination.

THE COMMISSIONER: Yes.

MR HODGE: Actually the further one that I showed you this morning, the one that we've just found, the 5 February one, I hadn't tendered that once because we've only just found it. So that's the emails between Ms Allen and Mr Howes on 5 February.

THE COMMISSIONER: That's Exhibit 150.

EXHIBIT #150 EMAILS BETWEEN MS ALLEN AND MR HOWES ON 5 FEBRUARY.

MR HODGE: Thank you. Can we bring up FSS.0001.0011.1803. Mr Howes, this is another chain of emails where on the first page we can see emails that are coming from, between you and Ms Brisotto and Ms Allen, but it follows on from an earlier chain and I want to - the chain starts in part with emails that we've already seen but I want to go if we can to page.1807. To put this in some context for you, you see in the middle of the page there's an email from Acting Inspector Simpfendorfer?
A. Yes.

Q. Where the Acting Inspector says:

Thank you for the below advice.

A. Yes.

Q. And if we then just go over the page so you can see what the below advice is. You see that's the long email that Ms Allen sent that you read earlier which includes the

statement about:

> *Scientists have reviewed those results and requested a microcon process if in the context of the case it could have been of potential benefit.*

We can blow that up, you can see the last large paragraph at the bottom, Mr Operator, beginning:

> *Whilst the microcon process.*

You see that sentence?
A. Yes.

Q. That's the one we've talked about already that's not true for the reasons we've already dealt with. So then can we go back to the page.1807. You see in the middle of this page the Acting Inspector says:

> *Could you advise is there a quant cut off where microcon would automatically occur? What would the decision making advice around preserving the sample and also enhancing chances of getting a result? Why did these samples yield a result? And could the factors involved be used to determine future processes?*

A. Yes.

Q. Do you agree with me Acting Inspector Simpfendorfer was asking legitimate and straightforward questions on behalf of the police to try to understand what was going on in relation to this process?
A. Yes, I think he is.

Q. And if we then go to the page.1806, we see Ms Allen's response there at the bottom of the page?
A. I can, yes.

Q. I don't really want to ask you questions about that email, I'll save those for Ms Allen, but I just invite you to read it because then I want to ask you some questions about some later emails?
A. Okay, thank you.

Q. You see at the end of that email Ms Allen says:

We have assessed a large amount of data to provide the best indication of how profiles have behaved and provide this advice to the QPS to assist.

A. Yes, I can see that.

Q. All right. Can we then go up and can we just - so that what it's possible for Mr Howes to see is the email that comes back from Acting Inspector Simpfendorfer which starts at the last third of that page and then continues over. You see Acting Inspector Simpfendorfer says:

You mentioned that there are a number of factors that would be taken into consideration regarding the balance between concentrating the sample versus preserving extract for other testing.

You gave some examples, including assessing the quality and quantity of the DNA as a key factor to obtaining a DNA profile. Then he asks some questions. He says:

Do you take these factors into consideration only when sending through the DNA insufficient result for all exhibits, P1 and P2 only exhibits, P1 only exhibits?

Then he asks some other questions about how these factors are considered in relation to testing?
A. Yes.

Q. And you see then at the end of the email he says:

If it is option 1 or 2, how do you provide this advice to the QPS to assist investigators, especially if in the scientist's expert opinion requesting a microcon step may not be the best for obtaining a possible DNA result due to this process consuming all the available extract.

A. I see that, yes.

Q. We know, and we'll come to this in a moment, you've read this chain of emails?
A. I have, yes.

Q. Tell me if you agree with this, it's obvious here that the misapprehension that Acting Inspector Simpfendorfer is operating under is the one that Ms Allen has created and that you knew to be false, which was that putting the samples through micro-concentration would result in the entire sample being consumed?
A. I think that that's the understanding, yes.

Q. And he's trying to understand, given that Ms Allen has said that scientists are reviewing all of the cases in the DIFP range and deciding whether concentration is appropriate, and also that Ms Allen has said if you do concentrate you lose all the sample, he's trying to understand how exactly that decision gets made and what factors are taken into account?
A. I think that's what he's asking.

Q. And in asking that question he has misunderstood two fundamental things, hasn't he? The first is - I'm sorry, I withdraw that. He hasn't misunderstood. He has been mislead about two fundamental things, first, about what the consequence of concentration is in terms of consuming all of the sample?
A. I think that, yes, he believed that it was going to be all consumed.

Q. And, second, he has been misled about the idea that scientists are reviewing all of the DIFP samples and deciding whether to concentration on a case-by-case basis?
A. I also think he understands that to be the case.

Q. If we then go back to Ms Allen's reply, and can we - sorry, that's my fault. If we go up to Ms Allen's reply which is at the bottom of p1804 and continues over to 1805. Could you just redact those - maybe just redact that whole box, I don't think we need any of the box, thank you. Ms Allen responds and says:

> *Scientists in forensic DNA analysis apply scientific principles to processing and reworking all samples that they review, as they are bound by the Code of Conduct for the Queensland Public Service and are*

committed to ensuring the best possible outcome for the Queensland community. Reporting scientists are questioned under oath about the scientific decisions that they have made and provide answers based on scientific principles. If the sample is reworked after a result and has been released to the QPS, the QPS is advised electronically by a result line advising that the sample has undergone further processing as per the example below.

A. Yes.

Q. Do you agree with me that Ms Allen, in sending that email, has not corrected Acting Inspector Simpendorfer in as to the two obvious ways which he has a misunderstanding arising from the things that she has said to him?
A. That's correct.

Q. And do you agree with me that the answer she has given about scientists being bound by the Code of Conduct and applying scientific principles is no sense an honest answer to Acting Inspector Simpendorfer's questions?
A. I don't think it answers the questions.

Q. And so then if we go up the page you see that Ms Allen then forwards the email on to you?
A. Yes.

Q. And you see that your response is:

Thanks for sending on and great email.

A. Yes.

Q. What was the "great" part it the email?
A. I think it's - look, I thought it was great to, you know, notwithstanding the answering the question part, but I think that I recall it was great to explain and to show that, look, scientists are doing the best that they can to provide DNA profiles.

Q. You said "notwithstanding the answering the question part". I'm struggling with that. Acting Inspector Simpendorfer sends an email asking questions. You know that Ms Allen doesn't answer those questions and doesn't

correct the ways in which he's been mislead, and you say notwithstanding that it was a great email?
A. I just said that because we had just been speaking about the two fundamental points that were not addressed, but certainly I think the "great" for me was in relation to explaining, you know, what our scientists do within the laboratory.

Q. It doesn't explain what you do within the laboratory?
A. I think it does in the sense of, you know, scientists - I think it's showing support that scientists do whatever they can to provide results to the best of their ability.

THE COMMISSIONER: You were applauding the fact that she was telling police that scientists are working for the public good?
A. Yes, that's what I believe.

Q. That was the part of the email that you were saying was great?
A. Yes.

MR HODGE: From the perspective of the scientist, were you discomforted at all by the fact that the managing scientist of the Queensland lab was not answering the questions asked by police and not correcting the misunderstandings they had due to the incorrect things that you knew she'd said to them?
A. Look, I can't remember any discomfort or anything at that stage.

Q. Are you discomforted now?
A. I think it would have been a bit more direct to answer the questions.

Q. Are you discomforted now?
A. I guess with this reflection, yes.

Is that a convenient time, Commissioner?

THE COMMISSIONER: Yes. We'll resume at 20 to 12.

SHORT ADJOURNMENT

THE COMMISSIONER: Mr Hodge.

MR HODGE: Commissioner, I don't think I tendered that

chain of emails immediately before we adjourned.

THE COMMISSIONER: Yes.

MR HODGE: So that's the chain of emails on 21 November 2018 between Ms Allen and Mr Howes.

EXHIBIT #151 CHAIN OF EMAILS DATED 21 NOVEMBER 2018 BETWEEN MS ALLEN AND MR HOWES.

MR HODGE: Mr Howes, I had been wondered, there's a number of expert reports that the Commission of Inquiry has obtained. Have you read any of those?
A. I've read some, yes.

Q. Could you just tell me, doing the best you can, which ones you've read? Perhaps I might give you some examples. Have you read the ones by Dr Bidalli and Professor-Wilson-Wilde about the Options Paper?
A. I have read Wilson-Wilde and - yes, I think I have read Bidalli's Options Paper before.

Q. Do you know then, apart from those, have you read the Clint Cochrane report on sperm microscopy?
A. Yes.

Q. Thank you. What about the Duncan Taylor one on validations?
A. No.

Q. I'll come back to those a little bit later. Now, I want to then show you some emails that you received about the Options Paper. Can we bring up first FSS.0001.0011.1798. Can we go to the last email in the chain. So you see where this begins is you send an email which is advising everybody of the wording that's now going to be used in relation to DIFP or that's under consideration?
A. So this is notifying staff and suggested wording, yes, that's correct.

Q. And then if we go up a little bit, you see there's an email that comes back to you from Ms Caunt copied to Kylie Rika?
A. Yes, I can see that.

Q. She says:

I have had a look at the reports for this and NCIDD aside, it shows that 10 percent of samples went through the auto microcon and gave interpretable results.

And then she raises an issue about the adequacy of the DNA insufficient for further processing line?
A. Yes.

Q. She explains it just in the text below where she says:

This indicates to scientific staff that there is nothing further that can be done with this sample, which is not the case for 10 per cent of samples. It also does not give them the option to request this sample to be processed further. Can I request that we update the expanded comment to be clear that there may be a chance of getting a usable profile and they had the option of requesting this.

A. Yes, I can see that.

Q. You know that ultimately this year the way in which DNA insufficient for further processing is described is an issue that became of great concern to the Commissioner?
A. Yes.

Q. And ultimately an interim report was released?
A. Yes.

Q. Have you read the interim report?
A. Yes.

Q. I'm interested in understanding, back in February of 2018 did you hold a concern about how this issue of DNA being insufficient for further processing was explained to scientists and also to the police?
A. I don't know if I necessarily had a concern if that's what your question is.

Q. I see. Perhaps then if we just go up to the page .1800. And there's an exchange of emails between you and Ms Caunt, but you see then she says:

I've been thinking about this a bit more. I want to say from the outset that I am not necessarily opposed to stopping the auto microcon process but I do think that there is a risk that we are able to manage.

And you see she goes on to say:

My personal opinion is that the line should not be validated until the whole case has been assessed to see if processing of this sample would be of benefit, particularly as the quant value reaches the upper range. Obviously at the statement stage the reporter can assess these samples, but the gap will be of no statement is questioned. Since we case manage on a sample by sample basis the DNA insuff results won't be monitored during the normal case management process.

A. Yes.

Q. So tell me if you agree with these propositions: first, what she says about how you case manage is accurate, that is you do it on a sample by sample basis, rather than on a case by basis?
A. For most of the time that's correct, yes.

Q. And what she says about there being a gap if no statement is requested is true?
A. Yes, that's right.

Q. And what also follows from that is that at the investigation stage, if police have not reached the point of requesting a statement, then there won't be any further scrutiny that's given to a DNA insufficient for further processing result?
A. That's right.

Q. And she's raising with you directly that there is an obvious risk that arises from the implementation of this process which is that you're going to lose 10 per cent of potential results?
A. Yes.

Q. Can you tell the Commissioner then, that issue and that

risk having been directly raised with you, what steps did you take to mitigate the risk?
A. I guess at that point in time what I was doing was trusting the process of communication through the Forensic Register through to the DNA management section and on to the investigating officers so that they would be able to assess the case in its entirety, which a lot of the times we don't have that, that ownership of the case as such because of the sample by sample basis. And so then I was trusting that that evaluation would then occur and if anything got to the investigator, or came to mind that they would like further testing, restarting, well then we could do that and we'd be notified through the Forensic Register.

Q. Sorry, I just want to understand that answer. When you say that somebody could make the re-evaluation, you're talking about the police investigator?
A. If the result went to them as DNA insufficient and indicated to them that low levels of DNA was obtained, and if they were still needing at that point in time those results to be restarted, well then it is available for restarting.

Q. And tell me if you agree with this: that proposition has a number of obvious problems. One is the investigators are not scientists?
A. Yes.

Q. A second is the investigators don't know what the quant values are?
A. That's right.

Q. A third is, following from the first two, that the investigators are unlikely to - in fact it's not simply unlikely, you could not have had any rational expectation that the investigators would be in a position to assess whether in fact it was likely that with processing a particular sample could produce a result?
A. Yes, so I'm not sure what information they had around any percentages or any other communications around those results. Could I just take you back to the second point. Yes, they didn't know the quant values but I guess within this range they would have known it was a low level quantification range.

Q. Now, you know, Mr Howes, there's a very significant difference between a quant value of .001 and a quant value

of .008?
A. Yes.

Q. And they're both within the range?
A. Yes.

Q. And you know that at a quant value of .008 the chance of obtaining a usable profile is far higher than the chance of obtaining a usable profile at .001?
A. Yes, I do know that.

Q. Is it exponentially higher?
A. I don't know about exponentially but it's certainly higher, and that's the theory and that was supported by the data.

Q. So not knowing the quant value and not understanding this significant difference in prospect of obtaining a profile would mean - I want to suggest to you you could not possibly have believed that the investigators would be in a good position to make a decision as to whether or not to process the sample?
A. I guess my understanding at the time was also that they would have an understanding of the case if that sample was still important for them in progress through in light of other samples that they may have got results for.

Q. By that do you mean this, that it may be that if they had reached the point in a case where they'd not managed to obtain a profile from any other sample, that in desperation they might ask for a DIFP sample to go through processing?
A. That's my understanding, yes.

Q. That really is the extent of the safeguard from your perspective, that it's possible that an investigator in desperation might ask for a DIFP sample to go through for processing?
A. Whether it's desperation or something to support their case or just for completeness.

Q. Well they don't know. They just don't have the information to be able to make the assessment or the expertise. You agree, don't you?
A. What is the question I'm agreeing with?

Q. They don't have the information or the expertise to be able to make the assessment as to whether or not it's

worthwhile to process a sample?
A. They don't have the quant information, that's correct. They've got the information around the case and so that is where they would have some information to be able to help them decide whether they want to continue with the sample or not.

THE COMMISSIONER: In some cases the low quant sample is the only sample?
A. In some cases they might be, yes.

Q. Or the low quant samples might be the only samples?
A. Yes.

Q. So police in major crime cases can be taken to be submitting samples for testing that they really want tested?
A. Yes.

Q. And when they get DIFP, what you expect them to do is to say, we really, really want these tested. They've already said they want them tested and you're ceasing testing them?
A. I accept that.

MR HODGE: Tell me if you agree with this: the other assumption that your proposition depends upon is that the investigator will understand that a DIFP sample is one that could be re-tested?
A. That's my understanding, yes.

Q. And I'm interested in understanding you - I know you gave a statement to the Commissioner before he issued his interim report and you read his interim report. Do you agree with me that there is an obvious and significant risk that participants in the criminal justice system would not understand the reality of the prospect of obtaining a sample based on the line DNA insufficient for further processing?
A. I think if that education hasn't happened with the investigators, well then they wouldn't understand, and then if you're talking further about the system overall, if that education hasn't happened well then, sure, I agree with you.

Q. And to come back to Ms Caunt's email, she's making the point to you that there are things that you can do within

the lab to mitigate the risk?
A. Yes, there were things that we could have done, correct.

Q. And you didn't do them?
A. I don't think that we did. I think that --

Q. So when you say you don't think, you know you didn't do them?
A. No, we didn't, and I can give you example of some which we didn't do.

Q. You can give examples of things you didn't do?
A. Yes, I can give you an example.

Q. Well you didn't do anything to mitigate the risk. There's an endless number of things you didn't do, because you didn't do anything.

THE COMMISSIONER: What did you mean you can give an example of something you didn't do?
A. I was just going to give an example that what we could have done there at that time to improve the process and to help mitigate the risk was to raise an enhancement within our basic register system so that it could identify if there was the case that there was, for example, nothing. So with your example, with only one DNA insufficient have or only DNA insufficients, we could have had a system set up within our Forensic Register to detect those situations and then make that apparent on a work list or something like that, or send to a senior scientist for attention.

Yes, I see.

MR HODGE: Not only did you not do anything to mitigate the risk, but as you knew from the emails that we have looked at earlier, in November 2018 you knew that Ms Allen misled the police about the fact of a risk mitigation measure?
A. So, yes, with those emails before, we did see that Ms Allen had mentioned that they were being reviewed.

Q. And when you reflect on your own conduct, do you regard it as acceptable that you took no steps to mitigate the risk and stood by as Ms Allen misled the police about the existence of risk mitigation steps?
A. Okay. So I think in terms of my conduct here, I think that I could have been, I could have raised the enhancement

to be able to bring this to the attention through our system so that we would mitigate that risk. I take responsibility as part of the process there.

Q. And what about standing by as Ms Allen misled the police?
A. So I guess in that situation I should have read the emails a little bit more carefully.

Q. Are you really saying that you didn't understand what she was saying to the police?
A. No, I think - I just, perhaps at that time, and I'm trying to remember my thinking at that point in time, I think that I could have been a little bit more careful with the reading of the emails and providing advice back.

Q. If we then go to the next email in the chain which you'll see - this is now an email that comes from Ms Caunt to Ms Rika and then it will later be forwarded on to. But you see Ms Caunt is referring to a conversation that she had with you where you informed her that the DNA insufficient process will continue?
A. Yes.

Q. And do you remember that conversation?
A. No, I don't.

Q. But do you agree with me what the email indicates is that Ms Caunt was sufficiently concerned about the risk being created that she spoke to you about it?
A. I think that I might have called her in response to her email.

Q. You might have called her?
A. Yes.

Q. Do you remember it?
A. No, I don't, but I'm just thinking of the chain of events that I think - to me it would have made sense that I might have called her.

Q. So in any event you spoke with her and she remained concerned about the risk but you did nothing about it?
A. I didn't - well, I spoke to her but I didn't raise any risk mitigation strategies at that point.

Q. And you see then in this email Ms Caunt is passing on a

real example which is for a rape case?
A. Yes.

Q. And she's giving the example where in this case the auto microcon gave the only evidence to substantiate the claims of the complainant?
A. That's what Emma has summarised, yes.

Q. If we go up the page, Ms Rika forwards the email on to you and says "this is a concern"?
A. Yes.

Q. Were you concerned?
A. I guess for me I was - this is one, two days into the process. I think that at that point I was - please forgive me, it's difficult to remember what I was thinking at that time. I think that I was trusting that the process, in that the results go through to the police and that we would be informed if anything further was to be tested. I was trusting that, wanting to trust that process.

Q. Why did you want to trust that process?
A. Because it's a process that was decided and I think that that's - it was just my feeling is what I, what I recall.

Q. And you see Ms Rika says:

> *I guess it's one thing for the QPS to understand this risk (if they do)but it's not full testing/disclosure for the case from our lab.*

Do you see that statement?
A. Yes.

Q. And she asks, she also raises the question of whether the process needs to be reassessed?
A. She does.

Q. In your view does the lab have any responsibility or duty to the victims of crime?
A. We certainly do in the sense that we have responsibility to the community through our, from the client being Queensland Police.

Q. And so you understood the concern that Ms Caunt had

raised to Ms Rika, and Ms Rika had raised to you, was that an obvious problem was the potential to miss samples, not in some theoretical case or in volume crime, but to miss a result that was, in Ms Caunt's words, the only evidence to substantiate the claims of the complainant in a rape case?
A. Yes, that was the example given.

Q. And in response, tell me if you agree with this, you did nothing?
A. I don't think any of us did, and I take responsibility for my part there, yes.

Q. When you say you "don't think any of us did" and you take "responsibility for my part", what is your part that you were taking responsibility for?
A. As I mentioned before, I think that my part there could have been to raise an enhancement to try to mitigate any risks.

THE COMMISSIONER: Can you remember, Mr Howes, why it didn't occur to you at the time to respond to an email like Ms Rika's, you know, that contained the information that was put to her by Ms Caunt. Why didn't you react and think, as one would expect, that "there's something wrong with what we've just done, we haven't taken into account everything", or at least that "I'd better think about this and do something about it, dig into it a bit more deeply"? Why was it, what was your frame of mind that meant that you didn't do anything? It didn't occur to you that there was anything to do? There must have been something, the way you were thinking at the time must have taken some form to explain why you didn't - as I see it, you didn't even respond to that email. I just think that's a little strange and I wonder if you can help me with an explanation. It may not matter in the end but if you're able to I'd be assisted?
A. Commissioner, I think it goes to what I've described before. I think that - I don't think I was particularly well at that point.

Yes, I understand. Thank you. Mr Hodge.

MR HODGE: If we then go to the next email in the chain which is on p1780. You'll see Ms Rika's email to you on the - no, sorry. The next in the chain, yes, 1798.

THE COMMISSIONER: I see, you did reply. I said you didn't

reply but you did reply.

MR HODGE: But not straight away. What happened was this, wasn't it, Ms Rika had emailed you on 9 February and you didn't reply to that, and then she forwards that email again two weeks later and says:

> *Just following up on your thoughts re the below.*

A. Yes.

Q. And then at that point you respond and say:

> *I do want to catch you up on this and will catch you when I return next Thursday. I have some urgent work that I am trying to complete before I go.*

A. Yes.

Q. And do you remember, did you speak to Ms Rika?
A. Look, we speak a lot. I really can't recall that.

Q. And then they were not the only staff in the laboratory to raise concerns about the consequence of this DIFP process for priority 2 samples?
A. I don't recall any other around that time.

Q. No, but on an ongoing basis?
A. Ongoing? Yes, I think until last year really.

Q. Can we bring up FSS.0001.0011.1824. You see at the bottom of the page there's an email from Adrian Pippia?
A. Okay, yes.

Q. And the subject is "Example of microcon of sample that was insufficient for further processing".
A. Yes.

Q. And he says:

> *I've come across a few of these recently. Unfortunately this is only one I could track down. I have heard of others having the same results and I thought I would provide an example.*

A. Yes.

Q. Tell me if you agree with this. Sorry, I should ask, what is the role of Mr Pippia?
A. He's a reporting scientist.

Q. And so if a reporting scientist is getting a result from a DIFP sample, that must be because the case has come through to the reporting scientist because of other samples, but which includes that DIFP sample?
A. That, or it's been requested through the mechanism that was decided upon. So that's the request for restart through the Forensic Register.

Q. Let's just break this down. I think I had been assuming, but perhaps incorrectly, that what had happened in the example that Mr Pippia is describing is that a case with samples had come through to him, including a DIFP sample, and he had then sent back the DIFP sample for micro concentration?
A. Yes. So the process, if it was initiated by Queensland Police, that goes through to the senior scientist of analytical. It gets automatically microconed or - sorry.

Q. No, I understand, but I think there's a few different streams by which these things can come through to the reporting scientist. One possibility is you could do the results, report them back to the QPS and an investigating officer might say "I want you to further process that DIFP sample"?
A. That's one way, yes.

Q. And how often did that happen?
A. Look, it had happened, I think that happened every week on samples. I don't know the actual numbers, I didn't record those. It doesn't come through, through me at all.

Q. Did you think to monitor it?
A. I remember periodically we did get some indication of how many we were getting through to the analytical senior scientist. Yes, it's certainly one way, is the investigating officer to request through the DNA management section, or the DNA management section request it themselves.

Q. And another way would be if the case went through to

reporting, because there were other samples that were going through to reporting, and then the reporting scientist asked for a DIFP sample to be processed?
A. Yes.

Q. And if there was only one sample in a case that was a DIFP sample, then unless the investigating officer asked for it to go through to, or asked for it to be re-tested, it would never come to reporting to reconsider?
A. That's right.

Q. Do you agree with me, or tell me if this is within your field of knowledge, that when the reporting - I'm sorry, when the analytical scientists validate a result as no DNA or DNA insufficient for further processing, they don't, as a matter of routine, look at the photos on the Forensic Register of the sample?
A. That's my understanding, correct.

Q. And so, for example, they would have no idea whether the sample that they were validating as no DNA or DNA insufficient for processing was a sample taken from something that if they'd looked at the photo they could see was likely blood?
A. Yes, that's right.

Q. And so in that sense do you agree with me even what one might regard as the most basic risk measure, risk mitigation measure of having a scientist look at the DIFP result and look at the photo of the sample, it was not something that happened in your lab?
A. At the analytical stage, that's correct.

Q. And therefore the only way in which it could happen, that a scientist would do that type of exercise, would be if the DIFP sample managed to make it through to reporting and then reporting did it?
A. Yes. If they had that opportunity.

Q. So Mr Pippia is raising this issue that he's had, as he says, a few recently, examples of microconing a sample that was insufficient for further processing and he's hearing that others have had the same result?
A. Yes, he said that.

Q. And when you got that email did that prompt you to think perhaps we should go back and look at this?

A. I don't recall that prompting me to think that. What I - to answer your question, that was it.

Q. And your response to that email, if we go to the top of the page - he must have discussed it with you?
A. Yes, it looks like that.

Q. Do you remember the discussion now?
A. No.

Q. Do you say in your email you might have a chance of getting a profile, especially as the quant reaches .0088?
A. Yes.

Q. You say in the next paragraph:

> *The chance of an interpretable profile is limited in that around 10 per cent of the range will lead to an interpretable profile.*

A. That's correct.

Q. Tell me if you agree with this: when you got, when you had issues raised with you by the scientists within the lab, you never said to them, look, the pertinent value is NCIDD uplink or NCIDD upload?
A. I might have mentioned that as a part of a conversation.

Q. Do you remember doing it?
A. I don't recall every conversation I had.

Q. You see in this email though the thing that you focus on is the chance of an interpretable profile?
A. Yes.

Q. Because you well knew that that was the figure that mattered?
A. It's a figure that mattered, correct.

Q. So this issue was raised and did you speak to Ms Allen about it?
A. I really don't know, Mr Hodge.

Q. Did you at any stage between the end of 2018 and the end of 2021 discuss with Ms Allen the prospect of going

back and re-evaluating whether it was a good idea to have this DIFP process?
A. In terms of the process, I can't recall a conversation specifically on that but in answering that further, I do know that we were going to schedule, to look into this range as part of a post implementation review of an instrument that we had bought online.

Q. So which instrument was that?
A. That was the 3500 Genetic Analyzer.

Q. We'll come back to that but can I just ask you, I had thought that in the case of the 3500 Genetic Analyzer Ms Rika had suggested that there be a review of the quant range for the DIFP process?
A. That's right.

Q. That was in December of 2020?
A. Yes, I believe that was around the time of the implementation plan.

Q. Did that review happen?
A. The review happened, which was part of the - I guess not formally as part of the post implementation review, however I did - when I was asked to look into data further in March 20, this year, 2022, I did speak to Kylie to, who's the line manager of Alan McNiven, to figure out a time for Alan to be peer reviewer and I had mentioned that we were both down for looking into this data as part of the post implementation review.

Q. Sorry, I'm not sure I understand. So that back in late 2020 there was an implementation for the 3500 Genetic Analyzer which suggested a review of the quant range. As part of validating the 3500 did you undertake that review?
A. Not as part of validating the implementation, it was mentioned as part of the post implementation.

Q. All right. So as part of the post implementation - sorry, tell me if you agree with this: it wasn't you who suggested undertaking a review of the quant range post implementation?
A. No, the management team agreed.

Q. It was Ms Rika?
A. Ms Rika wrote the implementation plan, that's correct.

Q. And I'm just interested in understanding then, whose responsibility was it to undertake a review of that quant range?
A. So as part of the implementation plan staff are allocated, various staff are allocated different parts to that plan. To that component, that was allocated to myself and to Alan McNiven and that's what I recall, yes.

Q. And when was it allocated to you?
A. It was - I don't think there was a date as such.

Q. The implementation plan was dated 3 December 2020. So when you say it was allocated to the two of you - maybe we'll do it like this: who allocated it to the two of you?
A. I wasn't there for that allocation but I believe it was a discussion at a management team meeting.

Q. And when was this management team meeting?
A. It must have been around that time of the document being finalised.

Q. In December of 2020?
A. It must have been, yes.

Q. And so can you explain to us then if it was allocated to you and Mr McNiven in December 2020, why you didn't do it?
A. It's not done until you've got sufficient time and data in which to analyse, so I guess that, you know, when it came to March 2022, you've then got over a year's worth of processing to be able to analyse.

Q. Do you say to the Commissioner that the reason that you deliberately chose to wait until March of 2022 to undertake the work, because you were waiting for there to be sufficient data from 3500?
A. I think a year's worth of data is sufficient time.

Q. Do you say to the Commissioner that you deliberately chose to wait until March of 2022 to undertake that analysis because you were waiting for sufficient date?
A. Not deliberately. I think that - again, I'm trying to answer your question. I think that a year's period is a decent amount of period, consistent with the 184 project in the year of data, although different because that was assessing (indistinct) with microcon. But yes, I think that waiting for a year's worth of data to interrogate I

think is appropriate.

Q. So did you write that down and let the management team know:

I'm going to wait until I've got a year's worth of data and then undertake the exercise.

A. No, I don't think any of us wrote that down.

Q. Did you discuss it with Mr McNevin:

I'll wait a year until we've got sufficient data and do the exercise.

A. No, I don't think so.

Q. Do you agree with me the reason you did the exercise or began doing a data analysis in March of 2022 had nothing to do with the 3500 implementation plan, it was because by that stage the police were metaphorically screaming about this DIFP issue?
A. Okay. So I was tasked to look into the update data and I felt that that was therefore a nice time, a good time I mean, to look at the data and that could form part of the post implementation review.

Q. Do you honestly say that when you undertook the analysis in March of this year it had anything to do with the 3500 post implementation plan?
A. It was all 3500 data.

Q. No. Do you understand my question, Mr Howes? Do you honestly say that in March of this year when you undertook the analysis of the data it had anything to do with the 3500 post implementation plan?
A. I can honestly say it does have some relation because I did also speak to Kylie about that in asking for Allan's time to be set aside to help with the process.

Q. And when do you say you did this?
A. I can't remember the time but it was a phone call when I was asking Allan to be a peer reviewer to technically review the data.

Q. Was that in June of this year?

A. June or maybe a little bit earlier.

Q. We'll come to that. In October of 2018, by this stage you'd been undertaking this process for ten months or eight months?
A. Yes.

Q. And you'd had Ms Caunt and Ms Rika raise issues about it in writing with you in February of that year?
A. Yes.

Q. And you had Mr Pippia raising issues with you in October of that year?
A. Yes.

Q. At that point did you think maybe we should do a re-evaluation of the data?
A. I don't think it was - it came to mind for any of us at that stage.

Q. Why is that? The reason I ask is remember when you drafted the Project 184 report you had proposed that after six months you'd do a re-evaluation of data to try to extend the DIFP range?
A. Okay, so that was - in the 184 I think - okay, so I think that I ended up - that wasn't part of any Options Paper.

Q. No, I understand. But as part of Project 184 the thought occurred to you:

> *We could do a review after six months to try to extend the DIFP range.*

A. I think that was an idea, yes.

Q. So it's not as if the idea of re-evaluating data periodically was foreign to you?
A. No, I think (indistinct) to data is a good thing.

Q. So why then did it not occur to you it would be a good thing to look into whether this implementation of the DIFP process that had been then ongoing for eight months was a good thing?
A. I don't know how to answer that. I don't know.

Q. Well one possibility is this, isn't it, that you by

this stage simply had no interest in re-evaluating data if it might potentially lead to additional work for the lab?
A. I don't agree with that. I think that looking into data is a good thing overall and I think it's - I think my thinking at this time I believe was really around, okay, we need to give this process some time, but also I think that's - also at this point remembering cases that, or the samples, sorry, that have worked upon rework. I think on the other side of the coin we have also the case that samples haven't turned out to be beneficial after reworking. So I think that that's something which the case managers may not necessarily be cognisant of, but certainly they do remember when something has worked.

Q. I'm sorry, Commissioner, I'll just check if I need to tender the document. I won't tender that for the moment, I think it's already in. Actually no, it won't be in. Sorry, it just occurred to me. I tender that chain of emails, Commissioner.

THE COMMISSIONER: Exhibit 152.

EXHIBIT #152 CHAIN OF EMAILS.

MR HODGE: Then can we bring up FSS.0001.0051.5008. You see in the bottom half of the page and continuing over the page there's an email from Ms Quartermain to Ms Rika but it's copied to you?
A. Yes.

Q. This is sent on 7 March 2019?
A. Yes.

Q. You see that she says in her email:

> *I've come across quite a few samples in a case that I am reviewing where because the samples have all been registered as P1 quite a few have gone straight through to auto-mic based on their quant values. A number of them have produced usable profiles that we would never have been able to provide police if they'd gone through the usual P2 work flow. They would have been reported as DNA insufficient for further processing.*

A. Yes.

Q. Then she goes on to make the same observation that Mr Pippia had made the year before:

> *A few other staff members have had a similar experience lately where for various reasons samples have gone on to microcon when they would have otherwise have stopped after quant based on their quant values being in that DIFP range.*

A. Yes.

Q. Then she refers to her CSP discussion, what's the CSP discussion?
A. That's the career success planning discussion with her line manager.

Q. And then she refers to wanting to bring this issue to management team's attention?
A. I can see that.

Q. She says:

> *Our customers are not just QPS but the courts, the complainants, the defendants and the general community.*

A. Yes.

Q. She says:

> *I believe we should revise the value range we are using for DNA insufficient for further processing and/or potentially reinstate P2 samples which quant in the range of that DIFP range to go for an auto-mic.*

A. Yes.

Q. And you obviously paid attention to that email because we can see at the top of the page you forwarded it on to Ms Brisotto?
A. Yes, I did.

Q. And so when you saw that, did that prompt you to think maybe I should undertake a data analysis to see in what percentage of cases we're getting a usable profile?
A. I don't recall if I did.

Q. When you say you don't recall you know you didn't?
A. I guess now I know I didn't.

Q. Can you explain to the Commissioner why Ms Quartermain's email didn't prompt you to do that?
A. I can't explain why.

Q. And if we go back down to Ms Quartermain's email, you see she makes a further point which is:

> *We sign our statements in good faith and they state that we could be liable for prosecution if we are stating anything we know is false, saying DNA insufficient for further processing when a quant value is near that, .0088 ng/µL figure I believe based on my recent experiences is false. We aren't serving the community or doing our best work if we don't make a change or at least have a team discussion here.*

A. She said that, yes.

Q. You see she goes on to make the point in the next paragraph that she believes that:

> *If you report something as DNA insufficient and for some reason the court or a defence barrister requests an extract, is sent elsewhere for testing we could potentially come off not looking great.*

A. Potentially, yes.

Q. So do you agree with me she by her email was raising four issues with you, or raising four issues with Ms Rika for the management team. One was that scientifically the basis for continuing with the DIFP process for P2 samples might not be sound?
A. She's raising that, yes.

Q. The second is that when you sign statements that say

DNA insufficient for further processing, that in her view they are false or potentially false?
A. I think she's saying that potentially, yes.

Q. The third is that if this is, or this issue is revealed in some way in a court that that could create reputational damage for the Queensland DNA lab?
A. Okay, so I think what she's saying there is that if we report and the sample has been sent elsewhere for testing is where if there's a different result she's identifying that could be a reputational --

Q. The reputational issue being that on the face of it the Queensland lab is saying:

> *The DNA in this sample is insufficient for further processing.*

When in fact that's simply not true, you don't know whether it's insufficient for further processing:

> *And it might be sent off to another lab which would find a result and in which case it would potentially create reputational harm for the Queensland lab.*

A. Potentially. I mean in a different laboratory with different settings, it's not always exactly the same between jurisdictions.

Q. And the fourth point that she's making is that you, the scientists in the lab, you owe a duty and have a responsibility to people, people acting in the criminal justice system and the Queensland community, and she's making the point that she doesn't think that what is happening with DIFP is consistent with the lab discharging its responsibility?
A. I think she's raising that, yes.

Q. And you then forward that email to Ms Brisotto?
A. I did.

Q. Did you and Ms Brisotto discuss it?
A. I don't know, we may have. I don't know.

Q. Did you do anything about it?
A. I don't think that any of us did any data mining or

anything else about, you know, with this.

Q. Isn't the answer to my question:

No, I did nothing about it.

A. I think in simple terms, yes.

Q. Do you agree with me given your responsibilities and your role in the lab that doing nothing in response to Ms Quartermain's email was a complete failure of your duty and responsibility?
A. I think with everything that's happened since then and the interim report from the Commissioner, look, I think, yeah, I certainly would take my part in that, yeah. It's regrettable.

Q. No, I need you to answer my question. Do you agree with me that it is a complete failure of your duty and responsibility in the position that you held?
A. I think at this stage with the benefit of hindsight and with the information that I've been privy to I'd agree with you.

Q. When you say the information you've been privy to, what is the new information that you have become aware of since March of 2019 that has now revealed to you that this was a failure that was not available to you then?
A. What I was meaning then was the Commissioner's interim report which I think we need to respect.

THE COMMISSIONER: You mean the new perspective that you've gained?
A. Yes.

MR HODGE: I'll just check if that's --

THE COMMISSIONER: Yes.

MR HODGE: You can take that document down. Now then, at the end of 2021 Inspector Neville is chasing this issue about DIFP with Ms Allen and Ms Keller?
A. I believe so, yes.

Q. And I'll show you a document. Can we bring up FSS.0001.0052.7 - I'm sorry, I'm directing you to the wrong document. I'll come back to that. Do you remember whether

at the end of 2021 you had any meetings with Ms Keller or Ms Keller and Ms Allen or Ms Keller and Ms Allen and Ms Brisotto, or some combination of those people, to discuss the issues being raised by Inspector Neville?
A. I don't remember specifically, no.

Q. Do you remember when the idea of BDNA obtaining a data extract was first raised with you?
A. No, I don't, but I do remember that I had provided parameters if something was going to be requested.

Q. I'll show you an email which is what I was about to bring up. Can we bring up FSS.0001.0052.7579. You see at the bottom - actually we need to go over the page. We need to show both pages. I'm sorry, Mr Operator, that's my fault. You see you send an email on 16 February 2022 with the subject line "parameters for an FR report with quant values"?
A. Yes.

Q. Then as far as I can tell the whole of this email continuing over the page is about what data you're going to obtain and then what the things are that you'll be able to see with the data?
A. That's correct.

Q. Do you remember what prompted you to send this email?
A. I guess it would have been a discussion or something around getting the data and then I guess the question put to me what would we need from the data, what area, what data points are we looking at to measure the various things.

Q. What I want to understand is if you're sending this email on 16 February 2022, would that have been because Ms Allen had spoken to you at about that time and asked you to come up with the parameters?
A. Yes, I would say that's right.

Q. And do you remember the conversation or do you remember why it is that she told you that you needed to get that data?
A. No, but I was aware that there was, you know, request for an evaluation.

Q. You were aware that there was a request from the QPS for an evaluation?

A. Yes, I was aware of discussions with Inspector Neville.

Q. Tell me if this is right, what prompted you to put forward these parameters was that Ms Allen asked you for the parameters because she said that QPS have asked for an analysis?
A. I don't remember the phone call points but I think that's fair to make that point that you just made.

Q. Without doing this extract from the forensic-register - I'm sorry, I withdraw that. Without getting somebody external to do this extract from the forensic-register, would it have been possible for you to assess in how many cases within the DIFP - sorry, how many samples within the DIFP range you were obtaining a profile after micro-concentration?
A. Not easily. I think the most accurate way would be getting the data from the vendors of the forensic-register.

Q. When you say not easily does that mean it would have been possible but it would have required additional work rather than having them extract the data for you?
A. You may miss things I guess. With the ability to request from BDNA you'll be getting everything and not missing any data.

Q. Okay. I'm interested in understanding whether you, as far as you can recall, knew before mid-February of this year about the request that had come from the police?
A. Yes, I was. I think there were some emails which spoke to Queensland Police and I believe Inspector Neville asking for reassessment of the data.

Q. And so then you undertook work to create the draft update paper?
A. Yes.

Q. And can we bring up FSS.0001.0001.0004. This is an internal version of the paper, and internal as it was finalised on 9 June 2022?
A. That's the final date there, yes.

Q. But it was a paper that you had originally drafted back in March of this year?
A. I think I'd started back then, yes. Yes, I did, sorry.

Q. And then you'd circulated it around for comments to

Ms Brisotto and Ms Allen?
A. Yes, and I also had that go to technical review to Allan McNevin.

Q. Yes. Now that was in June, was it?
A. I think it was a little bit earlier than that.

Q. I might show you an email. I'll just get the doc ID. An email's going to come over so I'll deal with that in a moment. Can I just ask you this: back in March, at that stage it was only you and Ms Brisotto and Ms Allen who knew about what was going on with this update paper, within the lab I mean?
A. I think there was some information that data had - we were trying to get data before March, that's to the management team, but I didn't have the data until I was asked to look at it and that was the beginning of March.

Q. And when you created the draft of the update paper in March, the two people who you sent it to were Ms Allen and Ms Brisotto?
A. After I'd looked at the data, yes, I believe so.

Q. Can you explain to us why it wasn't circulated to other members of the management team?
A. I think I had raised that we could do it as a changed management but I can't explain. I was simply doing the data as I'd been asked.

Q. Is what happened this: that you originally drafted it and circulated it to Ms Allen and Ms Brisotto, and then on a couple of occasions you said:

We should allocate a project number and turn this into a project.

A. I think I did suggest that, yes.

Q. And Ms Allen told you no?
A. I think that was the reply.

Q. And can you explain to us did you ask her why it wasn't being allocated a project number?
A. No, I don't remember asking.

Q. Tell me if you agree with this: at some point you realised that she was trying to minimise the number of

scientists within the senior management who knew about it?
A. Look I'm not sure about that. I don't think I can agree to that.

Q. Did you turn your mind to the question of whether she was happy for you to send copies or provide copies of the information to other people?
A. No, I don't think I did.

Q. I want you to pause and reflect on that. I want to suggest to you that you well knew that this was something that you were trying to keep secret from other members of the management team?
A. No. I had suggested to raise as a change management.

Q. I understand, you had suggested to turn it into a project and she rejected that. You suggested it again and she rejected it again, and then at that point you understood that you were keeping it secret from other members of the senior management?
A. No, I think - if I reflect I think that - I guess I was assuming that was something on Cathie's level and above and with police was being determined. So for me my role was there to do the data and do the analysis and work through that.

Q. Do you say at no stage this year did it occur to you that Ms Allen or somebody else desired that this update report not be revealed to other members of the senior management?
A. Look I really can't speak for other people but I guess all I can say --

Q. I'm not asking that. You know that. I'm asking you about what you thought and I'm asking you whether you say that at no stage this year did it occur to you that Ms Allen or some other decision maker, if you thought it was somebody else, was seeking to keep this secret from the rest of the management team within the lab?
A. I don't think that occurred to me in terms of keeping things secret.

Q. Mr Operator, have you got the email that Ms Hedge just sent to you? Can we bring up, it should be a message file ending I think 2481.MSG. Can we go to the beginning of the chain. I'm sorry, we can take down for the moment the "not for distribution" report, I'll come back to that after

lunch. Just so Mr Howes can see it. You see, Mr Howes, you sent an email on 3 June to Mr McNevin and copied to Ms Brisotto saying:

> *Hi, thanks for working on this. If possible please work in 611 or 6103 or at home. Here is the source data and draft reports. The exec summary was written by Cathie based on the other doc.*

A. Yes.

Q. So why don't you tell us why you're asking Mr McNevin to work on this draft update report in room 611 or 6103 or at home?---Yes, look these are two rooms in our block 6 area that are frequently used by people to get some quiet concentration because we actually work in an open plan office, and so to work in these two rooms it was not unusual for people to --

Q. Just stop, just stop. Just think for a moment.

MR HICKEY: With respect, Commissioner, he was asked the question --

MR HODGE: I'm doing it for the protection of your client.

MR HICKEY: Well can I finish the objection?

THE COMMISSIONER: Mr Hickey, wait and see what Mr Hodge has to say. I understand he interrupted Mr Howes's answer.

MR HICKEY: Thank you, Commissioner.

MR HODGE: Just stop and think. In answering the question that I've asked you take time. I've asked you why it is that you asked Mr McNevin to work on it in room 611 or 6103 or at home, and you know that I've been asking you questions about whether you were trying to keep it secret or whether you knew that Ms Allen wanted to keep it secret. So just stop and reflect and then when you're ready answer the question?
A. Because I was answering, the immediate thing that comes to mind on that, Mr Hodge, is that these are rooms available for quiet analysis, quiet work on case work. It's not unusual for staff certainly to use those rooms. And in terms of home, a lot of people do work from home and

they do say that that is a good way to concentrate on their work.

THE COMMISSIONER: But they're also places where nobody will be able to see what it is they're working on?
A. That is true if they're not interrupted.

MR HODGE: Wasn't the reason why you wanted Mr McNevin to work on it away from the open plan office so that nobody else would see it?---No, I don't believe so.

Q. Commissioner, I tender that email.

THE COMMISSIONER: Exhibit 153.

EXHIBIT #153 EMAIL.

MR HODGE: Can we then bring up another message file, this is the one which is 8988.MSG. Now you see this is another chain of emails. Can we just scroll down, Mr Operator, so that Mr Howes can see what's happened. So you see Ms Keller sends an email to Ms Allen on 3 June saying:

> *Could you kindly arrange for the final version of the second paper to be sent to me by COB Tuesday please.*

A. Yes.

Q. Then if we scroll up further. You see Ms Allen then forwards it to you and Ms Brisotto saying FYI?
A. Yes.

Q. And then if we scroll up further. You see you respond and say to Ms Allen:

> *Hi. The source data and findings are not peer reviewed so will need to be clearly marked as such.*

A. Yes.

Q. That meant that if you were to finalise the report in the form that it was on 3 June you would have to identify that nothing had been peer reviewed?
A. Yes.

Q. And then if we scroll up further. You see Ms Allen says to you:

Is it possible to have it done by then?

A. Yes.

Q. Then if we scroll up further. You see this then is your further reply on 3 June where you say:

Hi. Possibly I would ask Allan to do this but would have to show him what was done.

A. Yes.

Q. What was it that you would have to show him?
A. I guess show him the data that was gathered.

Q. And the report?
A. Yes.

Q. Why were you reluctant to show him what was done?
A. I wasn't reluctant there. That's as part of a review you'd have to look at that.

Q. Again, just take your time. You see Ms Allen is saying to you:

Can we get it done by then?

You're responding and saying:

I would ask Allan to do this but would have to show him what was done.

A. Yes.

Q. You're saying the problem with asking someone to do this, or asking the person I'd like to ask to do this is I'd have to show him what was done?
A. I'd have to take him through that so that could effect having it done by the, sorry, the date that's below, 9 June I think.

Q. I don't understand. Why is it an issue to ask Allan to do this? Why is the fact of having to show him what was done a problem?

A. I don't think it was a problem to show him. I would have to show him what was done as part of the data mining for him to review.

Q. Tell me if this is your evidence, Mr Howes. You say he never had or never thought that you were trying to keep it secret from the management team what was going on with this update paper?
A. I don't think - because I wanted to raise it as a change of management that would not be something that would be secret.

Q. Did you ever understand that Ms Allen wanted to keep it secret?
A. No, I think that I was - look, I was just working on instruction, then it would be up to - I know that Acting Executive Director Lara Keller had a discussion with Bruce McNab around the update paper as well. So look, I was just working on instruction then.

Q. And then Mr McNevin did review your paper?
A. Yes.

Q. He was someone that, to put it very bluntly, you trusted within the lab as somebody who was on your side?
A. I trust him if he'd disagree with me he'd disagree.

Q. For example, a person who you could have shown the document to who had a statistical expertise was Rhys Parry?
A. Yes.

Q. If you were reviewing data in order to come to a statistical conclusion he would be the obvious person within the lab to look at the data?
A. He'd be a good choice, yes.

THE COMMISSIONER: He'd be the best choice, wouldn't he? He's the one you turned to when this arose originally as part of a project, you asked him to do some statistical work?
A. Yes, so Rhys, he does have a special interest in statistics. I did ask him for 104.

Q. Yes?
A. I thought Allan would be a good choice here because we were both down for the post implementation review of the 3500. That was why. I thought that he would - in addition

to him being an excellent scientist I thought that he would be someone that we could both do this together.

Q. Could I ask one thing about that. When you said you'd wait a year to get the 3500 data to be able to do the analysis in relation to the DIFP samples, am I right in thinking you could have done it at the time, that is you could have back in December of 2020 done it based on the data that you already had for the previous two years?
A. No. So it would have to --

Q. You couldn't use 3500 data because you hadn't been using it?
A. That's right.

Q. You could have done an analysis?
A. I could have done an analysis, it wouldn't have been based on the implementation review.

Q. I understand. And then can we bring up one other chain of emails, this is the one which is the 8376.MSG email. You see then on 9 June you send an email to Ms Allen and Ms Brisotto where you say:

> *Here is my version with my changes tracked. Al is currently checking my edits, et cetera, and source data.*

That's Mr McNevin?
A. Yes.

Q. Then you say:

> *My report is not reviewed by anyone officially.*

A. I don't think that the review had been looked at by then. Sorry, I don't think the report had been looked at by then, by Allan, sorry.

Q. The report hadn't been looked at?
A. I'm talking about my report is not reviewed by anyone officially.

Q. Yes?
A. So I don't think that that report had been looked at at that stage, I think Allan had been looking at the source

data.

THE COMMISSIONER: He'd looked at the data?
A. Correct.

Q. But he hadn't reviewed the content of your report?
A. That was my understanding at that time.

MR HODGE: Had you provided a copy of your report to him?
A. I think I did, and I think he then had a look at the report and reviewed it.

THE COMMISSIONER: Afterwards?
A. I think so, yes.

MR HODGE: Sorry, after this email?
A. I think around that time because that is 9 June, I think around that time. I just can't remember now.

Q. At any point at around this time did it occur to you to provide a copy of the report to other members of the senior management team?
A. No. I was - look, I was working on this through Cathie and to a lesser degree with Lara, but no, it didn't occur to me.

Q. Why not, given that one of the things we've seen is that for the last few years there's been members of a management team raising issues with you about the DIFP process? You plainly have strong views and have been asking for a re-evaluation, why not show it to them?
A. I can't explain that.

Q. Is that a convenient time, Commissioner?

THE COMMISSIONER: Yes, it is. We'll adjourn until 1 o'clock.

MR HODGE: Sorry, Commissioner, you said we'll adjourn until 1 o'clock.

THE COMMISSIONER: Sorry, till 2.30. It is 1 o'clock. Thanks.

LUNCHEON ADJOURNMENT

THE COMMISSIONER: Mr Hodge.

MR HODGE: Yes, Commissioner. I'm not sure I tendered those emails we were looking at before the break.

THE COMMISSIONER: I thought you did.

MR HODGE: I did, okay. Excellent.

Q. Mr Howes, I just wanted to ask you a few more questions about your tasking of Mr McNiven with the job and I thought you'd given some evidence before lunch that you'd asked Ms Rika for permission to use Mr McNiven?
A. Yes.

Q. And that's because Mr McNiven was part of Ms Rika's team?
A. Yes.

Q. And he reported to her?
A. That's right.

Q. And so at some stage in about early June you went to her and asked, or told her that Mr McNiven was going to do a task for you?
A. I - yes, I called Kylie and said, look, I need Alan for some time to be set aside for a task and I said remember we've got some data that he and I were down for within the post implementation review, so we want to look into this data and that's where I just asked her to make some time available.

Q. You didn't tell her that it was for an update paper that was being prepared for the QPS?
A. I believe that she knew it was about that data and - yes.

Q. Now, again, I'll just ask my question again. You didn't tell her that it was for an update paper that had been prepared for the QPS?
A. No, not for an update paper as such.

Q. And you didn't tell her that it was for any kind of paper?
A. I think I mentioned it was to look into the data round the insufficients.

Q. You said it was something to do with some data that you

and Mr McNiven were looking into?
A. I think she knew it was about the DNA insufficient data.

Q. Was that because you said it about DNA insufficient for further processing, or was it because you said it's to do with the post implementation of 3500?
A. I think it was part of both from memory.

Q. I understand. But what is it that you told her?
A. I mentioned I would like him to look into the data and to make time available and I said do you remember how we were both down as part of the post implementation review, so this is the data that will be part of that as well.

Q. I see. Do you agree with me you didn't tell her directly and frankly what it was that you were asking Mr McNiven to work on?
A. I think I did mention matters to do with data that we were looking around DNA insufficients.

Q. Did you tell her that "the data is for a paper that I've prepared and had in draft for several months"?
A. I don't think I had in it draft for several months but I think that - no, I don't think I did mention it was part of that.

Q. You didn't copy her into the email that you sent to Mr McNiven tasking him with looking at the data?
A. No.

Q. Why not?
A. Because I'd already, by that stage I'd already spoken to Kylie to make time available.

Q. But she's his line manager, why not, as a matter of course, keep her informed about what it was that you had her subordinate do?
A. Look, at that time I think I just worked out that Kylie knew that I was asking for Alan's time and it was being allocated.

Q. Because it looks like what you were doing was being careful not to inform Ms Rika of exactly what this thing was that you had been working on and were now asking Mr McNiven to work on. Can you see how it looks like that?
A. I can see when you put it like that but I can tell you

that it was, I thought it was clear. Perhaps it wasn't as clear.

Q. When you say you thought it was clear, you couldn't have thought it was clear that you were working on an update paper for the QPS about the 2018 Options Paper, because you definitely didn't tell her that, did you?
A. No, I don't think specifically.

Q. When you say not specifically, again, just tell me what you mean by that. Do you mean you said something that referred in any general way to the 2018 Options Paper?
A. I think in a general way, yes, because we were looking into data - the term update paper was something that, yes, was given to this body of work through, I think after the Commission of Inquiry had started.

Q. All right. Tell me if you agree with this: you didn't mention the 2018 Options Paper to Ms Rika?
A. No, I don't think so.

Q. You didn't mention a new paper for police to Ms Rika?
A. No, I don't think so.

Q. You didn't mention that the QPS had requested a paper at the end of 2021?
A. No.

Q. You didn't mention that the QPS had raised an issue about the percentage of samples from which they were obtaining a profile where the samples were in the DIFP range?
A. No.

Q. You didn't mention to her that because of that issue raised by police you were preparing a paper?
A. No.

Q. You didn't mention to her that what you were asking Mr McNiven to do was to review the data used for that paper?
A. No.

Q. And what I'm suggesting to you is that not informing her of those things were deliberate choices that you made so that she would not be aware of what you were working on?
A. I think she knew that data was being obtained. I don't

know whether - and to answer all those other questions where I said no, I don't think that she knew that there was an update paper in draft or being worked on.

THE COMMISSIONER: Ms Rika, Ms Caunt and others had shown a deep interest in the, what used to be Project 184 and became the Options Paper by the provision of feedback to you. You remember we discussed that yesterday?
A. Yes.

Q. And after the process was implemented Ms Rika forwarded to you examples raised by members of her team showing that the process was missing important profiles that showed that there was a risk that other things were being missed. I don't think Mr McNiven did anything other than support the process. I seem to recall that when the Options Paper or when the project paper was circulated in draft, he was of the view that the threshold should be lifted even higher, do you remember that?
A. Yes, I do.

Q. Whereas Ms Rika and others had raised criticisms that were never addressed and were raising, over the period from 2018 and onwards, instances that they'd observed that justified a further, that they thought justified a further consideration about the utility and integrity of the program and it seems that from the moment that Ms Rika and Ms Reeves raised their criticisms in relation to the last draft of the project process, and into this year, the only people you didn't consult were the people who had an interest in the process and, moreover, had relevant expertise as profilers who could give you, as a human resource, assistance in dealing with the challenge that you faced that was presented by Inspector Neville.

So why didn't you - why are they the people who have those qualities, why are they people whom you didn't consult, first, and, secondly, appear to have taken pains to exclude them from even knowledge of what was happening with the Options Paper until it was done and the work that was being done in the preparation of this further report that was obviously a very important task for you? Why, why did you exclude them?
A. Okay. I think - I agree that Kylie would have been a good choice to look through the data, I agree with that, and so is Alan McNiven. Alan used to be a senior scientist.

Q. You have a lab full of people who have relevant expertise, some of whom have given you their written views about it. Mr McNiven might be the best person in the world to ask to do some work on it, I'm not asking you about that, I'm asking why you didn't also consult these people but instead, so it appears to me at the moment, I'd invite your views, instead you took steps to exclude them, even to the point of asking Ms Rika for the use of Mr McNiven's time without telling her that this is the thing that you're doing, the thing that she showed a real interest in. Why?
A. I believe I did mention to Kylie this is, we had some data that we were looking at.

Q. Yes.
A. And that's where I needed Alan to help out and I --

Q. You had some data that you were looking at. What else did you tell her?
A. Around the DNA insufficient, but I don't think I mentioned around an update paper.

Q. Yes. And that's what I'm asking. Why not?
A. I don't have a coherent answer for you on that.

Q. Well is the answer that you didn't want her to know?
A. No, she knew we were doing data. I don't - yeah. Look I don't remember the stage at which I asked for Alan. I presume it's around the time that I asked Al to look into this work.

Q. Yes.
A. But, look, I think - I really can't, I can't remember any (indistinct).

Yes Mr Hodge.

MR HODGE: Let me show you some further (indistinct) to see if we can assist your memory. Now, tell me if you agree with this: the data that was being analysed for what we're all now referring to as the update paper, and that Mr McNiven was looking at, that was not the same as the data that you would envisage being used for the post implementation 3500 review?
A. Some of it would be and that would be the data for the 2020 calendar year.

Q. I'm sure you understand where I am going with this. The point that you have already made to us this morning is that the reason you didn't do a re-analysis of the DIFP range for the 3500 post implementation was because you were waiting for there to be enough data from the 3500 machine to do that analysis?
A. That's right, we had seen this data that we obtained from BTNA, we ended up getting four year's worth of data, and that was split into two years. And the 2020 data, being a calendar year, I think would have been enough data to be able to analyse for that post implementation.

Q. It's more than that, isn't it? Your rationale for why you couldn't do an examination at an earlier in point in view in relation to the post implementation 3500 process was that you could only use data from the 3500 machine, not from the 3130 machine that you were using before that?
A. I'm sorry, could you please repeat that?

Q. I'll put it in a different way. In December of 2020 a recommendation had been made by Ms Rika that as part of the post implementation review of the 3500 machine there be a re-analysis done of the DIFP range. Do you agree with that?
A. Yes, I think it did have a look at the range, yes.

Q. And you, in about March of 2021, effectively identified as an action item that that's something that would be, that you would consider doing?
A. Yes, I think so.

Q. You didn't say you would do it, but you identified as an action item that you'd consider doing this, and I was asking you some questions this morning as to why you hadn't done it at an earlier point in time than, on your explanation, some time in 2022, and you were making the point to me this morning that you needed to wait until there was enough 3500 data to be able to do a post implementation review of the 3500 machine?
A. I thought a year's worth would be a good period to assess.

Q. But the only data that would be relevant to a post implementation review od the 3500XL would be 3500XL data?
A. For the post implementation, that's right.

Q. And data that was done, or that came from the preceding

machine, the 3130, that wouldn't be relevant to a post implementation review of the 3500 machine?
A. Correct, that would be separate.

Q. And for the update paper you know that the data that you used was not limited to the 3500 machine?
A. That's right, it was four year's worth.

Q. It was the four years since the introduction of the Options Paper?
A. Yes.

Q. And the data that you were asking Mr McNiven to do a review on, I want to suggest to you it had nothing to do with a post implementation review of the 3500XL, it was about reviewing DIFP over the course of the full four years since the Options Paper?
A. It can serve both purposes. So four years, so three years of that with the 3130 data and one year with the 3500 data.

Q. And your evidence as to what you told Ms Rika was, as I understood it, that you said, well, it's about the post implementation review of the 3500 machine or something to that effect?
A. I believe that was how I had explained to her Alan's time to be - because he was, alongside myself, allocated that task for that post implementation for that range.

Q. Yes. And what you were doing was, and I'm suggesting this to you, deliberately misleading Ms Rika by making her think that it was about the post implementation review of the 3500 machine and not revealing to her that it was about a review of the entire course of DIFP since the Options Paper?
A. My understanding is that she knew that there was data in addition to that year and around the DNA insufficient data.

Q. Your understanding was that she knew there was additional data being used?
A. Yes, my understanding is that she knew that there was going to be some data to look at, yes.

Q. No, no. You said additional to that 2020 period.
A. (Indistinct words).

Q. I think you mean 2021, but setting that aside --
A. Yes.

Q. How did she know that?
A. I thought it had been mentioned in a meeting.

Q. By whom?
A. In one of the management meetings I thought.

Q. What did you mention?
A. I don't know whether I did, but that's my recollection. Sorry, I don't mean to be vague, I'm just trying to remember as best I can.

Q. When was the management meeting?
A. I think, I believe that there was a management meeting, look I think it was - it was clearly this year. I don't know when.

Q. Just before I show you some other emails, I just need to ask you one other technical question about the 3500 machine and reviewing the DIFP range. It's right, isn't it, that if you'd wanted to in December of 2020 you could have undertaken a review of the DIFP range for the 3500 machine by buying standardised samples?
A. Yes, that could work, yes.

Q. And you could have done that review in the space of two days?
A. I don't about two days but, yes.

THE COMMISSIONER: Which review, Mr Hodge?

MR HODGE: A review of the DIFP range under the 3500 machine. I said two days, let's say a few days, you could have done it very quickly?
A. Yes, if we look at how quickly we have been able to look through some of the data, I think it could be done quickly, yes.

Q. And all you would need to do for that would be to buy the standardised samples which told you the amount of DNA in the sample?
A. That could work, yes. I could see that.

Q. But when you say it could work, that was an obviously way to go about undertaking a review that you needed to do

urgently?
A. That would work, I agree that it would work, and I don't believe that occurred to me. I certainly don't remember any discussions on that.

Q. Did it go to you?
A. No.

Q. Have you ever done that before?
A. Standardised - yes, I think there was been standard DNA looked at, yes.

Q. Did you feel any urgency at the end of 2020 about reviewing the DIFP range?
A. No, I didn't feel that, no.

Q. Why not?
A. End of 2020, no, I don't remember any urgency.

Q. I've shown you some examples of scientists within the lab raising the DIFP issue with you but I want to suggest to you there were other incidents of scientists raising the issue with you, do you remember that?
A. I think, yes, you did mention that.

Q. And so I'll show you another document. Can we bring up WIT. - and this is a large volume of exhibits and I'll take you to the right page - but bring up WIT.0012.0026.0001. And if we go to the page .0069. I'm not sure why, but for some reason the doc ID that I have on the documents is different from what's showing up. I might show you a different investigation. Can we bring up FSS.0001.0083.0002. So this is an email that Ms Quartermain sent you on 29 April 2021?
A. Yes.

Q. And she said:

> *In the past I had noticed some samples which had originally been called DIFP were subsequently processed on the 3130 resulting in some decent profiles.*

A. Yes.

Q. And then you see in the next paragraph she says:

With the introduction of the 3500 I'm seeing the same thing happening except the peaks are much higher due to the sensitivity of the instrument. I feel that reporting these samples as DIFP is technically incorrect. I strongly feel that we should be processing a lot of these samples these days, especially ones that may have a quant value close to the cut off range.

A. Yes.

Q. And receiving this email, again, this didn't prompt you to think "Maybe I should just do that data analysis of the 3500 and DIFP"?
A. No.

Q. Didn't prompt you to think "I should revisit the DIFP range"?
A. No.

Q. Did you turn your mind at any stage between 2018 and the end of 2021 to the question of how you thought Ms Allen would react if you suggested reviewing the DIFP range?
A. No, I don't think I did.

Q. You just didn't even turn your mind to the idea of reviewing it?
A. I think so, yes.

Q. And then you see Ms Quartermain goes on to say:

I don't see how data mining around this can happen yet.

So she's referring to the problem you'd referred to before about not having enough samples from the 3500.
A. Yes.

Q. And she says:

I would, however, be prepared to do the research.

A. Yes.

Q. So she's offering to do the research herself?
A. Yes.

Q. And did you agree to her doing it?
A. No.

Q. Why?
A. I don't, I don't remember that part of this email.

THE COMMISSIONER: Well thinking back, why would you not have taken up her offer to do some work that might be helpful in improving the work of the lab? What possible reason might there have been?
A. I don't know, Commissioner.

MR HODGE: Can we bring up WIT.0012.0026.0070. This is - I can show you the next page just so you can see - that's Ms Quartermain's email, the copy of it here is quite blurry, but if we come up to the page before, so this is your reply. You say:

> *Hi. Happy for you to come and talk about this. It seems there are some things that require further clarification.*

Do you remember sending this email?
A. No, I don't but - I don't remember.

Q. Can you help us now with what required further clarification?
A. No, I can't.

Q. Do you recall in that same year, 2021, that one of the things that was verified or went through verification was version 2.7 of STRMix?
A. Yes, I think that was 2021.

Q. And do you recall that Ms Caunt was involved in that?
A. She has been involved, yes.

Q. And do you recall her having a conversation with you, this is last year, where she suggested to you that maybe the lab should be reassessing the DIFP threshold as the 3500s were more sensitive?
A. I don't recall that.

Q. Is it possible that it happened?

A. Look, it's possible and (indistinct) great at thinking that things are going to happen.

Q. And that you responded to the effect that sensitivity is related to the amplification kit and not the capillary electrophoresis instruments and therefore the DIFP threshold is related to PP21?
A. In terms of the range that was related to the PP21, I think we mentioned yesterday, the upper bound of the value, the 0088 was related to the 132 picograms of the stochastic elements of profiles which was related to the PP21 validation.

Q. Yes. And I think if I can put it in a slightly different way, the use of PP21 is what effectively sets the limit of detection, that is how much, at what point you can detect DNA within a sample?
A. PP21 is the kit that eventually the DNA profile is represented by. The detection system is the Genetic Analyzer, so the 3130, 3500 is what detects the DNA that's been amplified.

Q. Insofar as you suggested that - sorry, perhaps I'll go back a step. Do you think it's likely that you would have responded to Ms Caunt and said something along the lines that sensitivity is related to the amplification kit and not the capillary electrophoresis instruments and therefore the DIFP threshold is related to PP21?
A. Look, what I was referring to there was around the 132 picograms, so the range --

Q. Sorry, does that mean you don't remember the conversation but if you had said it then that's what you mean?
A. Yes.

Q. Can you think of a reason why if Ms Caunt had said to you last year maybe we should be reassessing the DIFP threshold as the 3500s were more sensitive you would have said that wasn't necessary?
A. I'm not sure what I would have said.

Q. Those emails that we looked at from Ms Quartermain and you which refers to you having a discussion with her, do you remember having had a discussion with her about the DIFP threshold?
A. I remember having some discussions with Alicia, I'm not

sure if it is at this stage.

Q. Do you remember that you said to her last years words to the effect that based on data mining you'd completed previously you did not see the benefit of undertaking her proposal just to see what happens?
A. I think that's - I may have said that. I don't remember.

Q. Can you explain to the Commissioner why you would have said that?
A. I think - no, look, I can't explain that.

Q. Because it seems like with all of the evidence and the things that I've shown you, it seems like you blocked any attempt to reassess the DIFP threshold despite multiple scientists within the lab raising the issue with you. Do you agree with that?
A. I think the way you're presenting it seems like that. Yes, we didn't go ahead and do an earlier analysis.

Q. And then the question is why would you, a person in your position with your responsibilities understanding the consequences as you must have for the victims of crimes in Queensland, why would you have done that?
A. I don't have an answer for you.

Q. In a way the question seems to be was it a choice of approach by you or was it a reflection of what you understood somebody senior to you wanted to be done?
A. I don't know. I don't know how to answer that question.

Q. I want to then jump forward again to June 2022. Actually, sorry, I think I should show you something else first. Can we bring up FSS.0001.0051.4964 and if you go to page.4965. Do you see there's your email that you send on 30 March 2022 where you say to Ms Allen and Ms Brisotto:

> *I should raise as a project number looking at values post 3500 implementation as something tasked to me and Allan and this data includes 3500 data.*

A. Yes.

Q. And then if we go up to the next page, you see Ms Allen

responds and says:

> *Hi Justin. Please don't raise it as a project just yet. Yes, we should have a data tech review.*

A. Yes.

Q. Then your response at the top of the page is:

> *Hi, sure.*

A. Yes.

Q. Did you ask Ms Allen why she didn't want it raised as a project?
A. No.

Q. Did you turn your mind to why it was or did you think about why she might not want it raised as a project?
A. No, I think that - no, I'm not going to guess there but I simply thought okay, we could raise it as a project. She's my line manager who she said no, not at this stage and I respect that.

Q. Do you agree with me that given what you are looking at, not raising it as a project was not consistent with the usual processes within the laboratory?
A. Yes, I think in light of there being other analyses that had projects, 163, 184, that's why I thought it would be good as a project and therefore this would be inconsistent.

Q. It's also part of the change management process, isn't it? Because this paper was prepared as part of providing further options to the Queensland Police to change the processes within the lab?
A. Yes, it was.

Q. So there are at least two reasons to make this a project within the lab?
A. Yes.

Q. That was why you said to her:

> *I should raise this as a project.*

You raised that immediately?

A. It's a neat way within our change management system to record and to keep information together.

Q. When she said please don't, you didn't ask her why?
A. No, I didn't. I took that direction and --

THE COMMISSIONER: Is that because you knew why?
A. I don't - look, I knew there were sensitives in the lab, but there were sensitives with police, but perhaps that did go into but I didn't press it.

Q. You knew it had to do with sensitivity, what was the sensitivity?
A. Look, within the lab by that stage.

Q. March 2022, this year?
A. Yes.

Q. What was the sensitivity?
A. I think by that stage staff, police were raising through Cathie and perhaps and through Lara at that stage some concerns and I think that there was, you know, there were concerns from staff as well, and so perhaps those sensitivities but I guess --

Q. What are the sensitivities? Police are concerned, staff are concerned. So what are the sensitivities that you understood made it a good idea not to make it a project that was accessible to everyone?
A. I'm just trying to find answers to that, Commissioner. I guess at the end of the day I didn't press it, I didn't push it. I didn't ask.

Q. I'm just asking you what you mean by the sensitivities which you understood might justify or explain Ms Allen's request not to make it a project. What did you mean by the word sensitivities? You said police were pressing for some answers and there was something from staff. So what is one sensitive about?
A. I guess this year has been particularly sensitive for many reasons and I think that what I was getting at was I think that perhaps we didn't want to add any more stress to staff if that was the case. But I'm just - I guess it's probably not appropriate for me to be guessing but it has been a very sensitive time in the laboratory, certainly since November last year.

Q. All right, thanks.

MR HODGE: And then after you'd had Mr McNevin look at your data in June you raised again with Ms Allen the idea of raising a project. I'll bring that up. Can we bring up FSS.0001.0051.4969. It's actually I think Ms Brisotto who first raises it. If you go to page.4970, see in the middle of the page Ms Brisotto sends an email on Friday 10 June saying:

> *As this is the report and a tech review has been undertaken should a project be created for it.*

A. Yes.

Q. Then if we go up to the first page of the email chain, at the bottom of the page you chime in and say:

> *Yes, I think we should have a project number and I can keep the documents/drafts/ spreadsheets in that folder. Protected of course.*

A. Yes.

Q. We'll come back to one part of that in a moment. But then Ms Allen responds and says:

> *Let's just hold off on creating anything for the moment. I'll still awaiting feedback from Lara and legal.*

A. Yes.

Q. Did you ask her about that?
A. No.

Q. These documents that you were creating, the various versions, where were you saving them?
A. These were saved on my One Drive.

Q. Are you the only person who has access to that?
A. Yeah, I believe I shared the documents through One Drive to Paula.

Q. Ordinarily if it was a project would it be kept within

a shared folder that anyone within the management team could access?
A. Anyone within the laboratory could access, yes.

Q. If it were a project?
A. Yes.

Q. You see in your email, if we go to the bottom of the page, to Ms Brisotto and Ms Allen you say:

> *Yes, I think we should have a project number and I can keep the documents, drafts, spreadsheets in that folder (protected of course).*

A. Yes.

Q. What did "protected of course" mean?
A. So the data can't be changed, so you can't edit and change the data after it's been checked.

Q. Well it seems to be that you're saying the folder will be protected?
A. Oh, what I mean is that the spreadsheet with the data can't be manipulated, it can't be changed if you put protection on it.

Q. Who would be manipulating or changing the data?
A. No, it's just a protection mechanism in case someone accidentally opens it and edits in error.

Q. So do you that ordinarily with a project?
A. We try to if we do remember. I think it's a good idea.

Q. But why did you specifically say to Ms Brisotto and Ms Allen "protected of course"?
A. That's simply to protect the data so after it's been peer reviewed that's the record of the data.

Q. But why if it's just the usual course would you specifically note that in your email?
A. I think - I guess just making it clear that it should be protected.

Q. And when you say protected, did you expect that other people within the laboratory other than you and Ms Brisotto and Ms Allen would be able to access the files?

A. Yes.

Q. So by protected you didn't mean - you meant apparently read only, not protected from access?
A. No, that's right, read only, yes.

Q. I see. So Ms Allen says:

> *Let's just hold off from creating anything at the moment.*

As I understand your evidence you didn't ask her what that was about?
A. That's right.

Q. You knew by this stage, or you must have felt by this stage that you had entirely abandoned any conventional process that you adopted in the lab?
A. It was different because I had requests - I had mentioned a couple of project numbers to open up as a change management, which is different I accept that.

Q. Back in early 2018 you'd abandoned a project to switch to the Options Paper and that was unusual, you'd never done that before?
A. Yes.

Q. But now in 2022 you weren't even keeping, you weren't even creating a project, you were keeping this review secret from the rest of the management scientists, holding the files only on your own One Drive and not telling anyone about it, do you agree?
A. Yes, that is right.

Q. Had you ever done anything like that before?
A. No, I don't think so.

Q. Did you at any point feel any discomfort about simply following the direction of your line manager to do this thing that you'd never done before that you knew was inconsistent with the ordinary practices within the lab?
A. I'm sorry, could you ask it again? I was just thinking about another situation where I used my One Drive for drafts of various things that I'm working on, but unnecessary change management. So could you please ask that again?

Q. Yes. At any stage in June 2022 did you feel any discomfort about simply following the direction of your line manager to do something that you'd never done before, that you knew was inconsistent with the ordinary processes within the lab, which you were keeping secret from the other members of the senior management team?
A. I think I'd say discomfort. I think that it certainly would have been better that a decision came from higher and I respect that.

Q. On 6 June the Premier announced that there was to be an abandonment of the DIFP process, or something to that effect?
A. Monday, yes.

Q. You'd been told as I understand it a few days earlier by Ms Allen that that was likely to happen?
A. Yes.

Q. You knew that before the decision in 2018 that the standard process or samples between .001 ng/µL and .0088 ng/µL was for them to go to micro-concentration before amplification?
A. Yes.

Q. Indeed it was in the name of the process, it was called the auto-micro-concentration process?
A. Yes, it was.

Q. And the Options Paper when it talked about what was going to change, it talked about abandoning or stopping the auto-micro-concentration process?
A. Yes.

Q. When did you find out that what was to happen for the DIFP samples - sorry, for the samples in the DIFP range from 6 June was that they would go straight to concentration - sorry, straight to amplification and not be concentrated first?
A. It was on that day, Monday.

Q. And how were you informed of that?
A. I can't remember how specifically but I do remember that Lara Keller spoke to staff on that Monday, and on that Monday had mentioned that the thresholds were going to be removed and that we were going to be doing what we were doing just prior to the insufficient. Now I remember

hearing that and thinking that was different to what we were moving towards, which was to amplify, so I must have heard before then on that day that we were going to straight to amplification. So I guess putting all of that together I think it was prior to Lara speaking to staff, or staff that were available, but on that day certainly.

Q. So as you remember it before Lara Keller spoke to staff you must have already heard that the samples in this range were going to go straight to amplification and not go through concentration?
A. Yes.

Q. And you're not sure now how it was that you heard that?
A. No, I'm not certain on that.

Q. Is it possible, I'll show you an email, can we bring up FSS.0001.0052.1306. You see this is an email sent by Luke Ryan to a number of people on 6 June 2022?
A. Yes.

Q. Do you know if you received that email?
A. I did, yes.

Q. Do you know how it is that Luke Ryan knew about this before you?
A. Perhaps we had a meeting. I don't think that Luke would have necessarily known before me. I think I was actually forwarded this email. I don't think I received this email directly.

Q. Do you know then who it is that said to you and to Mr Ryan:

> *The Premier has requested we (and this is important) amp all samples in the current DNA insufficient range.*

A. I believe that it was Cathie.

Q. And do you remember her saying it to you?
A. I do, I just can't place how. Whether it was a meeting or some other form.

Q. Did you ask her how such a decision could have been made?
A. I know that they were working on - well when I say

they, sorry, I know that Cathie had informed me on Friday afternoon that they were working on options, her and Lara Keller, to inform higher, and then it was the Monday that all this happened then.

Q. So then after you had been informed, presumably by Ms Allen, that you were going to go straight to amplification for samples in the DIFP range, you then attended this meeting where Lara Keller spoke?
A. Yes.

Q. And she said, as you recall it:

We're going to go back to the process as it was before 2018.

A. That's what I recall.

Q. And it struck you because you knew immediately that is not what you'd just been told by Cathie Allen?
A. Yes.

Q. And did you say something to anyone about that?
A. Yes, I checked with - I called up to double-check with Cathie and I also checked with Paula just to make sure what are we doing, because we heard from Lara that it was to go back to the previous one, which was actually microcon.

Q. So you said to Ms Allen on 6 June:

What's going on? Because there's an inconsistency between on the one hand what Ms Keller has said, which is we're going back to the pre-2018 process, and on the other hand what you have told me, which is we're going straight to amplification.

A. Yes, I double-checked what are we doing, what are we implementing?

Q. I just want to be clear about this because this is quite important. You obviously knew immediately going straight to amplification is not the same as going to the pre-2018 process?
A. Yes, that's right.

Q. You said, as I understood your evidence, you

double-checked with two people about that, Ms Brisotto and Ms Allen?
A. Yes.

Q. We'll deal, perhaps we'll take them in turn. Let's deal first with Ms Allen. When you double-checked with her did you say that there's an inconsistency or something to that effect?
A. Something to that effect. I said what we were doing beforehand was microcon, so just checking are we amplifying or are we microconning?

Q. What did she say to you?
A. She said amplifying was the option that was selected.

Q. Did she tell you why?
A. I think because, yes, I recall that there was an explanation that that would provide case managers the opportunity to microcon after that amplification, whenever they felt that a rework was required.

Q. But did she explain to you why somebody had chosen to go with a process that was different from the pre-2018 process, did she explain that to you?
A. No.

Q. When you spoke to Ms Brisotto did you raise the same issue with her, that going straight to amplification was not the same as the pre-2018 process?
A. Yeah, Paula was fairly around the logistics. I was just making sure we are amplifying because that's not what we were doing beforehand and she confirmed that was her understanding as well.

Q. And did you discuss with her what her understanding was as to why you were doing something different from the pre-2018 process?
A. No, I don't remember discussing matters. Really just looking at what we were doing.

Q. Did either Ms Brisotto or Ms Allen seem surprised or uncomfortable with this decision to do something different from the pre-2018 process?
A. I don't remember that reaction, no.

Q. Do you agree with me that an obvious consequence of going straight to amplification rather than going to

concentration first would be that you would be far less likely to obtain profiles from samples within the DIFP range?
A. With those low-level samples, so within that DIFP range, going to an amplification straight away I don't think would yield - it's not more likely to yield a DNA profile that would lead to a suitable outcome than if it was microconned.

Q. I think you're agreeing with me but I'll just put my question again. Do you agree with me that going straight to amplification rather than concentration first would be far less likely to yield a usable profile than going to concentration first?
A. I would agree with that.

Q. That was something that was immediately obvious to you on 6 June?
A. It was obvious, yes.

Q. And did you discuss that fact with Ms Brisotto?
A. I don't recall discussing it.

Q. Did you discuss it with Ms Allen?
A. No, I was really just calling up to clarify what we were actually doing, what's the direction.

Q. Did it occur to you that something had obviously gone wrong with a decision-making process to undo the 2018 decision if these DIFP samples were to go straight to amplification rather than concentration first?
A. Okay, so I'm just trying to (indistinct) your question.

Q. Sorry, did you want to ask a question? Let me put it to you a slightly different way. Before the 2018 decision was made, when you were going to concentration for samples within the DIFP range, that was based on a project that had been undertaken within the laboratory?
A. The original PP21 validation, yes.

Q. And that was based on an assessment of data to determine what was the scientific best practice within the lab to maximise the chance of obtaining a profile?
A. Yes.

Q. And in addition you knew that - tell me if I'm right about this - you knew that what was the apparent desire on

6 June as expressed by Lara Keller, was to undo the 2018 decision?
A. I think so.

Q. Lara Keller gave an all staff meeting where she said:

We're going back to the 2018.

Isn't that what you said?
A. So she explained we were going back to what we were doing before DIFP.

Q. I'm just trying to understand, you discover or realise on 6 June that you're not going back to the pre-2018 position, you're going to change to something that as far as you know is not scientific best practice within the lab?
A. Yes.

Q. It must be the case as a scientist that you thought at a minimum that is a baffling decision?
A. That's why I double-checked. I double-checked to make sure what's the direction, what are we doing as a lab.

Q. Did you check what advice Ms Allen had given?
A. No.

Q. Did you ask her what she'd told her senior managers?
A. No, but I know she was working on options to take forward for decision.

Q. Did other scientists within the lab raise concerns about this decision to go straight to amplification?
A. Yes, after that there were some, yes.

Q. And they raised them with you? That is there were scientists who were raising them with you directly their concerns?
A. I don't recall directly. I think with their line managers, yes.

Q. I see. There were scientists who were raising issues with, for example, Ms Rika?
A. Yes, or Sharon Johnstone.

Q. And then were they in turn raising them with you?
A. I can't recall. I can't recall.

Q. Were you aware of any concerns being raised with Ms Allen?
A. I am aware now, having read some statements.

Q. I see. I just want to understand, at the time, that is back in June, were you aware of concerns being raised with Ms Allen?
A. I know that there was a concern raised by Alicia Quartermain. The full extent I wasn't aware of until I was reading the statement.

Q. Can we bring up WIT.0011.0017.0001.

THE COMMISSIONER: Having regard to Ms Keller's statement that the lab was to resume the pre 2018 process, and knowing that she did not have any relevance scientific experience with the work that the DNA section was doing, it didn't occur to you to mention to her that you hadn't gone back to the pre 2018 process, you had gone to something worse?
A. No. Yes, I didn't raise anything with Lara Keller.

Yes Mr Hodge.

MR HODGE: So can we bring up, Mr Operator, that page and the next page, just so Mr Howes can see both pages. You see this is an email sent on 20 June 2022 by Dr Moeller to you and Ms Allen?
A. Yes.

Q. And she says:

> *Hi Cathie and Justin. I have been off sick for about two weeks and have missed a lot of the discussions surrounding the recent change where DIFP samples are now going straight to a 15 microlitre amplification and not being concentrated first with a microcon.*

And then you see over the page she says:

> *I'm a little confused and concerned about this new approach. Am I missing something? I'm concerned because if QPS requests work on a DIFP sample it goes through microcon first. P1 samples in the DIFP range go or*

microcon. Auto microcon was the process we used prior to the DIFP process. P3 samples, which we are not allowed to microcon, could be lost immediately with a potentially suboptimal amplification at 15 microlitres.

A. Yes.

Q. And you see Ms Allen then responds and says:

Hi Ingrid. Welcome back to work. Sorry to hear that you've been absent for some time feeling unwell. I hope you're feeling better an improving. I'll let Justin have a chat with you regarding this so that he can bring you up to speed.

A. Yes.

Q. Did you speak to Ms Allen beforehand - sorry, did you speak to Ms Allen about what she wanted you to talk to Dr Moeller about?
A. I think just to clarify what the process was that we were about to use. That we were using, sorry, by that stage.

Q. Did you speak to Dr Moeller?
A. No, I didn't, I spoke to Ingrid's line manager, Kylie Rika, because there was a communication that was sent and I was just making sure that or just checking whether Kylie had, you know, distributed that to her team.

Q. Just so I understand, you checked with Ms Rika as to whether she'd distributed a communication to her team?
A. Whether she had that communication with her team and she said, no, she's been busy, which she had been, and that she asked if she, if I wanted her to chat to her, and I said, yeah, thanks, that would be great.

Q. I see. So you understood Ms Rika was going to talk to Dr Moeller about this change in process?
A. Yes.

Q. And still at this stage, even with these concerns being raised by Dr Moeller, you didn't challenge Ms Allen on what it was that was going on?

A. No. I guess from my point of view it was, it was really around a decision has been made at a level and if the decision was that we would be going down the path of the amplification case and that was the direction we were following.

Q. And then when did you discover that, or when did you become aware that Ms Allen had told more senior people within Queensland Health that going straight to amplification was the pre DIFP process?
A. I don't know when I found that out.

Q. Was it in July or August or you're not sure?
A. It must have been towards the next change. There were a lot of changes around this time and there was a lot of - I think by this time we were doing a lot of work for the Inquiry and were really away from the bench, so to speak.

Q. So perhaps tell us how did you find out that Ms Allen had informed more senior people within Queensland Health that the pre 2018 process was going straight to amplification?
A. I think it was a phone call. I think that she mentioned that she may have made a mistake. (Indistinct words), sorry.

Q. A phone call to you?
A. Yes, I think so.

Q. Just the two of you?
A. I think so.

Q. So she called you and what did she say to you?

THE COMMISSIONER: I'm sorry to interrupt you. Could I just ask you, earlier you said that when you learned that the process wasn't being, the pre 2018 process was not being reintroduced, rather a new process was being introduced without concentration, you raised the matter with Ms Allen. Can you recall what was it you asked her?
A. I just wanted to double-check what we actually doing because I had heard that we were doing the process immediately prior to the insufficient, which I knew to be the microcon, and so I wanted to check with her, in light of - I must have known already - that we were going down the amplification path instead of the microcon path.

Q. So you said to her something to the effect that you understood that you were going back to the pre 2018 process but are you sure that what we're doing is this, not the pre 2018 process?
A. I can't remember the actual words but I just wanted to check what process we were actually going to be using.

Q. In your checking were you telling her that you understood the pre 2018 process to be a particular process and this was not it?
A. I think I did say that, yes.

Q. It must have been apparent to her from what you said that what was being introduced was not the pre 2018 process, but she was telling you notwithstanding that that's what she'd been told to do?
A. Yes, so I think that my recollection was that I was checking around the logistics, what we were actually implemented, and that I'd heard that Lara had mentioned that. And she seemed to me to confident, "No, no, what we're doing is amplification".

Q. Not the pre 2018 process?
A. Yes.

Q. So she must have known that what was being introduced now was not the pre 2018 process, it was something else, but on what you understood she was being told to do it?
A. Yes, I think that - she said to me that no, no - was confident that, no, it's amplification, that's what we're doing.

Q. So if she'd made a mistake prior to that you gave her an opportunity to correct the mistake, because it should have been clear that, from what you were saying, that what the politicians were wanting, as far as you knew, or the DG or whoever it was, she must have appreciated that what they had decided to do was not the pre 2018 process, it was something else?
A. Yes.

Q. Otherwise why would you be asking?
A. Yes, so I think I did explain that this is what we're hearing from Lara, this is what we're hearing that we're actually implementing. I just really wanted to double-check, so I guess - I'm not sure what occurred to Cathie at that stage.

No, I understand. Yes, Mr Hodge.

MR HODGE: At some stage subsequently you had a conversation with her on the phone where she told you that she'd made a mistake?
A. Yes.

Q. And what did she tell you was the mistake she'd made?
A. I think that she got confused about what the actual process was before insufficient. That's my understanding.

Q. That was what she said to you?
A. I think so, yes.

Q. And you tell me if you agree with this, but you must have known that was a lie?
A. I don't - I don't know.

Q. You must have. You'd told her on 6 June what the process was and you'd been copied in an email to her on 20 June from Dr Moeller that said "auto microcon was the process we use prior to the DIFP process"?
A. Yes.

Q. So when she told you that, do you say you thought she was telling the truth to you?
A. Around about making a mistake.

Q. She had made a mistake?
A. I think that, yeah - I guess when she said that she'd made a mistake. I trusted that she'd made a mistake.

Q. Why?
A. It sounded like she was, it sounded like she was admitting to making a mistake.

Q. Yes. I understand she was saying to you she'd made a mistake, but what I'm saying to you it was obvious to you that she hadn't made a mistake, it was obvious to you that she'd lied?
A. No, I don't, I don't know about that.

Q. Did you tell anyone about the fact that you had said to her on 6 June that going straight to amplification was not the pre DIFP process?
A. I think I, I think I had mentioned to Paula that what

we were doing was microcon.

Q. Of course, I understand - my question was a bad one. Did you tell anyone else that you had said to Ms Allen on 6 June that the process that you were adopting was not the pre DIFP process?
A. I don't, I don't think I did. I'm not sure.

Q. Why not?
A. Because the decision had been made about what we were doing and we were just interested in getting a process going.

Q. But what about in August of this year when this issue suddenly emerged about the fact that the wrong decision had been made and various people must have been asking you questions; that's right, isn't it?
A. Not directly I don't think. Not various people directly.

Q. Was Ms Gregg speaking to you about the issue?
A. Yes, Acting Executive Director, yes.

Q. Because Ms Gregg was in the Acting Executive Director role and she was speaking to you and Ms Brisotto about the issue?
A. Yes, she was interested to know what was the actual process before the DNA insufficient, so I clarified with her what it was.

Q. And did you say to her, "I pointed this out to Ms Allen on 6 June "?
A. I don't - I may have, I'm not quite sure, I can't remember.

Q. Did you say to Ms Gregg, "Dr Moeller pointed this out to Ms Allen and me on 20 June"?
A. No, I don't think I did.

Q. Why not?
A. I think because - I think the understanding was that that was the process that was being implemented until it came to light that, no, actually it was really was what was the process immediately before DIFP and that's where I confirmed with her what the process was.

Q. Because tell me if you agree with this, or these

propositions: first, going straight to amplification, rather than concentration, would be likely to produce less usable profiles from 6 June?
A. Yes, that's correct.

Q. Second, if you were then to compare or to use the number of usable profiles obtained after 6 June to judge how terrible the consequences had been of the decision made at the beginning of 2018, the decision made at the beginning of 2018 would look less bad?
A. I don't - I'm not following that, sorry.

Q. Let me put it a different way. You had spent from March until early June undertaking a data analysis to determine how many profiles might have been missed out on during the four year period based on not auto microcon concentrating?
A. Yes.

Q. And one of the points that you had made in your draft paper was that the data was selected differently from the data that had been used in the 2018 paper?
A. Yes, it was different.

Q. And so it wasn't necessarily fair to say that the 2018 Options Paper was inaccurate because the sample or the way of selecting the sample that was used for the 2018 Options Paper was different from the way of selecting the sample for the 2022 paper?
A. Yes, they were slightly different.

Q. But from 6 June samples that were processed in the DIFP range, they would be selected in the same way as the samples pre 2018, which is to say, there would not be some separation where the only samples that went on for processing were ones specifically chosen by somebody?
A. They would be still slightly different because they would have had the first amplification before any subsequent reworks after that.

Q. Yes. But it couldn't have been suggested any more that the samples that were being evaluated post June 2022 were cherry picked?
A. Yes, they weren't, they wouldn't be cherry picked, that's right.

Q. And so it would not be possible to argue that you could

not directly compare the results after 6 June 2022 with the data that had gone into the 2018 Options Paper?
A. I think there's a few negatives there with that question. I'm just trying to understand it.

Q. I'll put it more simply?
A. Thanks.

Q. It wouldn't be possible to criticise post June 2022 data as being cherry picked?
A. That's right, it's not cherry picked, that's right.

Q. And so in evaluating what the consequences were of adopting the 2018 decision, looking at the post 6 June 2022 results would give a fair understanding of what the consequences had been?
A. I'm really trying to understand your questions, Mr Hodge. Could you please ask that again.

THE COMMISSIONER: You're going to get rubbish profiles if you don't amp low point samples. If you don't microcon concentrate low quant samples. Your study in Project 184 in the Options Paper demonstrated that even if you concentrate low quant samples you're only going to get about 10 per cent hits. So if you don't concentrate them you're going to get even less than 10 per cent hits?
A. Yes.

Q. Right. So what Mr Hodge is putting to you is that in 2018 the argument was you're not getting many results out of these samples that we're processing, so the suggestion is we won't process them unless we're specifically asked to do it?
A. Yes.

Q. You then reintroduce, on instructions, a pre 2018 process and if the Government believes that it's the pre 2018 process that's been introduced then actually, because concentration is not one of the steps, you're going to get even worse results than you used to get before 2018, so it's possible to say to the Government, you see, what we said is true, it's not worth processing these samples, we're hardly getting any hits. Do you follow or not?
A. Look, I follow that but I don't --

Anyway, that's the proposition and Mr Hodge wants to put something to you about that proposition.

MR HODGE: And so do you agree with me, given your responsibility of the 2018 Options Paper, it was to your personal advantage that samples post 6 June 2022 went straight to amplification and didn't go to concentration?
A. I didn't see that at all.

Q. You didn't see that at all?
A. I didn't think of any advantage to myself at all.

Q. Did you think of it in a different way. Did you think that it might lessen the level of criticism that would be directed at you?
A. No, I was not thinking about myself at all, Mr Hodge.

Q. You just didn't think about it at all you say?
A. Yes.

Q. Now, I just need to ask you about one other aspect of this and I need to put to you the evidence of somebody else who hasn't given evidence yet and that's Cathie Allen. She says in a statement that she's given to the Commission:

> *I verbally discussed options with Justin Howes, team leader, on the afternoon of 3 June 2022. The two alternative options were identified during this discussion and those were put forward.*

Is that true?
A. I don't remember that. I remember that she mentioned that some options were being worked on.

Q. Did she discuss with you what they were?
A. No, I don't recall that.

Q. Did she discuss with you what the pre 2018 process was?
A. No.

Q. Do you recall that at about - on about 6 June 2022, that Ms Rika had been tasked to do a separate task to review a particular file?
A. Yes.

Q. And do you recall that she was in a conference room reviewing that file?
A. Yes, she was.

Q. And do you recall that you spoke to Ms Rika about the change of process?
A. Yes, I remember I went to go and speak to her, to let her know, yes.

Q. And do you recall that you said to her words to the effect of:

It will be interesting to see what, if any, useful results this will give.

A. I think - I don't know my exact words but I think it was more like see how we go with this.

Q. Because you knew, didn't you, that this process that was being adopted would be unlikely to give useful results?
A. I knew at that stage that - well, I think, as we mentioned before, that microcon would have given the opportunity to yield better results.

Commissioner, I was going to move to some other topics. I'm just wondering if you were going to take an afternoon break.

THE COMMISSIONER: I'm sure the witness would probably like one. The email that we just saw from Ms Moeller to Ms Allen about, you know, why is this happening.

MR HODGE: It's in evidence.

THE COMMISSIONER: Yes, yes. And Ms Allen said that she would let Mr Howes have a chat with Ms Moeller, have you asked about that chat?

MR HODGE: I have, yes.

THE COMMISSIONER: Yes, all right. Then we'll adjourn until quarter past 4. Are you likely to finish your questioning of Mr Howes today?

MR HODGE: I think it's unlikely but I'll see how I go.

THE COMMISSIONER: Because we could sit on so that - there'll be others to ask him questions, but at least this part of it will be concluded. It's up to you. You think about it and you can let me know when we get back because -

anyway, we'll resume at a quarter past 4.

SHORT ADJOURNMENT

THE COMMISSIONER: Mr Hodge.

MR HODGE: Thank you, Commissioner. Mr Howes, I want to ask you about a number of different topics in relation to aspects of the operation of the lab. The first is in relation to SOP wording. In your 9 August statement you'd said that:

> *Scientists have an onus to ensure their statements are accurate and the wording in statements can be edited by the reporting scientist when writing their witness statement as ultimately it is their statement.*

A. Yes.

Q. Is it the case though that in terms of the practice within the lab that you sought to bring about, you wanted scientists to draft their statements in accordance with the SOPs?
A. Yes, standard operating procedures are a good way to standardise the information so that anyone else can pick up the statement and understand the contents.

Q. But it was a bit further than that, wasn't it? You wanted scientists to stick with the standard wording or stick to the standard wording?
A. There's certainly guidelines that we had developed as a team in 2013 which - it's good practice to stick with that where they can.

Q. I'll show you a document, can we bring up WIT.0012.0027.0001. You see this is an email you sent to members of the reporting team on 5 August 2016?
A. 2016, yes.

Q. You say:

> *Hi all. A few instances of late have been brought to my attention where the collective agreement on statement wording hasn't been used.*

A. Yes.

Q. And then you see you say in the last paragraph:

Can I please ask that we stick to the standard wording in the interests of the above as we need to put all our efforts, time into getting the large amount of work to our clients.

A. Yes, certainly that was my request, yes.

Q. That didn't change, that position within the lab, that is you didn't at some stage say to people within the lab:

I'm fine with you using wording other than the standard wording.

A. Well, it's the preferred position to use standard wording and as I mentioned because it gives that ability for other people to pick up the statements. But, look, there are wording differences that people have which can be as minor as had, have, has, and a few other words put in to clarify what their findings are. So, but it was certainly my preferred position that we used the wording that we worked on as a group in 2013.

Q. What about the wording for DNA insufficient?
A. Yes.

Q. Did you encourage scientists if they felt uncomfortable with the accuracy of that wording to choose their own wording?
A. I had suggested some wording in 2018 I think it is, yes, I had consulted some senior scientists at the time before putting out some wording for around what DNA insufficient was. Yes, that was the preferred wording but I think that we did find through this process and inquiry that a few different statements were used.

Q. Tell me if you agree with this: what happened in 2018 was when the question arose as to what the standard wording would be for DIFP results, you drafted some standard wordings, a new standard wording that would more accurately reflect the reality, which was that it wasn't that there was necessarily insufficient DNA for further processing but that the DNA was in a low quant range and therefore without

- it wasn't as a matter of course being tested, something to that effect?
A. Yes, something to that effect.

Q. And you consulted with some of the other senior scientists like Ms Rika as to what they thought about that wording?
A. Yes.

Q. And they were comfortable with that wording?
A. Yes.

Q. But that wording wasn't adopted?
A. The wording wasn't put into the standard operating procedure.

Q. Why is that?
A. I think it was missed by all of us, but I think - I think I had suggested that I was going to add a comment and I think I missed it.

Q. And then over the course of the next couple of years Ms Quartermain at least directly raised with you her concern about the accuracy of the wording?
A. In statement?

Q. Yes?
A. I'm not sure about that.

Q. Did she not raise a concern with you about whether or not the wording was accurate, the wording that you were providing to - I think we looked at the email after lunch which was her email where she refers to the obligation that you have to other people, that is to people within the criminal justice system?
A. Okay, so you're talking about that email before?

Q. Yes?
A. Yeah, she expressed that. Alicia was also - I think she had - the wording that I suggested in that email in February I had also provided to Alicia and a couple of other staff members who were working on improvements to the statement wording in April, so I think I sent Alicia that wording twice. I'm not sure, I haven't - I can't recall what she actually uses in her statements.

Q. Why not revisit the wording? I'll put it a different

way. Why did you not through mid-2018 through until mid-2022 revisit the accuracy of the wording?
A. Look, the wording is revisited whenever the SOP is --

THE COMMISSIONER: No, just answer the question. Why wasn't it revisited?
A. It was through the review of the document since that time, and that would have found that the actual wording that I suggested in that email wasn't actually part of that, an expression of the SOP. So I think to try to answer that question, it was revisited but as part of the review of the standard operating procedure.

MR HODGE: Let me ask you about a different issue. Do you remember in 2018 Jacqui Wilson and Angelina Keller coming to raise a concern with you about a change in the bone and teeth extraction method?
A. About the method? I do remember them coming to talk but I'm not sure it was about the method.

Q. Can you remember - as you remember it what was the issue?
A. I remember talking to them both about a presence at a Coronial - the periodic Coronial meeting. I can't remember about the bone method.

Q. I'll show you a document. Can we bring up WIT.000 - sorry, Commissioner, I tender that document on the screen.

THE COMMISSIONER: Exhibit 154.

EXHIBIT #154 DOCUMENT

MR HODGE: Apparently it's already gone into evidence, now it's in twice. Can we bring up WIT.0003.0460.0001. This is an email that Ms Rika sent to you on 18 April 2018?
A. Yes.

Q. Have you reviewed this email for the purposes of preparing to give evidence?
A. No.

Q. Just take a moment to read through that?
A. Okay, thank you.

Q. Reading that email, does that help refresh your memory as to what the issue was that had been raised with you in

April of 2018 about the bones extraction process?
A. As I say I don't remember a discussion with Angelina and Jacqui but I do remember seeing the email now that I'm looking at it.

Q. And did you reply to this email?
A. I don't know.

Q. Did you take any action as a consequence of it?
A. I really can't remember.

Q. Did QIAsymphony continue to be used for Coronial samples?
A. Yes, that is our standard process using the kit supplied with that.

Q. I wanted to ask you about another issue. Do you recall being aware of the validation of Quant Trio and QuantStudio 5?
A. Yes.

Q. Are you aware of the issues that have been raised by Dr Budowle and also Dr Van Taylor about the validation of the limited detection?
A. Not Taylor.

Q. But Budowle?
A. Yes, I do remember reading that.

Q. You understand the point as made by Dr Budowle is that in order to validate a limited detection you need to test samples below the limited detection?
A. I do remember that.

Q. And his point based on the limited documents he looked at was that it didn't look like the Queensland lab had done that?
A. I don't recall that.

Q. Do you agree with that criticism?
A. I think that would show the full extent of the range from zero quant moving through above .001, so in that sense I agree with him, yes.

Q. When you say in that sense, do you agree that the only way scientifically to validate the limited detection is to have tested samples below the limited detection?

A. I agree with that.

Q. Do you agree with his criticism that it doesn't appear in the Queensland lab you had done that?
A. I think that's what he found. I have no reason to disagree with him.

Q. Is that something you've ever turned your mind to before in terms of the validation or limited detection in the Queensland lab?
A. No, I can't think that I have.

Q. What do you think the Commissioner should make of the fact that as one of the 2ICs in the lab you hadn't considered this question of validating a limit of detection based on samples below the limit of detection?
A. Are you asking for suggestions?

Q. I suppose what I'm wondering is do you think - what do you think the Commissioner should conclude about the adequacy of your management and supervision within the lab if this hadn't occurred to you before?
A. Okay. Look I think you can see that there's work that could be done to investigate that further as a management team.

Q. Do you think it's something that ought to have occurred to you at an earlier time?
A. Oh look, in hindsight yes, and reading Dr Budowle's report, yes, that's right.

Q. There's another issue that Dr Budowle raised which was about the elution volumes that are used in a Queensland lab?
A. Yes, I do recall reading that.

Q. And the point that he makes is that within the Queensland lab you elute to 90 or 100 microlitres which seems to be far higher than what is done using the same equipment in other labs?
A. Yeah, I trust his view there in terms of the other labs, I'm sure he's got that information.

Q. One of the points that he makes is that in validating that elution level there was a problem with the actual validation because two things were changed rather than one to come to that conclusion?

A. I do recall that.

Q. And do you accept that that is a problem with the validation?
A. It's always best to investigate one variable, correct.

Q. Well it means, doesn't it, if you change two things you can't know what the cause of the change is?
A. That's right.

Q. And so do you agree that that means that that validation was not properly undertaken?
A. Certainly that aspect is that one.

Q. And again, do you think that in your position as a senior scientist within the lab you should have been alert to that issue?
A. I think that my part as part of the endorsers of the document, I agree.

Q. I want to then ask you about sperm microscopy. This was an issue raised with you in March of 2016?
A. I'm not sure of the time but yes.

Q. I'll show you a document. Can we bring up FSS.0001.0067.6316. Do you see this is an email that Amanda Reeves sends you on 4 March 2016?
A. Yes.

Q. She's forwarding on to you an email that had come from Jacqui Wilson?
A. Yes.

Q. Then you respond and we'll bring up another email which is FSS.0001.0067.6318. You respond and say:

> *We are also together on the fact that two reads being vastly different is worth looking into further. Thanks for raising your concerns. If that wasn't done there wouldn't be anything we could do to find out and action this outside of audit schedules. Good work and we will follow things up here.*

A. Yes, that's right.

Q. And so did you?
A. I think I had spoken to Luke and that's when it proceeded down the path that it did.

Q. So when did you follow things up?
A. I think I mentioned their great timing in catching Luke and together on this, so it would have been that day or around that period.

Q. So you tasked Luke Ryan to do something about it?
A. I think he was at that point, 2016, he must have been acting for Paula Brisotto at that time and something like this, which is to do with evidence recovery of sperm, the examination of sperm, sorry, that's within Luke's team and so I was speaking to him about it.

Q. And do you know what he did about it?
A. Not at this point in time, no.

Q. Did you regard it as an urgent issue?
A. I think I immediately spoke to Luke. I don't know, perhaps he did something immediately about it.

Q. You know no change was made to the process within the lab until August of 2016?
A. That's an actual change or that had been looked at before that?

Q. Well that's when the lab introduced what I think's referred to as the work around, are you familiar with that?
A. Yes.

Q. To your knowledge did anything get changed from when the issue is raised with you at the beginning of mark and when the work around was introduced?
A. I can't remember what was done in that period, whether anything was looked into with particular examples or - I do recall another email not long after that where there were some ideas in the past that (indistinct) as well as the other team.

Q. Do you regard the time that it took within the lab to make a change to address the issue being raised by Ms Wilson and channelled through Ms Reeves as acceptable?
A. I think it is. Between this period and you mentioned August, I think that is a long period of time but I can't remember what else was going on at that time in 2016, but

it does on face value look like a number of months.

Q. Are you aware that the process that was being used in relation to the semen samples was in place from about 2010 through to about August 2016 when the work around was introduced?
A. Yes.

Q. And are you aware of whether any work was undertaken to go back and review the semen samples that had been analysed over the course of that six year period to see whether there were problems with earlier evidence recovery?
A. I don't recall having discussions around that.

Q. Do you regard it as part of your responsibility to ensure that something like that occurs, that is that the consequences of the problem are gone back and evaluated?
A. I think it's all of our management teams' responsibility, yes.

Q. So it's part of your responsibility as well?
A. Yes.

Q. And did you do it?
A. No, I don't remember having any discussions about that.

Q. Do you regard that as unusual within the Queensland lab?
A. Well I don't know whether something like this has come up before.

Q. I'll ask you about another issue --

THE COMMISSIONER: Are you moving on to a new topic?

MR HODGE: Yes.

THE COMMISSIONER: I see the time.

MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: You're not going to finish in 15 minutes?

MR HODGE: No. Will we start at 9.30?

THE COMMISSIONER: Yes. How long do you think you'll be,

Mr Hodge, if you can say?

MR HODGE: I think I'm now notoriously unreliable, Commissioner. I don't think I'll be that long.

THE COMMISSIONER: All right, we'll resume at 9.30.

<THE WITNESS WITHDREW

AT 4.35PM THE COMMISSION ADJOURNED UNTIL THURSDAY, 27 OCTOBER 2022 AT 9.30AM