

COMMISSION OF INQUIRY
INTO FORENSIC DNA TESTING IN QUEENSLAND

Brisbane Magistrates Court
Level 8/363 George Street, Brisbane

On Monday, 26 September 2022 at 9.30am

Before: The Hon Walter Sofronoff KC, Commissioner

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

1 THE COMMISSIONER: Yes, Mr Hodge.

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3 MR HODGE: Commissioner, today we begin module 1. If I
4 can open my iPad, I will begin my opening.

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6 THE COMMISSIONER: Yes.

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8 MR HODGE: Since the first hearing that we had in front of
9 you, Commissioner, you have delivered an interim report,
10 and that report was released to the public last week on
11 20 September 2022. In that report, you considered the
12 reporting in formal witness statements of samples using
13 words such as "DNA insufficient for further processing" and
14 "no DNA detected", and you concluded that statements that
15 included those kind of phrases without further explanation
16 were not true in all cases.

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18 You recommended that the lab identify all cases in
19 which those kinds of words were used in formal witness
20 statements and issue addendum statements giving an accurate
21 account of the factual situation of the sample in the
22 particular case.

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24 Your report identified that the words "DNA
25 insufficient for further processing" came about after the
26 formulation and presentation of an Options Paper, which was
27 presented to the Queensland Police by the lab in 2018.

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29 The consequence of the adoption of Option 2 in that
30 Options Paper was that samples in the range between
31 .001 ng/ μ L and .0088 ng/ μ L were not being tested after
32 quantitation unless it was specifically requested by the
33 Police or a laboratory scientist.

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35 This module of your Commission will essentially be
36 concerned with issues that arise in relation to that
37 Options Paper. The process by which the decision was made
38 in 2018 to stop testing samples in that range, the process
39 by which further decisions were made this year to undo that
40 2018 decision, and with the assistance of independent
41 experts from whom the Commission has obtained reports, the
42 validity and merits when judged against best practice of
43 those decisions, both in 2018 and this year.

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45 I should also say something very briefly about the
46 words "no DNA detected" which you also addressed in your
47 interim report. That will not be a focus of this module.

1 The description "no DNA detected" has been used by the
2 laboratory for a number of years to represent samples which
3 had a quantitation value below the quantitation
4 instrument's limit of detection; that is to say, below the
5 limit at which the machine used by the lab could detect,
6 accurately detect, the presence of DNA. And according to
7 the laboratory's current validation of the relevant
8 instrument, that limit of detection is .001 ng/μL, and that
9 the use of wording such as "no DNA detected" where the
10 level of DNA falls below the limit of detection is common
11 in other labs in Australia, and as you found in your
12 interim report, it is correct insofar as it reflects a
13 scientific view, which is that no DNA was reliably detected
14 by the instrument that was used.

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16 We then are not concerned in this module with
17 exploring the issue that you have already addressed in your
18 interim report, which is the potential inaccuracy of those
19 words when understood by somebody who is not approaching it
20 from that scientific background.

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22 What I now propose to do today is to outline some of
23 the factual background and evidence that will be relevant
24 to this module. I want to begin with the process of DNA
25 collection and analysis. You explained this, Commissioner,
26 in some detail in your interim report and I know you are
27 very familiar with it, but I want to touch on some aspects
28 of the process to assist all of those in the courtroom or
29 watching on the live stream to understand some of the
30 evidence in this module.

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32 As you explained in your interim report, there are six
33 main steps in the collection and processing of a DNA
34 sample. First, the collection of the DNA from a crime
35 scene or a body often by taking a swab or a tape-lift of
36 something.

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38 Second, the extraction of the DNA from that swab or
39 tape-lift into a solution, and that is done in the
40 Queensland Laboratory by two machines, and those machines
41 ordinarily dilute the DNA into a solution of about 90 to
42 100 microlitres.

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44 And so, coming back to that threshold use, when we
45 talk about .001 ng/μL, we are talking about the
46 quantitation of DNA in that kind of solution. And that is
47 the third step when an instrument in the lab measures how

1 much DNA there is in the solution.

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The fourth step is amplification, where the DNA is split apart and replicated to increase the amount of DNA for analysis. The fifth step is capillary electrophoresis, where the DNA is processed and analysed at certain locations to see how many pairs of bases exist at that location. And that process results in a graph called an electropherogram which shows how many repeats of bases were present at the particular locations considered, and a large number of pairs be shown as a peak on the graph, which then leads to the sixth stage where interpretation of that electropherogram is done to determine the likelihood that a certain person with known DNA either did or did not contribute to the sample.

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If at the quantitation stage - that is, the third stage when the DNA is measured - there is a small amount of DNA detected, it is possible to perform an extra step called "concentration", and concentration involves condensing the liquid in which the DNA is suspended. And as you explained in your interim report, Commissioner, a sample can be concentrated to increase the prospect of capturing a greater amount of DNA for the amplification stage, the fourth stage, and this can increase the chance of obtaining a profile which then, if you have obtained a profile, you can compare either to a reference sample - I'll come back to that - or upload it to the NCIDD, which is a national database, and I will come back to that.

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At the Queensland laboratory, typically if the sample was concentrated, that is, if it went through that extra stage, the solution in which the DNA is present is condensed, and it is condensed to about one-third of its former volume, to about 35 microlitres, although sometimes it is condensed to a much greater extent. And, of course, in condensing the solution, then the volume of DNA per microlitre is increased.

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THE COMMISSIONER: So what we are talking about is if you get your 95 microlitres and if we think of a saucepan and you are going to put eggs in it, and that's the 95 microlitres, is the saucepan full of water and there is a healthy amount of DNA, so let's say there are a dozen eggs in the saucepan, then when you use a spoon to fish out 5 microlitres for testing, you are going to get an egg or two?

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MR HODGE: Yes.

THE COMMISSIONER: And you can then replicate those eggs to increase the amount that you have got to analyse. But if you have got the same saucepan with only two eggs in it, then when you take five microlitres out, you might miss an egg entirely or might only get one. So you boil off the water, in effect, so that the two eggs are floating in a very small amount of liquid. Now when you put your spoon in to fish out the eggs - the DNA in our metaphor - you are likely to get one egg or both eggs out of the small sample you had. You started with two. In short, we speak of concentration, don't we? Nanograms per microlitre is the mass of material in a volume, and you can increase that ratio by decreasing the liquid.

MR HODGE: That's right.

THE COMMISSIONER: Yes. So in that way, you are more likely to capture sufficient DNA for further testing, whereas if you don't concentrate, you are likely to miss it. Is that correct?

MR HODGE: That is exactly it.

THE COMMISSIONER: Yes.

MR HODGE: And in the Queensland Laboratory, they use a machine or machines called microcon centrifugal filter devices to carry out concentration, and so the consequence is, what you will often hear and everyone will often hear is a concentration step referred to in these cases as "performing microcon" because that is the name of the machines or the instruments that they use in order to concentrate.

THE COMMISSIONER: Yes.

MR HODGE: So from December of 2012 until February of 2018, the lab used micro-concentration as a matter of routine for samples that contained low levels of DNA in order to increase the concentration of DNA within a sample.

THE COMMISSIONER: So until 2018, concerning samples below a certain value, a certain mass, certain concentration, they would take the step that you describe? They would

1 concentrate it in order to maximise the prospect of getting
2 a good profile?

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4 MR HODGE: Yes. I think the words I used were: they would
5 do it as a matter of routine.

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7 THE COMMISSIONER: Yes.

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9 MR HODGE: The importance of that being that there are
10 three classifications of samples that come into the
11 laboratory, and they are classified according to priority.

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13 Priority 1 is the most urgent and serious crimes;
14 priority 2 is known as major crimes and includes all types
15 of sexual assaults and rapes, as well as homicides and
16 other offences against a person; and priority 3 is known as
17 "Volume Crime" and that would relate to effectively
18 offences against property like burglary. And whether
19 particular samples were concentrated as part of that
20 routine in the past depended upon both whatever quant value
21 the sample had, so they wouldn't concentrate a sample that
22 already had a high concentration of DNA within the liquid,
23 and also the priority of the sample.

24
25 And so before February of 2018, Priority 1 and
26 Priority 2 samples with a quant value of between .001 ng/ μ L
27 and .008 ng/ μ L were concentrated. That is, the most urgent
28 crimes and major crimes. But Priority 3 samples were not,
29 as part of the routine, routinely concentrated.

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31 THE COMMISSIONER: So the stage we reach is that, leaving
32 aside volume crime which is a special case, for crimes of
33 violence against people and among those, the crimes that
34 the police designate as Priority 1, they are regarded as
35 even more serious and more important, for all of those
36 cases, all samples were tested fully and samples with a low
37 quantitation, that is below .0088, they were also
38 micro-concentrated before being progressed to the remaining
39 steps, but, in short, they were all tested fully in an
40 attempt to get a usable profile; is that right?

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42 MR HODGE: That's right. So all of them would go through
43 all six stages, and if they were below whatever the
44 relevant threshold was or in between the relevant
45 threshold, then they would be concentrated. But after that
46 decision in February 2018, whilst Priority 1 samples
47 continued to be concentrated, Priority 2 and Priority 3

1 samples were now recorded as "DNA insufficient for further
2 process". And I will come back to that decision in a
3 moment.
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5 Before doing that, I need to set some other context,
6 which is about the structure of the laboratory. The
7 forensic DNA laboratory in Queensland is part of a wider
8 group in Queensland Health called the Forensic and
9 Scientific Services, and it comprises a range of services
10 including forensic pathologists, coronial services,
11 including the mortuary and toxicology, and a public and
12 environmental health group which includes chemistry, public
13 health virology and radiation and nuclear scientists.
14

15 One stream of the Forensic and Scientific Services is
16 the Police Services stream, and that comprises forensic
17 chemistry, which includes illicit drug analysis and
18 forensic DNA analysis, and many of those services are
19 provided from space at a Queensland Health facility at
20 Coopers Plains. Within The Forensic DNA Laboratory there
21 are a number of teams, and what I might do now is bring up
22 an organisational chart of the lab. And the document ID is
23 [FSS.0001.0002.3976_R].
24

25 THE COMMISSIONER: Yes. Are you going to bring it up on
26 the public screen?
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28 MR HODGE: I think they are.
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30 THE COMMISSIONER: They are? All right. Thank you very
31 much. And counsel have them? Yes. Yes, Mr Hodge?
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33 MR HODGE: Let me then explain some of the aspects of the
34 teams that you see on that organisational chart. On the
35 left-hand side you see Evidence Recovery and Quality. And,
36 put simply, Evidence Recovery deals with obtaining of DNA
37 into a solution. And the analytical team within the
38 Evidence Recovery and Quality performs all of the
39 analytical tasks on the samples, including quantitation,
40 amplification, capillary electrophoresis and concentration.
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42 THE COMMISSIONER: So they perform the chemistry, the test
43 tube work?
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45 MR HODGE: That's right.
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47 THE COMMISSIONER: That is not entirely correct, but that

1 is a way of looking at it.

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3 MR HODGE: Yes. Then further to the right, you will see,
4 moving over to Forensic Reporting and Intelligence,
5 "Reporting", and you will see two reporting teams.

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7 THE COMMISSIONER: Yes.

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9 MR HODGE: And just to explain the division then, the
10 evidence recovery and analytical teams have carefully
11 maintained the laboratories so that DNA from the scientists
12 or the outside world does not contaminate the samples, and
13 they wear full PPE when they are performing their duties in
14 the clean areas of these laboratories, and then the
15 reporting teams comprise scientists who interpret profiles,
16 determine whether a profile obtained from a crime scene
17 sample matches a reference sample, or the likelihood ratio
18 that a person contributed or did not contribute to a
19 sample. They write formal reports for court, and they
20 appear in court as expert witnesses.

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22 And then further to the right, the Intelligence team
23 assists with reporting information back to Police and
24 uploading profiles to the national DNA database. And then
25 having now talked about, effectively, the steps in the
26 process, to come back to the middle of the chart, the
27 Quality and Projects team deals with quality management
28 within the laboratory.

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30 And each team has a supervising or senior scientist,
31 and you can see that on the chart. And then as you can
32 also see from the chart, there is then a Team Leader in
33 respect of each of those groups of teams. Paula Brisotto
34 is the team leader for Evidence Recovery and Quality and
35 Justin Howes is the team leader for Reporting and
36 Intelligence. And in turn, they report to Cathie Allen,
37 who is the managing scientist for the DNA lab and also the
38 forensic chemistry lab. And it's not displayed on this
39 chart, but above the Cathie Allen is the executive director
40 of FSS who is Lara Keller and there is also an FSS-wide
41 quality position held by Helen Gregg. So that is the
42 structure of the laboratory as it is at the moment. Could
43 we take that down. Thank you.

44

45 Before making significant changes to processes or
46 procedures within the laboratory, FSS, the lab, performs an
47 investigation to determine the benefits and risks

1 associated with the potential change. And when they
2 undertake this procedure or this process, they call it a
3 project and they give it a number. And in April of 2015,
4 the lab started project #163. That was a project proposed
5 by Kylie Rika, who is, as you would have seen,
6 Commissioner, a senior reporting scientist.

7
8 And the purpose of the project was to review the
9 results from DNA samples that had been automatically
10 concentrated and determine whether the process of
11 automatically concentrating them was worthwhile. The
12 concentration process is designed to improve the prospect
13 of obtaining DNA from the sample, as I have explained
14 already, and at the time the concentration was occurring
15 for samples which had a quantitation range between .00214
16 ng/ μ L and .0088 ng/ μ L.

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18 THE COMMISSIONER: That is to say at the stage at which
19 you are talking about, this is 2015.

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21 MR HODGE: That's right.

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23 THE COMMISSIONER: The earlier you were talking about
24 .001, but at that time the limit of detection was a little
25 higher.

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27 MR HODGE: That's right.

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29 THE COMMISSIONER: Yes.

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31 MR HODGE: Project #163 was finalised with a conclusion
32 that there was value in continuing the automatic
33 micro-concentration process for samples with low levels of
34 DNA and the final report from Project #163 was signed by
35 the lab management team in December 2015 and put to rest on
36 the basis that it would be revisited following the
37 introduction of new equipment.

38
39 In April of 2017, Justin Howes, the team leader of
40 Forensic Reporting and Intelligence, restarted Project #163
41 and that was approved by Paula Brisotto, the other team
42 leader, the team leader of Evidence Recovery and Quality.
43 And the reason for restarting the process was project
44 improvement. The resurrection of Project #163 became
45 Project #184, and Project #184 had the same goal as Project
46 #163: to determine whether it was worthwhile to
47 automatically concentrate samples with low levels of DNA.

1 The project proposal was circulated at the end of July 2017
2 by Cathie Allen, and I will have this document brought up.
3 It is [FSS.0001.0001.0862_R].
4

5 THE COMMISSIONER: So I gather that there is a protocol
6 within the lab for making these kinds of studies, because
7 you speak about projects and numbers and then you put up a
8 project plan. So I take it that there are a series of
9 formal steps that are undertaken when somebody proposes to
10 examine a question like the one that you have described; is
11 that right?
12

13 MR HODGE: That's right. There is a standard operating
14 procedure in relation to this kind of change management.
15 I won't bring that up in the opening, but inevitably --
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17 THE COMMISSIONER: You are going to deal with it.
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19 MR HODGE: -- during the evidence that you will hear, we
20 will get the standard operating procedure.
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22 THE COMMISSIONER: Yes.
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24 MR HODGE: But you are right, Commissioner, there is a
25 standard opening procedure where you work through a project
26 and it comes to the management committee to consider and
27 sign off on the project.
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29 This is the project plan for Project #184
30 [FSS.0001.0001.0862_R], and you will see that the person
31 who is the team leader for it is Justin Howes. As I
32 indicated, it was circulated within the laboratory by
33 Cathie Allen at the end of July 2017. What I will just
34 note at this point is, if we could bring up pages .0863 and
35 .0864 side-by-side, and blow up the bottom of .0863 where
36 it says "Expected Outcome". That will need to go to the
37 top, and then the top of what is on .0864 to show what was
38 the expected outcome.
39

40 You see as part of the plan, what's identified is
41 going through and looking at what data is generated. You
42 will see that in the first paragraph it is said:
43

44 *It is expected that the vast majority of*
45 *DNA profile outcomes would be in the 'fail'*
46 *category [that is to say] mostly reported*
47 *as 'complex unsuitable for interpretation'.*

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2 And then you will see in the next paragraph that:

3
4 *It is expected that there will be some*
5 *'success' ...*

6
7 That would include DNA profiles being uploaded into NCIDD,
8 and that is this national DNA database:

9
10 *... and possibly obtained linking*
11 *information for the QPS.*

12
13 And then, Commissioner, I want to particularly note the
14 next paragraph:

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16 *It is an expectation that any*
17 *recommendations are communicated with QPS*
18 *in order to agree on possible new workflow*
19 *strategies.*

20
21 And then there is an identification of what one of those
22 strategies would be, which is not automatically processing
23 low quant samples.

24
25 I note that it was always envisaged under the Project
26 Plan that the expectation was that ultimately
27 recommendations would be communicated to QPS to seek QPS's
28 agreement to any change. Could we take that down now.

29
30 That was July 2017. On 30 November 2017, version 1 of
31 the Project Report, Project #184, was provided to the
32 management team of the lab for feedback. And to finalise a
33 project and implement its recommendations, essentially
34 sign-off is required by the management committee. So part
35 of the process is, unsurprisingly, circulation of the
36 report to members of the management committee.

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38 THE COMMISSIONER: So the management committee you are
39 referring to are the managers you identified in the
40 organisational chart?

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42 MR HODGE: That's right.

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44 THE COMMISSIONER: Or largely those people?

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46 MR HODGE: Yes.

1 THE COMMISSIONER: Mm.

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3 MR HODGE: And if we can bring up two documents. The
4 first is [FSS.0001.0011.2139] and that is the email from
5 Justin Howes circulating the Project Report on 30 November
6 2017 and you will see - I note the phone numbers are not
7 redacted there, Commissioner, so I am not sure if that is
8 being displayed on the live stream. It is not being shown
9 on the live stream. And Commissioner, I just need you to
10 make a non-publication order in respect of the phone
11 numbers.

12

13 THE COMMISSIONER: Yes. I direct that the phone numbers
14 that appear on document [FSS.0001.0011.2139] not be
15 published.

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17 MR HODGE: What we might do, Mr Hunter has sensibly
18 suggested, perhaps you can make a general non-publication
19 order in respect of the phone numbers and email addresses
20 of individuals on screens?

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22 THE COMMISSIONER: Yes. I direct that any evidence that
23 shows email addresses or phone numbers not be published.

24

25 MR HODGE: Thank you, Commissioner. I just note, I think
26 at the moment, very efficiently the operators have redacted
27 some parts of the document. But actually, it is not
28 necessary to redact the "To" line because it doesn't show
29 the email addresses; it just shows who received the email.

30

31 So these are the people who have received the draft
32 version 1 report, and you'll see feedback was sought by
33 Wednesday, 20 December. If we can then bring up version 1
34 of the report, which is [FSS.0001.0001.0914].

35

36 THE COMMISSIONER: So this is really a draft report that
37 is being circulated for approval?

38

39 MR HODGE: Comment.

40

41 THE COMMISSIONER: For comment, yes.

42

43 MR HODGE: The Project Report - I will take you to some
44 particular parts in a moment, but, in general, let me say
45 that the Project Report revealed that 10.6 per cent of
46 samples were successful in this particular .001 to .0088
47 range. And by "success", what the report means is they

1 resulted in a usable DNA profile. And 89.4 per cent of the
2 samples failed; that is, they did not result in a usable
3 DNA profile. But then the numbers were further broken
4 down, and before I get to those, I just need to explain two
5 terms that you will hear used, Commissioner, by witnesses.
6 The first is a "cold link" and the second is a "warm link."

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8 A warm link is when a DNA profile from a sample is
9 matched to a known reference sample, and a reference sample
10 is the DNA sample from somebody who is already known or
11 associated with the case. So it might be the victim or a
12 suspect or somebody else who is already known to those, the
13 police investigating the case. On the other hand, a cold
14 link is where a DNA profile from a sample is matched to the
15 DNA of someone who has not previously been associated with
16 the case.

17
18 And what version 1 of the report identified was that
19 only 1.86 per cent of the samples had some - and the term
20 that is used is "interaction" - with the National Criminal
21 Intelligence DNA Database (NCIDD). And only 1.45 per cent
22 of the samples provided new intelligence by that
23 interaction with NCIDD.

24
25 And "new intelligence" means one of two things.
26 Either establishing a cold link in the case; that is, by
27 taking the sample that has been extracted and matching it
28 to a DNA sample that is stored in NCIDD and thereby
29 providing new information in relation to the case, or,
30 alternatively, providing DNA information for future linking
31 in NCIDD. That is, it might not link with somebody who is
32 already in the database, but it will be able to be uploaded
33 and then be able to be used in future for future matching.

34
35 And a cold link is the term that is used to describe
36 when this unknown profile from the sample is identified by
37 comparison to the National Crime Database and has a match.

38
39 Before we go further with the report, it is also
40 important to note that the QPS regards NCIDD submission and
41 response as significant, and Inspector Neville, who will
42 give evidence in this module and is at the Forensic
43 Services Group at QPS, has explained to the Commission that
44 the time taken for the lab to report the initial cold links
45 is tracked by the Forensic Register. The Forensic Register
46 is a database that both the QPS and the lab have access to,
47 and so what the QPS does is look in the Forensic Register

1 in order to see how many days it takes for the lab to tell
2 QPS the identity of an unknown contributor in a sample;
3 that is, the number of days for a cold link.
4

5 But as Inspector Neville also explains, there is no
6 tracking of that turnaround time for warm links, and
7 Inspector Neville explains that the comparison of crime
8 scene samples to known reference samples, which is looking
9 for a warm link, or the time taken for the lab to provide a
10 report for court purposes, have much longer turnaround
11 times which are not tracked by the Forensic Register. So
12 all of that means, as we apprehend it at the moment, that
13 the benchmark that the QPS is conventionally using to judge
14 turnaround times is cold links, and cold links, again as we
15 apprehend it at the moment, are concerned with submission
16 to the National Database.
17

18 Undoubtedly, that's a metric that makes sense for
19 Volume Crimes. One of the questions that you will need to
20 consider, Commissioner, is what is the significance or
21 otherwise for that and that way of looking at turnaround
22 times in relation to Priority 2 crimes, serious crimes
23 involving violence to a person.
24

25 THE COMMISSIONER: So I understand it, you are speaking
26 about the police attitude towards measuring turnaround
27 time, which is the time between the submission of a sample
28 and the obtaining of some kind of a result.
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30 MR HODGE: Yes.
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32 THE COMMISSIONER: And you are telling me that in
33 volume crime cases in particular, break-and-enters where
34 somebody breaks a window and leaves a bit of blood on the
35 broken glass, for example, or leaves some other kind of
36 trace evidence of having been there but we don't know who
37 the suspect is - it is just a somebody who has come, nobody
38 has identified anyone - or a car has been stolen, then the
39 relevant thing is to get a profile, load it up onto the
40 national database and see if you get a hit. And so, the
41 Forensic Register, which is the database shared between FSS
42 and Police, tracks the turnaround time for those kinds of
43 results, unknown results, for volume crime and unknown
44 results for any crime, really.
45

46 MR HODGE: Unknown results for crime.
47

1 THE COMMISSIONER: But in particular volume crime is where
2 the largest number are.

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4 MR HODGE: Or whether it is where the largest number are,
5 the volume crime --

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7 THE COMMISSIONER: Only because it is volume crime, so
8 there is more of it. That's all. Go on.

9

10 MR HODGE: I was just going to say it is readily
11 understandable why you would be concerned with turnaround
12 time for cold links in relation to volume crime, because -
13 there are a number of reasons, but one reason is because if
14 you have some DNA from, say, a burglary or something like
15 that, by being able to quickly match or relatively quickly
16 match, given that that kind of offending is volume crime,
17 it is often committed by same offenders repeatedly, you are
18 effectively stopping further offending if you can quickly
19 make a match.

20

21 THE COMMISSIONER: Yes. I see. Yes, yes. Whereas - yes,
22 I understand. And with respect to major crime, crimes of
23 violence generally, then many of those involve offenders
24 who have been identified by a complainant or by witnesses,
25 and so the contest is to prove that the identified person
26 is the offender, is guilty. And so you are not interested
27 in cold links; you are interested in warm links. But they
28 haven't devised the system, is that what you are telling
29 me, to measure the turnaround for warm links? Is that what
30 it amounts to?

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32 MR HODGE: At the moment there isn't a measurement for
33 warm link turnaround time, which is not surprising again
34 because it is likely to take longer, it is going to be
35 idiosyncratic in the sense that it won't be - it is not a
36 straightforward process that will be applied every time.
37 It is likely to involve different samples and different
38 kinds of cases. But it is also a question that you will
39 need to consider, which is what is the utility of being
40 concerned with turnaround time for cold links in relation
41 to priority 2 crimes?

42

43 THE COMMISSIONER: Yes.

44

45 MR HODGE: And just to expand upon that a little, bearing
46 in mind the kinds of crimes that we are concerned with,
47 which are murders and sexual assaults, it seems obvious

1 that warm links are going to be an important consideration
2 in relation to any decision to stop or continue processing
3 samples because if a profile can be extracted from a
4 sample, then common sense would suggest that it is more
5 likely to be of significance in relation to a Priority 2
6 crime because it is either matched or not matched to a
7 reference sample. And so, to give some examples, does the
8 blood that has been found on a suspect's clothing match the
9 victim's DNA? Does the DNA that has been extracted from
10 semen match the suspect's DNA? Or conversely, does the DNA
11 profile that has been extracted from some piece of evidence
12 potentially exculpate the suspect because it does not match
13 the suspect's DNA.

14
15 And those appear to be considerations in relation to
16 warm links which would be particularly important if you are
17 making a decision about Priority 2 crimes, and a decision
18 whether to continue processing or not processing.

19
20 THE COMMISSIONER: So what you are saying is that the way
21 that - the attention paid to turnaround time for
22 volume crime and for major crime, measured by reference to
23 the time it takes to get a hit on the National Database, if
24 a hit is obtained, does not, it seems, have any relevance
25 to the bulk of work done on major crime cases?

26
27 MR HODGE: On the face --

28
29 THE COMMISSIONER: So it seems.

30
31 MR HODGE: -- that would seem to be a possible inference
32 that can be drawn and that is something we will hear about
33 both with witnesses from the laboratory and also QPS
34 witnesses.

35
36 THE COMMISSIONER: Anyway, the point at the moment is to
37 draw a distinction between the significance of cold links
38 applying to particular sorts of cases and cases to which
39 cold links are irrelevant?

40
41 MR HODGE: Yes.

42
43 THE COMMISSIONER: So you have drawn that distinction,
44 yes.

45
46 MR HODGE: And then using this report or this version of
47 the report, I just want to draw attention to three features

1 of the report. There are various features that will no
2 doubt be explored as part of the evidence and will be
3 explored using later versions of the report, but I just
4 want to note these three for the moment.

5
6 The first is if we go to page .0924 of the version 1
7 report, and there is a figure at the top of the page which
8 is figure 2. Could we blow that up. This figure shows the
9 spread of success and failure of obtaining a profile
10 against the spread of quantifications within that range of
11 .001 through to .0088. And you can see, Commissioner, at
12 the very bottom a number that begins .001 and then at the
13 top, you can see a number that begins .0085. And at each
14 level, the blue bar indicates the number of successes of
15 obtaining a profile at that level of quantitation and then
16 the red bar indicates the number of failures at each level.

17
18 And what will be apparent to you, Commissioner, just
19 from looking at that is that as the quantifications fall
20 towards the limit of detection of .001, the number of
21 successes decreases and the number of fails increases. And
22 that point is made specifically on the preceding page.
23 But, of course, conversely, as the quantification rises
24 towards the ceiling of the range, .0088, the number of
25 failures decreases and the number of successes increases,
26 so that at a quantification of .0088, you are not missing
27 out on 10 per cent of samples providing a profile, but
28 something meaningfully higher. And that is apparent just
29 from looking visually at the figure.

30
31 The second point, to come back to this issue of --

32
33 THE COMMISSIONER: So just pausing there. If we look at
34 the bottom of that graph, we can see that the last blue bar
35 has associated with it a very, very long red bar. So you
36 may conclude - that long red bar ends at about 45 and the
37 little blue bar ends at about 2, so you get two successful
38 profiles and then about 45 unsuccessful profiles.

39
40 MR HODGE: Yes.

41
42 THE COMMISSIONER: But if we go from the top of the page
43 to the third blue bar, then the red bar that is associated
44 with it, if the blue bar is add about 5, the red bar is at
45 about 7 or 8, so it is 5:8 is the ratio. And in fact, if
46 you look at the weird bar just below the 6684 number, there
47 is a long blue bar just below the 6684 number and above the

1 45, the red bar associated with it is shorter. So there is
2 a big difference between the ratios at the top of the page
3 and the ratios at the bottom of the page, a huge difference
4 in ratios between success and failure.

5
6 MR HODGE: That's right.

7
8 THE COMMISSIONER: Is that what you wanted me to see?

9
10 MR HODGE: Yes. Thanks.

11
12 THE COMMISSIONER: So why does that matter?

13
14 MR HODGE: Ultimately, one of the issues that you will
15 undoubtedly need to consider as part of the decision making
16 process is why, as we will come to in a moment, this was
17 treated as binary; that is, why was the approach taken
18 without further interrogation that there would be this
19 cut-off of .0088 so that any samples below that level would
20 simply not be further tested unless a specific request was
21 made, given that there is a vast difference between, as is
22 apparent in terms of the results that you obtain versus at
23 one end .001 and at the other end .0088, what is the
24 reasoning process that has been employed both by the lab
25 and also by QPS in deciding that this should be approached
26 on a binary basis.

27
28 And then the next thing I will ask you to do,
29 Commissioner, is to go to the next page, page 11
30 [FSS.0001.0001.0914, at 0925]. And I will ask the operator
31 to blow up the paragraph immediately above the figure.

32
33 You will recall what I explained already about the
34 1.45 per cent. The 1.45 per cent is successful interaction
35 with NCIDD. And so I will just identify at this stage this
36 sentence which appears here, which is:

37
38 *This 1.45% of samples would be the*
39 *pertinent value for the client to consider*
40 *if the 'auto-microcon' process was not*
41 *performed.*

42
43 THE COMMISSIONER: Yes.

44
45 MR HODGE: And that ties back to the discussion that we
46 have already had and was the second observation I would
47 make about this report, which is why is that regarded as

1 the pertinent value given what we have already discussed
2 about warm links and the obvious significance of obtaining
3 a profile in the first place and comparison with reference
4 samples for the kinds of serious crimes that constitute
5 Priority 2 cases.

6
7 THE COMMISSIONER: That is to say, the Options Paper
8 having shown that about 10 per cent of samples return a
9 usable profile, it is now said that, really, the percentage
10 of the matters is not 10 per cent but 1.45 per cent; these
11 are the samples that are the pertinent values, and this is
12 the percentage of samples, that range, that give you a cold
13 link hit on the National Database. That's the number you
14 should look at as what you are getting out of this whole
15 process, they're telling Police?

16
17 MR HODGE: Yes.

18
19 THE COMMISSIONER: Or they propose to tell Police?

20
21 MR HODGE: Yes, that's right. And I just want to qualify
22 that in two ways. One is this is not the Options Paper;
23 this is version 1.

24
25 THE COMMISSIONER: No, I understand. But we're at the
26 stage that they are proposing to tell Police as this report
27 stood --

28
29 MR HODGE: That's right.

30
31 THE COMMISSIONER: -- that the relevant consideration is
32 that we are doing all this work, but you are only getting
33 1.45 per cent success rate because the pertinent criterion
34 is whether or not you get a cold link.

35
36 MR HODGE: Yes.

37
38 THE COMMISSIONER: Not whether you get a cold link and a
39 warm link which, together, is about 10.5 per cent, 1 in 10.

40
41 MR HODGE: And again, I know I can go on in detail.

42
43 THE COMMISSIONER: No, go on.

44
45 MR HODGE: Getting 10.6 per cent is not getting a warm
46 link; getting 10.6 per cent is getting a usable profile
47 that can be compared to a reference sample.

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THE COMMISSIONER: I understand.

MR HODGE: So you may or may not get a warm link from it, but of course you then have a usable profile that you can compare to a reference sample, you can compare it to a victim's sample or to a suspect's sample or something of that sort.

THE COMMISSIONER: To put it more accurately then, in 1 out of 10 samples yield a usable profile. Whether it can be used depends upon the case, but you have got a profile that can be used for some purpose by an investigator.

MR HODGE: Yes.

THE COMMISSIONER: Out of all the samples, only 1.45 per cent of them give rise to a successful hit on the National Database; that is, a cold link. And what is being proposed is to say to police, "This is the criterion we are getting if you concentrate upon the fact that we are doing all this work and only getting 1.45 per cent success rate".

MR HODGE: Yes, which as I have noted already appears to reflect, at least arguably reflect, the concern that police are communicating around turnaround times, which are judged according to cold links and finding cold links.

THE COMMISSIONER: Yes.

MR HODGE: There is a further point that's of note about this first report, which is if we go to page .0931 --

THE COMMISSIONER: If we can go back, I'm sorry. In the second sentence, it says:

In considering this, it would be important to evaluate the time and cost for processing, and the opportunity to concentrate efforts on other higher yielding samples.

The time and cost for processing - in this draft report, was there any evaluation of the time and cost for processing? Any data about what percentage of samples, of the total samples examined by the lab, fell within this range? How many time they took and how much time would be

1 saved and how that time - was there any examination of how
2 that time could be used to progress other more valuable,
3 more fruitful work?
4

5 MR HODGE: No, not in the way that you are asking about,
6 Commissioner.
7

8 THE COMMISSIONER: All right. And why - anyway, it
9 doesn't matter, we'll ask somebody, I suppose.
10

11 MR HODGE: And then could I then get you to go - thank
12 you. We have gone to [FSS.0001.0001.0914 at .0931]. I
13 just want to note something, the qualification to what I
14 have said about this focus on NCIDD. This is the
15 conclusion as it was in the first draft.
16

17 THE COMMISSIONER: Yes.
18

19 MR HODGE: And if we blow up the first two paragraphs, you
20 will see that at this stage the conclusion is focused on
21 the idea of obtaining a profile, so that it is referring to
22 89 per cent not yielding meaningful results. And then
23 there is a comparison in the next paragraph, which I will
24 come to in a moment, about all samples that underwent a
25 microcon step, 78.5 per cent of them did not yield
26 meaningful results. And so, there is a certain ambiguity
27 in the original draft of the paper where on the one hand it
28 suggests, as I have taken you to in terms of the words
29 already, that the point to focus upon is NCIDD's
30 submission, but in terms of a conclusion, the conclusion is
31 really focused upon what proportion obtained a profile.
32

33 Then the third point I want to note about this version
34 of the report --
35

36 THE COMMISSIONER: I am sorry, I just want to make sure I
37 understood it, Mr Hodge. What is the point you are making
38 here? By reference to the 89 per cent failure rate for
39 samples within the range we're discussing, and a 78.5 per
40 cent failure rate for all samples that underwent a microcon
41 step, whether or not within that range, what is the point
42 you are making?
43

44 MR HODGE: I will explain the 78.5 per cent in a moment.
45

46 THE COMMISSIONER: Yes.
47

1 MR HODGE: But the point I was making was to just balance
2 the observation I had made about the passage I took you to
3 already where it says what is of significance for the
4 client is 1.45 per cent against, in the draft conclusion,
5 what is being spoken of is the 89 per cent, which is
6 physically 89.4 versus 10.6, 10.6 being where a profile is
7 obtained.

8
9 And then let me then explain the 78.5, which is, as
10 you have identified, Commissioner, in your questions about
11 benefits in terms of time and cost, evaluating whether this
12 is a good idea on its face would seem to require a lot of
13 extra data in terms of understanding the significance of
14 this particular quantification range within the workings of
15 the laboratory, what savings there will be, and things like
16 that. There is a limited amount of comparison data, but
17 not about the things that you were asking about in this
18 version of the report. And if we go to page .0926, this
19 shows the origins of that figure at 78.5 per cent so that
20 in addition to looking at the quantification range up to
21 .0088, there was also an assessment made of what the
22 success was for micro-concentration in respect of all
23 samples that were micro-concentrated from 2016. And just
24 to explain that a little bit further, it's not the case
25 that they were only micro-concentrating samples that were
26 under .0088. They were also micro-concentrating samples
27 above that.

28
29 So this shows, when you look at all samples, the
30 failure rate in respect of micro-concentration, meaning no
31 usable profile is extracted, was 78.5 per cent. And if we
32 go to the next page, you will see a similar kind of figure
33 to the one we looked at before, but this is now graphing it
34 across the full range of samples where there was
35 micro-concentration from 2016. And it is very small and
36 difficult to see, but it will probably be apparent,
37 Commissioner, that, unsurprisingly, as you step up in terms
38 of the quantity of DNA, the proportion of times when you
39 successfully obtain a sample increases.

40
41 So in this version of the report, there was some
42 information that at least provided a little bit of extra
43 context, but not the kind of context that you were asking
44 about, Commissioner. And then if we come back to the
45 conclusions on page .0931 and if we just keep strolling
46 down to where it says:
47

1 *Based on the data analysis, the following*
2 *recommendations are offered ...*
3

4 We will see the recommendation in 1 as drafted is that all
5 microcon processing cease within the relevant range. And I
6 will also just note recommendation 4, which was that there
7 be a further analysis six months later in relation to
8 priority 2 samples in the range of .0088 ng/μL up to
9 0.0133 ng/μL to determine whether recommendation 2, which
10 is to cease processing for all priority 3 samples could be
11 extended to Priority 2 samples up to that range.
12

13 So that is this version of the report was considering
14 recommending not only ceasing immediately
15 micro-concentration or further processing of samples up to
16 .0088, but also in six months' time evaluate whether that
17 should be further extended.
18

19 THE COMMISSIONER: Oh, I see. So proposition 1 is, "We
20 are going to stop further processing if the quantity is
21 between those two limits, except for Priority 1 which is
22 where police insist on the work being done urgently, and
23 except in the case of coronial examinations, which are a
24 special case which we needn't mention at the moment." So
25 the recommendation is we stop doing it immediately, and in
26 six months we'll see if we shouldn't increase the number of
27 samples that we don't sample, that we don't test.
28

29 MR HODGE: Yes.
30

31 THE COMMISSIONER: By making the limit even higher.
32

33 MR HODGE: Yes. The reason I draw that to your attention
34 is because, having drawn to your attention that there was
35 this extra piece of information about the effectiveness of
36 processing above .0088, which is not, as I recall it, in
37 the final Options Paper that went to police, it might be
38 thought that - and we will explore whether that is linked
39 to this fourth recommendation, which is actually to
40 consider extending it further. And that is not a
41 recommendation or a possibility that was put before the
42 police in the Options Paper.
43

44 Can we take that document down. Let me now, as
45 quickly as possible, because these are things that we will
46 then get into in the evidence, tell you about what follows.
47

1 In January of 2018, Kylie Rika, who is the first
2 witness that we are going to call in this module, provided
3 her feedback regarding the project report for Project #184,
4 version 1, the one we have just looked at. And Ms Rika's
5 feedback raised substantial concerns regarding the
6 relevance of NCIDD upload. And her feedback included an
7 opinion that many samples yielded a good DNA profile
8 without necessarily resulting in an upload to the National
9 Database.

10
11 THE COMMISSIONER: She was pointing out that the
12 criterion that was being proposed, the cold link criterion,
13 she was proposing that that wasn't the relevant criterion,
14 in essence?

15
16 MR HODGE: Yes. Or at least --

17
18 THE COMMISSIONER: In essence, not the only thing?

19
20 MR HODGE: -- not as good as something else to be
21 considered. And Amanda Reeves, a senior reporting
22 scientist, also provided feedback. And she questioned the
23 proposition that there was arguably minimal value in
24 proceeding with the auto-micro-concentration in samples
25 with DNA values. And she suggested that the report should
26 include perceived risks and impacts of abandoning that
27 process.

28
29 At 4.47 pm on 8 January 2018, Justin Howes emailed
30 version 2 of the report to the Management Team for feedback
31 and requested feedback by 1.00 pm the next day; that is, by
32 9 January 2018. And Ms Rika and Ms Reeves, a member of
33 that management team, provided their feedback jointly on
34 9 February 2018, and that feedback questioned the data and
35 the need to test to know the true value of a result and
36 also the urgency for feedback.

37
38 THE COMMISSIONER: That is to say - I was going to ask
39 you - is the evidence going to show why it seems so urgent
40 that feedback had to be provided within 24 hours?

41
42 MR HODGE: I expect that is an issue that will be taken up
43 during evidence.

44
45 THE COMMISSIONER: And the feedback that Ms Rika and
46 Ms Reeves provided, that was what an email?

1 MR HODGE: Yes.

2
3 THE COMMISSIONER: All right.

4
5 MR HODGE: And Ms Hedge will take Ms Rika through.

6
7 THE COMMISSIONER: All right. Thanks.

8
9 MR HODGE: By 12 January, so that is within three days, a
10 decision appears to have been made to change Project #184
11 into an Options Paper for the QPS. So the project did not
12 return as a project to the management committee that met
13 every couple of months. A curiosity so far is that we
14 haven't yet, or we aren't yet able to provide you with a
15 precise answer as to how and why that decision is made to
16 proceed by way of Options Paper, but that's something that
17 we will explore over the coming week.

18
19 THE COMMISSIONER: Just so I understand it, you have said
20 there is a protocol for projects which involves a proposal
21 being put up and signed off, and then the project is
22 undertaken. And here it was undertaken by looking at
23 certain data and preparing a report, and then the report is
24 circulated and feedback is obtained. And then the end
25 result is a formal report, I take it, with recommendations
26 in it that management then decides to implement or not
27 implement? Is that the structure?

28
29 MR HODGE: As we apprehend it at the moment, and Ms Rika
30 will be able to give some evidence about this, ordinarily
31 the project report that we have been - the document that we
32 saw version 1 of and then there was a version 2 circulated,
33 that would be finalised and signed off on by the management
34 committee.

35
36 THE COMMISSIONER: And so what you are saying is that that
37 process was abandoned, and instead a fresh document was
38 prepared which has no relationship to this project protocol
39 but is a stand-alone document called an Options Paper?

40
41 MR HODGE: Not quite. What I am saying is there was a
42 version 2 of the Project Report. It never continued on to
43 be finalised by the Management Committee or signed off by
44 the Management Committee or considered for sign-off by the
45 Management Committee. Sometime between 9 January 2018 and
46 12 January 2018 a decision was made to convert that Project
47 Report document into an Options Paper, so that when you

1 look, Commissioner, and we compare the Options Paper with
2 version 2 of the report, they look visually very similar.
3 They contain very similar kinds of information, but one is
4 a report going to the Management Committee for sign-off and
5 the other is or becomes a paper that is presented to the
6 police for the police to choose --

7

8 THE COMMISSIONER: And not to the management.

9

10 MR HODGE: And not to the Management Committee.

11

12 THE COMMISSIONER: Yes, all right.

13

14 MR HODGE: Now, on the one hand the decision as to whether
15 to continue to process samples in the range .001 to .0088
16 had an obvious and primary significance for QPS because it
17 involved QPS - or involved a trade-off for QPS between
18 turnaround time as opposed to potential assistance for
19 investigations, at least in the way it was presented. And
20 so, presenting an Options Paper to QPS as had been
21 envisaged in the process plan gave QPS the choice or the
22 agreement to - I beg your pardon, gave QPS the possibility
23 of agreeing to what they wanted to do about that trade off.

24

25 But, on the other hand, proceeding at that point by
26 way of Options Paper seems to have also meant that the
27 Management Committee sign-off of a Project Report for
28 Project #184 was no longer necessary. And the consequence
29 of that change appears to have been, whether intentionally
30 or unintentionally, that the procedural requirement or
31 sign-off by the Management Committee no longer applied.
32 Ms Rika has indicated to the Commission, and I expect will
33 say today, that she is unfamiliar with the concept of an
34 Options Paper, and as of yet, we have not identified a
35 precedent within the lab for an Options Paper of this kind,
36 but, on the other hand, as I have tried to emphasise, it
37 was always envisaged under the Project Plan that there
38 would need to be the agreement of QPS to the change that
39 was to be made.

40

41 With the documents that we have, it looks or it
42 appears that on 9 January 2018, Ms Brisotto provided
43 feedback --

44

45 THE COMMISSIONER: Just remind me. Who is Ms Brisotto in
46 the lab?

47

1 MR HODGE: She is the team leader on the left-hand side of
2 the organisational chart which I think is "Evidence
3 Recovery"?

4
5 THE COMMISSIONER: Yes, all right.

6
7 MR HODGE: If I bring up a document [FSS.0001.0001.0785].
8 This is an Excel spreadsheet. And if we could blow up row
9 6 column C. Try row 7. Thank you. I am sorry, it is the
10 wrong tab. If you see at the bottom, you are on version 1.
11 So if you blow up row 6 column C from "v2 feedback", you
12 will see "PMB" are the initials, Commissioner, of Ms
13 Brisotto and the feedback is:

14
15 *Doesn't apply to P3 with PP21. Best to be*
16 *option paper as QPS should make the*
17 *decision on this.*

18
19 We apprehend that this was a spreadsheet kept by Mr Howes
20 of the feedback that he received from various people within
21 the organisation in relation to the two versions of the
22 report.

23
24 Ms Brisotto has told the Commission in a statement
25 that she cannot now recall what feedback she provided and
26 she has not been able to find a copy of that written
27 feedback, but while she can't confirm anymore, four years
28 later, that she gave this feedback or that it was her view
29 at the time, she says that she does not disagree with
30 information being provided to QPS for their decision as
31 that was the process that she understood was adopted in
32 2011 in relation to Volume Crime, which is Priority 3. And
33 again as I noted, that reflects the outcome or the expected
34 outcome suggested in the project plan.

35
36 On 12 January 2018 - you can take down that document,
37 thank you - Mr Howes requested a copy of version 2 of the
38 report so that he could convert it into an Options Paper.
39 And sometime between the end of January 2018, the Options
40 Paper was finalised. And it is, in effect, an abridged
41 version of the second draft of the project report for
42 Project #184.

43
44 On 30 January 2018, Cathie Allen emailed the Options
45 Paper to Superintendent Dale Frieberg. Superintendent
46 Frieberg was at the time --
47

1 THE COMMISSIONER: Now, the Options Paper is the document
2 that I attached to my interim report, isn't it?

3

4 MR HODGE: Yes.

5

6 THE COMMISSIONER: All right. Thanks.

7

8 MR HODGE: The only reason I hesitate is I was looking at
9 a version of the Interim Report last night, and it looked
10 like what was attached was actually version 2 of the
11 report, but that might just be --

12

13 THE COMMISSIONER: No, it was the - well --

14

15 MR HODGE: I hope it was the Options Paper. You certainly
16 intended to attach the Options Paper.

17

18 THE COMMISSIONER: I hope it was too. All right.
19 Anyway --

20

21 MR HODGE: I will bring up the email. If we bring up
22 [QPS.0013.0649.0001]. And again, you have made the
23 direction already --

24

25 THE COMMISSIONER: Yes.

26

27 MR HODGE: -- Commissioner, that there is a
28 non-publication in relation to the emails. You will see
29 there is an email at the bottom of the page from Ms Allen.

30

31 THE COMMISSIONER: The bottom, the redaction. If you go a
32 little bit further. Yes, Mr Hodge. What?

33

34 MR HODGE: And the emails that Superintendent Frieberg
35 attaches the Options Paper - and then I will take that down
36 now and just bring up the Options Paper itself, which is
37 [QPS.0013.0650.0001]. I think I was just in the midst of
38 saying before, just identifying what Superintendent
39 Frieberg's position was at the time, which is the
40 superintendent of the forensic scientific group of the QPS.

41

42 THE COMMISSIONER: So was she in charge of that group, as
43 it were? Is she the head of that group?

44

45 MR HODGE: Yes, that's as I understand it. And I think
46 then she reported to Acting Inspector Ewen Taylor. Sorry,
47 it is the other way around. Ewen Taylor reports to

1 Superintendent Frieberg. If we go to [QPS.0013.0650.0001
2 at .0009], and you will see at the very top of the page
3 that sentence that we looked at earlier:
4

5 *1. This 1.45% of 'auto-microcon' samples is*
6 *considered to be the pertinent value for*
7 *the client to assess if the 'auto-microcon'*
8 *process was not performed.*
9

10 THE COMMISSIONER: Yes.

11
12 MR HODGE: And then if we go to [QPS.0013.0650.0001 at
13 0010], the Options Paper offers two options for
14 consideration. Option 1 was to simply continue with
15 auto-micro-concentration for all Priority 2 samples, and
16 option two was to cease processing samples that fall within
17 the range .001 and .0088 ng/μL.

18
19 And you will see there are then a list of key elements to
20 consider. And if we could just scroll down the page. And
21 I will just note the first one is a downside of ceasing to
22 process, which is the loss of opportunity to link on NCIDD.
23 And that was said to be 1.45 per cent. And then the next
24 six - and I think at the moment you can see four on the
25 page, but they keep going - the next six are apparent
26 benefits of ceasing to process: lower time and cost --
27

28 THE COMMISSIONER: But they all say the same. There might
29 be six of them, but they all say the same thing, don't
30 they?
31

32 MR HODGE: They all effectively say - well, with one
33 exception, they all effectively say it will be faster and
34 it will require less resources, so it will improve
35 turnaround times.
36

37 THE COMMISSIONER: "We don't have to spend money testing
38 these samples, and we can spend the money somewhere else
39 and we can use the time somewhere else." They say it six
40 times.
41

42 MR HODGE: There is one exception, which you can see at
43 the bottom of the page.
44

45 THE COMMISSIONER: Yes.

46
47 MR HODGE: And that is that by not going through the

1 micro-concentration process at that stage, it would
2 conserve DNA extract for further processing if other
3 technologies became available. So you will see,
4 Commissioner, a reference to Y-STR analysis and LCN
5 analysis, which were not technologies that were available.

6
7 THE COMMISSIONER: They were not available in the lab, but
8 they were available in other labs in Australia.

9
10 MR HODGE: In other labs, that's right. Yes, that's
11 right.

12
13 THE COMMISSIONER: So they say, "If we don't test this,
14 then we can keep it and it can be tested," which I don't
15 understand. Anyway, somebody will explain it no doubt.
16 All right.

17
18 MR HODGE: We can take that document down. Superintendent
19 Frieberg received the document. She does not have any
20 science qualifications. Superintendent Frieberg emailed
21 back to Inspector Ewen Taylor to seek his advice. He is an
22 inspector at the time within the DNA Management Unit, and
23 he, too, does not have any science qualifications but has
24 spent many years in scene-of-crime roles within QPS and had
25 access to others in the DNA unit which have experienced DNA
26 issues. And Acting Inspector Taylor sought assistance from
27 other people within the DNA Management Unit and provided
28 advice to Superintendent Frieberg, and the advice was, in
29 short, to accept Option 2 of the Options Paper to cease
30 processing samples under the relevant threshold.

31
32 A question that will arise for you to consider,
33 Commissioner, is whether the QPS consulted more widely
34 within the QPS or ought to have consulted more widely to
35 get the views of areas of the police force that would be
36 directly affected who were dealing with murders and serious
37 crimes by this change of process.

38
39 On 2 February 2018 --

40
41 THE COMMISSIONER: So the police investigators weren't
42 asked whether they were happy?

43
44 MR HODGE: As we understand it at the moment, but that
45 will no doubt be something that we explore tomorrow in
46 evidence.

1 THE COMMISSIONER: Yes.

2

3 MR HODGE: On 2 February 2018, Superintendent Frieberg,
4 Acting Inspector Taylor, Cathie Allen and Paul Csoban and
5 others met to discuss the Options Paper. And after that
6 meeting, Superintendent Frieberg emailed Ms Allen and
7 accepted Option 2. And then in June of 2018, Inspector
8 David Neville took over as the manager of the DNA
9 Management Unit from Acting Inspector Taylor. Inspector
10 Neville has science qualifications and significant and
11 relevant experience dealing with scientific processes.

12

13 In November of 2018, the DNA results from a particular
14 murder investigation caused Inspector Neville to question
15 the results of some samples. The results of samples had
16 originally been reported as "DNA insufficient for further
17 processing FP" and upon retesting, three of the four
18 samples provided a DNA profile.

19

20 Inspector Neville raised this with Ms Allen by email
21 and Ms Allen responded, and Inspector Neville felt
22 confident that the laboratory was assessing the results as
23 a matter of routine for major crimes to determine if
24 micro-concentrating samples would be helpful. Ms Allen's
25 response also reinforced, from the perspective of Inspector
26 Neville, the low efficacy of micro-concentrating samples,
27 that is 1.45 per cent. And Ms Allen also made the point
28 that if micro-concentration was to occur, it would use up
29 the full sample. Inspector Neville then let the matter
30 rest until December of 2021.

31

32 THE COMMISSIONER: Sorry, when was that first
33 communicative exchange?

34

35 MR HODGE: That was November of 2018.

36

37 THE COMMISSIONER: 2018, yes. And that was prompted by a
38 particular murder case wherein Spectre Neville felt the
39 results were anomalous.

40

41 MR HODGE: Yes.

42

43 THE COMMISSIONER: All right.

44

45 MR HODGE: Three years later in December 2021, Inspector
46 Neville had another murder investigation in which the DNA
47 results raised concerns for him. This time, of the results

1 that had been reported as DIFP, 33 were further worked and
2 10 of those returned useable profiles. And Inspector
3 Neville thought the success range within this range of .001
4 to .0088 might be much higher than had been suggested in
5 the Options Paper. And he requested a meeting with Ms
6 Allen and commenced a review of results, and in April of
7 2022, the QPS started to automatically request that all
8 DIFP results were further worked; that is, all results in
9 this quantification range between .001 and .0088.

10
11 THE COMMISSIONER: When did he start doing that?

12
13 MR HODGE: In April of this year. Various communications
14 occurred as to a further report from the lab about the
15 Options Paper, and they will be covered in the evidence.

16
17 On 24 June 2022, this further report was received by
18 Inspector Neville. That is, after this inquiry commenced.
19 And I will bring up that document, which is
20 [WIT.0020.0003.0001 at .0114]. You will see this is an
21 exhibit to Inspector Neville's statement. And if we blow
22 up the last two paragraphs on that page. Thank you. You
23 will see, Commissioner, what this is concerned with is
24 looking at samples within the relevant range that underwent
25 concentration between 2018 and 2021.

26
27 THE COMMISSIONER: Yes.

28
29 MR HODGE: And bearing in mind that as a matter of course
30 those samples were not auto-microconned or processed; if
31 they underwent concentration and they were within the range
32 between 2018 and 2021, it meant that somebody must have
33 requested that they be reworked, either a scientist within
34 the laboratory or the police. And of the reworked samples,
35 25 per cent provided a DNA profile. And then you will see
36 that in the next paragraph, 6.3 per cent of the samples
37 provided a profile suitable for uploading to the National
38 Database.

39
40 And Inspector Neville reviewed the report and provided
41 his opinion to Superintendent McNab. And Inspector Neville
42 observed that the inferred success rate is grossly
43 minimised by only including profiles potentially uploaded
44 to NCIDD. And he went on to say:

45
46 *I believe that the important measure of*
47 *success is the 25% mentioned in the ...*

1 *report which accords to some extent with*
2 *what we are observing. If we were to be*
3 *conservative and only consider 20% as a*
4 *success rate, this is still high, certainly*
5 *much higher than the rate of success that*
6 *was forecast by [the lab] in 2018.*

7
8 THE COMMISSIONER: So the Options Paper posited a success
9 rate of 10 per cent. Inspector Neville began to require
10 all samples within the range to be fully processed; is that
11 right?

12
13 MR HODGE: Yes, but only from April 2022. I just note
14 that, because this is 2018 to 2022.

15
16 THE COMMISSIONER: No, I understand. The results that he
17 saw was that there was about a 30 per cent success rate; is
18 that correct?

19
20 MR HODGE: I think 20 per cent. It depends on what you
21 are talking about. That is, it depends whether you are
22 talking about a particular case or whether you are talking
23 about the samples.

24
25 THE COMMISSIONER: No, I am talking about all the samples
26 that he then --

27
28 MR HODGE: I think you might be referring, Commissioner,
29 to the my submission that was made to the task force. That
30 was 30 per cent for all samples and 66 per cent for special
31 results.

32
33 THE COMMISSIONER: But what are you telling me?

34
35 MR HODGE: No, I think we are agreeing. But those are -
36 as I recall that submission, that's not every sample
37 automatically. That's where there has been a request for
38 it to be done.

39
40 THE COMMISSIONER: All right. In any event, the original
41 Options Paper had a success rate of 10 per cent. Inspector
42 Neville was getting a success rate higher, significantly
43 higher, and this document indicates a success rate
44 significantly higher. But, of course, the 10 per cent came
45 from one year's sampling and the figures that Inspector
46 Neville got and the figures here are certain categories
47 that might be selected, which might suggest that - anyway,

1 it doesn't matter. I suggest that's for another time.
2 Thanks. I follow.

3

4 MR HODGE: Yes. So on any view, the later comparisons
5 after 2018 show a much higher success rate in terms of
6 number of samples. My wariness is just that they are not
7 necessarily directly comparable because of change in
8 process.

9

10 THE COMMISSIONER: It is day one of the inquiry. It
11 doesn't matter.

12

13 MR HODGE: Commissioner, the last thing I will say about
14 this exploration of the Options Paper and the consequences
15 of it are that during this round, you will also hear from
16 some frontline police investigators of cases where DNA was
17 missed on the first round of testing because of the DIFP
18 process that was adopted.

19

20 Let me then move to the issue that was of particular
21 concern to you in the Options Paper, which is the DIFP
22 statements. Immediately after the Options Paper in 2018,
23 Justin Howes proposed wording for the former witness
24 statements which gave a more accurate account of the
25 position of those samples, and he proposed wording that the
26 samples had low levels of DNA and were not further tested.
27 And that wording was discussed with other reporting
28 scientists and preferred to the "insufficient" wording.

29

30 THE COMMISSIONER: So it was proposed that samples that
31 were not going to be progressed further, for the reasons we
32 have been looking at, would be reported to those concerned
33 to receive the results, with words to the effect "low
34 levels of DNA are not processed further" or something like
35 that.

36

37 MR HODGE: "And were not further tested"?

38

39 THE COMMISSIONER: Yes.

40

41 MR HODGE: And that is what was proposed by Mr Howes and
42 preferred by reporting scientists. However, the "low level
43 of DNA" wording which you addressed in your Interim Report,
44 Commissioner, was, for reasons that are not apparent to us
45 yet, not added to a standard operating procedure or other
46 formal documentation at the laboratory until 5 August this
47 year after the Commission had sent correspondence about the

1 wording to the Department of Health. The management - I'm
2 sorry, I beg your pardon, I put the wrong negative in
3 there.
4

5 The accurate wording, that is the "low level of DNA
6 wording" that was proposed by Mr Howes, was not added to
7 the standard operating procedure until August this year.
8 The managing scientist, Cathie Allen, approved a number of
9 versions of the standard operating procedure which included
10 the inaccurate wording as the suggested statement wording
11 in versions between 2018 and 2022, and one of the issues
12 that we will seek to explore as part of this round is why
13 was that inaccurate wording put into the standard operating
14 procedure and what discretion, if any, did the reporting
15 scientists have to depart from that inaccurate wording.
16

17 In relation to the police, results from the laboratory
18 are first published on a platform shared between the police
19 and the laboratory which we have spoken about already,
20 Commissioner, the Forensic Register, and then further
21 wording was added to the reporting of the results under the
22 police's main database QPRIME. And that wording stated
23 that samples reported as DIFP had low levels of DNA but
24 could be retested or reworked by the laboratory. And so,
25 another question that will arise in relation to the police
26 is whether that communication to officers in the field was
27 sufficient, given some of the issues that have arisen and
28 that police officers are raising. That is, did they
29 understand that, having regard to the wording, they could
30 request that the samples be reworked, and that it was
31 simply a matter of process that the lab wasn't doing so.
32

33 The next issue that we will explore, Commissioner, is
34 the decision that was made on 6 June 2022, or by that date.
35 By February and March of this year, the Minister for Health
36 had received sufficient information to order an internal
37 review of the laboratory and its processes to be conducted
38 and in May of 2022, the QPS put in their submission to
39 discussion Paper 3 from the Women's Safety and
40 Justice Taskforce, which I addressed at the preceding
41 hearing that we were talking about a moment ago, which
42 identified the usable DNA profile as 30 per cent for all
43 cases and 60 per cent for sexual assault cases, subject to
44 the qualifications I have already mentioned. And that
45 number, of course, is far higher but, as I keep trying to
46 emphasise, not directly comparable because the police would
47 be using their knowledge and experience in asking for

1 certain samples to be reworked, including if, for example,
2 the samples appeared to be possibly rich samples or rich
3 sources of DNA if they were possibly blood or semen. But
4 on any view as you have noted, Commissioner, the difference
5 between 10.6 per cent in 2018 and the kinds of percentages
6 that we are talking about this year is striking, and it
7 raises the question of this Commission, which is whether
8 the threshold that was set in 2018 was appropriate.
9

10 In early June of this year there was a discussion in
11 the upper echelons of Queensland Health about the
12 possibility of a commission of inquiry, and there was also
13 a discussion of what should be done about the threshold,
14 which by then was the subject of concern from scientists
15 speaking to the media and the Queensland Police Service.
16 Shaun Drummond, who was the Acting Director-General of the
17 Department of Health and had previously been the chief
18 operating officer of the Department, made two decisions on
19 around 6 June 2022, that was the day that your Commission
20 was announced.
21

22 His first decision was to remove the threshold that
23 had existed since the Options Paper in February 2018. That
24 had the consequence, as he decided, that the laboratory
25 would again commence testing, as a matter of routine,
26 samples with a quant value in that DIFP range of .001 to
27 .0088. That decision was communicated to the public by the
28 Premier and the Minister for Health at their press
29 conference on 6 June 2022.
30

31 His second decision was more complex. It was to
32 decide what should be done to the samples that had
33 previously been reported as DIFP, and what Mr Drummond will
34 tell the Commission is that he intended to change the
35 process back to the process that had been in place up to
36 2018 before the Options Paper. So, in that sense, on one
37 view, Mr Drummond was only seeking to make one decision; he
38 was seeking to undo what had been decided in February of
39 2018. But for reasons that we will explore, another way of
40 looking at it is that there are two decisions involved.
41 One, to recommence processing of those samples within the
42 DIFP range and, two, to process them in a particular way.
43

44 On 2 June, he had a telephone conference with the
45 minister and others within Queensland Health in the chain
46 of command. And on 3 June 2022, he asked for options to
47 return the process to its position in 2018. He asked Lara

1 Keller, who is the responsible for whole of FSS, and her
2 ground is in pathology and she has been a scientist working
3 on the benches as well as having management experience in
4 pathology. Ms Keller spoke to Ms Allen to develop some
5 options for how these samples might be processed, and
6 together they drafted an email to Mr Drummond setting out
7 two options, and I will deal with that.

8
9 THE COMMISSIONER: Just to get the context clear, a point
10 is reached where there seems to be a determination to
11 revert to the status quo ante, the position as it was
12 before the Option 2 was adopted. And then we move to the
13 point where Mr Drummond seeks advice from Ms Keller, and
14 Ms Keller speaks to Ms Allen, and then there is this email
15 that you are going to show us?

16
17 MR HODGE: Yes. If we can bring up
18 [FSS.0001.0051.5400_R]. And you will see this is the email
19 from Ms Keller to Mr Drummond. It has been drafted by a Ms
20 Keller with Ms Allen, and you will see it sets out two
21 options. Option 1, described as the preferred option, is
22 "Process Only". And you will see that is said to be:

23
24 *Revert to pre 2018 workflow - which is*
25 *where all samples above a quant value of 0*
26 *are processed through to DNA profiling.*
27 *Samples that are identified as being*
28 *beneficial for concentration can be based*
29 *on the DNA profile achieved, item*
30 *criticality and case context.*

31
32 And then you will see Option 2 is:

33
34 *Concentrate and Process (Least Preferred)*

35
36 And it says:

37
38 *Discontinue 2018 workflow and concentrate*
39 *all samples with a quant value between 0*
40 *and 0.0088ng/ μ L and then process through to*
41 *DNA profiling stage.*

42
43 That was actually the process that was in place before
44 Option 2 was adopted?

45
46 MR HODGE: Option 2?
47

1 THE COMMISSIONER: In the Options Paper there were two
2 options: keep doing the same thing we're doing; Option 2 is
3 cease processing samples within this range.

4
5 MR HODGE: Yes.

6
7 THE COMMISSIONER: So the process, until that point, was
8 to test all samples, and samples within the range 0 to 88
9 would, as a matter of course, be concentrated.

10
11 MR HODGE: Yes, are you quite right, Commissioner. What
12 is being described in Option 2, even though it is said to
13 be:

14
15 *Discontinue 2018 workflow ...*

16
17 That's wrong, in fact the 2018 workflow was to concentrate
18 all samples between .001, the limit of detection and
19 0088 ng/μL. But the way in which this email is drafted, it
20 inaccurately conveys the situation because Option 1, which
21 is said to be reverting to the pre-2018 work flow, was not
22 actually reverting to the pre-2018 work flow. It was
23 actually Option 2 which was reverting to --

24
25 THE COMMISSIONER: Can we have a look at both of them
26 together?

27
28 MR HODGE: Yes.

29
30 THE COMMISSIONER: Thank you.

31
32 *Revert to pre 2018 workflow - which is*
33 *where all samples ... are processed ...*

34
35 Well, that's correct.

36
37 *Samples that are identified as being*
38 *beneficial for concentration ...*

39
40 The sentence doesn't make sense, but what it means is that
41 the samples can be concentrated depending upon the DNA
42 profile achieved, item criticality and case context. But
43 that wasn't the position, was it? Samples between 0.001
44 and 0.008 were concentrated as a matter of course because
45 they required it to give the best chance of getting a
46 result.

47

1 MR HODGE: Yes. That's right. As a matter of course,
2 they were concentrated. The only thing I hesitate about is
3 they required it to give the best chance.

4
5 THE COMMISSIONER: Well, that's what they did.

6
7 MR HODGE: That's the motivation for why the laboratory
8 did it. That's a matter of, potentially, scientific
9 contest --

10
11 THE COMMISSIONER: Yes.

12
13 MR HODGE: -- about whether or not, as a matter of fact,
14 it's required in all cases to give the best results.

15
16 THE COMMISSIONER: That's another thing, but the reason
17 you concentrate is to increase your prospect of getting a
18 profile.

19
20 MR HODGE: That's right.

21
22 THE COMMISSIONER: And so, the words revert to "revert to
23 pre 2018 workflow" do not describe what follows. And,
24 anyway, all of the disadvantages of both courses of action
25 are explained, but no advantages. Anyway, yes, where do we
26 go next?

27
28 MR HODGE: Mr Drummond chose Option 1, which meant that
29 samples in the DIFP range would not be concentrated before
30 amplification, although after one amplification, that is
31 after moving to stage 4, he was open to scientists to
32 request a concentration step before a second amplification.

33
34 Mr Drummond will give evidence and tell the Commission
35 he was influenced by these options being presented in such
36 a way that Option 1 appeared to be a reversion to the 2018
37 process; that is, seemingly undoing all of what had been
38 done in February of 2018, and also by the risk that a
39 sample could be exhausted if option 2 was chosen, which you
40 will see mentioned there, Commissioner, that he thought
41 that was unattractive in cases where some further testing
42 could be done at another lab.

43
44 The decision to go with Option 1 was, effectively,
45 communicated by the Minister for Health in a press
46 conference on --

47

1 THE COMMISSIONER: It is understandable why he did that.
2 How could you choose Option 2 the way it is presented?
3 You'd be mad to choose Option 2 when you are told that the
4 scientists don't prefer it and that it will take longer to
5 do the work, it will be more expensive. So there's really
6 only one choice, isn't there? That's how you present
7 options, apparently. Anyway, go on.

8

9 MR HODGE: Ms Keller was advised that Option 1 had been
10 chosen by video-conference on 6 June at around the same
11 time as the Minister for Health was giving the press
12 conference. And Ms Keller went to the lab and told Cathie
13 Allen, and emails were sent internally to change the
14 processes of the laboratory immediately. Inside the lab,
15 emails from Management Team members had advised staff of
16 the new process and attributed both decisions, in the way
17 that we are classifying this as two decisions, to the
18 Premier.

19

20 THE COMMISSIONER: They attributed the Director General's
21 decision to accept Option 1 on the document you have just
22 shown me, the email from Ms Keller, they attributed that to
23 the Premier? I don't understand what you mean.

24

25 MR HODGE: You will see, Commissioner, when Ms Rika is
26 called and you will see the emails that went internally,
27 but the way in which it was communicated to staff within
28 the lab was that the Premier had decided to process
29 samples, but --

30

31 THE COMMISSIONER: Not to concentrate?

32

33 MR HODGE: -- not to automatically concentrate them.

34

35 Let me just say a few other things about that 6 June
36 decision. It is apparent when you look at that email
37 that's on the screen that the effects on the lab that were
38 presented to Mr Drummond related to turnaround time on
39 results from the lab, backlog and staffing requirements.
40 There was no identification of scientific issues other than
41 the exhaustion of samples or any difference between Option
42 1 and 2 in terms of the chance of obtaining DNA profiles
43 from samples, or the accuracy or reliability of the results
44 obtained, and there is also no evidence of which we're
45 aware at present of consultation with the police or the
46 DPP, defence lawyers, or the courts, or scientists in the
47 lab, or, we would say, a careful explanation of the

1 decision afterwards.

2

3 THE COMMISSIONER: I am looking at Option 2, paragraph 2:

4

5 *... QPS did not support an automatic*
6 *concentration process, as the sample hadn't*
7 *been assessed in the context of the case*
8 *and may leave no sample remaining ...*

9

10 You haven't opened any evidence about conversations like
11 that or communications like that from police or decision on
12 the part of police about that. Is there any evidence of
13 that?

14

15 MR HODGE: Whether it is the evidence that goes
16 specifically to that statement, I don't know that I can say
17 that, but there is evidence you will hear, Commissioner,
18 about communications that occurred between police and the
19 lab. And I think I may have referred, albeit very briefly,
20 to something that Inspector Neville had said about this
21 issue of using up the sample. There will be some evidence
22 that will come out about this.

23

24 The last point I will make is that there is no
25 consideration of what should be done about samples which
26 had previously been reported as DIFP.

27

28 THE COMMISSIONER: Yes.

29

30 MR HODGE: That is, this is about what would happen in the
31 future. There doesn't appear to have been a consideration
32 at this stage by the Director-General as to what would
33 happen for samples that had been treated as DIFP for the
34 preceding four years.

35

36 THE COMMISSIONER: That is, nobody has given thought to
37 whether the samples that have not been tested for four
38 years ought now be fully tested?

39

40 MR HODGE: The Director-General hasn't.

41

42 THE COMMISSIONER: Yes.

43

44 MR HODGE: And then the last decision that is of relevance
45 to this module is a decision that was made on 19 August
46 2022. What happened was this: on 21 June 2022,
47 Superintendent McNab was advised by Ms Keller that the DNA

1 insufficient threshold had been removed as from 6 June
2 2022. And I will do this by reference to a document. If
3 we bring up [WIT.0020.0008.0001 at 0164]. And if the
4 operator could go over the page for you, Commissioner, you
5 will see there is an email that's sent - and we might just
6 redact the various email addresses - but there is an email
7 sent by Ms Keller, in the middle of the page, to
8 Superintendent McNab and copied to Ms Allen where she
9 informs him:

10
11 *On ... 6th of June 2022, the Premier*
12 *announced a Commission of Inquiry [and]*
13 *also announced that, moving forward,*
14 *samples that fall into the category of*
15 *[DIFP] would be profiled.*
16

17 And then if you --

18
19 THE COMMISSIONER: And that's really a statement that they
20 are going to revert to the former process, the former
21 procedure, before 2018 and test all samples within the
22 range".

23
24 MR HODGE: Yes.

25
26 THE COMMISSIONER: And concentrate them.

27
28 MR HODGE: And Inspector Neville will say that when this
29 email was forwarded on to him by Superintendent McNab, he
30 did not understand from the email that samples that were in
31 the DIFP range would not be concentrated before
32 amplification, and he was concerned about what that would
33 mean for turnaround times.

34
35 Later, in July of 2022, Inspector Neville became aware
36 that samples in that DIFP range were not being
37 concentrated, and he was concerned by that because the
38 original Options Paper had indicated that there were
39 stochastic or random effects where samples with lower
40 quantitation values were processed without concentration.
41 And he raised the matter with his superior and wrote to
42 Helen Gregg, who was then acting as the executive director
43 of FSS, and Ms Gregg confirmed that samples were not being
44 concentrated before amplification. And then on 17 August,
45 Inspector Neville wrote to Ms Gregg to express his concern
46 that evidence may be missed.
47

1 THE COMMISSIONER: So the director-general's idea, it
2 seems, was "Let's just go back to the previous position,"
3 whatever that was.

4
5 MR HODGE: Yes.

6
7 THE COMMISSIONER: And actually that involved processing
8 samples within the range and automatically concentrating
9 them. And, in fact, what happened - and then the
10 Director-General was given two options in the email, one of
11 which suggested that the option that should be adopted was
12 one that did not involve automatic concentration and the
13 other one did. He chose the option that did not involve
14 automatic concentration, and it seems to me that that email
15 represented that that was indeed a previous procedure,
16 though it wasn't. And you are saying that Inspector
17 Neville then learned that these samples weren't being
18 concentrated and, being a scientist himself, he knew that
19 that was a problem because if you don't concentrate these
20 low quantity samples, you're likely to get troublesome
21 profiles. Is that the position?

22
23 MR HODGE: Yes. He learns in July that they are not being
24 concentrated. He speaks to his superior. His superior
25 writes to Helen Gregg, then Inspector Neville writes
26 himself to Helen Gregg on 17 August to express his concern.
27 His concern - I appreciate what you say, Commissioner,
28 which is he is, himself, a scientist. As I understand what
29 his evidence will be, his concern is driven by what he has
30 read in the original Options Paper, which are about --

31
32 THE COMMISSIONER: Yes.

33
34 MR HODGE: -- the problems that can occur.

35
36 THE COMMISSIONER: If you don't concentrate, yes. But do
37 I understand then that the emails you showed me which
38 communicated to various people that these samples would be
39 processed without concentrating, that the content of those
40 emails, that decision was not communicated to police. The
41 police didn't know that that happened?

42
43 MR HODGE: As best we can tell, it wasn't explicitly
44 communicated to police.

45
46 THE COMMISSIONER: That must be so, otherwise why would
47 Neville be surprised?

1
2 MR HODGE: That's right. And then, so that's the
3 17 August when Inspector Neville writes to express his
4 concern. Coincidentally, two days earlier, there was a
5 meeting between Cathie Allen and Queensland Health's
6 lawyers, and that identified a potential problem with the
7 options that had been provided to Mr Drummond that we've
8 looked at, and in the meeting with lawyers, Ms Allen
9 accepted that Option 2 was the closest option to the
10 process that had been in place prior to 2018 and explained
11 that she had made an unintended human error and that there
12 were a number of clarifications necessary for those
13 options. And then Ms Gregg wrote to the Acting
14 Director-General of Health with options at the DNA
15 Laboratory and prepared an email, with the assistance of
16 Ms Allen, clarifying the email from 3 June 2022. And I
17 will bring up that email, which is [WIT.0032.0016.0001_R].
18 Commissioner, can I just note something.

19
20 THE COMMISSIONER: Yes.

21
22 MR HODGE: I understand there might be somebody in the
23 back of the courtroom who is taking photographs of things
24 that are appearing on the screen.

25
26 THE COMMISSIONER: I see. Is anybody taking photos of the
27 screen? Who spoke, will you stand up?

28
29 UNIDENTIFIED SPEAKER: Yes. Just for note taking
30 purposes. I've deleted them. I apologise.

31
32 THE COMMISSIONER: Have you got your camera there or is it
33 on your phone? Well, are you not allowed to do that.
34 Could I ask you to delete them, and then during the
35 adjournment Mr Hodge will check that you have deleted them
36 and that they are deleted from the deleted collection.
37 Thank you.

38
39 A lot of these exhibits will be posted on the
40 Commission website. Not only is the proceeding being
41 live-streamed, but there is no restriction on recording the
42 live-stream and using it. So you needn't be concerned that
43 you won't have an opportunity to look at the material that
44 is being discussed. The purpose of the public hearings is
45 to publicise, so you needn't make your own record. If we
46 don't give you some document, there will be a very good
47 reason for it, and I will explain that. So anything that

1 you see today will, subject to redactions of things that
2 need to be redacted like email addresses, and so on, will,
3 I expect, be made available to all of you. Yes, go ahead,
4 Mr Hodge.

5
6 MR HODGE: Thank you, Commissioner. So this is the email
7 from Ms Gregg to Mr Rosengren, who is the Acting
8 Director-General of Health. And it clarifies the
9 information and the email includes a scientific
10 explanation, including that the purpose of microcon is to
11 maximise chances of a DNA profile being obtained through
12 the DNA analysis process. Dr Rosengren, who will also give
13 evidence, considered the information, consulted with
14 Inspector Neville on behalf of the Queensland Police, and
15 Inspector Neville stressed that the police were keen for
16 samples not to be exhausted without their permission.

17
18 Dr Rosengren decided on 19 August 2022 to change the
19 process. He chose Option 2, so that all Priority 1 and 2
20 samples would be concentrated before amplification if their
21 quantitation values fell into that DIFP range, .001 to
22 .0088. And that decision was communicated by a formal
23 memorandum sent to laboratory staff and the QPS on
24 19 August 2022.

25
26 THE COMMISSIONER: What is Mr Rosengren's position?

27
28 MR HODGE: At this time he is the Acting Director-General
29 of Health.

30
31 THE COMMISSIONER: Was he the Acting-Acting
32 Director-General?

33
34 MR HODGE: No, he was at the time the Acting
35 Director-General of Health at the time that he made the
36 decision, but I will find out - I just can't remember what
37 his position generally is at the time. Chief Operating
38 Officer of Queensland.

39
40 THE COMMISSIONER: I see. Two options are presented in
41 the email that was derived from advice from Ms Allen.
42 Ms Allen accepted that there were errors in that email, but
43 now that email is being used by somebody who is not a
44 forensic scientist to make a decision about what the lab
45 should do; is that is correct?

46
47 MR HODGE: Yes. If we can switch over to the next page

1 and you can see the options.

2

3 THE COMMISSIONER: A lot of human errors.

4

5 MR HODGE: Yes. As you can see, Commissioner, the
6 highlighting indicates where information has been corrected
7 from that originally known on 3 June 2022. Fundamentally,
8 you will see it flips around and explains that the workflow
9 that had been in place before February 2018 is not the
10 workflow that had been communicated in the 3 June email.
11 And the process of making this decision, or this further
12 decision, is also something that we will examine during the
13 course of this week. The other thing I will mention is
14 Ms Rika, Ms Caunt and Ms Quartermain are all scientists in
15 the lab who will give evidence as to how these decisions of
16 6 June and 19 August were communicated within the
17 laboratory and the scientists' efforts to determine the
18 basis for the decisions and the effect that they would have
19 on other processes in the laboratory.

20

21 The last topic I want to say something about,
22 Commissioner, is the scientific issue that underlies this.

23

24 THE COMMISSIONER: Just pausing there, Mr Hodge, how much
25 longer do you have to go, do you think?

26

27 MR HODGE: 10 minutes.

28

29 THE COMMISSIONER: All right. We will adjourn after
30 Mr Hodge has finished, for 20 minutes. And what I had in
31 mind for the hearing was to have a 20-minute adjournment
32 mid-morning and a similar adjournment during the afternoon,
33 because I don't think it is fair to witnesses to keep them
34 running without a break. But I will leave it to counsel to
35 discuss what time, normally, you would wish those
36 adjournments to be to suit your sense of what is
37 reasonable, and I am happy to conform to that. Yes,
38 Mr Hodge, you finish.

39

40 MR HODGE: Thank you, Commissioner. The last topic is
41 concentration. Having looked at these various decisions,
42 the question for you that will remain is what should be
43 done, what is the best practice in terms of concentration
44 of samples with low quantitation values before
45 amplification, and the Commission has sought reports from
46 two very eminent experts in the field: Professor Lindsay
47 Wilson-Wilde, the managing scientist of the South

1 Australian Laboratory, and Dr Bruce Budowle, a US expert
2 who has set up and run forensic laboratories in the United
3 States.

4
5 Professor Wilson-Wilde confirms that there are
6 positive and negative potential outcomes from adding a
7 concentration step before amplification, and the decision
8 as to whether to concentrate depends on both scientific and
9 management considerations and could be a balance struck in
10 individual cases depending upon sample type quantitation
11 and case-type.

12
13 Professor Wilson-Wilde will advise the Commission that
14 a concentration step will not affect the accuracy of a DNA
15 profile, but may affect the chance of obtaining a profile
16 from a sample, and she will also note that it is possible
17 during the extraction step, using the instruments in use in
18 the Queensland laboratory, to have a sample that is only 30
19 microlitres rather than 90 or 100 microlitres, thereby
20 removing the need for a concentration step. And that is a
21 point that will also be made by Dr Budowle, who notes that
22 many laboratories dilute samples to between 35 and 50
23 microlitres, removing the need for a concentration step,
24 and it is the Queensland laboratory that has this
25 particular practice of 100 microlitres. The short point
26 from both experts is that the low quantitation values may
27 arise because of the large amount of dilution that occurs
28 in Queensland in the extraction step.

29
30 THE COMMISSIONER: Oh, I see. So the way it's done here
31 results in a sample of about 95 or 100 microlitres, but it
32 could be done in a way that results in a sample of 35 or 50
33 microlitres, and in that way it has already been
34 concentrated to a degree, is that what you mean?

35
36 MR HODGE: Yes.

37
38 THE COMMISSIONER: Yes, I understand.

39
40 MR HODGE: An additional point that is made by Dr Budowle
41 is that he considers that there does not appear to have
42 been any appropriate validation of the concentration
43 methodology for the Queensland lab and concludes that
44 whilst the process after 19 August is better than after
45 6 June in terms of maximising the success of obtaining a
46 profile, the laboratory should conduct a rigorous study to
47 revisit the DNA IQ validation and undertake a validation

1 study on its concentration methodology.

2

3 THE COMMISSIONER: That is to say, "validation" being an
4 experiment to determine how the process is working in your
5 lab and whether it is working to its optimum capacity.

6

7 MR HODGE: Correct.

8

9 THE COMMISSIONER: And you do that to ensure that when you
10 use it for real samples, you are getting reliable results,
11 and Dr Budowle is saying that that hasn't been done here.

12

13 MR HODGE: Yes, and that you should also - this is just an
14 additional observation. It is also something that,
15 conventionally, you would expect a lab to do as they change
16 pieces of equipment within their process.

17

18 THE COMMISSIONER: Yes.

19

20 MR HODGE: Finally, he will note or recommend that there
21 be some criteria that is developed within the lab for how
22 to exercise the discretion of whether to concentrate to 35
23 microlitres or to 15 microlitres.

24

25 Then Ms Rika and Ms Caunt will explain their concerns
26 about the concentration process in a laboratory, and in
27 particular their concern about the lack of discretion to be
28 exercised by scientists as to whether and to what extent
29 concentration is performed, both before and after both the
30 6 June and also 19 August decisions.

31

32 Those, Commissioner, are a summary of the various
33 issues and background to the things that we will consider
34 this week, and we hope that that gives you some sense of
35 the scope of what we are concerned with in this module.
36 But to come back to what I said at the beginning, that will
37 really mean you are considering first the changed process
38 that was made in 2018 for samples in that DIFP range and,
39 importantly, what this might tell us about the functioning
40 of the lab and the decision-making in relation to DNA
41 testing in Queensland as between both Queensland Health and
42 also to QPS.

43

44 Second, the later identification of problems that had
45 arisen with the change made in 2018, including the further
46 decisions made in June and August of this year, and, again,
47 we are interested not only in what this tells us about the

1 functioning of the lab, but the decision-making process of
2 these kinds of important issues.

3
4 Third, how it was that the words "DNA insufficient for
5 processing" were included in statements of scientists from
6 the lab and the extent to which management within the lab
7 permitted scientists to form their own views as to what
8 wording should be used.

9
10 And, fourth, the expert scientific advice that you
11 have obtained as to the question of concentration and
12 whether the process used in the lab at present is or is not
13 best practice.

14
15 Commissioner, that is all I wanted to say in opening.
16 Is that then an appropriate time?

17
18 THE COMMISSIONER: Thank you, Mr Hodge.

19
20 MR HEDGE: I should indicate after the break Ms Hedge will
21 call the first witness.

22
23 THE COMMISSIONER: Yes. Thank you. We will adjourn for
24 20 minutes.

25
26 **SHORT ADJOURNMENT**

27
28 THE COMMISSIONER: Ms Hedge.

29
30 MS HEDGE: Thank you, Commissioner. I call Kylie Dale
31 Rika, spelt R-I-K-A.

32
33 THE COMMISSIONER: Ms Rika, do you wish to take an oath or
34 an affirmation?

35
36 MS RIKA: An oath is fine.

37
38 **<MS KYLIE DALE RIKA, sworn** [12.06pm]

39
40 THE COMMISSIONER: Yes, Ms Hedge.

41
42 **<EXAMINATION BY MS HEDGE**

43
44 MS HEDGE: Q. Your name is Kylie Dale Rika?

45 A. That's correct.

46
47 THE COMMISSIONER: We are just getting you a cup of water,

1 Ms Rika.

2 A. Thank you.

3

4 MS HEDGE: Q. You are currently an employee of the
5 Queensland Health Forensic and Scientific Services; is that
6 right?

7 A. That's correct.

8

9 Q. Your current position is senior scientist within the
10 Forensic DNA Analysis Unit?

11 A. That's correct.

12

13 Q. Can you tell the Commission your formal
14 qualifications.

15 A. Yes. I have a bachelor of science degree in molecular
16 biology and a postgraduate diploma in forensic science and
17 a diploma in management.

18

19 Q. How long have you worked for the Queensland Health
20 Forensic DNA lab?

21 A. Since 2005.

22

23 Q. Did you work in previous forensic DNA capacities?

24 A. Yes. Between 2000 and 2005, I worked at the Institute
25 of Environmental Science and Research Limited in
26 New Zealand which is a forensic science laboratory in
27 New Zealand.

28

29 Q. What was your position there?

30 A. When I left, I was at a senior scientist level as a
31 court reporting scientist.

32

33 Q. While you have been employed by the Queensland
34 Forensic DNA lab, have you been a reporting scientist for
35 that period since 2005?

36 A. Yes, I have.

37

38 Q. Thank you. You have provided two statements to the
39 Commission. Could I have them taken across to you. The
40 first of your statements is dated 9 August 2022 and starts
41 with the number [WIT.00006.0093.0001_R]; is that correct?

42 A. Yes, that's correct.

43

44 MS HEDGE: I tender that first witness statement.

45

46 THE COMMISSIONER: Thank you. That will be Exhibit 1.

47

1 **EXHIBIT #1 - WITNESS STATEMENT OF KYLIE DALE RIKA DATED**
2 **09/08/2022**

3
4 MS HEDGE: Can I have on the screen your second statement,
5 [WIT.0006.0095.0001_R], can you see that?

6 A. Yes.

7
8 Q. Is that your second statement?

9 A. Yes, it is.

10
11 Q. It is dated 16 September 2022, which would appear as
12 the final numbers at 0017 - [WIT.0006.0095.0001_R at
13 0017].

14 A. Yes.

15
16 Q. You have had the chance to look at those statements
17 before coming to the Commission today?

18 A. Yes, I have.

19
20 Q. Is there anything you wish to correct in either of
21 those statements?

22 A. No.

23
24 Q. Thank you.

25
26 THE COMMISSIONER: The second statement is Exhibit 2.

27
28 **EXHIBIT #2 - 2ND WITNESS STATEMENT OF KYLIE DALE RIKA DATED**
29 **16/09/2022**

30
31 MS HEDGE: Thank you, Commissioner.

32
33 Q. I return then to your time in the Queensland lab.
34 When you first came to that lab, were you a scientist in
35 the Reporting team?

36 A. Yes, I was.

37
38 Q. Can you explain generally the duties of that role?

39 A. As a reporting scientist, my duties were to examine
40 items to identify and locate potential areas for DNA
41 testing and then once those areas were identified, put them
42 through the process and then, at the other end, I would
43 interpret - analyse and interpret those results and report
44 those results and appear in court, when required, to
45 explain the results.

46
47 Q. You said then, "when I started". Is the role of a

1 reporting scientist in the Queensland Forensic lab
2 different now?

3 A. Yes. So reporting scientists now don't have any
4 hands-on involvement in the examination of items.

5

6 Q. I see. When did you move into the managerial role of
7 senior scientist?

8 A. I think it was -

9

10 Q. You can look at your statement.

11

12 MS HEDGE: Commissioner, may the witness look at her
13 statement?

14

15 THE COMMISSIONER: Yes, certainly.

16

17 Q. The second statement in paragraph 4, you say -

18 A. Yes.

19

20 Q. - that you moved into the managerial and reporting
21 role in April 2006.

22 A. Yes. That's correct, yes.

23

24 Q. You have held that role continuously since 2006 to
25 now, senior scientist?

26 A. Yes, I have.

27

28 Q. At times have you acted up into the team leader
29 position of forensic reporting and intelligence when
30 Mr Howes is on leave?

31 A. Yes, I have.

32

33 Q. Thank you. Could I have the organisational chart of
34 DNA Analysis Unit placed on the screen. It is document
35 [FSS.0001.0002.3976_R]. Is the screen in front of you
36 working, Ms Rika?

37 A. Yes, it is.

38

39 Q. Thank you. We see your name under "Reporting (2)" on
40 the right-hand side of that chart, is that correct?

41 A. Yes.

42

43 Q. This is the chart as at 27 June 2022 which appears in
44 the top right-hand corner of the document.

45 A. That's correct, yes.

46

47 Q. Looking at it from your position, the people listed in

1 the box under you, they are reporting scientists; is that
2 correct?

3 A. That's correct, yes.

4

5 Q. And they are people who report to you?

6 A. Yes.

7

8 Q. Looking upwards from your position, you report to
9 Mr Howes.

10 A. Yes.

11

12 Q. And, through him, to Ms Allen.

13 A. Correct, yes.

14

15 Q. To the left of yourself is Ms Johnstone; she is the
16 senior scientist in the other reporting team; is that
17 correct?

18 A. Yes.

19

20 Q. Can we deal briefly with what some of these other
21 teams do. You have explained what the Reporting team does.
22 What about the Intelligence team that we see to the right
23 of yourself?

24 A. So the Intelligence team - if there are DNA profiles
25 that are suitable to be loaded to NCIDD, which is a DNA
26 database for searching and matching, those profiles are
27 loaded to NCIDD and any links generated are reported by the
28 Intelligence team.

29

30 Q. Links to samples that are already on NCIDD.

31 A. Yes, correct.

32

33 Q. Moving then to the other side of the page, there is a
34 team leader of Evidence Recovery and Quality in
35 Ms Brisotto.

36 A. Yes.

37

38 Q. Is she the same level as Mr Howes?

39 A. Yes.

40

41 Q. Underneath Ms Brisotto is the Evidence Recovery team
42 headed by also Allison Lloyd?

43 A. Yes, that's right.

44

45 Q. What does the Evidence Recovery team do presently at
46 the Queensland laboratory?

47 A. So the majority of samples submitted from the

1 Queensland Police Service to our Evidence Recovery lab,
2 most of them are just a sample in tube. We do also receive
3 a few larger items for examination and also sexual assault
4 investigation kits. So there are some items that we
5 receive that aren't just in tube samples, but the majority
6 of it is in tube samples. So Evidence Recovery team checks
7 and examines all of those items and submits sub-samples to
8 - in the case of in tube samples, they would submit that
9 whole tube, but with larger items and sexual assault
10 investigation kits, they will submit sub-samples through to
11 the Analytical section for DNA profiling.

12
13 Q. So when a sample first arrives at the laboratory, the
14 Evidence Recovery team, other than the property point -

15 A. Yes, yes.

16
17 Q. The Evidence Recovery team is the first team within
18 the lab to deal with that sample?

19 A. That's correct, yes.

20
21 Q. Did you say that after they have done their tasks, the
22 sample moves to the Analytical team?

23 A. That's correct, yes.

24
25 Q. We see that there on the chart with the senior
26 scientist being Luke Ryan.

27 A. Yes.

28
29 Q. What does the Analytical team then do with that
30 sample?

31 A. So the sample then goes through a process of DNA
32 extraction, so trying to get the DNA out of the cells or
33 cellular material on the sample in the tube. Once that DNA
34 is extracted, then it gets quantified through quantitation
35 process to see how much DNA may be in that sample, and then
36 the sample gets amplified to target areas on the DNA that
37 vary widely between people, and also make lots more copies
38 of the DNA, and then the sample progresses through
39 capillary electrophoresis which is the stage at which we
40 are able to visualise the DNA profile results.

41
42 Q. Are those tasks done by instruments and machines
43 within the Analytical section?

44 A. Yes, that's correct.

45
46 Q. But analytical scientists operate those machines; is
47 that right?

1 A. That's right, yes.

2

3 Q. Those two groups, Evidence Recovery and Analytical,
4 they work in a series of laboratories; is that right?

5 A. That's right.

6

7 Q. Which require protection from the outside world and
8 from DNA contamination; is that right?

9 A. That's right, yes.

10

11 Q. And they are required to wear full PPE to do their
12 tasks inside the clean laboratory?

13 A. Yes.

14

15 Q. And that's a difference between those teams and the
16 Reporting teams; is that right?

17 A. That's right, yes.

18

19 Q. Generally -

20 A. Yes.

21

22 Q. - the Reporting teams sit in an open area, an office
23 area -

24 A. That's correct, yes.

25

26 Q. - and do their tasks with computers.

27 A. Yes.

28

29 Q. Rather than with lab equipment.

30 A. Yes.

31

32 Q. But there are times of course when a Reporting side is
33 fighting for a lab to look -

34 A. Yes.

35

36 Q. - at a sample or - well, you tell us. On what
37 occasions would a Reporting scientist enter the laboratory
38 spaces.

39 A. Sometimes a Reporting scientist may wish to observe a
40 particular item that is being examined within the Evidence
41 Recovery area, as it may be pertinent to form an opinion
42 for the Reporting scientist on that item. That rarely
43 happens these days. So I can't - for me, personally,
44 I haven't been into the laboratory in a long time to look
45 at items.

46

47 Q. Was that something different when you first arrived at

1 the Queensland laboratory?

2 A. Yes. Yes. When I first arrived, I had a lot of
3 interaction with item examinations, presumptive clinical
4 testing, sampling, item prioritisation, case conferencing
5 with QPS and other interested parties to formulate an exam
6 strategy that would best address the allegations. Now I
7 don't do that anymore. I just obtain the DNA results,
8 analyse and interpret those, and report them.

9

10 Q. Is that a result of a change of operating procedures
11 within the laboratory?

12 A. That's correct.

13

14 Q. What about when you were working at the New Zealand
15 lab, what was the level of involvement of Reporting
16 scientists in the evidence recovery and analytical systems
17 at that laboratory when you worked there?

18 A. So as a Reporting scientist when I worked there - I'm
19 not sure what it's like now, but when I worked there, we
20 would have a technician reporting scientist hearing
21 situation and the Reporting scientist would devise an
22 examination strategy to best address the allegations of the
23 case. That would often involve talking to the
24 investigating officers, with the police, to work out item
25 prioritisation and exam strategy, sample selection; then
26 the Reporting scientist would discuss that with the
27 technician and provide instructions to the technician for
28 what needed to happen with item examination and testing.

29

30 Q. When you say "exam strategy", that is an examination
31 strategy of the samples; is that right?

32 A. Yes, of the items, yes.

33

34 Q. What is the output of the analytical system or the
35 analytical team, what is the output that reporting
36 scientists look at?

37 A. So once the samples have processed through the
38 capillary electrophoresis, which is a software that helps
39 to visualise the DNA profiles, the reporting scientists
40 then are able to access the DNA profiles, which are called
41 EPGs, which are PDFs, to interpret that profile and make
42 decisions about that profile.

43

44 Q. An EPG is an electropherogram?

45 A. It is, yes.

46

47 Q. It is a PDF, that's the type of document that you are

1 looking at, a portable document format?

2 A. Yes, that's right. Yes.

3

4 Q. And the EPG or the electropherogram is a graph that
5 has peaks?

6 A. Yes.

7

8 Q. Peaks indicate larger amounts of DNA than a lack of a
9 peak, put very simply?

10 A. Yes. Yes, correct. Yes.

11

12 Q. How would you describe the peaks on an
13 electropherogram?

14

15 THE COMMISSIONER: Why don't we wait until we have one in
16 front of us, Ms Hedge.

17

18 MS HEDGE: Thank you, your Honour.

19

20 THE COMMISSIONER: Otherwise it is a little abstract.

21

22 MS HEDGE: Happy to do that.

23

24 Q. The last team we have the Quality & Projects/Clinical
25 Assistants team. Do you see that one, Ms Rika?

26 A. Yes.

27

28 Q. The quality and projects team perhaps is
29 self-explanatory; they deal with quality management and the
30 projects in the laboratory?

31 A. Yes.

32

33 Q. And the clinical assistants, what is their role in the
34 laboratory?

35 A. So they provide operational and some technical support
36 to scientists within the lab. So making up reagents, doing
37 some administrative duties at times, things of that nature.

38

39 Q. The laboratory exists at Coopers Plains in Brisbane;
40 is that right?

41 A. That's right, yes.

42

43 Q. And it is part of a wider campus of buildings that
44 house the forensic and scientific services?

45 A. That's correct, yes.

46

47 Q. And the forensic and scientific services include other

1 types of scientific services as the name suggests,
2 including the mortuary, pathologists, public health,
3 environmental monitoring, and so on?

4 A. Yes.

5

6 Q. A very wide range of scientific and forensic services?

7 A. Yes, that's right.

8

9 Q. And within FSS, there is a Police Services stream, of
10 which DNA analysis is part?

11 A. Yes.

12

13 Q. And there are only two parts of the Police Services
14 stream: DNA analysis and forensic chemistry; is that right?

15 A. That's correct, yes.

16

17 Q. And forensic chemistry do things like test drugs in
18 clandestine laboratories and so on?

19 A. That's correct, yes.

20

21 Q. Ms Allen, the managing scientist of DNA analysis, is
22 also the managing scientist for that forensic chemistry
23 lab; is that correct?

24 A. Yes.

25

26 Q. But Ms Allen's background is in DNA analysis?

27 A. Yes.

28

29 Q. The DNA evidence that is obtained in this lab is used
30 primarily in the criminal justice system; is that right?

31 A. Correct, yes.

32

33 Q. Is it ever used in any other forum?

34 A. Occasionally, we will do a civil case. But that's
35 very rare.

36

37 Q. Going back to your position on the chart, as well as
38 being a manager, do you still act as a reporting scientist
39 and write statements and give evidence in court?

40 A. Yes, I do. Not as much as my staff members do, but I
41 still do that, yes.

42

43 Q. Mr Howes, who you report to, does he still give
44 evidence in court and write statements?

45 A. Yes.

46

47 Q. There is a process in the laboratory which describes

1 people as "competent" to perform certain tasks; is that
2 right?

3 A. That's right.

4

5 Q. When you are "competent" to do a task, it means you
6 have both undertaken the appropriate training, but also
7 means you are signed off as capable of doing a particular
8 task?

9 A. That's correct.

10

11 Q. So when I ask, "Do you do this task?", you can only do
12 that if you are signed off as competent?

13 A. Yes.

14

15 Q. Mr Howes, yourself, all of your staff and all of the
16 start in Reporting (1), all of those people are competent
17 reporting scientists?

18 A. Yes. I still do have one staff member as Tegan Dwyer.

19

20 Q. But she is in the process of becoming competent; is
21 that correct?

22 A. Yes.

23

24 Q. What about Ms Allen, is she competent to be a
25 reporting scientist in the way that I have described her,
26 being signed off as competent?

27 A. Yes, she has been. I don't know how recently she has
28 actually practiced in that capacity, but, yes.

29

30 Q. Above Ms Allen is the Executive Director of FSS; is
31 that right?

32 A. That's correct, yes.

33

34 Q. Currently acting in that position is Lara Keller?

35 A. Yes, correct.

36

37 Q. There is also a quality manager of FSS, whose name is
38 Helen Gregg; is that right?

39 A. Yes.

40

41 Q. To your understanding, what is Helen Gregg's role in
42 the DNA Analysis Unit?

43 A. Basically, Helen's role is an overarching - from what
44 I understand, an overarching quality assurance monitoring
45 and evaluation of all quality for our campus. Just last
46 week, Helen has moved into our DNA Analysis lab to help us
47 out a bit further with our work, with our management and

1 quality processes.

2

3 Q. Thank you. We can have that document taken down now,
4 please.

5

6 Did you have the opportunity to listen to Mr Hodge
7 give an opening this morning?

8 A. I did, yes.

9

10 Q. You are aware one of the focuses of this hearing is
11 the "DNA insufficient for further processing" change that
12 occurred in 2018?

13 A. Yes, I am. Yes.

14

15 Q. Can you explain to the Commission what that result,
16 "DNA insufficient for further processing", how that
17 resulted is obtain within the laboratory, when it was, back
18 in 2018 and 2022?

19 A. Yes.

20

21 Q. Your second statement, at about paragraph 9, there is
22 a description there, if that assists.

23 A. Yes. So in 2018, the DIFP process was implemented
24 whereby samples that fell between 0.001 and 0.0088 ng/ μ L
25 were automatically stopped and the result was reported as
26 "DNA insufficient for further processing" through the
27 Forensic Register to the Queensland Police.

28

29 Q. Do you refer to that as a DIFP result?

30 A. Yes.

31

32 Q. Is it suitable if we refer to it as DIFP in this
33 hearing?

34 A. Yes.

35

36 Q. What team was the staff member in who would determine
37 the DIFP results?

38 A. The Analytical team.

39

40 Q. On what basis would they do that?

41 A. It was just a quant value alone, a strict threshold of
42 if it fell under 0.0088, it was stopped. And that's
43 Processing, and reported as DIFP.

44

45 Q. And the Analytical staff member who obtained the quant
46 value, they would do that using an instrument?

47 A. Yes.

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Q. In 2018, using the Quantifiler; is that right?

THE COMMISSIONER: Q. It was Quantrio by then, wasn't it?

A. Yes. Quantrio

Q. And previously it was Quantduo?

A. We didn't have Quantduo.

Q. But in any event, I just wanted to say, Quantduo is a chemical kit that is used for that, for the purpose of quantification?

A. Yes, correct.

MS HEDGE: There is an instrument that goes with it, or a piece of software, the QuantStudio?

A. Yes.

Q. And these things work together for an Analytical staff member to obtain that number?

A. Yes, correct. Yes.

Q. To your understanding, do the Analytical staff members consider other things in reporting a DIFP result? For example, case context or crime scene photos?

A. No, I don't believe they do.

Q. Are reporting scientists at all involved in that process of the initial report of a DIFP result to police?

A. No.

Q. You mentioned the Forensic Register. That's a piece of software that is shared by Queensland Police and Queensland Health; is that right?

A. That's correct, yes.

Q. So Queensland Health can input information into that software and immediately a police station, a person can - a police officer who has access to it can look at that same information?

A. Yes.

Q. But when you say they send the result, it is a matter of uploading a certain result or a certain sample at your end?

A. Yes.

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Q. And the police look at that result at the other end?
A. Yes. So we will put a result into the Forensic Register. Once that result has been reviewed and validated by another scientist who presses a button to say it's been reviewed, then that result will go across to the Queensland Police.

Q. When I asked you a moment ago about whether the analytical staff member looks at the context of the case or crime scene photographs, and so on, is that true for both the person who puts the initial number in and the validator?

A. I believe so, yes.

Q. You haven't worked in that analytical section, but that's your understanding?

A. That's my understanding, yes.

Q. You said that those samples would be stopped. Are there circumstances in which a sample would continue past that point?

A. So, yes. So the sample would be stopped unless a rework was requested by the Queensland Police and we could restart that sample to go to full testing; or if a statement was requested from us and a reporting scientist reviewed the case and requested a rework of the sample themselves, that could also allow the sample to be tested fully; or in the event a scientist by chance had looked at the sample when looking at others in the case during profile data analysis stage and requested a rework of the sample, at that stage, which, in my experience, is fairly rare. It's usually not until a scientist is looking at the case at the end of the process, at statement stage, that they will see or identify a DIFP sample that was reported and think, "Maybe", based on the case context and the sample type and those things, and their experience and judgment, "Maybe I should put that one through for full testing". But that's a rare - in my experience, a rare occurrence. So it's usually if QPS request us to work it further, or at statement stage.

Q. You described a rework.

A. Yes.

Q. What's a "rework"?

A. So a rework is - so what happens is a sample goes

1 through the process. We have a look at the result from
2 that first working of the sample, and if we think that we
3 might get a better profile if we rework it, that means that
4 we could put the sample through for a number of different
5 rework types, like amplification, microcon concentration,
6 re-CE, capillary electrophoresis. So it's just our ability
7 to be able to work that sample further to try and get a
8 good result or the best result we can.

9
10 Q. If a reporting scientist is the one who requests a
11 rework, would you determine which of the rework options
12 would be applied to the sample?

13 A. It depends on which stage of the process. Obviously,
14 with the automated DIFP process, we don't get that
15 opportunity to make a decision on that sample until it's
16 already gone through and the DIFP process has stopped. And
17 then after that, we may come back and look at it, but not -
18 not before that.

19
20 THE COMMISSIONER: Q. Ms Rika, as I understand what you
21 are saying, the process, the sample has been processed
22 through the Analytical department.

23 A. Yes.

24
25 Q. And the result is that if the quantitation is below 0
26 .0088, it goes to a list of such samples and it will not be
27 processed further, and in the ordinary course you won't see
28 it until a much later stage, which we'll come to; correct?

29 A. That's correct, yes.

30
31 Q. However, if a sample is worked beyond a quantitation
32 stage and is analysed and results in a profile, then you
33 have a work list and you take the next job, which is the
34 next profile to be analysed?

35 A. Yes.

36
37 Q. And it is a profile, an electropherogram with the
38 peaks?

39 A. Yes.

40
41 Q. And you will look at it and compare it to something
42 and that's your job and you will draw a conclusion about
43 it; is that right?

44 A. Correct.

45
46 Q. And having done that, you go to the work list and you
47 get the next job and you do that.

1 A. Correct, yes.

2

3 Q. Which may be the same investigation but may be a
4 completely different investigation. You are not asked in
5 the lab to be concerned with what the case is about or what
6 the crime scene was, or anything of that kind. Do I
7 understand you correctly?

8 A. Yes. So --

9

10 Q. At that stage.

11 A. Yes. Yes, that's right.

12

13 Q. So then if a matter is going to court and FSS is asked
14 to prepare a formal statement for court, that's what you
15 call a witness statement?

16 A. Yes.

17

18 Q. And so at that point, you are going to look at the
19 profile work you did again, or will somebody else do that?

20 A. No. I will look at it at the statement stage, yes.

21

22 Q. And it is at that point you might see the DIFP results
23 were obtained, which you didn't see earlier.

24 A. Yes, correct. Yes.

25

26 Q. So it is at that stage you see the DIFP result and there
27 might be an opportunity for you to consider doing something
28 further, but not before that stage?

29 A. Yes. Only in the rare case that, in the initial stage
30 of interpretation, long before the statement comes, a
31 scientist may by chance just, when they pick a sample off
32 the list, they may go into that whole case and see the
33 DIFP, but that doesn't happen as a matter of course.

34

35 Q. So to summarise then, as a matter of practice in the
36 course of doing your profiling work --

37 A. Yes.

38

39 Q. -- as opposed to witness statements, you are not asked
40 to look at DIFP results and ask whether I should rework
41 them or whether they should be processed further for some
42 reason; you just don't see them at all?

43 A. That's correct, yes.

44

45 Q. And if there was a case in which no witness statement
46 was ever asked for, you'd never see the DIFP statement
47 ever, DIFP result ever.

1 A. That's correct, yes.

2

3 Q. And if a case only had DIFP results then --

4 A. Yes.

5

6 THE COMMISSIONER: Well, that doesn't matter. Yes, all
7 right. Thanks, Ms Hedge.

8

9 MS HEDGE: Thank you.

10

11 Q. At that time that the Commissioner described of when
12 you've been asked to write a statement and you're deciding
13 whether to ask for a rework of a DIFP result, what sort of
14 information would you take into account as a reporting
15 scientist?

16 A. I would be looking at, as much as I can, get
17 information about the case to help me assess, looking at
18 all the samples in the case, with that particular DIFP
19 sample do I feel that that might be a critical sample in
20 the case? Maybe I don't have anything else in the case.
21 I am looking at the sample type of that DIFP sample.

22

23 For example, if I came across - if I was doing a
24 statement for a sexual assault and I noticed that there was
25 a high vaginal swab and I saw sperm and it was reported as
26 DIFP, for me, I would want to rework that sample because
27 sperm is a rich source of DNA, so, in my opinion, chances
28 of getting a usable profile from that would be quite good.
29 So it's at that stage that I would make all of those
30 assessments. Especially, for example, if I had a sexual
31 assault case and I had nothing else in the case in terms of
32 results, I would be looking at those DIP samples and
33 thinking maybe I need to rework these.

34

35 Q. What about the quant value? Is the quant value itself
36 of assistance in determining whether to rework?

37 A. Yes. In my experience, I can rework - well, I have
38 reworked samples between 0.001 and 0.0088, in all of that
39 range, and sometimes got something usable. If the quant
40 was .0087, that would inform my rework choice. I may
41 choose to just amplify rather than micro-concentrate. But
42 if it was .003, for example, I may wish to just
43 micro-concentrate to full before amplification. So the
44 quant value does play a role.

45

46 Q. When you say, "microcon to 35", that's to a volume of
47 35 microlitres?

1 A. That's correct, yes.
2
3 Q. So that's the reduction of the sample from about 90 to
4 100 microlitres down to 35 using a concentration process?
5 A. Yes.
6
7 Q. And a "concentration to full", you just described, is
8 about 15 microlitres?
9 A. Yes, correct.
10
11 Q. These are very small quantities?
12 A. Yes.
13
14 Q. So it's not possible to be exactly precise, but it is
15 approximately 15 microlitres?
16 A. Yes, correct.
17
18 THE COMMISSIONER: Q. So is it untrue to say that micro
19 concentration involves fully depleting the sample?
20 A. Sorry, say that again?
21
22 Q. I am sorry, I put it like a lawyer. Does
23 micro-concentration necessarily fully deplete the sample?
24 A. No, not all the time, no.
25
26 THE COMMISSIONER: All right. Thanks.
27
28 MS HEDGE: Q. In paragraph 12 of your second statement,
29 you say sometimes QPS are in the best position to decide
30 whether a sample should be reworked, and sometimes it's the
31 reporting scientists.
32 A. Yes.
33
34 Q. Is that because of the different roles that these
35 people play in the criminal justice system?
36 A. That's correct. That's correct.
37
38 Q. Do the police have a greater appreciation than the
39 scientists as to how a particular sample fits into a case?
40 A. Yes. So we - under the current system in which we
41 work, we get very little information about the whole case
42 context to allow us to really help devise a good exam
43 strategy for a case.
44
45 THE COMMISSIONER: Q. But you're not asked to devise an
46 exam strategy, are you?
47 A. No.

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MS HEDGE: Q. Sometimes at the reporting stage do you think back about what exam strategy you would have used? Is that what you mean when you say that?

A. Yes, yes.

Q. I see. So you are not - as the Commissioner says, at the start of the process when the sample first arrives at the lab to develop an examination strategy.

A. No.

Q. But later on when you are writing a statement, you might think, "What would I have done?"

A. Yes, yes, that's correct.

Q. I see. And you are saying you have little information about the case context to do that?

A. Yes.

Q. Equally, some of the information that you described you would rely on, including the quant value and particular knowledge that you have about DNA analysis, police don't have that knowledge or expertise?

A. No, that's right.

Q. And that's why you say that sometimes the police are in a good position, sometimes it is the scientist who is?

A. Yes, and I think the best way would be for both parties to work together on devising the best way to test, DNA test, a case.

Q. Do you talk to police investigators about your cases? At the examination time? I don't mean just before court.

A. No. No, I don't.

Q. If there is a sample that's recorded as - sorry, I withdraw that. Another group of samples are reported as, "No DNA"?

A. Yes.

Q. That's for below 0.001 ng/ μ L?

A. Correct.

Q. Are they reported with using in that same process? That is, by an Analytical scientist based on the quant value alone?

A. Yes, correct.

1
2 Q. If there is a case where all of the samples are either
3 no DNA or DIFP and no statement is requested by the police,
4 would a reporting scientist ever see that case?

5 A. No.

6
7 Q. In that case, does that mean it's entirely in the
8 police hands whether a rework is requested, because no
9 reporting scientist could ever exercise that discretion?

10 A. That's correct, yes.

11
12 THE COMMISSIONER: Q. Ms Rika, the scientists who
13 perform extraction and the scientists who perform the
14 analysis do their tasks very well, no doubt, but am I right
15 in thinking that they are in no position to determine
16 whether a particular sample ought to be worked in one way
17 or another way?

18 A. In my opinion, yes, because --

19

20 Q. That is, in your opinion, "No, they're not in that
21 position?"

22 A. Sorry, yes. "No".

23

24 Q. But reporting scientists, having access to a profile,
25 if you do, can form an opinion that having regard to
26 context, including the crime scene, the significance of the
27 sample for the investigation, the type of sample it was - I
28 think you mentioned semen or sperm being a rich source of
29 DNA - are in a position to do that, but you're not asked to
30 do that?

31 A. That's correct, yes.

32

33 THE COMMISSIONER: All right. Thanks.

34

35 MS HEDGE: Q. Is it your understanding that that
36 process, the DIFP process for P2 or major crime samples,
37 was introduced after the Options Paper in 2018?

38 A. That's correct, yes.

39

40 Q. Were you involved in the preparation of that Options
41 Paper?

42 A. No.

43

44 Q. The Options Paper itself, not any other previous
45 versions?

46 A. No, I wasn't, no.

47

1 Q. Were you present when it was presented to Police?

2 A. No.

3

4 Q. Did you find out about the decision made in relation
5 to it after it had been made by Police?

6 A. Yes.

7

8 Q. Mr Howes informed you of the decision?

9 A. Yes.

10

11 Q. As your supervisor?

12 A. Yes.

13

14 Q. Were you involved, though, in previous considerations
15 of workflow in relation to samples with a low quantitation
16 value?

17 A. Yes.

18

19 Q. And was the first of those Project #163 that started
20 in about 2015?

21 A. Yes, correct.

22

23 Q. That project related to assessing the benefits of a
24 concentration step; is that right?

25 A. Yes, the automated concentration. Yes.

26

27 Q. Could you just tell us briefly what the automated
28 concentration step is that you were assessing?

29 A. So any samples that at that time fell within 0.00214
30 and 0.0088 were sent for automated microcon concentration
31 to 35 microlitres. And with Project #163, it was decided
32 that a data mine and a data analysis as a look-see to see,
33 you know, is there - are there any merits in - is there
34 merit in thinking about a range, a quantitation range, for
35 which we don't, like, more often than not, don't get a
36 usable profile? And the conclusion of that project was --

37

38 Q. We will come to that.

39 A. Oh, sorry.

40

41 Q. If I can deal with the terminology, you said
42 "automatic". Does that just mean it happens automatically
43 in the laboratory without anyone exercising a discretion?

44 A. Yes.

45

46 Q. Microcon, that is the trademark name of the filter for
47 the laboratory uses; is that right?

1 A. Yes.

2

3 Q. And concentration is the actual process?

4 A. Yes.

5

6 Q. Is that correct?

7 A. Yes, correct.

8

9 Q. So it is a concentration step?

10 A. Yes.

11

12 Q. Done automatically, using a particular product?

13 A. Yes. Yes. Sorry.

14

15 Q. Not at all. Can we start at the start of that
16 project, and could I have on the screen document
17 [FSS.0001.0070.5037]. This is an email from Mr Howes to a
18 group of people. Just having a look through that, is that
19 the reporting scientists as they were in 2015?

20 A. Yes, correct.

21

22 Q. In the first line it says:

23

24 *... Cathie, Kirsten ... had some*
25 *discussions with senior QPS members. Part*
26 *of the discussion was on TATs.*

27

28 What is TAT?

29 A. Turnaround time.

30

31 Q. And what sort of turnaround time does that refer to?
32 Turnaround time of what?

33 A. When a sample arrives at a laboratory to when we
34 release a DNA result, that time taken to perform that work
35 and get results back to the Queensland Police.

36

37 Q. Is that time split into particular categories for the
38 benefit of considering turnaround times? For example, cold
39 links or warm links or no DNA detected? Is there different
40 categories of turnaround times or is it one whole --

41 A. It's - so, with Priority 1 cases, we have an agreed
42 turnaround time of between three and five days to release a
43 result. But for everything else, there's no hard and fast
44 turnaround time mandate. I understand that the Queensland
45 Police measure - a measure of turnaround time for the
46 Queensland Police is processing until a cold link is
47 obtained. I don't know anything else in terms of how they

1 measure those turnaround times.

2

3 Q. And what does a "cold link" mean to you?

4 A. A cold link is when we obtain a DNA profile from a
5 crime sample and it doesn't match anybody else in the case
6 that the Queensland Police already know about, and so it's
7 an unknown profile. So we put it on to NCIDD and it may
8 link to a person who's already on NCIDD, and that's
9 valuable information for the Queensland Police because it
10 helps them identify a potential lead.

11

12 Q. Is this email the lead-in to Project #163 in the sense
13 that in the third paragraph Mr Howes says that he has asked
14 you, and others, to assist you in getting opinions on
15 bottlenecks and potential strategies?

16 A. That's correct, yes.

17

18 Q. So one of the tasks you did in response to this email
19 was to start Project #163; is that correct?

20 A. That's correct, yes.

21

22 Q. Could we have on the screen [FSS.001.0051.5306_R].

23 This is an Initial Request form filled in by you?

24 A. Yes.

25

26 Q. This is the form filled in by you which resulted in
27 project 163; is that correct?

28 A. Yes, correct.

29

30 Q. You say in the third paragraph:

31

32 *It has been observed anecdotally that*
33 *samples [in that quant range that you*
34 *described] more often than not yield a DNA*
35 *profile which is unsuitable for*
36 *interpretation or comparison?*

37

38 A. Yes.

39

40 Q. And you state specifically at the end of that
41 paragraph that the current focus for the lab and the QPS is
42 to reduce turnaround times?

43 A. Yes.

44

45 Q. That this process was entirely directed towards
46 potential strategies for reducing turnaround time?

47 A. Yes.

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Q. Was there any other reason to do that data analysis, other than thinking about reducing turnaround times?

A. Not that I can think of.

Q. Can I turn then to [FSS.0001.0051.5329_R]. This is a Proposal document for the project; is that right?

A. Yes. Correct.

Q. Were you the main proponent of this? Or how did it work between yourself, Josie Entwistle, Allison Lloyd, Cathie Allen, who are all listed there?

A. So myself, Josie and Allison all worked on the project together as a group, and Cathie Allen's name is on there because she is always the last person's name on documents like this as the manager of the lab.

Q. Was she involved in writing this document, Cathie Allen?

A. No.

Q. Can we turn to the third page of the document [FSS.0001.0051.5329_R at .5331]. We see a list of people who have signed off on this, and Cathie Allen, the managing scientist. Are the people listed in the second box, is that the management team of the laboratory at that time?

A. Yes, correct.

Q. So, the people who sit in the Management Team are the team leaders and then the senior scientists of the six teams that we saw on the structure?

A. Yes.

Q. Thank you. Heading to the sixth page of that document under "Aims" you indicate, as you said, that the aim was to interrogate data in that auto-concentration range?

A. Yes.

Q. To determine, in part 2, the risks and benefits to process those samples; is that right?

A. Yes.

Q. Just one short point that in that auto-concentration 0.00214 ng/ μ L, that number is different to the .001 ng/ μ L number, but they are both the number for "no DNA detected"?

A. Yes.

1 Q. That's the 2015 number.

2 A. Yes.

3

4 Q. By 2018 it was .001?

5 A. Yes.

6

7 Q. And that depends on what the limit of detection is of
8 the quantifying machine?

9 A. Yes, that's right.

10

11 Q. Is that correct? Thank you. Can we turn then to the
12 report, which is [FSS.0001.0051.5307]. This is the final
13 report of Project #163; is that correct?

14 A. It looks like it, yes.

15

16 Q. If we turn to the third page, you will see there that
17 it is signed off --

18 A. Yes.

19

20 Q. -- by the Management Team?

21 A. Yes.

22

23 Q. Is that a way of determining whether something is a
24 final report or a draft, is if all those signatures are
25 there, then --

26 A. Yes.

27

28 Q. And I should that say you understand that there are
29 signatures underneath that black box?

30 A. Yes, yes.

31

32 Q. Can I take you to the eighth page of that document
33 under "Results" and in the second paragraph, there were 817
34 samples or about 82 per cent that were non-informative, so
35 things that didn't provide information to the Police?

36 A. Yes.

37

38 Q. And in the third paragraph, 184 or about 18 per cent
39 that provided informative information?

40 A. Yes.

41

42 Q. In the - what you considered - I assume you are
43 content with the contents of this project?

44 A. Yes.

45

46 Q. You adopt all of that?

47 A. Yes.

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Q. What you have described as "informative", does that include both full and partial profiles?

A. Yes.

Q. What is the reason that a partial profile gives informative information to the police?

A. So whether a DNA profile is - a DNA profile can be informative whether it is a single source, a mixture, a partial, a full. It all depends on the interpretation by the reporting scientist in terms of how they assess that DNA profiling result and whether it's suitable for comparison to person samples. Partial profiles can still be suitable. Yeah.

Q. Perhaps I should step back a second. A partial profile is one which there are peaks in some of the locations on the DNA?

A. Yes.

Q. But not all?

A. Yes, correct.

Q. That your laboratory looks at?

A. Yes.

Q. Yes. And a full profile would be one that has peaks in each location that the laboratory looks at?

A. That's right. Yes.

Q. So while there may be peaks in only some of those locations, that can still allow you to compare those peaks, whatever is there, to a reference sample?

A. Yes.

Q. And that might allow you to say that there's some likelihood that the person has contributed?

A. Yes.

Q. You will have to say it out loud for the transcript. And, equally, it might allow you to exclude someone?

A. Yes. Yes.

Q. So a full profile at the moment is 24 alleles; is that right, 24 locations?

A. 20.

1 Q. 20.
 2 A. Plus the gender allocation.
 3
 4 Q. Thank you. 21 in total.
 5 A. Yes.
 6
 7 Q. But even if you had, say, four or six locations, it
 8 could provide something?
 9 A. Yes. Correct, yes.
 10
 11 Q. Or to others in the criminal justice systems, defence
 12 lawyers, judges, juries?
 13 A. Yes, correct.
 14
 15 Q. Prosecutors.
 16 A. Yes.
 17
 18 THE COMMISSIONER: Is that a convenient time, Ms Hedge?
 19
 20 MS HEDGE: I have only a couple extra parts of this paper
 21 to go through. It will only take about five minutes, if
 22 that is suitable.
 23
 24 THE COMMISSIONER: No, do that.
 25
 26 MS HEDGE: Looking at the other results of this paper,
 27 could we turn to the 11th page. There is a 10 in the
 28 bottom right [FSS.0001.0051.5307 at 5317]. This is a graph
 29 that knows the informative and non-informative results
 30 across the quant value ranges we were looking at. You see
 31 the quant values at the box of the x axis or bottom axis
 32 and the number of samples that occurred in the Y or
 33 vertical axis?
 34 A. Yes.
 35
 36 Q. And if we can just scroll down a little, please,
 37 operator. Thank you. In the last paragraph there, you
 38 say, or you and the other authors of this report say that
 39 the number of informative results is less than the
 40 non-informative results, but they remain fairly consistent
 41 across the quantification value ranges.
 42
 43 A. That's right, yes.
 44
 45 Q. So it is not the case that all of the good results are
 46 at the high end of the quantitation?
 47 A. No.

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Q. Some are at the very low end.

A. Yes, correct.

Q. Thank you. I turn then to page 14 of this document. Under 4.2, "Discussion" in the first paragraph, again you say:

*... data obtained has shown that
informative results were obtained across
the quantitation value ranges even at the
lowest quantification value ranges.*

And that's the same point, that some informative information can be obtained even with very low quantitation values?

A. That's right, yes.

Q. Thank you. And at the top of the next page [FSS.0001.0051.5307 at 5322], it says that a decline in non-informative results was observed as the quantification value increased. Putting that in a different way, does that mean when the quantification is higher, there was less non-informative results?

A. Yes.

Q. We can see that if we go back to page 10 - I am sorry, the graph is easier - the white bars on that graph are the non-informative results. So the white bars are lower at the right-hand side of the graph?

A. Yes.

Q. Thank you. Finally, if we can turn to 16 at the bottom, in the top paragraph under:

5. Conclusions and Recommendations

You conclude:

*This assessment has indicated that there
has been value in the automatic-microcon
process ...*

A. Yes.

Q. Do you agree with that conclusion that you wrote back in 2015?

1 A. Yes.

2

3 Q. Your view is that this project concluded that there
4 was value in concentrating and processing samples in that
5 range 0.00214 to 0.0088?

6 A. Yes, that's correct.

7

8 Q. Finally then on page 21, the last page of the
9 document. That's a blank page. Thank you. Under 5.5,
10 your recommendation was not to make any change to the
11 process; is that right?

12 A. That's correct, yes.

13

14 Q. The recommendation was to finalising this and look
15 again after the introduction of the Forensic Register and
16 the Quantifiler Trio?

17 A. Yes. So we must have had Quantifiler at that stage.

18

19 Q. Not at all. So after this - and as we saw on the
20 signatures at the start, that report and its conclusions
21 was accepted by the whole management team, including
22 Ms Allen?

23 A. Correct, yes.

24

25 Q. And so, the result of that was that there was no
26 change to the process; is that right?

27 A. Correct, yes.

28

29 Q. And so, those samples in that range 0.00214 ng/ μ L to
30 0.0088 ng/ μ L retained their automatic microcon
31 concentration before amplification and the rest of the
32 process?

33 A. Yes. Yes, correct.

34

35 MS HEDGE: Thank you. Is that a --

36

37 THE COMMISSIONER: Q. Just while we are here, two
38 things. The introduction of Quantifiler Trio meant that
39 you were using a much more system to the one that preceded
40 Quantifiler Trio?

41 A. Yes.

42

43 Q. Is that why you said that we had better look at this
44 after we have looked at how much more sensitive our
45 readings are, because things will change, so let's not do
46 anything now?

47 A. Yes.

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Q. The other thing is just terminology. I saw in the document there is a reference to stochastic effects increasing when the quant reduces. So the less DNA you have, the more stochastic effects you have?

A. Yes.

Q. And "stochastic" means "random", doesn't it?

A. Yes.

Q. The word you use in your field for random effects?

A. Yes.

Q. Meaningless things that look like DNA can be confused with as if they show the presence of DNA or that they can interrupt and obstruct the prominence of DNA? Is that right? How would you put it?

A. So stochastic variation is where we see in really low levels of DNA, the DNA is there, you can see a lot of variation in the biological modelling of what we would expect to see in a DNA profile. So increased, what we call "drop out" of DNA peaks, increased allelar covalence between peaks. The other things that you described, I would describe as artefacts.

Q. Yes?

A. That may not be DNA.

Q. We will come to the detail of it?

A. Yes.

Q. But random effects that make it more difficult to determine a profile?

A. Yes.

THE COMMISSIONER: Thank you. Shall we resume at 2.30, ladies and gentlemen?

MS HEDGE: Would 2.15 be suitable?

THE COMMISSIONER: It suits me. Mr Hunter? Mr Rice?

MR HUNTER: I'm fine.

THE COMMISSIONER: We will adjourn until 2.15pm.

LUNCHEON ADJOURNMENT

[1.07pm]

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THE COMMISSIONER: Yes, Ms Hedge.

MS HEDGE: Q. Ms Rika, before the break, we got to the end of Project #163.

A. Yes.

Q. And we saw the recommendation that it be reinvigorated at a later time?

A. Yes.

Q. And was it later reinvigorated and became project 184?

A. That's correct, yes.

Q. Can we look at the project plan for #184, which is [WIT.0006.0107.0001_R]?

A. That's right.

Q. Were you involved in running this project, at the time of writing a project plan?

A. No, I wasn't.

Q. Did you see this document at the time? That is, in about July or August 2017?

A. Possibly. Sorry, I can't remember.

Q. You can't remember? That's no difficulty for you to say that. Do you see in the third paragraph on that page it says:

Anecdotally ...

Do you see that paragraph?

A. Yes.

Q. In the second sentence:

*... extracts that are of low quant value
that have been automatically concentrated
have been observed to rarely yield DNA
information for QPS.*

A. Yes.

Q. Do you think that is a fair summary after the conclusions reached in Project #163?

A. No.

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Q. Why was that?

A. Because Project #163 showed that there was value in doing the auto-microcon process, because we did see usable DNA profiles across a range of quants in the low range. Yeah.

Q. Thank you. Can we turn to the next page.

THE COMMISSIONER: Q. Just before you do. There is that sentence, "Anecdotally, quants within this range have been noted to provide limited intelligence." And there was that word "anecdotally", also appeared in your document.

A. Yes.

Q. Did you write that? The first document, I mean, not this one.

A. Yes.

Q. You wrote that document? What did you mean by "anecdotally"?

A. Based on accounts - at the time, based on accounts from various staff members who were making comments that when they worked a sample in the low quant ranges, more often than not, in their experiences, they were getting profiles that weren't usable.

Q. Yes.

A. But as time has gone on, we have new and more sensitive equipment. So that's something to consider in terms of a possibility for why there might be more usable profiles now.

THE COMMISSIONER: Thank you.

MS HEDGE: Q. Thank you. Turn to page 2 of the document at the bottom of the page there is a heading, "Expected Outcome" and it says:

It is expected that the data ... will match the anecdotal information ...

Which is what we're discussing?

A. Yes.

Q. The last sentence is:

1 *It is an expectation that any*
2 *recommendations are communicated with QPS*
3 *in order to agree on possible new workflow*
4 *strategies.*

5
6 Do you see that?

7 A. Yes.

8
9 Q. Is that a process that you were familiar with in the
10 lab? That is, that recommendations would be discussed with
11 the QPS in order to agree on possible new workflow
12 strategies?

13 A. So, for this particular project, I would have expected
14 that there would be consultation with QPS around risks and
15 benefits of any changes to our processing.

16
17 Q. Yes. Would you expect there to be agreement to be
18 reached between the laboratory and QPS?

19 A. Yes.

20
21 Q. So you weren't involved in performing the project,
22 doing the data mining analysis for Project #184?

23 A. No.

24
25 Q. Did your involvement start when versions of the report
26 were circulated amongst the management team for feedback?

27 A. Yes, that's right.

28
29 Q. The first of those - you provided - is it correct that
30 there were two occasions on which your feedback was sought:
31 Once on version 1 of the report and then again on
32 version 2?

33 A. Yes.

34
35 Q. The first time that feedback was sought, there was
36 some time given for feedback?

37 A. Yes.

38
39 Q. If we can turn to [WIT.0006.0104.0001_R], an email
40 attached to your second statement. This is the
41 distribution by Mr Howes to the management team of the
42 first version of that report; is that right?

43 A. Yes.

44
45 Q. Sent out on 30 November with feedback by 20 December.

46 A. Yes.

1 Q. So a little time there, 21 days or so?

2 A. Yes.

3

4 Q. If we turn to [WIT.0006.0105.0001_R], this is a
5 pre-emptive email from Mr Howes saying that he intends to
6 send out version 2, but the review must be done by 11.00 am
7 the next day.

8 A. Yes.

9

10 Q. Is that correct?

11 A. Yes, correct.

12

13 Q. We see in the second paragraph of the email, he says:

14

15 *I don't think I am stepping on Paula's*
16 *toes ... by asking for this to be your*
17 *No. 1 Priority as you all know how urgent*
18 *this is now.*

19

20 Do you know what this refers to? What the urgency was?

21 A. No. But I do know that at that time, as well as many
22 other times in the lab, actually a constant focus is
23 focusing on more results out the door more quickly. So
24 perhaps, in my view, I'm thinking of ways that we could get
25 through our big workload as quickly as possible.

26

27 Q. Can we turn then to [WIT.0006.0106.0001_R]. This is
28 the email where Mr Howes actually sent version 2 at 4.47 pm
29 on 8 January 2018.

30 A. Yes.

31

32 Q. And asked for the review by 1.00 pm, Tuesday,
33 9 January.

34 A. Yes.

35

36 Q. Do you see that?

37 A. Yes.

38

39 Q. Can we turn to the feedback that you did provide.
40 Could we have on the screen [WIT.0006.0099.0001_R]. I
41 would ask if that document can stay there, but was that
42 sort of turnaround a usual sort of turnaround for providing
43 feedback on project reports?

44 A. No, that was quite an urgent timeframe compared to
45 other projects.

46

47 Q. Is that true even though it was a version 2 of that

1 report? So from version 1, do the timeframes tend to
2 differ between these two versions?

3 A. I feel that version 2, the timeframe on version 2 of
4 this report, was quite tight regardless of version 1 or 2,
5 at interim periods of other projects.

6
7 Q. Just generally, how long would you generally get to
8 review a project report, whatever version it might be?

9 A. Probably around about two weeks, maybe a little bit
10 longer.

11
12 Q. Thank you. In that document that we have now on the
13 screen, could I ask you to turn to the page of it that ends
14 in .0012 [WIT.0006.0099.0001_R at .0012]. If we can just
15 zoom in on the text, please. We see some black text. As I
16 understand it, the black text is the actual report?

17 A. Yes.

18
19 Q. The draft report. The red text is yourself writing;
20 is that right?

21 A. Is this version 2?

22
23 Q. This is version 1.

24 A. Version 1.

25
26 Q. That you've provided on 3 January 2018.

27 A. Yes. Yes, the red text is my --

28
29 Q. Additions to version 1?

30 A. Yes. Feedback, yes.

31
32 Q. And is the blue text Mr Howes' response to your
33 feedback?

34 A. Yes. Correct.

35
36 Q. The second piece of red we see on that page, the
37 paragraph is about what DNA intelligence would the client
38 miss out on. Do you see that?

39 A. Yes.

40
41 Q. And do you understand the "client" to refer to QPS?

42 A. Yes.

43
44 Q. That's something that's discussed generally in the
45 lab, that QPS is "the client" of the lab?

46 A. Yes. There is - everyone thought that QPS is the main
47 client, and my view, we have a range of stakeholders, not

1 just the courts, but we have the community, et cetera. But
2 there is a big focus on the Queensland Police being our
3 main client.

4
5 THE COMMISSIONER: Q. When you say "main client", you
6 have said what your idea is, but did anybody in management,
7 Ms Allen or Mr Howes or Ms Brisotto, any of those managers,
8 refer to any other clients or to any other entities as
9 clients?

10 A. No.

11
12 THE COMMISSIONER: Thank you.

13
14 MS HEDGE: Q. Your comment is that that description, the
15 one where the reference is to 1.86 per cent of
16 auto-microcon samples were suitable for the NCIDD and 1.45
17 per cent provide new intelligence, your response is:

18
19 *True but only relevant for vol crime not*
20 *major crime where LR's can be calculated.*

21
22 A. Yes.

23
24 Q.
25 *The definition of success here is only*
26 *relevant for vol crime not major.*

27
28 Is that right?

29 A. Yes.

30
31 Q. "LRs" means likelihood ratio?

32 A. Yes.

33
34 Q. And that refers to - well, perhaps you can explain
35 what a likelihood ratio is?

36 A. So a likelihood ratio is a statistical weighting that
37 can be applied to describe the DNA evidence under one
38 proposition versus another.

39
40 THE COMMISSIONER: Q. By that you mean, so when you gave
41 evidence in court, or your colleagues give evidence in
42 court, and you have a profile and it has particular
43 characteristics which we will get into in due course, and
44 you look at the reference profile from the suspect or the
45 accused person, and you're comparing the characteristics
46 from the crime scene sample profile to the characteristics
47 in the reference sample that the accused person has given

1 up and that has been analysed --

2 A. Yes.

3

4 Q. -- you then have a mathematical approach to
5 calculating the probability or the likelihood, the
6 probability, that the person who contributed the crime
7 scene sample, the DNA in the crime scene sample, is the
8 same person who contributed the reference sample?

9 A. Yes.

10

11 Q. And when you have got a good match, although I
12 understand you don't like using the word "match", that
13 scientists in your profession don't like using the word
14 "match", but when you have got a good match, have you a
15 high probability in the billions-to-one probability; is
16 that right?

17 A. Yes. In a general sense, yes.

18

19 Q. In a general sense, but that is what you are talking
20 about?

21 A. Yes, that's right.

22

23 Q. It is 100,000 times to one more likely that the
24 reference sample person contributed this sample than not;
25 is that how you put it?

26 A. Yeah. We normally say the DNA evidence is 100 billion
27 times more likely to have occurred if this person had
28 contributed rather than if they had not.

29

30 Q. Yes. That's right. So that's what "LR" means?

31 A. Yes.

32

33 Q. Thank you.

34

35 MS HEDGE: Thank you

36

37 Q. Could you explain to us what you meant for
38 volume crime, not major crime?

39 A. So I suppose my concern with this part of the report
40 was that there was a big focus on what new intelligence
41 information might the QPS might miss out on if we
42 implemented the DIFP from 2018. And my concern was that
43 other warm link information was not being used in its
44 entirety or considered in its entirety.

45

46 For example, yes, a cold link, which is, as we
47 explained before what a cold link is, is an unknown person

1 linking to somebody on NCIDD, which is great intelligence
2 for the QPS. But warm link information is also - well, can
3 be important to the QPS as well. For example, finding
4 semen on the complainant, even though the QPS might have a
5 suspect already, that still goes some way to help address
6 the allegations. And I felt that this was very focused
7 just on what new intelligence information might be missed
8 rather than what other things could be missed that are also
9 helpful to QPS.

10

11 THE COMMISSIONER: Q. Is that because with volume crime,
12 break-and-enters and car stealings and things of that kind,
13 it is often the case that the police have no suspect in
14 mind?

15 A. Yes.

16

17 Q. And so, a National Database hit is what they are
18 hoping for? Whereas in major crime, more often than not,
19 there is a suspect --

20 A. Yes.

21

22 Q. -- that has been identified by the complainant, but
23 there is a dispute about whether the offence happened?

24 A. Yes, correct.

25

26 THE COMMISSIONER: Thanks.

27

28 MS HEDGE: Q. Just to clarify one part of this, it is
29 true that in some cases cold links can be relevant to major
30 crime?

31 A. Yes.

32

33 Q. That is, in murders or other offences against a person
34 where the police do not have a suspect?

35 A. Yes. Yes.

36

37 Q. And in some cases an NCIDD profile obtained from a
38 burglary or something might end up solving a murder
39 somewhere else in Australia, for example?

40 A. Yes.

41

42 Q. But that is a very small percentage of the major
43 crime?

44 A. Yes, correct.

45

46 Q. Is that the --

47 A. Yes.

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Q. Can we turn back to the page of this document that ends in 0007 [WIT.0006.0099.0001_R at 0007]. Zooming in under 4.2, do you see those definitions of "Fail" there?

A. Yes.

Q. "Fail" being "Complex unsuitable", "Partial unsuitable" or "No DNA", effectively?

A. Yes.

Q. And "Success" being everything else?

A. Yes.

Q. Those definitions are consistent with your informative and non-informative from Project #163?

A. Yes.

Q. But the 1.45 per cent is not linked to that definition of "Success" there, is it?

A. No.

Q. Rather, if you turn to the page ending in .0010 [WIT.0006.0099.0001_R at .0010] in the pie chart there, if you can zoom in on that, please, operator, that number there, 10.60 per cent, is the data figure that's relevant to those definitions we just looked at?

A. Yes.

Q. And was your view at the time that you reviewed this that that was a relevant piece of data for the QPS?

A. Yes.

Q. And why is that, in your view?

A. Because as I mentioned before, that 10.6 per cent includes not just new intelligence information but any other information that may be helpful to the QPS, such as finding foreign DNA on a person, that helps address the allegations.

Q. If we turn then in that same document and the page ending in .0013 [WIT.0006.0099.0001_R at 0013], we see a comment at the top of the page near the bar graph about the NCIDD outcome being relevant. Sorry, at the top of the page under the graph:

A profile might sit on NCIDD for years and not link.

1
2 That's your comment.
3 A. Yes.

4
5 Q. And that's the same point we have made now?
6 A. Yes.

7
8 Q. And the next comment underneath the yellow
9 highlighting, again:

10
11 *For major crime, we need to think about how*
12 *many samples gave good LR's but no upload?*

13
14 A. Yes.

15
16 Q. And that's the same point you're making now?
17 A. Yes.

18
19 Q. That there is other informative material for Police,
20 not just NCIDD uploads that result in cold links or new
21 information?
22 A. Yes, correct.

23
24 Q. Thank you. We see Mr Howes', if we zoom back in on
25 that second red and blue text under the yellow
26 highlighting, we see Mr Howes' response was:

27
28 *Captured in warm link data.*
29

30 And do you think that adequately dealt with the concern you
31 were raising?

32 A. I don't think so. It's actually - it was difficult
33 for me to actually understand how the data was actually
34 processed and what, if any, statistical methods were
35 applied to that. I couldn't actually follow or find
36 anything or see anything to follow how the data was
37 actually analysed. But on the premise of what data was
38 explained in terms of success and percentages within this
39 report, it was still concerning enough for me to think
40 about not just missing out on new intel information.

41
42 THE COMMISSIONER: Q. Ms Rika, you may not be able to
43 answer this. Can you think of a reason why or a basis for
44 thinking that the 1.45 per cent cold link success rate is
45 the most pertinent factor to consider when deciding what to
46 do with this range of samples? A proper scientific reason?
47 A. Being able to narrow the pertinent figure down to

1 1.45 per cent might look quite attractive to the reader
2 that, well, it's a small number, so in the big scheme of
3 things, you know, perhaps that's an option we could
4 seriously consider, to stop processing samples based on
5 1.5 per cent.
6

7 Q. But are you able to offer an explanation, having
8 regard to your field of science and your practice, a basis
9 upon which that ought to be regarded as the pertinent
10 figure for making a decision not to sample this class of
11 sample, not to test this class of samples?

12 A. In my opinion, I think even one sample, which could be
13 .2 per cent, for example, one sample that obtains a DNA
14 profile, is enough. So if there's a percentage applied to
15 some information that the QPS might be missing out on, in
16 my view, I don't think that's relevant because, like I
17 said, just one sample, which could be a really small per
18 cent, less than 1.45 per cent, is enough to help - could be
19 enough to help a case.
20

21 THE COMMISSIONER: I understand. Thanks.
22

23 MS HEDGE: Q. Could we turn to the page in that
24 document ending in 20 [WIT.0006.0099.0001_R, at 0020].
25 This is the Recommendations part of Project #184.
26

27 THE COMMISSIONER: What page?
28

29 MS HEDGE: It ends in 0020 in the top right, or page 19 in
30 the bottom right.
31

32 In black, we have the recommendations as drafted at
33 the time of this version of the report. And then item 1,
34 that was sent to - the recommendation, the draft
35 recommendation, was to cease auto-microcon processing, with
36 the exception of priority 1 and coronial/DVI samples, DVI
37 being disaster victim identification?
38

39 A. Yes.
40

41 Q. You added there "P2 samples".
42

43 A. Yes.
44

45 Q. Is that linked to your feedback that the basis of the
46 report was really not about major crime, which is P2?
47

A. Yes, yes. Correct, yes.

Q. In recommendation 2, it was at this time a draft

1 recommendation to:

2

3 *Cease processing all Priority 3 samples up*
4 *to Quantification value of 0.133ng/ μ L.*

5

6 A. Yes.

7

8 Q. And your feedback was that should be assessed
9 separately because at this time there was a data analysis
10 done of a whole range all together; is that right?

11 A. Yes, that's correct.

12

13 Q. And finally in recommendation 4, that connects with
14 your addition of 1c. That is, that P2 samples be an
15 exception for the moment until they have been re-analysed;
16 is that right?

17 A. Yes.

18

19 Q. At the bottom of the page, you say:

20

21 *Overall, I think this idea is good.*

22

23 Do you remember whether that was referable to
24 Recommendation 5, draft recommendation 5, or to all of the
25 draft recommendations?

26 A. It was all of the recommendations in terms of if we're
27 going to look at is there a range where we can prove that
28 we're not getting anything useful, then the idea of
29 exploring that is good, as I had already looked at in
30 Project #163.

31

32 Q. Yes.

33

34 A. But as I have said there in my feedback, my concern
35 was that the data and analysis had been done just on a
36 certain set of samples and focusing, really, just on the
37 new intelligence of information that might be missed; not
38 other evidence that might also be missed.

39

40 Q. Can I ask you about something that was happening in
41 the lab at this time that you mention there:

42

43 *We don't know what interp rules there will*
44 *be for vol crime in PP21 ...*

45

46 A. Yes.

47

48 Q. Is this correct, that leading up to 2018, leading up

1 to the end of 2017, P3 samples were amplified using a kit
2 called Profiler Plus?

3 A. Yes.

4
5 Q. Sometimes shortened to P Plus in documents?

6 A. Yes.

7
8 Q. Whereas priority 1 and 2 were amplified using
9 PowerPlex 21?

10 A. Yes.

11
12 Q. Otherwise known as PP21?

13 A. Yes.

14
15 Q. And those address two different kits by which you do
16 amplification of DNA?

17 A. Yes.

18
19 Q. PP21 was introduced for priorities 1 and 2 back in
20 2012; is that right?

21 A. Yes.

22
23 Q. And so, heading into 2018, were you aware that P3
24 samples were going to transfer into PP21?

25 A. Yes.

26
27 Q. And then all the samples in all the lab would all be
28 being amplified using PP21?

29 A. Yes.

30
31 Q. And was Profiler Plus being put out of - there was no
32 more Profiler Plus? It was out of operation?

33 A. That's right, yes.

34
35 Q. They had stopped manufacturing it, I mean, the kits?

36 A. Yes.

37
38 Q. Does PP21 take more time or cost or resources than
39 Profiler Plus?

40 A. Yes, it does.

41
42 Q. By a significant margin or a small margin? What's
43 your understanding?

44 A. Well, when I think about when we obtained PP21, we did
45 that in combination with a new approach to interpretation,
46 which is a continuous approach using STRmix, which is a STR
47 software package. And our time to interpret profiles

1 increased dramatically with the implementation of PP21 and
2 STRmix.

3
4 Q. I understand. So I should have said the difference
5 between Profiler Plus and PP21 is the number of locations
6 on the DNA strand that it looks at and amplifies?

7 A. Yes. That's right, yes.

8

9 Q. And how many of those locations are Profiler Plus?

10 A. Nine.

11

12 Q. And PP21 is 21?

13 A. Yes.

14

15 Q. As we discussed earlier?

16 A. Yes.

17

18 Q. All right. Is there extra time and cost and resources
19 in using Profiler Plus or PP21 at the analytical stage?

20 A. Not that I'm aware of.

21

22 Q. All right.

23 A. I don't do that part of it, but I wouldn't think so.

24

25 Q. I understand. But you are saying there is a
26 significant difference in time, cost, resources at the
27 interpretation stage by reporters?

28 A. Yes, correct.

29

30 Q. Were the Profiler Plus samples manually interpreted?

31 A. Yes.

32

33 Q. So they didn't use STRmix?

34 A. Correct.

35

36 THE COMMISSIONER: Q. Sorry, Ms Hedge, just so I get it
37 clear, Profiler Plus provided nine sets of peaks for
38 comparison?

39 A. Yes.

40

41 Q. And the peaks are when you represent what we see in
42 the DNA?

43 A. Yes.

44

45 Q. There aren't peaks in the DNA, but the computer that
46 gives us the data represents them as peaks?

47 A. Yes.

1
2 Q. So you get nine and you compare the characteristics of
3 that nine in a crime scene sample to the nine in the
4 reference sample?

5 A. Yes.

6
7 Q. And PowerPlex 21 is a much advanced system with 21
8 sets of peaks, so you have got more characteristics?

9 A. Yes.

10
11 Q. And by definition, you might even lose 10 of them and
12 you've still got 11, whereas you only had nine in the
13 original system. So it's that much more sensitive; is that
14 right?

15 A. It's --

16
17 Q. Is it that much more informative?

18 A. Yes. Yes.

19
20 Q. But because you have many more peaks, and because
21 peaks aren't perfect in crime scenes - they come in odd
22 shapes, sometimes they're not there at all and sometimes
23 fake peaks appear - do I understand that once PowerPlex 21
24 was introduced, that meant that some profiles took a lot
25 longer to understand and analyse than the up-to-nine that
26 you used to have, and so that meant your time as a profiler
27 was - you were much more occupied with individual profiles
28 than you had been before?

29 A. Yes.

30
31 Q. Is that the summary of it?

32 A. Correct, yes.

33
34 Q. And I think you mentioned STRmix?

35 A. Yes.

36
37 Q. And that is a software program that helps profilers
38 interpret by doing some of the work automatically in
39 identifying what matters and what doesn't matter in a
40 profile?

41 A. Yes, correct.

42
43 Q. So you have introduced PowerPlex 21 and STRmix at
44 about the same time, I think, in December 2012.

45 A. Yes, correct.

46
47 Q. And so the amount of time you and your colleagues were

1 spending suddenly increased --

2 A. Yes.

3

4 Q. -- as it were, to do the same work? The same amount
5 of work to produce the same amount of results, but it was
6 taking longer?

7 A. Yes.

8

9 Q. Is that the context?

10 A. Yes.

11

12 THE COMMISSIONER: I see. I understand. Thanks. Yes,
13 Ms Hedge.

14

15 MS HEDGE: Thank you.

16

17 Q. So moving back to 2018, at the time you were giving
18 this feedback, January 2018, was it the case that the lab
19 was looking at the prospect of that happening again for P3
20 samples, that interpretation would take a lot longer?

21 A. Yes.

22

23 Q. Were there any other - so that's one pressure that
24 might be said to be coming on turnaround times?

25 A. Yes.

26

27 Q. Were there any other pressures in the lab, from the
28 lab side, on turnaround times that you remember?

29 A. I remember around that time - I just remember a
30 general conversation from Cathie and Justin that QPS were
31 putting a lot of pressure on our lab to get results out
32 more quickly, and that information came to me and others in
33 the lab through Justin and Cathie based on their
34 conversations with QPS.

35

36 Q. Do you remember about when that was in comparison to
37 you giving this feedback in January of 2018?

38 A. I might have something in an email somewhere.

39

40 Q. Was it around that time?

41 A. Yeah, it was. Yes.

42

43 Q. You have made the point also in that feedback at the
44 bottom there that because you don't know about what the
45 interpretation rules will be, that previous data might not
46 be useful to use to look into the future?

47 A. Yes.

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Q. In the feedback that we can see on the screen.

A. Yes.

Q. That is your point about comparing apples with oranges?

A. Yes.

Q. All right. So that is the feedback that you provided on version 1. Can we turn then to --

THE COMMISSIONER: Just before you move on, Ms Hedge.

Q. On that page on item 2 and item 4, you picked up that other - independently from - you have to assess the data in a different range, independently from the assessment of data that you have made with the first range from 1 to 88. If you want to go higher, you have to look at that afresh.

A. Yes.

Q. And the response by Mr Howes is:

Have re-evaluated ranges.

A. Yes.

Q. What did you understand by that?

A. That he had looked at the data again, done a new data analysis. My understanding from his reply was that he had done a new data analysis looking at discrete sets of data for the different - breaking the ranges down into discrete sets.

Q. I see. But you haven't seen that analysis?

A. No.

THE COMMISSIONER: Yes, Ms Hedge.

MS HEDGE: Thank you.

Q. I turn to document [WIT.0006.0100.0001_R], which is the second lot of feedback you provided. If we turn to the page ending in 0005 under the word "abstract", do you see that:

Given the short TAT for feedback, the Reporting 5s have combined their final

1 *feedback.*

2

3 A. Yes, correct.

4

5 Q. This is a joint feedback between yourself and Amanda
6 Reeves; is that right?

7 A. That's correct.

8

9 THE COMMISSIONER: Sorry, Ms Hedge, which exhibit number
10 is it? Ms Rika's exhibit?

11

12 MS HEDGE: AR-03-01.

13

14 THE COMMISSIONER: Thank you very much.

15

16 MS HEDGE: Have you got that?

17

18 THE COMMISSIONER: I have got it. Thank you. And we are
19 at the abstract page.

20

21 MS HEDGE: Q. Amanda Reeves was the senior scientist of
22 the Reporting team?

23

24 A. She was.

25

26 Q. And when you describe "Reporting 5's", that is because
27 that position is a Level 5, relating to a pay scale in the
28 Health Department; is that right?

29

30 A. Yes, correct.

31

32 Q. And you describe there that short TAT for feedback,
33 and that is what we saw in the emails after lunch about
34 returning feedback by the 9th at 1.00 pm?

35

36 A. Yes, correct.

37

38 Q. Can I ask you, particularly, about point 3 you make
39 there:

40

41 *Note that there seems to be urgency around
42 this proposal being implemented, which
43 might not allow time for full consideration
44 of all potential risks/impacts.*

45

46 Do you understand whether you were referring to that -
47 well, what do you think you were referring - can you
48 remember what the urgency was?

49

50 A. The tight timeframe of, I think it was, one day.

51

1 Q. I see.

2 A. Yes.

3

4 Q. From Mr Howes?

5 A. Yes.

6

7 Q. Does that assist you in knowing what the urgency was
8 from his perspective, why he asked for that?

9 A. I don't know for sure, but in my view it's probably -
10 it probably was because of the pressure placed upon the
11 lab - what I was told, pressure placed upon the lab for
12 results. More results, more quickly.

13

14 Q. You suggested, yourself and Ms Reeves suggested that
15 it might be possible to just implement P3 and revisit it in
16 three months. And do you see in the middle of that
17 paragraph you said you were concerned:

18

19 *... that trying to use P2 results (with one*
20 *set of interp outcomes and purpose) to*
21 *forecast for P3 results (with another set*
22 *of interp outcomes and purpose) is*
23 *confusing, and combined with the haste, we*
24 *may miss something.*

25

26 A. Yes.

27

28 Q. And do you mean that yourself and Ms Reeves might not
29 be able to do a full review?

30 A. Yes.

31

32 Q. I see.

33

34 (Audio missing)

35

36 Q. What is your view? Had the lab in this document
37 considered its benefits appropriately?

38 A. No.

39

40 Q. And that is the reasons you gave in the first set of
41 reasons?

42 A. Yes.

43

44 Q. When you were writing this feedback, did it feel like
45 feedback?

46 A. No.

47

1 THE COMMISSIONER: Ms Rika, on that page at paragraph 2 of
2 your feedback, one of the points you make is that it is not
3 right, not justified, to look at a result where the DNA is
4 found to be the DNA of an assumed known contributor.
5 Can I just pause there. Do I take that to be, for example,
6 you have to tape-lift off my arm, and you assume you are
7 going to find my DNA on that tape, and you find my DNA on
8 that tape, so that's what you are referring to as an
9 example of a sample that gives a result, namely, an assumed
10 known contributor?

11 A. Yes, right.

12
13 Q. And then you go on to say you can't look at results
14 like that where you get a tape-lift off a person and as you
15 expect, you get that person's DNA. And you conclude for
16 the purposes of this analysis, this report, that that's
17 useless information because, as you say, the value of each
18 result changes according to the specific case history and
19 sometimes samples are taken to see whether or not there is
20 foreign DNA present. That is to say, the fact that you get
21 a tape-lift off my arm and it only has my DNA on it may,
22 depending upon the case, tell you something very valuable?

23 A. Yes.

24
25 Q. Is that what you meant?

26 A. Yes.

27
28 Q. Do I understand correctly?

29 A. Yes.

30
31 THE COMMISSIONER: Thanks. I just wanted to know that.
32 Thank you. Yes, Ms Hedge.

33
34 MS HEDGE: Q. Can I turn to the page that ends in 21 at
35 the top-right of this document. [WIT.0006.0100.0001_R at
36 0021]. We are in the conclusions and recommendations part
37 of this. Again I should have said the black is the actual
38 version of the report and the red is either yourself and
39 Ms Reeves's suggestions, either comments or also track
40 changes.

41 A. Yes, correct.

42
43 Q. In Recommendation 1, you removed the exceptions to the
44 ceasing of the auto-microcon process and you recommended to
45 the author that it only be applicable to P3 samples; is
46 that right?

47 A. Yes.

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Q. And you have described the reasoning for P2 and P1 in major crime. Is there any other reasons for that proposed change that you made, other than the information that QPS might be missing on major crimes?

A. No, not that I can remember.

Q. In Recommendation 3, you suggested that the change or that there be a re-assessment after a six-month period to look at the range for P3 and potentially include P2? So that was your proposed way forward --

A. Yes.

Q. -- for this project?

A. Yes.

Q. You might remember when we just looked at the previous recommendations of version 1, there was mention of the range going right up to .0133 ng/ μ L?

A. Yes.

Q. That number is now not in these recommendations?

A. Yes, that's right.

Q. So you're - I'm sorry?

A. I was just going to say yes.

Q. I didn't want to interrupt you. Had you finished that answer?

A. Yes, I had.

Q. Your recommendation in version 1 that that range, .0088 to .0133 had not been fully looked at, that was taken on board and removed?

A. Yes.

Q. But the other feedback you gave about whether 1.45 per cent was appropriate, was that taken on board?

A. No.

Q. And did this version of the report, in your view, still focus on the wrong figures in terms of what was informative to Police?

A. Yes.

Q. On the next page of this report ending in .0022, in the references you have provided some feedback on the

1 statistics used. That's set out there in quite a lot of
2 detail and it says on the third dot point, the third
3 indented dot point, that someone has done an analysis of
4 the data to determine 95 per cent confidence intervals and
5 so on. Who did that analysis?

6 A. So all of that red text, at the time Amanda and I
7 decided to seek advice from somebody within our teams who
8 is quite good with statistical analysis and his name is
9 Rhys Parry. And so, we asked him to look at the data
10 analysis and what, if any, statistical methods were applied
11 to that, and so we incorporated - Amanda and I incorporated
12 Rhys's feedback into our own to give back to Justin, and so
13 all of this information on this page is basically from
14 Rhys, which Amanda and I, we went through it, we considered
15 it, it made sense to us. And so, that's why we put it
16 forward, on behalf of Rhys.

17
18 Q. Can we turn then to page 24, two pages over.
19 [WIT.0006.0100.0001_R at 0024]. This is the table of 95
20 per cent confidence intervals that you mentioned?

21 A. Yes.

22
23 Q. If we look at that, the mean quant for range, so the
24 second column from the left --

25
26 THE COMMISSIONER: Sorry, which page is that?

27
28 MS HEDGE: It ends in 0024 in the top right.

29
30 THE COMMISSIONER: Got it. Thanks.

31
32 MS HEDGE: Q. The second column on the left is an
33 ascending set of values?

34 A. Yes.

35
36 Q. And the first row is 0.001, which is the "no DNA"
37 profile?

38 A. Yes.

39
40 Q. And 8 and 9 which are highlighted, rows 8 and 9,
41 between those two is where this new proposed P3 threshold
42 would be?

43 A. Yes, correct.

44
45 Q. Can I try and simplify the point that's made about the
46 statistics using this table, that there is an increasing
47 probability of success and lower and upper bounds of a

1 confidence interval shown between the bottom and the top?
2 A. Yes.

3
4 Q. So that suggests the prospect of getting some
5 informative information is less at lower quant ranges and
6 more at higher quant ranges?
7 A. Yes.

8
9 Q. And so the point you were making, correct me if I am
10 wrong, is that one should not look at the data of the whole
11 DIFP range together?
12 A. Yes.

13
14 Q. But should stratify it into points to determine what
15 the prospects of success or informative information is in
16 smaller chunks of it?
17 A. Yes, correct.

18
19 Q. Is that a fair summary of the statistical analysis?
20 A. Yes. Yes.

21
22 Q. Right. And again, putting it very simply, a
23 confidence interval is an area within which you can be
24 95 per cent confident that the true value will lie?
25 A. Yes.

26
27 Q. Do you have anything to add to your statistical - I
28 have tried to put it in simpler terms, but tell me if I
29 have taken away anything.
30 A. No, I think - I think because most of the data - well,
31 most of it was in the very low quant ranges, and so
32 grouping that with data of samples in the higher quant
33 ranges altogether skews the data in a way that is not, in
34 my opinion, scientifically sound.

35
36 THE COMMISSIONER: Q. Could I see if I understand that by
37 giving an extreme example. I assume you are testing to see
38 what your rate of success is in getting usable profiles in
39 the range between 0.001 and 0.0088 and you have 1,000
40 samples with a quant of 0011. And of that 1,000 samples,
41 you've got 100 usable profiles. Let me change that. Of
42 that 1,000 samples with a quant of 0011, you get 10 usable
43 profiles. You have 10 samples with 0088 and of that 10,
44 you get five usable profiles. So we can see it is 1 per
45 cent with the low quant, it is 50 per cent with the high
46 quant, but you have got 1,100 samples.
47 A. Yes.

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Q. And you have got 115 usable results.

A. Yeah.

Q. And so you say it is a 10 per cent, or thereabouts, success rate?

A. Yes.

Q. But in fact, at the higher end it's 50 per cent.

A. Yes.

Q. But you have only got a handful of samples that you counted?

A. Yes.

Q. So that's what you meant by skewed?

A. Yes.

Q. If you have a huge number at one end and a small number at the other end --

A. Yes.

Q. -- then when you add it up the percentages don't work anymore to reflect the reality?

A. That's right. Exactly right, yes.

THE COMMISSIONER: Thanks. I understand it now.

MS HEDGE: Q. Thank you. That document can be taken down now, please, operator.

Q. We have gone through the feedback that you provided in response to the second version of the report circulated by Mr Howes.

A. Yes.

Q. At that time when you gave that feedback, what was your expectation about what might happen next in this project?

A. My expectation was that being a member of the Management Team, and also Amanda Reeves being a member of the Management Team and we were both managers of the Reporting scientists who give evidence in court, my expectation would be that our perspective on the project and the impact on our teams would be seriously considered, discussed, et cetera.

1 Q. When did you think you would become involved again?
2 What would be the next time? Would there be a further
3 version? Would there be a meeting? What would happen
4 next?

5 A. I would have thought that after feedback on version 2,
6 there might have been further discussion with Amanda and
7 myself and also maybe a Management Team discussion, and if
8 a final report was to be created, that there might be extra
9 consideration of the points that Amanda and I had raised
10 twice already that didn't - still didn't seem to make it
11 into the final, or version 2.

12
13 Q. Generally in the laboratory around this time, so at
14 the start of 2018, was it a usual process for people to
15 provide feedback on versions of papers in projects?

16 A. Yes.

17
18 Q. Generally at around this time of 2018, was Mr Howes
19 responsive to feedback?

20 A. So around about 2018, my perception of the Management
21 Team's responsiveness to feedback was that if the feedback
22 was in line with the and agenda, then it was received quite
23 positively. But if it wasn't, then it seemed that the
24 feedback was a nuisance. That is because, in my view, the
25 culture of our lab at that time was quite toxic. And
26 that's one of the reasons that Amanda and I felt the need
27 to put our feedback together for version 2 as joint
28 feedback, hoping it would carry the weight needed to
29 actually be heard and considered. We thought that might
30 help us in being heard.

31
32 At that time, in 2018, I was going through a very
33 difficult time at work because I had witnessed my
34 colleague, Amanda, go through quite a traumatic event and
35 it felt to me that, based on that traumatic event, that the
36 Management Team further isolated myself and Amanda from
37 having our input totally and well considered.

38
39 Q. What was that traumatic incident that you refer to?

40 A. So - I forget the - I'll just check my

41
42 Q. There is a reference in, I believe, but correct me if
43 I am wrong, paragraph 20 of your second statement
44 [WIT.0006.0095.0001_R at 0005].

45 A. Yes. As I mentioned, the incident, before 2018, I
46 observed Amanda be dealt with inappropriately in a
47 management meeting for her raising an issue and delivering

1 feedback on Project #181 sperm microscopy sensitivity. In
2 the meeting where Amanda gave this feedback, I witnessed
3 another management team member, Allan, who was sitting
4 directly adjacent to Amanda, slam his hands on the table
5 and push himself back from the table and yell at Amanda.
6 The most senior managers in the meeting that day allowed
7 Allan to remain in the meeting and did not check on Amanda
8 and immediately --

9
10 THE COMMISSIONER: Q. Who are you referring to when you
11 say the most senior members of management?

12 A. At the time the person chairing the meeting was Justin
13 Howes and the other senior manager, because Cathie was on
14 leave, we had Debra Wheelan acting in her position. They
15 allowed Allan to remain in the meeting. When Amanda left
16 the room shocked and terrified, I, too, was shaken and
17 scared, and immediately after the meeting, I emailed Justin
18 to let him know the impact on me. This event contributed
19 to my perception of how willing or not the Management Team
20 would be to seriously consider feedback from Amanda and
21 myself on Project #184. I think that describes the
22 incident.

23
24 MS HEDGE: Q. Was there other incidents that you saw or
25 responses to feedback that also contributed to your
26 perception that feedback that was against the proposed
27 line of a project wouldn't be well considered?

28 A. I haven't got, like, specific examples, but
29 particularly at that time, but in general, there was a
30 feeling of, like I said before, any feedback that was given
31 on a project that was not really in line with where people
32 thought the project might go was not taken on board
33 positively. And I've seen that happen a few times.

34
35 Q. When you say in 2018 but also generally, has that
36 perception of yours continued up until, say, 6 June 2022,
37 which is the day this Commission of Inquiry was announced?

38 A. Yes. Yes.

39
40 Q. What do you think of that feature of not properly
41 considering feedback in terms of good scientific process?

42 A. I think it's bad.

43
44 Q. Why is that?

45 A. Because any scientific process or any scientific
46 experiment needs to be put forth for scrutiny from all
47 angles for the full merits of the best way forward to be

1 realised.

2

3 Q. And do you think that has, would it be fair to say,
4 openness of scrutiny? Is that fair comment?

5 A. Yes.

6

7 Q. And wide consultation? Is that a fair comment?

8 A. Yes.

9

10 Q. Do you think those things have been happening in the
11 lab between 2018 and 6 June 2022?

12 A. No.

13

14 Q. Was your feedback in version 2 of the 184 report taken
15 into account?

16 A. No.

17

18 THE COMMISSIONER: Q. Well, Ms Rika might not know that,
19 but it wasn't - did you get a response?

20 A. No.

21

22 Q. Is there any documents referring to it or dealing with
23 it?

24 A. No.

25

26 MS HEDGE: Q. Now, we saw in Project #163 that that
27 project ended in a report signed by all the Management
28 Team.

29 A. Yes.

30

31 Q. Did that ever happen for Project #184?

32 A. No.

33

34 Q. Did you ever see another version after version 2?

35 A. No.

36

37 Q. What's your understanding about what happened to the
38 end of Project #184?

39 A. In my view, I feel that it became evident to Justin
40 that Amanda and I were not going to sign off or endorse
41 Project #184, and without our sign-off and endorsement, the
42 project couldn't be implemented because we have a standard
43 operating procedure around change management that says
44 that - I've got it written down here somewhere.

45

46 Q. In paragraph 21, I believe, [WIT.0006.0095.0001_R at
47 0006], you mention there the procedure there for change

1 management?

2 A. Yes, that's right. It states the final report of a
3 project must be given to the forensic DNA Analysis
4 Management Team for consideration/acceptance.

5

6 Q. I understand?

7 A. And if the final report is accepted by the forensic
8 DNA Analysis Management Team it will be e-signed.

9

10 Q. Yes.

11 A. And the project or change management process closed.

12

13 Q. Yes, all right. Do you understand, looking in that
14 paragraph, from a document checklist which was annotated in
15 handwriting by Kirsten Scott, that Project 184 was replaced
16 with a QPS Options Paper?

17 A. Yes, yes.

18

19 Q. You understand the Options Paper to be the end of
20 Project #184?

21 A. Yes.

22

23 Q. In some way?

24 A. Yes.

25

26 Q. Not in accordance with your procedure?

27 A. No.

28

29 Q. But in some way it was the continuation?

30 A. Yes.

31

32 Q. All right. Is it right that you first found out about
33 the Options Paper, turning to paragraph 13 of your second
34 statement, same document that we were in, page
35 3[WIT.0006.0095.0001_R at 0003], in a meeting on 1 February
36 2018, a Management Team meeting where it says in the
37 description of each project, for 184, it said it has become
38 an Options Paper?

39 A. Yes.

40

41 Q. Is that right?

42 A. Yes.

43

44 Q. And the previous meeting, 7 December 2017, Project
45 #184 was just indicated as continuing as a project?

46 A. Yes. Correct.

47

1 Q. Had you heard of an Options Paper before?

2 A. No, not in my field.

3

4 Q. When did you have the chance to read the Options
5 Paper? Do you remember reading it before it went to the
6 Police?

7 A. No.

8

9 Q. Did you read it at some point after it went to the
10 Police, but you're not sure when?

11 A. Yes.

12

13 Q. Was it after the DIFP process was implemented?

14 A. Yes.

15

16 Q. In paragraph 15, you set out what you consider to be
17 difficulties of the Options Paper; that is, that it was
18 based on the analysis done in Project #184, which was not
19 done in the best way possible, as we've gone through with
20 your feedback?

21 A. Yes.

22

23 Q. And you describe there the data that it should have
24 been grouped in a different approach and that the measure
25 of success relating to NCIDD was not the appropriate way to
26 proceed with the data analysis; is that right?

27 A. Yes.

28

29 Q. So those concerns you had with the Options Paper, set
30 out in paragraph 15, are the same concerns you set out in
31 your feedback to the two versions of Project #184?

32 A. Yes.

33

34 Q. You were first told that the Options Paper had been
35 accepted - I'm sorry, could we just deal with paragraph 16
36 for a moment. You were also concerned that in the Options
37 Paper there were only two options?

38 A. Yes.

39

40 Q. Is that right?

41 A. Yes.

42

43 Q. And turning over to the top of the next page, you were
44 concerned there was only one risk mentioned, the
45 1.45 per cent, and this is the same point you made in your
46 feedback?

47 A. Yes.

1
2 Q. That there is other information lost, not just 1.45
3 per cent. All right. Whether DIFP was first implemented,
4 Mr Howes advised you that it was going to be implemented as
5 it had been accepted by the Police; is that right?

6 A. Yes.

7
8 Q. And that was on 7 February 2018; is that correct?

9 A. Yes, I think so, yes.

10
11 Q. Can we have a document on the screen
12 [WIT.0006.0110.0001_R].

13
14 THE COMMISSIONER: What exhibit is that, Ms Hedge?

15
16 MS HEDGE: KR-08.

17
18 THE COMMISSIONER: Thank you.

19
20 MS HEDGE: Q. If we turn to the page in that document
21 that ends in a 4 [WIT.0006.0110.0001_R at 0004]. We see
22 this is the end of an email chain, but this is the first
23 email in the chain. And do you see it is an email from
24 Mr Howes on 7 February to a group of people. Just a little
25 higher, please, operator. Thank you. Just a little higher
26 again. So we can see, "From: Justin Howes." So from
27 Mr Howes whose to a group of people. Is that the reporting
28 scientists at the time?

29 A. Yes.

30
31 Q. In the first paragraph, he says that an Options Paper
32 was presented to the QPS and that:

33
34 *QPS have advised ... they do not wish for*
35 *our efforts to be put to the auto-microcon*
36 *process (including the efforts and*
37 *interpretation) for Priority 1 or 2*
38 *samples.*

39
40 A. Yes.

41
42 Q. Was this the way you were advised of the outcome of
43 the Options Paper?

44 A. Yes.

45
46 Q. Below that, Mr Howes suggested potential wording that
47 could be used in a witness statement:

1
2 *Low levels of DNA were detected in this*
3 *sample and it was not submitted for further*
4 *DNA profiling.*
5

6 Do you see that?

7 A. Yes.
8

9 Q. So that email was sent. Can we then turn one page
10 back to the page ending in 3. [WIT.0006.0110.0001_R at
11 0003]. And looking at the email at the bottom of the page,
12 an email sent from Emma Caunt to Mr Howes in reply, ccing
13 you. Ms Caunt is a Reporting scientist?

14 A. Yes, she is.
15

16 Q. And was she then in your team?

17 A. Yes, she was.
18

19 Q. But now she is in the other Reporting team; is that
20 right?

21 A. Yes.
22

23 Q. And she says to Mr Howes, in the first paragraph, that
24 the report shows 10 per cent of samples that went through
25 the auto-microcon gave interpretable results.

26 A. Yes.
27

28 Q. And that is the same 10 per cent figure that you
29 consider to be an appropriate, a more appropriate figure
30 for consideration by Police; is that right?

31 A. Yes.
32

33 Q. Then towards the top of the next page, she is looking
34 at how the result is identified to Queensland Police?

35 A. Yes.
36

37 Q. Is that right?

38 A. Yes.
39

40 Q. At this time, did you have the Forensic Register?

41 A. Yes, we did.
42

43 Q. So this is how the result went through the Forensic
44 Register?

45 A. Yes.
46

47 Q. Is that right?

1 A. Yes.

2

3 Q. And Ms Caunt is identifying that it doesn't say that
4 there is a chance of getting a usable profile and that QPS
5 have the option of requesting it?

6 A. Yes.

7

8 Q. But Ms Caunt is identifying that the result being
9 given to QPS - this is on the same day that Mr Howes has
10 advised you of the change --

11 A. Yes.

12

13 Q. -- doesn't accurately reflect the information you've
14 got?

15 A. Yes.

16

17 Q. All right. Going back to page 3, in the middle of the
18 page there, Mr Howes agrees and says that he will fix that
19 wording; is that right?

20 A. Yes.

21

22 Q. At the top of that page - we can go and look at it,
23 but this is another email from Ms Caunt, and she says:

24

25 *... the line should not be validated until*
26 *the whole case has been assessed ...*

27

28 A. Yes.

29

30 Q. Ms Caunt, raising concerns about the DIFP process?

31 A. Yes.

32

33 Q. Going back to page 2 then, in the middle of the page
34 there, another email. This one from just Ms Caunt to you.
35 And she says that she understands from a conversation with
36 Mr Howes:

37

38 *... that the DNA Insuff process will*
39 *continue as per the no DNA detected process*
40 *so samples won't be assessed taking into*
41 *account the circumstances of the case.*

42

43 A. Yes.

44

45 Q. And that's your understanding of what happened?

46 A. Yes.

47

1 Q. And Ms Caunt provided you an example there of
2 something:

3
4 *Rape case.*
5 *Nothing on the [sexual assault kit]*
6 *Underpants - EFRAC ...*

7
8 "EFRAC" means epithelial fraction or skin cells; is that
9 right?

10 A. Yes.

11
12 Q.

13
14 *... had auto microcon and gave 2 [per cent]*
15 *mixture of complainant and defendant.*

16
17 So Emma Caunt identifying there that:

18
19 *In this case the auto-microcon gave the*
20 *only evidence to substantiate the claims of*
21 *the complainant*

22
23 Do you see that?

24 A. Yes.

25
26 Q. So she is identifying what might be missed if DIFP is
27 implemented?

28 A. Yes.

29
30 Q. Is that right? Can we go back to page 1 then. You
31 forwarded this email to Mr Howes at the bottom of the page?

32 A. Yes.

33
34 Q. This is still only two days after you have been told
35 about this decision.

36 A. Yes.

37
38 Q. And you have forwarded this email and said:

39
40 *This is a concern.*

41
42 *I guess it's one thing for the QPS to*
43 *understand this risk (if they do) but it's*
44 *not full testing/disclosure for the case*
45 *from our lab.*

46
47 *Perhaps the process needs to be*

1 *re-assessed?*

2

3 A. Yes.

4

5 Q. When you say "the process", you mean the DIFP process?

6 A. Yes.

7

8 Q. So everything that was implemented by the Options
9 Paper, in your view, needed re-assessment?

10 A. Yes.

11

12 Q. Then did you get a response to that email of
13 9 February 2018?

14 A. No, I don't think so. No.

15

16 Q. At the top of the page, you forwarded it to Mr Howes
17 again, 23 February:

18

19 *Just following up on your thoughts re below*

20

21 A. Yes.

22

23 Q. Did you get any response to that?

24 A. I'm not sure. I'd have to go back and look.

25

26 Q. Did the DIFP process continue?

27 A. Yes, it did.

28

29 Q. Was there any re-assessment of it?

30 A. No.

31

32 THE COMMISSIONER: Q. Ms Rika, if you go to the fourth
33 page of that set of documents, just above Mr Howes' email
34 announcing the implementation of the new process, Ms Caunt
35 wrote to him, with a copy to you, and it seems to me she
36 pointed out four things. One is that the proposal is not
37 to test these samples and, instead, to say that the amount
38 of DNA indicated that the sample was insufficient for
39 further processing due to the limitations of current
40 analytical and interpretational techniques.

41

42 Ms Caunt's first point is that this tells scientific
43 staff that there is nothing further that can be done with
44 this sample, which is not the case for 10 per cent of
45 samples. Do you agree with that?

46 A. Yes.

47

1 Q. So that statement was untrue; that is, to announce to
2 the world that the quantity of DNA found meant that the
3 sample was insufficient for further processing due to the
4 limitations of current analytical and interpretational
5 techniques, was just false?

6 A. Yes.

7
8 Q. The second point she makes is that not only is it
9 false, but in 1 out of 10 cases, on the figures in the
10 Options Paper, at least, you can get usable profiles?

11 A. Yes.

12
13 Q. And the third thing she points out is that this
14 statement to be appended as a result means that no option
15 is presented for anyone to request further processing?

16 A. Yes.

17
18 Q. I said four, but three is probably it. So this idea
19 that this should be said began at the very inception of the
20 Options Paper scheme, and that's a subject matter of the
21 Interim Report. Have you read the Interim Report that I
22 published a week or two ago?

23 A. Yes, I have.

24
25 Q. About using language? So that's the same language,
26 isn't it?

27 A. Yes.

28
29 Q. At the top of page 3 of that sheet, Ms Hedge took you
30 to the email from Ms Caunt to Mr Howes. She refers to the
31 difficulty presented because the reporter will assess these
32 samples and whether they're worthy of further work only at
33 the statement stage and she says:

34
35 *... but the gap will be if no statement is*
36 *requested.*

37
38 A. Yes.

39
40 Q. Did you refer to that earlier, I think?

41 A. Yes, I did.

42
43 Q. Namely, if no witness statement is requested, nobody
44 will ever know?

45 A. Yes.

46
47 Q. And you don't recall any discussions between yourself

1 and Mr Howes or between yourself and Ms Allen or any other
2 of your managerial colleagues about these objections to
3 this process?

4 A. No, not at that time.

5

6 THE COMMISSIONER: Thanks. Yes, Ms Hedge.

7

8 MS HEDGE: Thank you. Can I turn back to the statement at
9 [WIT.0006.0095.0001_R at 0008]. Page 8 of the second
10 statement, paragraph 26.

11

12 THE COMMISSIONER: I am sorry, it is in the statement?

13

14 MS HEDGE: Yes.

15

16 Q. Paragraph 26, which starts on the previous page. But
17 if we look here, this sets out some of the other times
18 between 2018 and now that you have raised concerns about
19 the key process; is that right?

20

21 A. Yes.

22

23 Q. Is this a comprehensive list or would there also have
24 been verbal conversations during the time raising concerns
25 about DIFP?

26

27 A. There would be verbal conversations as well.

28

29 Q. Paragraph (c) there we see at the top, is that in
30 November of 2020, you sent the management team a draft
31 implementation plan for the 3500xL. Do you see that?

32

33 Q. What is the 3500xL?

34

35 A. It is a Genetic Analyser. It is a machine that does
36 the capillary electrophoresis to enable us to visualise the
37 DNA profiles.

38

39 Q. So it creates the electropherogram?

40

41 A. Yes, it does.

42

43 Q. What did you notice - you state there that it might be
44 more sensitive.

45

46 A. Yes.

47

48 Q. Did you do the validation of the 3500xL?

49

50 A. No, I didn't.

51

52 Q. Did you do the implementation plan post-validation?

1 A. Yes, I did.

2

3 Q. All right. And in that post-validation implementation
4 plan, did you identify that it was or that it might be more
5 sensitive, as you write there? What do you mean by that,
6 that it might be more sensitive?

7 A. So at the time that I did the implementation plan,
8 there was some data through the validation that showed it
9 was more sensitive, and what I meant by "might be more
10 sensitive" was if we start using the 3500 for a bit with
11 real samples, then we could actually get a feel for how
12 much more sensitive it was.

13

14 Q. And when you say "more sensitive", what do you mean by
15 that?

16 A. That means the ability for DNA profile information to
17 be higher and more visible.

18

19 Q. Peaks are higher?

20 A. Peaks, yes.

21

22 Q. Does that mean peaks would you have seen on previous
23 instrumentation might be bigger?

24 A. Yes.

25

26 Q. But also some peaks that you might not have seen at
27 all on previous instrumentation, you might now see?

28 A. Yes.

29

30 Q. Do all peaks provide information? So more sensitive
31 means more information?

32 A. Yes.

33

34 Q. So you sent that to the management team; that included
35 Ms Allen, Mr Howes, Ms Brisotto?

36 A. Yes.

37

38 Q. All of those senior scientists we have heard of?

39 A. Yes.

40

41 Q. All right. Was there any re-evaluation of the DIFP
42 range after that, after you recommended it?

43 A. No. So when I sent that implementation plan with my
44 recommendation to see if the quant range still holds for
45 defining the DIFP process, the feedback was that, yes, we
46 could do that, but it's not necessary for this stage of
47 implementation; we could do it as a post-implementation

1 review - which never happened.

2

3 Q. Did you think that a post-implementation review was an
4 appropriate time if it had actually happened?

5 A. No.

6

7 Q. Why is that?

8 A. Because things can be easily forgotten or missed if
9 things aren't considered and actioned either as part of the
10 validation or of the implementation itself.

11

12 Q. Do you remember talking to Ms Allen, Mr Howes or
13 Ms Brisotto about this around this time?

14 A. Yes, through - I think verbally and also through a
15 couple of email communications.

16

17 Q. Do you remember what any of their attitudes were to
18 the idea of reviewing the DIFP range?

19 A. As part of the 3500 implementation?

20

21 Q. Yes.

22 A. That they didn't think it was necessary. The feedback
23 I got from them was: we can consider doing this
24 post-implementation review, if at all.

25

26 Q. And then looking at paragraph 27, there was a
27 Management Team meeting in November 2021 where you
28 identified that you were collecting samples?

29 A. Yes.

30

31 Q. Where results were obtained in the DIFP range?

32 A. Yes.

33

34 Q. At about this time, when DIFP was first implemented in
35 2018 --

36 A. Yes.

37

38 Q. -- if I can just ask you to focus on 2018-2019, that
39 sort of time period, were the police asking for many
40 reworks of DIFP samples during that period?

41 A. Let me think. I don't think so. Not at that time.

42

43 Q. What about as we get right through to late 2021?

44 A. Yes.

45

46 Q. So November 2021, were the Police asking for rework at
47 that time?

1 A. Yes.

2

3 Q. A significant increase?

4 A. Yes.

5

6 Q. One you noticed?

7 A. Yes.

8

9 Q. And you noticed because that is mentioned on the
10 Forensic Register? When a result comes to you, it says,
11 "The QPS have requested this rework"?

12 A. Yes.

13

14 Q. So, early on were you processing or looking at many
15 profiles from DIFP samples? Early on in 2018-2019?

16 A. Sorry, say that again?

17

18 Q. Would it be a fair conclusion from the fact that the
19 QPS weren't requesting many that in 2018, 2019, you weren't
20 looking at a report out of that many reworked DIFP samples?

21 A. Yes, correct.

22

23 Q. But by the end of 2021, you were looking at lots.

24 A. Yes, yes.

25

26 Q. Of reworked DIFP samples?

27 A. Yes.

28

29 Q. And is that why you started collecting them in a
30 spreadsheet?

31 A. Yes.

32

33 Q. Because you were seeing usable results from them?

34 A. Yes. Well, I had a lot of staff members come to me
35 and say things like, "Umm, I've just reworked this DIP
36 sample and I've got a really good result. In fact, I've
37 got an upload to NCIDD", or, "I've got a result of the
38 defendant on the complainant's intimate area supported
39 contribution greater than 100 billion" which we wouldn't
40 have got if we didn't process, didn't rework the DIFP
41 sample. So I started getting quite concerned with staff
42 coming and telling me all of this which is why I started
43 collecting the examples and at the time my colleague
44 Adrian Pippia was acting manager of the other Reporting
45 team and we both decided to take what we had been seeing
46 from staff members to the management team meeting to
47 explain and, you know, might be worthwhile looking at

1 re-assessing or doing a different data mine or whatever,
2 something, but the ensuing discussion and the management
3 team meeting made it very clear that the members - some
4 members of the management team did not think it was a good
5 idea at that time. There were a couple of things discussed
6 around that. One was, you know, it might be difficult for
7 us to get a data mine - a new data mine from the Forensic
8 Register through BDMA which is the software company for
9 Forensic Register and we may have to pay for it, I'm not
10 sure, but also discussion around, you know, "We've got such
11 a big workload at the moment, this is not the time for
12 doing another data assessment, we don't have time for it",
13 and so --

14
15 Q. Who said that, do you remember?

16 A. Sharon was quite keen to not do a data analysis at
17 that time because of our workload, and when Adrian and I
18 walked back to the reporting area after the meeting, Adrian
19 said to me he wasn't impressed by that.

20
21 Q. And so Sharon is Sharon Johnstone the senior scientist
22 of the other Reporting team?

23 A. Yes, yes.

24
25 Q. What about Mr Howes, Ms Brisotto, or Ms Allen, did
26 they indicate? Do you remember what they thought about
27 re-visiting the DIFP quant range?

28 A. There wasn't any enthusiasm about doing so. It was -
29 in my view, I felt that when we raised the possibility of
30 doing something like that, it was sort of - not that I was
31 placated, but just, "Yeah. Maybe", "maybe we'll look into
32 it", don't really - it was kind of just swept under the
33 carpet.

34
35 Q. If we turn to your spreadsheet which is
36 [WIT.0006.0109.0001_R] --

37
38 THE COMMISSIONER: Is it part of Ms Rika's statement?

39
40 MS HEDGE: It is. It is KR-07. The first page of your
41 spreadsheet.

42 A. Yes, I think - yes.

43
44 Q. Under the redaction is "Sample Numbers?"

45 A. Yes.

46
47 Q. So it's confidential information. But if we look

1 across so each of these rows is one sample; is that right?
2 A. That's right.

3
4 Q. And the first column that we can see is "result after
5 rework", the second column "NCIDD upload", the third column
6 "new result for the case". Fourth column "sfrac" - that's
7 the spermatozoa fraction?
8 A. Yes.

9
10 Q. "Sperm seen", that relates to seeing to sperm on a
11 microscope slide; is that right?
12 A. Yes.

13
14 Q. And then we have got the "initial quant" and the
15 "quant after rework". So you can see, is it fair to say
16 generally looking down those two columns the quant after
17 rework is generally greater in the second column than the
18 first?
19 A. Yeah, there are somewhere it is sort of about the
20 same, but generally, yes.

21
22 Q. Yes. If we look down the "NCIDD upload" case, we can
23 see a couple of yeses on the first page.
24 A. Yes.

25
26 Q. So that's something that would not have been uploaded
27 if a rework request had not been made either by police or
28 by a scientists?
29 A. That's right.

30
31 Q. In the "new result for the case?", we can see a number
32 of, "best result for a female in male SAIK", for example?
33 A. Yes.

34
35 Q. And a number of occasions where it says "yes" or "no."
36 We turn to the next page, again in that second column, a
37 number of uploads to NCIDD that would not have been
38 identified --

39
40 THE COMMISSIONER: Ms Hedge, what does "new result for the
41 case" signify as a title for that column?

42
43 MS HEDGE: We might ask Ms Rika.

44
45 Q. What did you mean by the "new result for the case"
46 back - if we could go back one page please, operator?
47 A. It's not really a - well, maybe the inquiry can

1 decide, but basically I was interested to see from these
2 samples that actually got processed further, past the
3 stopping point of DIFP, was it something that, you know,
4 gave evidence in the case that otherwise would not have
5 been there.

6

7 THE COMMISSIONER: Q. That is to say, you ask yourself:
8 "Does it appear to me that the rework has resulted in an
9 extra piece of evidence for the investigation"?

10 A. Yes. Yes.

11

12 Q. Just while we're on that page, you said before that
13 the DIFP results go to a limbo unless it is picked up at
14 the witness statement stage at the end of the process.

15 A. Yes.

16

17 Q. How was it that you and Mr Pippia picked up these
18 samples as DIFP samples that you thought might be worthy of
19 further work?

20 A. So these - all of these samples were given to us by
21 staff members and those staff members were either looking
22 at the results in the case at statement stage and deciding
23 to rework a sample and to their surprise went, "Oh, my
24 gosh, this is a really good result; need to let my
25 line manager know", or the Queensland Police may have
26 requested us to do further work on some of them, or in the
27 case of a Priority 1 case, Priority 1 cases are allocated
28 to a reporter from the outset. So they have case carriage
29 and consistency of care and a consistent approach from the
30 outset with all of the interpretations in the case, and so
31 some of these were noticed because they were samples within
32 Priority 1 cases. Those are the ways that these sort of
33 got picked up and reported to us and we decided to keep a
34 collection.

35

36 Q. Thank you.

37

38 MS HEDGE: Q. So if we go back to page 2 - thank you,
39 operator. The second column is the NCIDD upload. We can
40 see some yeses there?

41 A. Yes.

42

43 Q. And the third column being the new information in the
44 case, and we see some yeses there?

45 A. Yes.

46

47 Q. So each of these samples might be one case or there

1 might be a few samples on - together that are one case; is
2 that fair?

3 A. Yes, that's right.

4

5 Q. But you were collecting these. What did you think the
6 data showed when you were showing this spreadsheet to the
7 management team?

8 A. So I didn't actually show this spreadsheet to the
9 management team in that meeting because Adrian and I put
10 the spreadsheet together.

11

12 Q. Yes.

13 A. After the management meeting where we felt
14 disappointed that there wasn't much support in us looking
15 at the process. I remember we decided, "Well, we can start
16 our own little spreadsheet just to gather some
17 information", but I did in the management team meeting
18 sorry, I started collecting the stuff before the management
19 meeting but in the management meeting, I did tell the
20 management team that, you know, we were getting some really
21 good results from these and one of the comments back was,
22 "Yes, but we need to be really careful", you know, "It's
23 always easy to remember the ones that are successful and
24 not collect the ones that aren't successful." So it came
25 back to, "Well, what's the proportion of ones that are
26 being successful?", and, for me, I felt that that was an
27 irrelevant point because, like I said earlier, one sample -
28 one sperm on a child of a sexual assault, to me, that one
29 sample is relevant. I don't care what the percentage is.
30 So it just seemed like I couldn't get that message across
31 to the management team and so I did in the end, end up
32 taking this spreadsheet and my concerns all the way up to
33 the Executive Director, Lara Keller, and she was very
34 concerned and so we had lots of conversations about it,
35 and, in the end, Lara asked me if - what I thought about
36 submitting a public interest disclosure to our Ethical
37 Standards Unit about this based on this spreadsheet, and
38 stuff surrounding it, and I told her that I was really
39 scared to do that because I was scared of retribution for
40 taking things up higher because of the culture in the lab
41 at the time, and I said, "But it is the right thing to do",
42 and she said, "good girl", and so she said "I can put it
43 all together and send it up as a PID" - Public Interest
44 Disclosure - "for you" and I believe she did that and then
45 sometime later I had another meeting with her - can't
46 remember what about - but she mentioned to me that, "By the
47 way, Ethical Standards have assessed the information we

1 gave in relation to this and it didn't meet PID criteria",
2 and I felt really disheartened and I felt like I had been
3 wasting people's time. I said to Lara, "I feel like I have
4 wasted your time by bringing all of this and gathering all
5 the information for the PID". And she said, "No, you
6 haven't. You haven't, because all of this has to come out
7 at some point either through an internal review of our
8 lab" - at that time which obviously then turned into
9 Commission of Inquiry.

10
11 THE COMMISSIONER: Q. When did you submit your PID? Not
12 exactly, just - was it last year or this year?

13 A. It was either end of last year or beginning of this
14 year, around that time, I think.

15
16 Q. Yes. You gave some evidence earlier about agitating
17 for a review of the process because of the new equipment
18 that you had and the fact that you were getting some
19 positive results, and there's an email from Mr Howes to you
20 dated 10 February 2022, it is exhibit KR-12 to your
21 statement in which he said:

22
23 *[There's] no movement on reassessing quant*
24 *ranges to [my] knowledge.*
25

26 Did he ever give you, or did anybody who was opposed to
27 reviewing the process, did anybody ever give you a reason
28 why it was a bad idea to review it or why it's a better
29 idea not to review it?

30 A. The only reasons I had or comments that were given to
31 me were, "It's not the right time to do another data
32 analysis, we have too much work on", and also - what was
33 the other one? We don't - there was a - when all of the
34 media started happening at the end of last year, I was told
35 that there were to be no changes to anything until the
36 internal review which, obviously turned into a Commission
37 of Inquiry.

38
39 Q. Who was it who said, "This isn't the right time, we've
40 got too much on"?

41 A. Sharon.

42
43 Q. In that email - sorry, go on.

44 A. And the other reason was around perhaps we could
45 wait - I think Luke mentioned - Luke Ryan - mentioned we
46 could wait perhaps for - when we implement VeriFiler Plus,
47 which is another profiling kit again and use information

1 from that kit but my concern was, you know, the validation
2 of VeriFiler Plus has been going on for a really long
3 time - it's still not - we still don't have it, and I
4 didn't want to wait. It was urgent to me.

5

6 Q. The final point I want to ask you about is, you had
7 put to him in this email chain, exhibit KR-12, that you
8 were getting some results, others were getting results, and
9 he said, "I'm aware that there were a large number of
10 further processing requests from QPS and FSS in this matter
11 we were just showing a good use of the Forensic Register in
12 rework decisions. There are a variety of outcomes as
13 expected". So he says, well, look, the fact that some
14 reworks had been asked for and you are getting results,
15 shows that the system is working, namely, that the systems
16 was that you could always ask for reworks of those samples
17 which you thought deserved them. Whether a scientist made
18 a decision or a police officer, well, what's wrong with
19 that conclusion? Why isn't that true? Your anxiety is
20 that the system is not working?

21 A. Yes.

22

23 Q. Because you are missing results.

24 A. Yes.

25

26 Q. But he is saying it is because --

27 A. Yes. Yes. And, you know, we work on a work list
28 system.

29

30 Q. A work list. Yes.

31 A. A work list system which means that, as I mentioned
32 before, we miss - unless a statement is requested, or the
33 Police request reworks, there's still a lot that we don't
34 get to see and, therefore, miss and, therefore, don't get
35 the chance to assess if that sample might be good to rework
36 or not.

37

38 Q. So as I understand it, you are saying that the
39 decision is made to cull these samples by an analytical
40 chemist, not a profiler, and if you have any discretion to
41 exercise in order to rework a sample, actually to work a
42 sample for the first time --

43 A. Yes.

44

45 Q. -- the occasion doesn't much arise for the reasons you
46 have explained?

47 A. That's right, yes.

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Q. I understand. Thanks. Yes, Ms Hedge.

MS HEDGE: Q. Are you aware now that in June of 2022, Mr Howes, Ms Allen presented an Update Paper to the QPS?

A. I am aware now, yes.

Q. Were you first advised of that Update Paper or told of the existence of it by the Commissioner of Inquiry --

A. Yes, I was.

Q. -- in September of this year?

A. Yes.

Q. Despite the concerns you had raised, were you told that they were preparing that paper or doing any data analysis on DIFP ranges?

A. All I knew was that some data had been gathered - I think the last four years' worth of data had been obtained from the Forensic Register and that Justin and Allan were doing an analysis of that data. So a more up-to-date DIFP analysis, if you like.

Q. Yes. So you knew that the data analysis was being done but you didn't know what the results of it were or that a paper was being prepared?

A. Yes, that's right.

Q. Can we turn to [WIT.0006.0116.0001_R] which is KR-14. At the bottom of that page, this is a set of emails - we won't go through every single one - but this is a set of emails where you ask Justin Howes about that data analysis; is that right?

A. Yes.

Q. So in August, at the bottom of the page, Justin replied to you and said that he had followed up with Helen Gregg and he said there was nothing anything to share with management team at this stage. Is that right?

A. That's right.

Q. You forwarded that to Ms Keller, the Executive Director.

A. Yes.

Q. So you are escalating this issue. That's someone two levels higher than Mr Howes?

1 A. Yes, that's right.

2

3 Q. And you said you were wondering if there was an
4 update, do you see that?

5 A. Yes.

6

7 Q. If we can go to the top of the page, please, Ms Keller
8 responded and directed you back to Cathie, Justin or Paula;
9 is that right?

10 A. That's right.

11

12 Q. And then you wrote to Lara, Justin, Cathie and Paula?

13 A. Yes.

14

15 Q. And asked about an update on 7 September.

16 A. Yes.

17

18 Q. And were you told then that a report had been prepared
19 and given to the Police in June?

20 A. No. No, in relation to that email where I've said:

21

22 *Thanks Lara,*

23

24 *Justin, Cathie and Paula, ... Are we able*
25 *to please get an update yet? [Because] I*
26 *think it would be good for reporters to*
27 *know ...*

28

29 I haven't had a reply to this day from any of those three
30 people.

31

32 THE COMMISSIONER: Q. "To this day" did you say?

33 A. Yes. I mean I haven't checked my email today but last
34 time I checked my email.

35

36 MS HEDGE: Q. Can we move to 6 June 2022 and on that day
37 the Commission of Inquiry was announced.

38 A. Yes.

39

40 Q. And you can assume for the purposes of this,
41 Mr Shaun Drummond the then Director General of Health
42 decided to remove the DIFP threshold and decided that
43 samples that were formerly being dealt with as DIFP would
44 be amplified without concentration.

45 A. Yes.

46

47 Q. Were you consulted by anyone in the lab or in the

1 Department of Health about those decisions before they were
2 made? I don't mean the Commission of Inquiry, putting that
3 to one side, I mean the decisions about lap processes.

4 A. Before 6 June?

5

6 Q. Yes.

7 A. No.

8

9 Q. Were you just told afterwards what had been decided?

10 A. Yes.

11

12 Q. Can I turn to KR-16 which is [WIT.0006.0118.0001_R]and
13 turn to page 2 of that document, please. This is an email
14 from Luke Ryan on 6 June. Do you remember 6 June?

15 A. Yes.

16

17 Q. Do you remember there was a press conference with the
18 Premier and the Minister for Health?

19 A. Yes.

20

21 Q. And it was about in the middle of the day?

22 A. Yes, it was, I remember that.

23

24 Q. Did you watch that press conference?

25 A. Yes. Some of it, yes.

26

27 Q. At the lab with others?

28 A. Yes.

29

30 Q. Mr Ryan wrote this email. Now, you're not a recipient
31 of this email. Are the people there in the "To" field, are
32 those the Analytical scientists?

33 A. Yes.

34

35 Q. So this is Luke writing to him team?

36 A. Yes.

37

38 Q. Mr Ryan.

39 A. Yes.

40

41 Q. And in the first sentence he says:

42

43 *The Premier has requested we test (amp) all*
44 *samples ...*

45

46 Do you see that?

47 A. Yes.

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Q. Now, the analytical scientists are the people who determine whether things go to concentration or to amp?

A. Yes.

Q. I assume that's why it was important that they know first?

A. Yes.

Q. Because they are doing that job.

A. Yes.

Q. Coming back to page 1 of that document, please. [WIT.0006.0118.0001_R]. Is this the document where that (indistinct - audio distortion) to yourself to provide to Justin. And he says there in the second paragraph:

Previously reported DIFP that are requested for a restart, will go to microcon as per current process.

A. Yes.

Q. So that's if the QPS request a rework on something previously reported?

A. Yes.

Q. Or a scientist?

A. Yes.

Q. Right. So that's how you found out about it, the 6 June decision?

A. I was also - well, I actually had Justin pop in - at the time, I was actually reviewing a case in a private room.

Q. So you weren't at your usual desk.

A. No. And I had done that because I had been asked to review the case urgently, drop everything else, do that.

Q. I understand. Let's leave that.

A. Yes.

Q. Did Justin come to see you.

A. Yes, he did. He popped his head in just to say, "Just to let you know about this process" and then I read this email later and I remember him saying words to the effect

1 of, "It will be interesting to see what results, if any,
2 this new process which is amplifying at 15 microlitres
3 produces", and at the time I was so busy doing the other
4 case, that later on I thought about it and I spoke to a few
5 other colleagues and realised that removing the DIFP
6 process was good, but moving to another process which was a
7 decision of amplifying at 15 microlitres first had its
8 disadvantages, and I didn't feel that it had been well
9 thought through.

10
11 THE COMMISSIONER: Q. Ms Rika, amplifying at 15
12 microlitres first --

13 A. Yes.

14
15 Q. -- you mean you get the quant - so you know the
16 quantity.

17 A. Yes.

18
19 Q. And whereas before the DIFP range of samples would go
20 to micro-concentration?

21 A. Yes.

22
23 Q. Now you emit the micro-concentration and go to
24 amplification first; is that your point?

25 A. Yes, that's right.

26
27 Q. So the stochastic effects that you were talking about
28 would be prone to appear?

29 A. Yes. Yes.

30
31 Q. So when we looked at that email from Mr Ryan:

32
33 *The Premier has requested we test (amp) ...*

34
35 That's amplify?

36 A. Yes.

37
38 Q.

39 *... all samples in a current DNA*
40 *insufficient range. When transitioning*
41 *quant batches please ensure all samples in*
42 *the DNA insufficient range are transitioned*
43 *to the amp WL.*

44
45 So did you understand that statement by Mr Ryan to mean
46 that the Premier had requested that all samples in the
47 range .001 to .0088 be processed fully except that they not

1 be concentrated, they be transitioned to amp?

2 A. Yes.

3

4 Q. And that was made plain by Mr Howes in his
5 conversation with you?

6 A. Yes.

7

8 Q. Thanks.

9

10 MS HEDGE: Q. In your statement you identify a number of
11 difficulties or concerns you have about the 6 June process,
12 that's at paragraph 41 [WIT.0006.0095.0001_R at 0012]. Can
13 you tell us the main concerns you had about that process
14 post 6 June 2022?

15 A. So relating to paragraph 41?

16

17 Q. Well, these paragraphs are in, so if you can just tell
18 us your main concern. You don't need to tell us everything
19 in those paragraphs.

20 A. Okay.

21

22 Q. What are your main concerns with the 6 June process?

23 A. So my main concern is that it was another blanket rule
24 applied to all samples in my view for the purposes of an
25 automated approach because, in my view, I think samples in
26 that range need to have a scientist assess them and use
27 their own judgment to decide whether they should go
28 directly for an amplification or a concentration step.
29 Some samples are actually - some samples are actually best
30 concentrated before amplification, so ones with a very,
31 very low quant value, but other ones you may decide to
32 amplify first, especially if the quant range is up around,
33 you know, close to the threshold of 0.0088 so 0.0087, you
34 may decide "Well, actually, this might be quite a good
35 amount of DNA, I might just amp - amplify - that first, see
36 what I get and then if I have to concentrate, I can". But
37 it should be left to the scientist based on their
38 experience and expertise and knowledge to make those
39 decisions. It shouldn't be a blanket rule for every
40 sample, in my view.

41

42 THE COMMISSIONER: Sorry, Ms Hedge.

43

44 MS HEDGE: Not at all.

45

46 THE COMMISSIONER: Q. Can you think of any proper reason
47 to implement a system by which samples with low quantities

1 of DNA in the range we have been discussing ought not be
2 concentrated as a rule?

3 A. So --

4

5 Q. That is, the system that was implemented on 6 June,
6 that we have just looked at --

7 A. Yes.

8

9 Q. -- involves not concentrating any of the samples with
10 low quants. Can you think of any proper scientific reason
11 to adopt that course?

12 A. Not for every sample, no.

13

14 THE COMMISSIONER: Yes. Yes, Ms Hedge.

15

16 MS HEDGE: Q. And do you also identify in terms of
17 concerns you had in paragraph 43 that if you amplify first
18 before concentration, then you've got 15 microlitres of the
19 sample?

20 A. Yes, correct.

21

22 Q. Which means you have less sample and, therefore, less
23 DNA.

24 A. Yes.

25

26 Q. Because the samples have an even distribution of DNA.

27 A. Yes.

28

29 Q. In paragraph 46, you identify that you raised this
30 concern at a management meeting.

31 A. Yes.

32

33 Q. If we turn to the top of the next page, is it right
34 you raised that concern and you were told by Cathie that
35 she was present at a meeting with the minister and
36 Lara Keller.

37 A. Yes.

38

39 Q. And that options were put forward and the Minister had
40 chosen that option.

41 A. Yes.

42

43 Q. Can we then move to 19 August 2022.

44 [WIT.0014.0009.0001_R]. On that day you were sent a
45 memorandum --

46 A. Yes.

47

1 Q. -- sent out by Helen Gregg this time from
2 Dr Rosengren, the Acting Director-General; is that right?
3 A. Yes.

4
5 Q. They advised you that there had been a change to the
6 process and in the bold, in the middle there, this was
7 said:

8
9 *... all Priority 1 and Priority 2 samples*
10 *with a quantitation result [in that range]*
11 *should be concentrated down to a volume of*
12 *35uL and undergo one amplification process.*

13
14 A. Yes.

15
16 Q. Could we just remove the zoom-in for a moment, please.
17 The paragraph immediately below that, it is stated that if
18 there was further amplification considered, and that would
19 result in exhaustion of a sample, then written approval
20 must be obtained from the QPS.

21 A. Yes.

22
23 Q. In terms of how much sample is used, you need
24 15 microlitres for an amplification.

25 A. Yes.

26
27 Q. And you need 2 microlitres for a quant; is that right?

28 A. Yes.

29
30 Q. So if it is concentrated to 35, you have got enough
31 sample left to do two amps and one quant.

32 A. Yes.

33
34 Q. But if you did two amps and one quant, then you would
35 have three microlitres left, or almost, so you couldn't do
36 anything with that, is that right?

37 A. Pretty much, yeah.

38
39 Q. Is it right also that the pipetting system that you
40 use has difficulty pipetting from a solution that has less
41 than 20 microlitres in it?

42 A. Yes.

43
44 Q. So anything less than 20 microlitres creates some
45 difficulties.

46 A. Yes.

47

1 Q. It can be done.

2 A. Yes.

3

4 Q. But it is more difficult.

5 A. Yes.

6

7 Q. It has to be done manually.

8 A. Yes.

9

10 Q. Rather than using a machine.

11 A. Yes.

12

13 Q. I see. This process was created from this memo.

14 Before you received that memo in the afternoon of

15 19 August, were you consulted about any potential change in
16 process?

17 A. No.

18

19 Q. Were you told that anyone was even considering
20 changing the process at the lab?

21 A. No.

22

23 Q. Did you raise concerns with this process implemented
24 on 19 August?

25 A. Yes. Yes. As soon as it was announced to us,
26 I discussed my concerns with my colleague Emma Caunt. We
27 then collaborated on formulating a list of potential
28 issues.

29

30 Q. Are they in your statement at paragraph 53 at
31 [WIT.0006.0095.0001_R at 0014]?

32 A. Yes.

33

34 Q. All right. I will just let that come up on the
35 screen. This is the list of concerns that yourself and
36 Ms Caunt developed together?

37 A. Yes.

38

39 Q. We won't go through each one, they are there for
40 people to read, but is it fair to say that one significant
41 concern that remained is the discretion to be exercised to
42 determine when and to what level concentration should
43 occur?

44 A. Yes, correct.

45

46 Q. This was another blanket rule that would apply to all
47 samples.

1 A. Yes.

2

3 Q. In paragraph 56, is it right that you raised some
4 concerns with Mr Howes?

5 A. Yes.

6

7 Q. And suggested that a meeting might assist.

8 A. Yes.

9

10 Q. Did you have two meetings with Ms Gregg after that
11 about the process?

12 A. Yes.

13

14 Q. Did you raise all those concerns, or the significant
15 concerns you had, with Ms Gregg?

16 A. Yes.

17

18 Q. Was she able to answer your concerns or explain the
19 situation?

20 A. She did her best to try and answer our technical
21 questions, bearing in mind that she is not a DNA analyst,
22 but she did seem to struggle at times. She did her best to
23 take on board, or try to take on board, what we were saying
24 about the concerns and how - like, a lot of staff members
25 in that first meeting raised their own individual concerns
26 about it and, at the end, I sort of jumped on the MS Teams
27 meeting to try and summarise the concerns I'd been hearing
28 in my own words and suggested that, well, it's, you know,
29 the minister's decision, or whoever's decision it was,
30 because that was something that was mentioned to us, can
31 you take all the information that we've just talked about
32 today to that person so we can get some, maybe, better
33 decisions made, or the decision re-assessed. And Helen did
34 say that she - I'm pretty sure that Helen said she would
35 talk to QPS and then sometime later, I think it was about a
36 week later, she had a follow-up meeting with us, but there
37 was no mention of a meeting or talking to QPS.

38

39 Basically the take home message was, you know: this is
40 the decision that's been made; understand your concerns.
41 Staff also expressed concerns and frustration around the
42 transparency of the decisions that were being made, and why
43 they had been made that way, especially with no
44 consultation with those of us in Reporting who see the
45 results daily and rework strategies daily.

46

47 In the second meeting where Helen tried to give us

1 some follow-up information, basically the message I got
2 was: at the end of the day, here's the decision. The big
3 take home message is: if you think you're going to exhaust
4 a sample by reworking it, then you have to get QPS
5 permission first.

6

7 Q. Can I ask you about that part. That part of the memo,
8 that you have to get written permission before exhausting a
9 sample, has that ever been part of any lab process that you
10 are aware of in the last 10 years?

11 A. No. No. Because in the past we've been able to - if
12 a case scientist is working on a case and they believe,
13 "Oh, my gosh, that sample here is super, super important in
14 the case. I'm going to look after that one and not exhaust
15 everything in case I want to do something like Y-STR
16 testing or some other testing later on," then we've still
17 got that precious sample. And, again, those decisions are
18 usually best in a collaborative exercise between our
19 scientists, the Police, any other experts who have - where
20 we can discuss all the information about the case and
21 decide, you know, that's probably the best sample to - it's
22 a critical sample; we've got to save it.

23

24 Q. Yes.

25 A. So I - if we were going to have a blanket rule about:
26 don't exhaust any samples without getting written
27 permission, it might actually be better for QPS to let us
28 know when they submit a sample, this is one that, "Please
29 don't exhaust it, it's super important," because we don't
30 have that case context any more in the lab.

31

32 Q. You mentioned Y-STR testing. That is the type of
33 testing where you can test only for male DNA?

34 A. Yes.

35

36 Q. Do many labs in Australia have that capability?

37 A. Yes.

38

39 Q. The Queensland lab does not have that capability yet?

40 A. Not yet, no.

41

42 Q. But some terms are being made to validate it at the
43 moment; is that correct?

44 A. Yes,

45

46 Q. All right. Can I turn to the last topic which is
47 about witness statements. You said to the Commissioner

1 that you had read the Interim Report of the Commission.

2 A. Yes.

3

4 Q. And seen the focus on the wording in formal witness
5 statements for "DNA insufficient for further analysis" and
6 also "no DNA detected"?

7 A. Yes.

8

9 Q. You have reported results in formal witness statements
10 using the wording that was described in that report?

11 A. Yes.

12

13 Q. Where did you get that wording from?

14 A. Our standard operating procedure.

15

16 Q. Are you permitted to use other wording in your
17 statements?

18 A. Basically, the message that we get is to always follow
19 our standard operating procedures for any processes or
20 methods or suggested wordings that are in standard opening
21 procedures, to follow the standard operating procedures.

22

23 THE COMMISSIONER: Q. Well, that's why they are standard
24 operating procedures.

25 A. Yes.

26

27 Q. That's why they are called that.

28 A. Yes.

29

30 MS HEDGE: Q. Who told you that, what you just said, that
31 you should always follow the standard operating procedures?
32 Was that verbal or --

33 A. Ah, yes. Yes. So Cathie Allen has always said to us,
34 to the whole lab, that it is really important to follow
35 standard operating procedures because there is safety in
36 doing that for all of us, because we are all doing things
37 the same way, and when we go to court as representatives of
38 the lab, we can say that this is how the lab does it.

39

40 Q. Could I have on the screen [WIT.0012.0027.0001_R].
41 There is an email at the bottom of the page. This is an
42 email on 5 August 2016 from Mr Howes and you are one of the
43 people in that email.

44 A. Yes.

45

46 Q. Mr Howes says in that email that lately a few
47 instances have been brought to his attention where the

1 collective agreed upon statement wording hasn't been used?

2 A. Yes.

3

4 Q. This email relates to some wording that was agreed in
5 2013, wasn't it?

6 A. Yes.

7

8 Q. But it was in a standard operating procedure just like
9 the current wording?

10 A. Yes.

11

12 Q. And he says in his last sentence:

13

14 *Can I please ask that we stick to the*
15 *standard wording ...*

16

17 Do you see that?

18 A. Yes, I do.

19

20 Q. Is this an example of the type of thing you were
21 told about sticking to the standard operating procedures?

22 A. Yes.

23

24 Q. Thank you. Finally, can I take you back to
25 [WIT.0006.0110.0001_R at 0004]. We have seen this email
26 before from 7 February 2018, but I can focus on the part in
27 italics where Mr Howes suggests some wording:

28

29 *Low levels of DNA were detected in this*
30 *sample and it was not submitted for further*
31 *DNA profiling.*

32

33 Do you see that?

34 A. Yes.

35

36 Q. That wording has some benefits in terms of what the
37 Commission decided in its Interim Report because it doesn't
38 use the word "insufficient", it uses the words "low
39 levels"?

40 A. Yes.

41

42 Q. If I could have on the screen [FSS.0001.0019.1113_R].
43 Go to the next page, please. This is the same day.
44 Mr Howes wrote to yourself, Ms Johnstone and Mr Nurthen,
45 and cc'd Amanda Reeves. What is that group of people at
46 that time? Do you remember why that would have been the
47 people he wrote to about this topic?

1 A. Probably because - well, Sharon, Amanda and myself
2 were managers and Thomas may have been acting manager.

3

4 Q. I see.

5 A. Possibly.

6

7 Q. And he indicates the previous wording for DNA
8 insufficient, "going back to when we used it years ago".
9 And as I understand it, it was used in about 2012 to 2015
10 for P3 samples; is that right?

11 A. Yes, I believe so.

12

13 Q. And the alternative is exactly as in that previous
14 email?

15 A. Yes.

16

17 Q. If we go back to the page before, Mr Nurthen said:

18

19 *The second I think is better ...*

20

21 Do you see that at the bottom of the page?

22 A. Yes.

23

24 Q. I can bring up the email if you need it, but do you
25 remember you replied and said the second is better?

26 A. Yes, I think I can remember that.

27

28 Q. Let's go to the top of this page first, and Mr Howes
29 agreed:

30

31 *Hi, that was the reason why I wrote an*
32 *alternative...*

33

34 *We'll go with that.*

35

36 A. Yes.

37

38 Q. Do you remember that? I will show you your email
39 [FSS.0001.0019.1117]. There is your email saying you like
40 the second one, too?

41 A. Yes.

42

43 Q. And do you remember Ms Johnstone said she preferred
44 the original wording? You don't remember, that's fine?

45 A. Yes, I --

46

47 Q. We will deal with it later.

1 A. I'm not sure.

2

3 Q. After seeing that email where Mr Howes said that he
4 was going to go with that wording, do you understand that
5 wording never made its way into a standard operating
6 procedure?

7 A. I don't think it did.

8

9 Q. Do you know why that is?

10 A. No, not for sure. I think it may have had something
11 to do with trying to have our witness statements fully
12 automated from the Forensic Register, and so part of that
13 process or project involved different wordings to go in as
14 standard wordings for the automated statement production.
15 And I believe, from memory, there were different types of
16 wording considered, but somewhere along the way that
17 project, I don't think, actually got finalised. So I don't
18 think the final agreed wording somehow made it to the
19 standard operating procedure - I think.

20

21 Q. Thank you.

22

23 MS HEDGE: Thank you, Commissioner, those are my
24 questions.

25

26 THE COMMISSIONER: Ms Hedge, in exhibit KR-16, on the
27 second page, you referred to Mr Luke Ryan's email to the
28 Analytical team informing them that it had been the Premier
29 who had instructed that all samples within the range be
30 tested and that they be tested by transitioning to
31 amplification and implicitly omitting the concentration
32 step. Is there any information that actually imputes to
33 the Premier a technical instruction of that kind?

34

35 MS HEDGE: No.

36

37 THE COMMISSIONER: Thanks. Yes. We will adjourn in a
38 minute, but, gentlemen, who is going - what is your order?
39 Have you agreed on an order? If you haven't, you can do it
40 overnight.

41

42 MR HUNTER: We have not. I think we can discuss amongst
43 ourselves and agree on one.

44

45 THE COMMISSIONER: No doubt you can transition to the
46 front of the bar table if anybody wants to do that. Mr
47 Hickey, if you want to, for convenience, stand there rather

1 than call out from the back, I will leave it to you all to
2 make the necessary arrangements. Mr Hodge, is there
3 anything I need to do?
4

5 MR HODGE: No. Other than - would you mind starting at
6 9.00 am tomorrow.
7

8 THE COMMISSIONER: I don't mind. Do your colleagues
9 object?
10

11 MR HODGE: Some may not be comfortable.
12

13 MR RICE: Commissioner, I prefer not to make a habit of
14 it. There are always things to --
15

16 THE COMMISSIONER: I know, I know. It is crucial to have
17 that time in the morning to prepare, yes. You are not
18 sitting around gossiping.
19

20 MR HODGE: I will just explain. There are two
21 witnesses --
22

23 THE COMMISSIONER: No need to explain. It's all right.
24

25 MR HODGE: -- we need to finish by the end of Wednesday,
26 and --
27

28 THE COMMISSIONER: There is no need to explain, Mr Hodge.
29 If you or others require something like that, I take it
30 that there is good reason.
31

32 Earlier this morning when the gentleman was taking
33 photographs - he is not here now, I think he was
34 frightened - of exhibits, I said that we would be uploading
35 material to our web page. Do you know if any steps have
36 been taken to do that?
37

38 MR HODGE: I understand the statements as they go in are
39 going to be uploaded, I assume at the conclusion of the
40 evidence, but I will check about that overnight. And I
41 will speak to the other parties about the other documents
42 that are referred to.
43

44 My proposal is we will provide you, Commissioner, with
45 a list - perhaps we will do it each morning - of the
46 documents that were referred to the preceding day so that,
47 in effect, you can tender in bulk the documents that were

1 referred to and they can be assigned an exhibit number,
2 which will happen on the document, and that can be checked
3 for redactions overnight.

4
5 THE COMMISSIONER: All right. Because it is a public
6 hearing.

7
8 MR HODGE: Yes.

9
10 THE COMMISSIONER: And so unless there is good reason, we
11 should be uploading the statements and the exhibits.

12
13 MR HODGE: As soon as possible.

14
15 THE COMMISSIONER: - as soon as possible.

16
17 MR HODGE: Yes.

18
19 THE COMMISSIONER: But we can talk about that out of
20 hours. Thanks. Anything else, gentlemen?

21
22 MR HICKEY: Commissioner, can I just add one point. We
23 received something of the order of 1,000-odd documents on
24 Friday afternoon. One understands the processes that occur
25 behind the scenes, and it is not a criticism, but I wonder
26 if it would be possible for counsel at least to be provided
27 with a list which identifies the statements together with
28 the Epiq or the Ringtail numbers which identify the
29 annexures thereto.

30
31 The difficulty is it is not presently possible to be
32 absolutely sure that one has all of the exhibits that are
33 attached to any particular statement, and it seems as
34 though that must be something that is known within the
35 Commission. It would be of assistance to --

36
37 THE COMMISSIONER: Well, talk to Mr Hodge about it, and
38 I am sure you won't have any trouble because whatever you
39 need, you have to have. All right. Then we will adjourn
40 until 9.00 am tomorrow. Thank you.

41
42 **AT 4.35PM THE HEARING WAS ADJOURNED TO 9.00 AM ON TUESDAY,**
43 **27 SEPTEMBER 2022**
44
45
46
47

| # | | | | | |
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