

**COMMISSION OF INQUIRY
INTO FORENSIC DNA TESTING IN QUEENSLAND**

Brisbane Magistrates Court
Level 1/363 George Street, Brisbane

On Thursday, 27 October 2022 at 9.30am

Before: The Hon Walter Sofronoff KC, Commissioner

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

1 THE COMMISSIONER: Mr Hodge.

2

3 MR HODGE: Thank you, Commissioner.

4

5 <JUSTIN ANTHONY HOWES, recalled, on former oath: [10.38 AM]

6

7 <EXAMINATION BY MR HODGE:

8

9 Q. Mr Howes, I take it from some evidence you've given you
10 have read some of the statements that have been given by
11 other scientists in the laboratory to the Commission?

12 A. Yes, I have.

13

14 Q. In reading those statements do you recall that Ms Caunt
15 raised an issue which was about whether she was permitted
16 to speak to scientists from other laboratories?

17 A. Yes, I do.

18

19 Q. And she gave some evidence in her statement which was
20 about discussions she'd had with you about whether she was
21 permitted to speak to scientists in other laboratories?

22 A. Yes.

23

24 Q. You tell me if you disagree with this, you've obviously
25 read it, but the effect of her evidence was that you
26 discouraged her from speaking to scientists in other
27 laboratories?

28 A. Okay, what I recall is that I - Emma's part of our
29 group, it's a national body called STATSPWG, so statistics
30 project working group, and she can contact that project
31 working group for advice and to share ideas and thoughts
32 freely. I think that Emma might be referring to contacting
33 Dr Duncan Taylor is what I recall from the statement. Is
34 that correct, Mr Hodge?

35

36 Q. Yes, she does refer to that as well?

37 A. Yes. Would you like me to explain?

38

39 Q. Yes?

40 A. Okay. So look, I recall speaking to Emma and just
41 checking with her that, like I was just cautious that
42 contacting Duncan directly, you know, was a good idea. I
43 know Duncan quite well, have for a long time, and he's a
44 world leading expert who would be getting queries about
45 certain things from all around the world, not just our
46 laboratory. I think it was just courteous and respectful
47 to be able to contact his manager just to make sure it's

1 okay to contact him directly, which I did do, and spoke to
2 manager Thomas (indistinct), and of course it was fine. So
3 it was just really about courteous and being respectful to
4 the fact he was probably getting enquiries from all around
5 the world and we can just be respectful of that.

6
7 Q. What Ms Caunt says, there's a couple of aspects to it,
8 but one is she says that you said to her the lab in South
9 Australia didn't want Duncan Taylor to be contacted all the
10 time by other laboratories?

11 A. No, I just think that it's - I think we just need to be
12 understanding that every laboratory is busy, and I think
13 Duncan Taylor would be especially busy given his standing
14 in the community.

15
16 Q. Just coming back to my question, what she says is that
17 you said to her that the lab in South Australia didn't want
18 Duncan Taylor to be contacted all the time by other labs?

19 A. My feeling is that when I've spoken to Thomas before I
20 think he does express that he's, I guess, he's
21 accommodating of us to contact Duncan Taylor, but I sense
22 a, although not directly, but I sense that it's, you know,
23 does take his time. It does take his time to address
24 concerns from around the world.

25
26 Q. I understand. Again, just to come back to what I'm
27 just trying to test with you, did you say to Ms Caunt that
28 the lab in South Australia didn't want Duncan Taylor to be
29 contacted all the time by other labs?

30 A. I don't think that directly, I don't think I said that
31 directly.

32
33 Q. Something to that effect?

34 A. I think I intimated look, I think we need to be
35 conscious of him being contacted by the world forensic
36 community.

37
38 Q. And then one of the other things that Ms Caunt says is
39 that you were told - sorry, that you told her that she was
40 not to contact other laboratories?

41 A. I don't believe that.

42
43 Q. Have you ever discussed with her whether she should or
44 shouldn't be contacting other laboratories apart from
45 Mr Taylor?

46 A. No, I don't recall that.

47

1 Q. Is it possible that you've discussed it with her?
2 A. As part of the STATSPWG group she can contact. In fact
3 I have asked her as STATSPWG delegate to be able to contact
4 people on certain topics.
5
6 Q. Do you have a view about the extent to which the
7 Queensland laboratory has remained or is in contact with
8 other laboratories and developing its knowledge with the
9 benefit of consultation and discussion with other
10 laboratories?
11 A. Yes, we are in contact with other laboratories.
12
13 Q. And have you at times formed views about how the
14 Queensland lab sits relative to other labs say within
15 Australia?
16 A. I think we sit comparably with other labs.
17
18 Q. Do you have why YSTR testing?
19 A. No, we don't.
20
21 Q. Do other labs in Australia have YSTR testing?
22 A. Yes, they do.
23
24 Q. Do you accept that it is an inadequacy in the
25 Queensland lab that it does not have YSTR testing?
26 A. Yes, we've been trying to validate that for a few
27 years.
28
29 Q. Do you accept the fact that for a few years the
30 Queensland lab has been unavailable to validate YSTR
31 testing is indicative of an inadequacy in the Queensland
32 lab?
33 A. I don't think necessarily inadequacy. These tests to
34 validate do take a long time. And I know that it was held
35 up for some period to do with getting consent to get police
36 samples for use within the project, is what I recall, and
37 also whether the actual testing could be part of a
38 memorandum of understanding.
39
40 Q. You've read Mr Cochrane's report?
41 A. Yes, I have.
42
43 Q. Do you recall what he said about best practice and YSTR
44 testing?
45 A. Yes, I do.
46
47 Q. Do you accept that the Queensland lab is presently

1 below best practice given its inability to perform YSTR
2 testing?

3 A. In that regard, yes.
4

5 Q. And is that something that you've recognised for some
6 time or that only became apparent to you on reading
7 Mr Cochrane's report?

8 A. No, we've been trying to validate this for some time.
9

10 Q. No, sorry, it may be that it was my question that was
11 problematic. Did you recognise the Queensland lab was
12 below best practice because it did not have YSTR testing
13 for some time, or did that only become apparent to you on
14 reading Mr Cochrane's report?

15 A. No, we've felt we needed to have the YSTR testing, so
16 that would mean we have been, my opinion, below best
17 practice and it's been identified as a key strategic
18 project.
19

20 Q. Have there been steps that you or Ms Allen or
21 Ms Brisotto have taken to try to get that implemented
22 urgently?

23 A. I wouldn't say urgently but we certainly do have
24 project staff allocated to that project and who are working
25 and meeting to get that project completed.
26

27 Q. Have there been any steps that you've taken to
28 intervene and seek to address this issue?

29 A. No, I trust the project staff are working and I know
30 they are working on this project.
31

32 Q. Can you see that one of the things that's striking from
33 Mr Cochrane's report is he connects the absence of YSTR
34 testing back to the issue identified by Ms Reeves in early
35 2016 about the problems with using the ER slides to
36 identify semen or identify sperm?

37 A. I did see that connection.
38

39 Q. And what it appears, or what appears to be the case is
40 that for at least six years there has been an awareness
41 within the Queensland lab that there was a problem in
42 relation to the way in which the Queensland lab dealt with
43 sperm samples?

44 A. Do you mean with YSTRs and the fact that we don't have
45 the Y testing?
46

47 Q. Well continuously in this sense, that at the beginning

1 of 2016 an issue was identified about the apparent problems
2 that the lab was having in identifying sperm using the ER
3 slide method, and as we discussed yesterday afternoon as
4 far as you know no one ever went back to review what had
5 been happening for the preceding six years when that
6 problem was occurring, you remember we discussed that
7 yesterday?

8 A. Yes, I do.

9
10 Q. And no one at any stage went back to identify or
11 evaluate what it was that was causing the problem in
12 relation to identifying sperm on ER slides?

13 A. Yes, we didn't go back, that's right.

14
15 Q. But more than that, even beyond going back and doing a
16 review, there was never an attempt made - sorry, I withdraw
17 that - there was never a view formed as to a root cause why
18 it was sperm weren't being identified by the ER slides?

19 A. In terms of root cause I guess it's not unexpected to
20 be able to get a higher count of the differential lysis
21 slide examination compared to the --

22
23 THE COMMISSIONER: This wasn't a higher count, Mr Howes,
24 this was zero on the microscope. It wasn't a difference
25 between the amount on the slide and the amount in diff
26 lysis, there was nothing on the microscope. Why are you
27 referring to differences? Why did you raise that?

28 A. We're just talking about root cause so I was just
29 trying to explain, perhaps not eloquently, that the slide
30 prepared at differential lysis is a concentrated sample
31 compared to evidence recovery. I don't recall anyone going
32 back and finding root cause other than exploring that and
33 the differences.

34
35 MR HODGE: Then the way that that issue was addressed was
36 effectively by - it was by a work around, that was how it
37 was described within the lab?

38 A. The work around was implemented I think you mentioned
39 yesterday August to be able to get samples through and to I
40 guess look at the differential lysis slide as the primary
41 slide to look at.

42
43 Q. And then the project was ongoing and eventually
44 resulted in just using diff lysis as the method?

45 A. Yes.

46
47 Q. But the time the final decision was made to just be

1 using diff lysis you'd already been trying unsuccessfully
2 to get YSTR to work?

3 A. Yes, genotype.
4

5 Q. And by that time best practice around the country was
6 to use YSTR?

7 A. I think it was in every laboratory if I remember
8 correctly.
9

10 Q. That was 2020, and even now in 2022 the Queensland lab
11 still doesn't have YSTR working?

12 A. Yes, that's correct.
13

14 Q. Again, tell me if you agree with this but the types of
15 testing that we're concerned with here, they are
16 necessarily testing that are concerned with sexual assaults
17 and rapes?

18 A. Yes, they are.
19

20 Q. And they are very serious crimes?

21 A. Yes.
22

23 Q. I'm interested in your view about this. It looks as if
24 over, for a number of years within the Queensland
25 laboratory that an emphasis has been put on things like
26 turn around times?

27 A. It's certainly something which we are measured by and
28 which we try to meet.
29

30 Q. And that the approach of the Queensland lab for a
31 number of years has been to focus on effectively the things
32 that would matter for volume crime rather than the things
33 that would matter for serious crime?

34 A. I think we've focused on both, Mr Hodge.
35

36 Q. I want to give you two examples. The first is what
37 we've just been talking about, which is that for six years
38 there has been an inadequacy in relation to the testing
39 that the lab is performing in relation to semen?

40 A. In terms of YSTRs, yes.
41

42 Q. And also though it's not just the absence of YSTR,
43 before the absence of YSTR became a problem there was an
44 original problem that was identified back at the beginning
45 of 2016 with the method that was then being used?

46 A. That's correct, yes.
47

1 Q. And also the way in which the lab is managed is that
2 you do not have a case manager dealing with samples that
3 are coming in from serious crimes?

4 A. We do in some cases, we certainly do.

5
6 Q. Priority 1 cases?

7 A. Priority 1 and some other cases which, for example cold
8 cases we'll allocate staff to look into those. And also if
9 there is another case with a large number of items, we find
10 that these are also good cases to allocate so people can
11 have the continuity of that case work.

12
13 Q. As a matter of usual practice though, for priority 2
14 cases, which are the bulk of serious crimes, homicides,
15 assaults, sexual assaults, rapes, you do not do case
16 management, you do sample management or you do follow
17 through the samples?

18 A. For the bulk, yes.

19
20 Q. And to put it very bluntly, the way in which the
21 Queensland lab has been run for a number of years, not just
22 in relation to volume crime but also in relation to serious
23 crime, is like a factory line?

24 A. I can see that analogy.

25
26 Q. That reflects that the focus of the way in which the
27 lab has been managed is on the kind of lab that is
28 effective for volume crime rather than the kind of lab that
29 is effective for serious crime?

30 A. I think it can work for some serious crime. We find
31 that allocating a case manager for the very large cases is
32 a more effective way for those cases with a large number of
33 samples. So for some major crime you don't have hundreds
34 and hundreds of samples. So I think that it's not every
35 major crime has hundreds of samples.

36
37 Q. As a scientist and a professional do you think that it
38 is embarrassing that in the Queensland lab a sample would
39 be validated as no DNA or DNA insufficient for further
40 processing without the scientist doing the validation even
41 viewing the photograph from where the sample had been
42 taken?

43 A. You asked if it's embarrassing. I think in light of
44 what I have mentioned how things could have been improved
45 that was something which I had identified as a potential
46 improvement to our forensic-register. In that sense I'd
47 have to agree with you.

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Q. It reflects, doesn't it, the fact that for a number ever years the Queensland lab has been run as a factory line where these highly trained scientists that you have there are not encouraged to bring their intellect to bear for the benefit of the people of Queensland and instead just stamp things through and get it done as quickly as possible?

A. I think our scientists apply their intellect to all the samples that we come across. Yes, you mentioned factory line again, I can see that analogy.

THE COMMISSIONER: Mr Howes, I just want to ask you something about the system. After samples go through quantitation?

A. Yes.

Q. The quant has been entered by somebody or by the machine itself on to a database and somebody then - and does the system itself allocate samples with quant below .0088 to one list and others to another list, does the computer do that automatically?

A. I can't confirm if they are separate but the computer doesn't validate in order to make it available to the police. That is a human.

Q. No, I'm not talking about the police. What I mean is as I've been told a profiling scientist, one of the reporting scientists, will look at a work list?

A. Yes.

Q. And take the first sample and then look at the profile that's been generated by the genetic analyser and STRmix and lift that and then interpret it?

A. Yes.

Q. So that work list until recently only contains samples with quants above .0088?

A. Correct.

Q. How did that list come to be generated so that samples below that level were not listed but went elsewhere, how does that come to be?

A. Yes, okay. So when a file is put into the forensic-register it will detect that that value is in that range and then that will go to a separate list. So not the ones to the reporting scientist. It will go to a separate

1 list for verification. I think the page is called the
2 quant transition page. Yes, so they are managed outside of
3 the --
4

5 Q. Right. So does the computer itself determine in the
6 first instance that samples with quant above a level will
7 go to the work list for the reporting scientists, and
8 samples below that level will go to another list for
9 validation?

10 A. Okay, so samples above that will go to amplification
11 and then eventually to the reporting scientist.
12

13 Q. Yes?

14 A. And samples below that will go to - yes, a separate
15 list for validation.
16

17 Q. Right. So then somebody will look at that list and
18 validate that the sample belongs on that list?
19

20 A. Yes.
21

22 Q. Was that Mr Luke Ryan?

23 A. I believe it's Luke. There may be other people who are
24 trained in that aspect as well.
25

26 Q. And what does somebody in that position do, does that
27 person look at the list of quants that were generated
28 yesterday and confirm that the numbers are correct and that
29 they belong in that list and that constitutes validation?

30 A. Yes, I think it's to check that the correct lines are
31 applied to that quant value. So the two lines being no DNA
32 detected or --
33

34 Q. Yes. So there's a quant, let's say it's .007 and the
35 line is DNA insufficient for further processing, so the
36 person checking it confirms that's correct and then moves
37 on to the next sample to do the same task, is that right?
38

39 A. That's my understanding, yes.
40

41 Q. One can see then that the emphasis is upon speed, that
42 is the computer does the quantitation, generates the
43 quants, places the samples in lists according to the
44 quants. One list goes to the validating scientist who's in
45 the analytical team, not the profiling team, who checks the
46 number and the result line, confirms that that's in order.
47 The other sample then proceeds to amplification and so on;
is that right?

A. Correct.

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Q. So you then have up to that point people working on extraction, people involved in micro-concentration if that's required, people involved in quantitation and then it comes to the data and somebody validates it, and that's what Mr Hodge was referring to as the production line approach. When did you join the laboratory?

A. I joined the Queensland laboratory in 2005.

Q. Right. Was that the system that was in place when you joined it?

A. No.

Q. What was the system then?

A. Okay, so the system we had in place in 2005 was that profiles went through those analytical phases through to DNA profile. The DNA profile was made available for case managers or reporting scientists. I guess I use the term case manager, that's somebody who might be trained and competent in profile interpretation but is not a reporting scientist. So then that becomes available for them to interpret and reviewed by someone with the same competence. That is all DNA profiles, all information will then go through to those staff members.

Q. How is that different from what is operating now?

A. Well what we have operating now is list-based work, as we're just mentioning, and that there is these two zones, no DNA detected, DNA sufficient and then profiling.

Q. But when you joined the lab and before any change was instituted, for example if there was a discretion to be exercised concerning whether to concentrate a sample or not to concentrate a sample, who made that decision when you first joined?

A. I'm trying to remember back, Commissioner, but I think there was - so case managers and reporters would have that discretion. I think there's also some aspects where in the analytical team if there was an analytical component that needed to be reworked, so what I mean by that is if there was - so the stage of analysing DNA profile prior to going to the reporters, if we can see the baseline, for example, was not ideal, there was a rework that could be ordered by analytical team at that stage or anyone else competent in that particular task. So I guess in that sense it was less of a production line back when I started in 2005, and essentially all profiles went through to the case

1 management reporting fold.
2
3 Q. Was somebody assigned to a particular case back then?
4 A. Yes. Back then --
5
6 Q. In major crime I mean?
7 A. So when I joined in 2005 the lab was going through a
8 fair bit of flux.
9
10 Q. Yes?
11 A. And design. I came and very soon after, I think it was
12 a matter of a few weeks, a couple of months, there was a
13 new design within the major crime team. That was to
14 separate into three different teams to focus on certain
15 case types in order to get the work done. Because there
16 was a - if you remember there was a significant backlog in
17 our laboratory in terms of volume crime work and also major
18 crime.
19
20 Q. Yes.
21 A. But a big focus on the volume crime work.
22
23 Q. Is that when the division was created P1, P2 and P3, as
24 part of dealing with the backlog that existed back then?
25 A. I don't think - I'm not sure when the actual numbers
26 and the priorities were established but certainly there was
27 volume crime cases, determined by the crime type, against
28 person or against property.
29
30 Q. Let's leave that aside?
31 A. Sure.
32
33 Q. When you joined the lab were major crime cases
34 allocated to a particular case manager to coordinate?
35 A. Yes.
36
37 Q. From beginning to end?
38 A. Yes. That was the way that we operated, yes.
39
40 Q. If there was a sample in a rape case where the quant
41 was low, a case coordinator could apply judgment in
42 discussions with analytical staff, the chemistry staff I'll
43 call them, to decide we'll concentrate those down to half
44 or we'll concentrate this fully and engage in discussions
45 of that kind before a final profile is made?
46 A. There might be some discussions with - sorry to
47 interrupt. Yes, so there were a couple of different rework

1 options that they could have entertained, but yes, I agree.

2

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10 Q. The position now as I understand it is that there is a
11 well-understood division of responsibility between what you
12 and your colleagues call the analytical team and the
13 reporting teams, is that right?

14 A. Yes.

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Q. That change must have been introduced for a reason and was the reason in order to deal with samples as quickly as possible?

A. Yes, I believe so, around 2008.

Q. When did that happen, about 2008?

A. 2008 is when I recall, yes.

Q. And who instituted it, do you remember?

A. I do remember that I believe the Superintendent Forensic Services at the time was Superintendent Michael Keller. I don't know if he was solely responsible for the design, but certainly the design from what I recall was to assist in trying to improve the overall --

Q. But Superintendent Keller was a police officer?

A. Yes.

Q. So how he would be - was it a he?

A. Yes, it was.

Q. Michael Keller, yes. How could he be what process, what systems are adopted in the lab?

A. What I recall was part of that change was to utilise the skills of the forensic officers within Queensland Police. So there are different forensic officers within the police, some have got --

Q. Yes, I understand?

A. Okay. So it was to use their skills to be able to examine pre-delivery to --

1 Q. So part of the change was police scientific officers
2 would prepare the samples from the actual physical exhibits
3 and deliver them rather than delivering the exhibits to the
4 lab?

5 A. For the most part, yes.

6
7 Q. Yes, all right. Putting that aside, who was it who
8 determined that within the laboratory a system would be
9 adopted of the kind that Mr Hodge referred to as a
10 production line system, who was in charge then, who did
11 that?

12 A. In charge back at that time, 2008, was Vanessa Ientile
13 and I believe that the senior of Vanessa was Robin Kelly
14 from what I recall.

15
16 Q. I see, thanks.

17
18 MR HODGE: Thank you, Commissioner. Just a few other
19 things I wanted to ask you about, Mr Howes. One is --

20
21 THE COMMISSIONER: I'm sorry. And the person who then
22 validates the quant and the result line that we discussed a
23 moment ago, that person as a standard operating - part of
24 the standard operating procedure does just that, doesn't go
25 back to the case file or look at photographs or speak to
26 police officers, it's just a question of confirming that
27 the number and the result line are appropriate for that
28 list?

29 A. Yes.

30
31 Q. Thank you.

32
33 MR HODGE: You recall back in August when the issue of - or
34 when the interim report was under consideration by the
35 Commissioner you put in a statement then dealing with this
36 question as to - amongst other things, dealing with the
37 issue of whether people within the criminal justice might
38 have misunderstood what DIFP meant?

39 A. I think I remember, yes.

40
41 Q. I'm interested in understanding your view about that.
42 I know you explained that, whereas I understood your
43 statement you're not aware of any specific steps being
44 taken within your work unit to try to educate, for example,
45 prosecutors as to what the meaning of DIFP was?

46 A. That's correct, yes.

47

1 Q. But you gave some evidence I think that you didn't
2 think that there was or you hadn't apprehended that there
3 was any confusion about that?

4 A. That's correct, yes.

5

6 Q. Did you turn your mind at any stage between 2018 and
7 mid this year when the process finally ended to the
8 question of whether the lab ought to be trying to educate
9 people within the criminal justice system about what this
10 DIFP label meant?

11 A. Look, I don't think I turned my mind to that in that
12 period around that particular issue.

13

14 Q. Reflecting on it do you feel like that was something
15 that it was incumbent on the lab to do, that it needed to
16 educate people if it was going to maintain this system as
17 to what the system meant?

18 A. I think, look, upon reflection we could have done more
19 to educate not just the legal parties but certainly
20 Queensland Police. I did have one presentation in mid-2018
21 that included information around those two lines of
22 information. But I think that we could have done more to
23 educate them.

24

25 Q. That was a presentation to the QPS?

26 A. It was, yes.

27

28 Q. Do you agree with me, and I don't mean this critically,
29 I just mean within the lens within which things seemed to
30 have been perceived within the lab, it would not have
31 served the lab's interests to be educating people within
32 the criminal justice system to the reality, which is just
33 because something was labelled as DNA insufficient for
34 further processing did not actually mean that there was
35 insufficient DNA for further processing?

36 A. Okay, I'm sorry, I'm trying to remember the first part
37 of your question there.

38

39 Q. Let me look at it like this. It seems like the only
40 real benefit of introducing the DIFP process was to reduce
41 the workload for the lab with the consequent benefit that
42 it could improve its turn around times?

43 A. It had that - there's certainly that point there.

44

45 Q. It had no other benefit, did it?

46 A. I think I explained that it also had some other points
47 where it could have - and I take the view of the interim

1 report, it could have allowed other samples with that
2 higher quant to have processed quicker as well.

3
4 THE COMMISSIONER: That's what Mr Hodge put to you, the
5 only benefit was the speed with which samples would be
6 dealt with would be improved, at least that was the
7 advantage that was pointed out?

8 A. Okay.

9
10 Q. There was no other benefit, was there?

11 A. No, that would have turn around overall, yes.

12
13 Q. By the way did it improve turn around?

14 A. That was a hard one to measure. Turn around times have
15 been great I believe up until mid-last year, things started
16 to get a bit heavy from what I remember from our graphs.
17 We do get some information from the forensic-register on
18 our turn around time, we get informed of how we're going
19 from Queensland Police. We are seeking to get more
20 information around our through put in terms of --

21
22 Q. So after the new process was introduced in early 2018
23 can we find any data that you and others in FSS generated
24 to determine that the new protocol by which a proportion of
25 work was culled actually did have that - gave that benefit,
26 that it did improve turn around times? Did you do any
27 studies in 2018?

28 A. Not specifically, it's very difficult.

29
30 Q. When you say not specifically, did you do any studies?

31 A. We did have our turn around times measured during that
32 period but I don't think any internal studies looking at
33 that as the one variable that had changed.

34
35 Q. But that was the only advantage there was and you
36 didn't see whether that advantage had come good?

37 A. Because there were other variabilities that occur in a
38 functioning lab. Having more than one variable it's
39 difficult to isolate to one aspect and the effect of that
40 aspect on the through put of the turn around time.

41
42 Q. Thanks.

43
44 MR HODGE: Given that the only benefit of it was reducing
45 turn around times, do you agree with me that anything that
46 you did that would educate people about the fact that there
47 might be sufficient DNA would be likely to lead to requests

1 for processing of samples?

2 A. I'm not sure, I don't know.

3

4 Q. It's obvious though, isn't it? That's the reason why
5 you've said you'd put this information in the
6 forensic-register and it would go into QPRIME so that you
7 say police would understand that they could request
8 samples?

9 A. Yes, police could, yes.

10

11 Q. So the more you told people about the fact that
12 actually DNA insufficient for further processing did not
13 mean there was insufficient DNA for further processing, the
14 more likely it would be that people would request that
15 those samples be tested?

16 A. Well I don't know. I don't know how that might have
17 been taken, and I don't recall turning my mind to that.

18

19 Q. I understand you didn't turn your mind to it, but what
20 I'm suggesting to you is, you tell me if you disagree, it
21 seems obviously if you tell practising within a system
22 where they use DNA as evidence for that system, that you've
23 been telling them that samples have insufficient DNA for
24 further processing but actually just because it's labelled
25 like that doesn't mean it's true, that it would be likely
26 to lead to a request being made for a test?

27 A. It might have led to that and I think that's where the
28 education could have been improved to say we're open to
29 that testing.

30

31 Q. And it would seem to follow that the more people that
32 you told about what DNA insufficient for further processing
33 actually meant, the more you would defeat the whole purpose
34 of putting the process in in the first place, which was to
35 reduce the number of samples that you were having to
36 process?

37 A. I don't recall that being a conscious thought.

38

39 Q. I understand it wasn't a conscious thought, I'm not
40 suggesting to you it was. I'm just asking if you agree
41 with me it's obvious the more people you informed about the
42 reality, that DNA insufficient for further processing
43 didn't actually mean DNA insufficient for further
44 processing, the more it would defeat the whole purpose of
45 putting in the process in the first place?

46 A. I think more education might have led to more samples
47 then, yes.

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Q. That in turn would defeat the purpose of putting in the work in the first place, which was to reduce the amount of work the lab was doing?

A. When you put it like that I can't disagree.

Q. I want to show you the submission that we've - that the Commissioner has received from the DPP. So the Commissioner asked some questions as to the knowledge of Crown prosecutors and legal officers about DIFP reporting. Can we bring up SPM.DPP.0002.0001. So this is the submission made by the DPP giving responses to some questions that had been raised by the Commissioner. Can we just blow up the two questions at the bottom of the first page. You see the first question was:

During the period from 2018 to 2022, where results were reported as insufficient DNA for further processing, whether officers of the DPP understood that samples with a result reported as DNA insufficient for further processing, or words to that effect, could within the capabilities of the FSS laboratory be tested further?

And then four said yes and 191 said no?

A. Yes.

Q. Then you see the next question:

During the period from 2018 to 2022, where DIFP results were reported whether officers of the DPP understood that if such samples were tested further partial or full profiles could be obtained in some cases.

And the answer for 19 of them was yes and for 176 of them no?

A. Yes.

Q. I'm not sure, have you seen this before?

A. No.

Q. I'm interested in whether looking at these figures you accept that there was a failure by the laboratory not only in introducing the process in the first place but in

1 educating, just to begin with, prosecutors as to what it
2 was that you had done and what it meant?

3 A. Looking at that data, yeah, look, I agree.
4

5 Q. Do you think that it was incumbent upon the lab to
6 undertake that educational function?

7 A. I think we certainly had a place to play there.
8

9 Q. Thank you. I tender the submission, Commissioner.
10

11 THE COMMISSIONER: Exhibit 155.
12

13 **EXHIBIT #155 DOCUMENT SPM.DPP.0002.0001.**
14

15 MR HODGE: I want to then ask you about just a few other
16 things. One is the ESR report, that is the ESR report
17 about sperm microscopy. I've understood from your
18 statement you didn't receive that report until about a year
19 after it was delivered?

20 A. I'm not sure of the actual time period of that.
21

22 Q. I think in your email you exhibit the emails. I'll
23 just bring that up, it's WIT.0016.0188.0342. This is the
24 email that Ms Allen sent to you on 4 January, to you and
25 Ms Brisotto, attaching the 11 April 2017 report?

26 A. Yes.
27

28 Q. Had you been aware of what the report had found before
29 then?

30 A. No.
31

32 Q. Did you read it when she sent it to you?

33 A. I had read it after, yes. I'm not sure when, whether I
34 read it before she came over or read it after.
35

36 Q. Did Ms Allen explain to you what the reason was for
37 obtaining the report?

38 A. I recall it was to do a desk top exercise to look into
39 our standard operating procedures for sperm recovery.
40

41 Q. Did she at any stage suggest to you it was to address
42 the issues that had been raised by Ms Reeves?

43 A. I think it was - I don't recall that directly, but what
44 I recall is it was there to look into as an audit of our
45 SOP, sorry.
46

47 Q. Do you agree with me, and I can bring up the report if

1 you'd like, but in reading the report it wouldn't have
2 occurred to you that it was addressing the issues that were
3 raised by Ms Reeves because it didn't, on its face, address
4 those issues?

5 A. I don't recall the actual details of the report but I
6 just remember it was an audit of our Standard Operating
7 Procedure.

8
9 Q. Do you remember when you first became aware that ESR
10 had been asked to provide the report?

11 A. It was around this time.

12
13 Q. And do you remember whether you were told why it was
14 that the report had been provided in April of 2017 but you
15 were only receiving it in January of 2018?

16 A. No, I don't recall.

17
18 Q. Do you remember whether it was provided or a copy of it
19 was provided to the people that were working on Project
20 184?

21 A. 184?

22
23 Q. Sorry, 183. Wasn't 183 the - 181. I apologise, I'm
24 getting my project numbers mixed up.

25 A. You're doing well though.

26
27 Q. Project 181?

28 A. I don't recall that.

29
30 Q. Do you remember whether at any stage Ms Allen told you
31 anything about Ms Reeves having made an RTI request?

32 A. I don't recall that.

33
34 Q. I want to then move forward to December of 2021. Can
35 you remember having a telephone conversation in early
36 December of 2021 where you and Ms Allen were speaking to
37 Inspector Neville?

38 A. I don't recall that specifically.

39
40 Q. Did you and Ms Allen have many telephone conversations
41 with Inspector Neville?

42 A. With just the three of us, I don't remember many. I
43 know that we've had some teleconferences with a number of
44 people on the call.

45
46 Q. Let me suggest some things to you and see if this
47 brings back any memory for you. Do you remember a call in

1 which you and Ms Allen were speaking to Inspector Neville
2 and he was speaking to you about Operation Tango Amunet?
3 A. No, I don't recall that.

4
5 Q. And that he explained that in that matter 33 samples
6 had been labelled as DNA insufficient and then when further
7 testing was asked for ten of them gave a profile?
8 A. Okay. I think I'm recalling that case now, yes.

9
10 Q. I'm just wondering whether you can remember a telephone
11 conversation that you had with Inspector Neville about
12 that?
13 A. No, I don't recall those details.

14
15 Q. And do you recall that - do you recall participating in
16 a telephone conversation with Inspector Neville where
17 Ms Allen said something to the effect that Queensland
18 Health had done repeated tests that revealed it is highly
19 unlikely to get a profile below a particular quant value?
20 A. I don't remember those details.

21
22 Q. Is that the kind of thing that you have heard Ms Allen
23 say?
24 A. I really don't know, I'm sorry.

25
26 Q. Now, I want to then ask you about conversations you had
27 with Ms Keller and, to try to orient you in time, do you
28 remember that media coverage about the adequacy of the DNA
29 laboratory began last year?
30 A. Yes.

31
32 Q. And do you remember at any stage telling Ms Keller
33 words to the effect that there was nothing to worry about?
34 A. That was my opinion, yes.

35
36 Q. And words to the effect that the testing methodology
37 was appropriate?
38 A. That's what I thought, yes.

39
40 Q. I understand that's what you thought, I'm just
41 interested in whether you can remember having communicated
42 it to Ms Keller?
43 A. Yes.

44
45 Q. And words to the effect that QPS agreed with the
46 processes?
47 A. In terms of - okay, so the context, so the processes,

1 so our general processes?
2
3 Q. Yes?
4 A. I think I remember that.
5
6 Q. And have you at any stage said to Ms Keller words to
7 the effect that reworks were regularly being performed?
8 A. Reworks are being performed, yes.
9
10 Q. But have you told Ms Keller that reworks are regularly
11 being performed?
12 A. Do you mean for in this range or do you mean in
13 general?
14
15 Q. I think let's assume it's in this range. Would you
16 have told Ms Keller that?
17 A. I can't remember talking about this range at that point
18 in time when I was working with, working quite closely with
19 Lara Keller.
20
21 Q. Can you remember having discussed with Ms Keller this
22 DIFP issue?
23 A. I think we had discussed it. I can't remember when.
24
25 Q. Can you remember you reassured Ms Keller that it wasn't
26 an issue or said anything in an attempt to reassure her to
27 the effect?
28 A. I think I had - do recall mentioning that there was a
29 disconnect between, I think what we were discussed
30 yesterday with the 30 per cent and the 2 per cent, but at
31 that point in time, yeah - look, I can't remember those
32 specifics there, Mr Hodge.
33
34 Q. Can you remember whether in the context of this DIFP
35 issue you said to Ms Keller words to the effect that QPS
36 had the opportunity at any time to request further
37 processing of samples?
38 A. I probably did because they did, yes.
39
40 Q. Can you remember whether you said or attempted to
41 convey to Ms Keller that QPS were in the best position or
42 in a good position to be able to do this given their
43 knowledge of the whole context of the case?
44 A. Yes, that was my view.
45
46 Q. And can you remember whether you ever indicated to
47 Ms Keller that Forensic DNA Analysis staff could also

1 request additional processing on samples?

2 A. I think I might have, yes.

3

4 Q. Did you explain to her that as a matter of course that
5 wouldn't happen?

6 A. I don't recall if I did or not.

7

8 Q. Is it fair to say that in speaking to Ms Keller you
9 sought to convey to her that this was not an issue, that is
10 the DIFP problem being raised by Inspector Neville was not
11 an issue?

12

13 THE COMMISSIONER: Not an issue of concern?

14

15 MR HODGE: Yes, not an issue of concern?

16 A. I think at that point I was just explaining the process
17 that was occurring and I think it was around that time that
18 we became aware of more examples, so 30 per cent and a few
19 others, with that particular case, Tango Amunet.

20

21 Thank you, Commissioner, I don't have any more questions.

22

23 THE COMMISSIONER: Yes, Mr Hodge. Thank you. Mr Hunter.

24

25 <EXAMINATION BY MR HUNTER: [10.27 AM]

26

27 Q. Mr Howes, I act for the Queensland Police Service. I
28 hope not to detain you terribly long. Could I ask you
29 about the feedback process for the project that became the
30 Options Paper, so Project 184?

31 A. Yes.

32

33 Q. I'm only concerned about what happened up to the point
34 where there was a decision made to turn it into an Options
35 Paper. Am I right in thinking that up until that point the
36 way feedback was sought and provided was entirely
37 conventional?

38 A. Yes, you're right.

39

40 Q. You had put a copy of the draft of that paper on the I
41 Drive in a sub directory called Change Management?

42 A. Yes.

43

44 Q. And in that sub directory called Change Management
45 there was also an Excel spreadsheet?

46 A. Yes.

47

1 Q. Was it the process that people who wanted to give you
2 feedback on the paper could enter that feedback in various
3 cells on the Excel spreadsheet?

4 A. We started keeping a spreadsheet as a way for the
5 project officers to put in information from emails or
6 conversations.

7
8 Q. So you were the project officer?

9 A. Yes.

10
11 Q. So you were the one who input the information into the
12 spreadsheet?

13 A. Yes.

14
15 Q. Could we please have on the screen FSS.0001.0001.0785,
16 please. So I'm looking at row 6?

17 A. Yes.

18
19 Q. Where we've got some feedback attributed to PMB, which
20 is Ms Brisotto, correct?

21 A. Correct.

22
23 Q. What's recorded there is:

24
25 *Doesn't apply to P3 with PP21 best to be*
26 *Option Paper as QPS should make decision on*
27 *this.*

28
29 A. Yes.

30
31 Q. Do you say you made that entry into the spreadsheet?

32 A. I did, yes.

33
34 Q. Is that because Ms Brisotto had communicated to you
35 that the options you were, that the paper that you were
36 drafting did not apply to P3 with PP21?

37 A. Yes.

38
39 Q. And that she thought it was better to be an Options
40 Paper because the QPS should make the decision?

41 A. Yes. So I remember there was, a question about
42 meeting, and I think I spoke it's two days ago, spoke about
43 a meeting that we had with - that I had, sorry - with Paula
44 Brisotto and Cathie Allen to see, you know, how do we reset
45 on this and how do we put this information or have this
46 information going forward, and I think recall - the point
47 was that Paula had the presence of mind to go, look, let's

1 just take a second here, let's simplify this. These are
2 really not for us to be making recommendations about, these
3 are options to put forward to police.
4

5 Q. Am I right in thinking that Ms Brisotto was the first
6 person who suggesting putting it to the police as an
7 Options Paper?

8 A. I think in terms of the actual Options Paper element,
9 the actual description to call it an Options Paper, I don't
10 recall that, yep, but I don't have a clear recollection but
11 the notes indicate that that's what it was. But what I do
12 remember is that Paula was breaking it down to just present
13 the options.
14

15 Q. The content of that meeting is not otherwise recorded
16 anywhere?

17 A. No. Not that I know.
18

19 Q. Because we've just been shown your diary for the
20 relevant period from 5 to 15 January 2018?

21 A. Okay.
22

23 Q. And whilst there are some notations about feedback you
24 got from other people, there's no notation about that on
25 9 January?

26 A. Okay.
27

28 Q. Would there be a notation anywhere else?

29 A. I don't think - I didn't record notes about everything.
30

31 Q. Assuming then the decision was made to put it to the
32 police so that they could make the decision, you
33 understood, didn't you, that the police were dependent upon
34 you and Ms Allen, the senior scientist at the laboratory,
35 to provide them with advice?

36 A. They sought our advice, yes.
37

38 Q. The police did not have internally any DNA scientist
39 that they could turn to to seek advice?

40 A. Not specifically DNA but they certainly had forensic
41 experience.
42

43 Q. Yes, but no one in the QPS had the sort of detailed
44 subject matter knowledge of scientists at the laboratory,
45 do you agree?

46 A. I'd agree with that.
47

1 Q. So you accept then that it was important that if the
2 police were being asked to make a decision, they be given
3 as much information as possible?
4 A. That follows, yes.
5
6 Q. So that they could make an informed decision, correct?
7 A. Yes.
8
9 Q. And I think you've already agreed that with the benefit
10 of hindsight you accept that the Options Paper did not
11 contain the level of detailed information that the police
12 needed to make an informed decision?
13 A. Could have been improved.
14
15 Q. Well you accept that it did not contain the required
16 level of detail to enable the police to make an informed
17 decision?
18 A. I accept that.
19
20 Q. Thank you. All right. Now, I suppose before leaving
21 that topic, I suppose I should actually suggest to you or
22 put it squarely to you that the Options Paper was crafted
23 with a view to inducing the police to accept option 2?
24 A. I don't have that view.
25
26 Q. You set about to deliberately persuade the police, by
27 virtue of the way the document was drafted, that option 2
28 was effectively the only option?
29 A. I don't believe deliberately, Mr Hunter.
30
31 Q. All right. Can I come now then to the decision on
32 6 June 2022. You heard from Ms Keller that the intention
33 was to go back to the pre-2018 workflow, correct?
34 A. Yes.
35
36 Q. And you knew what the 2018 workflow had been, correct?
37 A. Yes.
38
39 Q. The pre-2018 workflow had been to automatically micro
40 concentrate any sample that fell within the DIFP range,
41 correct?
42 A. For major crime, yes.
43
44 Q. For P1 and P2, correct?
45 A. Yes.
46
47 Q. And that procedure was specified in a written document?

1 A. Yes, it would have been.
2
3 Q. It was called the Procedure for Case Management?
4 A. Yes.
5
6 Q. And this is a document that's had successive iterations
7 over a period of years?
8 A. Many years, yes.
9
10 Q. But it is basically the Bible in terms of the steps
11 that are to be taken when a sample is being processed in
12 the laboratory?
13 A. No, not necessarily, just in the, I guess the case
14 management which we call, we did call, the profile
15 management aspect and the processes involved, but there are
16 a number of large documents that helps with that process.
17
18 Q. I'm not suggesting that there aren't other documents
19 exist which contain detail a lot of detail about how
20 specifics steps in the process are to be taken, but it
21 provides an overview that sets out the steps through which
22 a sample will go as it's being processed through the
23 laboratory, agreed?
24 A. Agree.
25
26 Q. I mean there was a separate document, for example, that
27 specifically related to how micro concentration was done,
28 correct?
29 A. Correct.
30
31 Q. But in any event, if as at 6 June, or a few days before
32 6 June, 2022 someone wanted to know how things were done
33 back before the DIFP regime was introduced in early 2018,
34 it would be a simple matter of going and finding the
35 procedure for case management that existed at the time,
36 correct?
37 A. Yes.
38
39 Q. Because all of the previous iterations of the procedure
40 are kept?
41 A. Yes.
42
43 Q. And they're accessible to people such as yourself?
44 A. Yes.
45
46 Q. And Ms Allen?
47 A. Yes.

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Q. And can I suggest to you that the relevant procedure - and I'll ask that it be brought up, please, it's FSS.0001.0001.9355. Recognise that?

A. Yes.

Q. And we can see at the bottom that it's dated 24 April 2017.

A. Yes.

Q. Approved by Ms Allen?

A. Yes.

Q. And this was something that had to happen in respect of this procedure each time, that it had to be approved by the lab manager?

A. That's right.

Q. So could we go then please to p9372. We see the section called Rework Strategies and in subparagraph 2 there's a reference to the quantitation value?

A. Yes.

Q. And there's then prescribed a series of, I'll call them rules for want of a better word, as to what's to be done depending upon a number of variables?

A. Yes.

Q. Could we go, please, over to the following page and we can see there that 4 provides that:

PP21 samples below .001 ng/uL will not be further processed.

A. Yes.

Q. Then 5 is PP21 QPS environmental samples with a quantitation that is in what we recognise as the DIFP range would not be routinely amplified. What's an environmental sample?

A. That's a sample taken from, sorry, by QPS of something from their laboratory just to monitor any background.

Q. But then the critical one is paragraph 6:

PP21 samples with an initial quantitation value between .001 and .0088 ng/uL will automatically be sent for a microcon to

1 35 microlitres and be re-quantitated then
2 amplified.

3 A. Yes, correct.

4
5 Q. And, as I say, if in June of this year you wanted to
6 know how did things work before January of 2018, this would
7 tell you, correct?

8 A. Yes.

9
10 Q. I don't think that's been tendered so I'll tender that
11 please, Commissioner.

12
13 **EXHIBIT #156 [FSS.0001.0001.9355]**

14
15 Q. Am I right in thinking that the auto microcon had been
16 going on for quite some years prior to that procedure?

17 A. Yes, I think we implemented that at the beginning of
18 2013.

19
20 Q. Can I suggest to you that the range of quant at which
21 auto microcon would occur changed slightly over the years?

22 A. It changed slightly because - okay. At the beginning
23 of 2013 we also validated PP21 to be processed at half
24 volume, so there's a different quantitation value at that
25 stage, however, they both related to the template of
26 132 picograms. So that's the only change in terms of the
27 values and the range, and the other change is also related
28 to the lower bound being the limit of detection, which was
29 .00214, I believe, down to .001.

30
31 Q. Could I please have FSS.0001.0001.9191. Do you
32 recognise that as being the Procedure for Case Management
33 dated 11 December 2012?

34 A. Yes.

35
36 Q. Approved by Ms Allen?

37 A. Yes.

38
39 Q. Could we go, please, to p9372. Sorry, that's my
40 mistake. Just bear with me a moment. To page 9197. In
41 fact to the previous page, please. You see paragraph 6,
42 Assessment of Results?

43 A. Yes.

44
45 Q. If we go over the page, please, then to the last dot
46 point above the three arrows:

47

1 *Samples with an initial quantitation value*
2 *between .01 ng/uL and .0176 will be*
3 *automatically sent for a microcon.*
4

5 A. Yes, that's right.

6
7 Q. That's a slightly different quantitation range?

8 A. Yes.

9
10 Q. But it's the same concept?

11 A. Yes.

12
13 Q. So my point is that for a period of over five years
14 prior to the implementation of the DIFP regime, there had
15 been an auto microcon process for low quant samples?

16 A. Yes.

17
18 Q. Thank you. And so when, on 6 June, you learnt that the
19 process that was to be adopted involved the direct
20 amplification of low quant samples?

21 A. Yes.

22
23 Q. Without first concentrating it, that must have come as
24 a surprise to you?

25 A. When I heard Lara mention that we were going back to
26 the process before that's, yeah, that's when I check what
27 we were actually doing.

28
29 Q. Because you had known that for years prior to DIFP
30 coming into effect, low quant samples were mandatorily
31 microconed?

32 A. Yes, I knew that.

33
34 Q. So it must have been completely bewildering to you that
35 a decision would have been made on 6 June to do something
36 like directly amp these low quant samples?

37 A. What I understand and remember at the time is that
38 options were being put forward. What I was interested in
39 wanting some clarity, what actually was the direction.

40
41 Q. My question to you is whether or not you found it
42 bewildering that this workflow would be chosen, that is
43 directly amping these low quant samples?

44 A. I don't know whether I found it bewildering, I really
45 was just checking what are we actually doing, what is the
46 process?
47

1 Q. Did it strike you that it was a dumb decision, to be
2 blunt about it?
3 A. Well I think that, I think we explored yesterday that I
4 felt that a microcon would have been, would have given the
5 opportunity for a better profile straight up.
6
7 Q. And so did it strike you as a decision that made no
8 sense scientifically?
9 A. I can't remember all these thoughts striking me at that
10 time.
11
12 Q. Did you go and see Ms Allen and say why on earth are we
13 doing this?
14 A. Look, I remember at that time I was really just
15 interested in what are we actually doing and I trusted that
16 options were discussed and that was the direction we were
17 taking.
18
19 Q. But you knew, didn't you, that directly amping these
20 low quant samples was likely to result in meaningless
21 output?
22 A. For the very low level because certainly some towards
23 the top of the range could work quite well.
24
25 Q. But you were aware that it made no sense to be directly
26 amplifying them?
27 A. I think that, as I mentioned, I think that the microcon
28 would have given a better option.
29
30 Q. My question is: do you agree that it made no sense to
31 be directly amping them?
32 A. Okay, yes, when you put it like that simply.
33
34 Q. But you didn't raise it with Ms Allen?
35 A. Not in those words, no.
36
37 Q. Well, in any words?
38 A. I just - sorry, I just raised around the process and
39 what we were actually doing based on discussions that had
40 been had.
41
42 Q. Did you say to her this doesn't seem like a worthwhile
43 exercise, why are we doing this?
44 A. I don't think I did.
45
46 Q. Why not, given your understanding that this was not a
47 scientifically sensible thing to be doing?

1 A. Look, I think at the time I was just, I was just
2 interested in what we actually doing, what is the process.
3 We knew that day that we'd removed the threshold, what are
4 we actually doing, how do we get information around the
5 process?
6

7 Q. Were you intimidated by Ms Allen?

8 A. No, I don't think so.
9

10 Q. Were you friends with her?

11 A. Friendly. I wouldn't say - I mean we're not catching
12 up for drinks on a Friday afternoon.
13

14 Q. So your relationship was a strictly professional one at
15 work?

16 A. Yes, friendly, certainly.
17

18 Q. So you didn't have any concerns about how she might
19 react if you questioned a decision that she might have had
20 some input into?

21 A. No, I don't recall that.
22

23 Q. All right. I mean you understood, didn't you, that
24 these - I don't want to labour the point given that you've
25 already been asked questions about it, but you understood
26 the importance of these samples, even the low quant ones,
27 didn't you?

28 A. Absolutely.
29

30 Q. I mean if a sample was asserted to be blood, that was
31 because someone had been bleeding, yes?

32 A. Yes.
33

34 Q. A high vaginal swab was taken as part of an intrusive
35 medical procedure on a victim who might have been
36 traumatised?

37 A. Yes.
38

39 Q. And the fact that the police had submitted them to you
40 meant that they wanted them tested, correct?

41 A. Yes.
42

43 Q. To the best of the lab's ability, yes?

44 A. Yes.
45

46 Q. But you knew that the process that was being adopted
47 after 6 June was not testing to the best of the lab's

1 ability, didn't you?
2 A. Certainly for the lower range, yes.
3
4 Q. Well, I thought you told me before that the best option
5 for these samples was for them to be, all of them to be
6 micro concentrated?
7 A. So just to clarify, some samples towards the top of the
8 range could be just as well, just as good with just an
9 amplification.
10
11 Q. Could be, but you'd have a much better chance if they
12 were concentrated, wouldn't you?
13 A. Not necessarily. It depends. It is a manual process.
14
15 THE COMMISSIONER: Mr Howes, you know that the best
16 practice with low quant samples is to at least consider
17 micro concentration and having regard to the practice that
18 had been in place from 2012 onwards, that the practice of
19 the lab adopted, for very good reason, was to automatically
20 concentrate such samples, so why are you talking about that
21 you might be able to get a result without micro
22 concentration for some in the higher end of the range? Why
23 are you raising that?
24 A. I was just referring to - I think Mr Hunter might have
25 been using an absolute around all, but there are some
26 towards the top of the range that --
27
28 Q. But that wouldn't justify - that's not a scientific
29 justification for this process being adopted where quants
30 in this range were automatically not concentrated?
31 A. (Indistinct words).
32
33 It doesn't matter. You go ahead, Mr Hunter.
34
35 MR HUNTER: Thank you, Commissioner. Did you regard the
36 Queensland Police Service communications to the laboratory
37 as a source of annoyance or irritation?
38 A. Not at all.
39
40 Q. Was there an attitude held by anyone that you were
41 aware of that communications from the Queensland Police
42 Service about testing were irritating or annoying?
43 A. I think that at some point in time it was irritating to
44 Cathie Allen.
45
46 Q. But not to you?
47 A. Not to me, no.

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Q. Did you always regard the communications as being appropriate and professional?
A. I've always had excellent communication with Queensland Police.

Q. Can we perhaps go to an example of what I'm talking about. I should tender that document that's currently on the screen please, Commissioner.

EXHIBIT #157 PROCEDURE FOR CASE MANAGEMENT DATED 11 DECEMBER 2012.

MR HUNTER: Can we go now please to WIT.0016.0062.0001. Can you scroll down, please, to - the next page down again, please. I'm sorry, if we can go up one page. You see at the bottom of the page this is the email to Inspector Simpfendorfer. This is the email that you applauded as being a great email. If we go down to the next page we'll see what Ms Allen said. Do you remember this? You were asked about this yesterday and you described it as being a great email?

A. That's correct.

Q. Can we go up, please, to Inspector Simphendorder's response to Ms Allen's "great" email. The next page up, please, thank you. If we could zoom in on the top half of the screen, please. Here we see Inspector Simpfendorfer responding to Ms Allen's "great" email politely again, can I suggest, raising the issues that he wanted some answers to?

A. Yes.

Q. He pointed out that he wasn't questioning the Code of Conduct or the evidence and accepts that maybe he phrased the question poorly. So he goes on to make a number of points. If we can go to the next page we'll see the questions that he specifically raises.

Now, these were - you can take your time to read it if you like but I'm suggesting you would have seen this at the time and perhaps more recently?

A. Yes.

Q. He is politely and reasonably asking perfectly legitimate questions?

A. Yes.

1
2 Q. Yes, can we then go back to the document itself and
3 scroll to the top of the page. We can see it's an email
4 sent by Ms Allen to you and Ms Brisotto:

5
6 *Another day, another email.*

7
8 A. Yes.

9
10 Q. Do you have any understanding as to why Ms Allen would
11 have sent you an email saying that?

12 A. I think that she's continuing or sending the thread and
13 she's just mentioning that, you know, she's getting a lot
14 of enquiries and is keeping us in the loop.

15
16 Q. Did you talk to her about any frustration or irritation
17 that she had with the communications from the QPS?

18 A. No, I don't recall that, no.

19
20 Q. We saw another email yesterday where she referred to
21 the exchanges with Inspector Simpfendorfer as "microcon
22 tennis". Do you recall that?

23 A. I don't recall that actually.

24
25 Q. Perhaps if we could see, please, FSS.0001.0051.5050. I
26 won't take you to what's below, but there was a series of
27 further emails between Inspector Simpfendorfer and Ms Allen
28 and she then forwards the email chain on to you and
29 Ms Brisotto with the words:

30
31 *Outcome to the microcon tennis*
32 *conversation.*

33
34 A. I see that, yes.

35
36 Q. Were communications from the Queensland Police Service
37 about matters concerning testing of samples submitted by
38 the QPS regarded as some sort of a joke at the laboratory?

39 A. No.

40
41 I tender that email if it's not already an exhibit.

42
43 **EXHIBIT #158 [FSS.0001.0051.5050]**

44
45 MR HUNTER: Now, after the 6 June decision I think you told
46 us that it was always possible for case managers to ask for
47 a rework?

1 A. Yes.
2
3 Q. Of those samples?
4 A. Yes.
5
6 Q. Do you know how many times case managers in fact asked
7 for a rework of those samples that had been directly
8 amplified, that is the low quant ones?
9 A. No, I'm not aware.
10
11 Q. Did it happen at all?
12 A. Did they request reworks?
13
14 Q. Did it ever happen at all where a scientist requested a
15 rework of a directly amplified low quant sample?
16 A. I'm sure it did, yes.
17
18 Q. Did you ever actually check to see whether it was
19 happening?
20 A. No, I trust it would have happened because were -
21 they're all amplification and case management decision
22 rework in a variety of ways that would include a micro
23 concentration.
24
25 Q. So your answer to my question is that you assume that
26 it did but you never checked?
27 A. No.
28
29 Q. Do you accept this, that whilst the scientists might
30 have been able to ask for a rework of those samples, when
31 the result was reported to police on the Forensic Register,
32 there would simply be, in the case of a rubbish profile, to
33 use the language adopted by the Commissioner yesterday, if
34 the police saw that they would not see anything that
35 suggested that there was the capacity to have the sample
36 reworked?
37 A. Okay. I think the police would understand that we
38 would rework if the case manager decided there needed to be
39 one.
40
41 Q. But my point is, even under the DIFP regime, when a
42 sample was reported as DIFP, the police would be told in
43 the text that accompanied that result line that they could
44 ask for it to be reworked?
45 A. Okay, I follow.
46
47 Q. But after 6 June they'd just get told, for example,

1 "complex profile unsuitable for further interpretation"?

2 A. Yes.

3

4 Q. And they would, or could not unreasonably think that's
5 the end of that, correct?

6 A. Yes, that's right.

7

8 Thank you. Those are the only questions that I have.

9

10 THE COMMISSIONER: Thank you, Mr Hunter. We might take a
11 break now. We'll resume at 20 past 11.

12

13 **SHORT ADJOURNMENT.**

14

15 MR MURDOCH: I have no questions of this witness.

16

17 THE COMMISSIONER: Nothing for you, Mr Murdoch, no.

18

19 MR DIEHM: I do, Commissioner.

20

21 THE COMMISSIONER: Yes Mr Diehm.

22

23 <EXAMINATION BY MR DIEHM:

[12.24 PM]

24

25 Q. Mr Howes, I appear for Ms Brisotto. I just want to ask
26 you some questions about the Project 184 process that led
27 to the Options Paper. I can take you to a particular
28 document if you need it to refresh your memory but it may
29 be something that you recall. That the Project 184 plan
30 that was signed off by the management committee in 2017,
31 the latter part of 2017, had as its object, according to
32 the document, the making of recommendations to the QPS
33 about how to proceed with respect to the testing regime?

34 A. I think so, yes.

35

36 Q. In turn, as you're undoubtedly familiar with, you as
37 the project leader generated, firstly in November of 2017
38 and secondly then in January of 2018, draft papers for that
39 project?

40 A. Yes.

41

42 Q. With respect to the first draft that you circulated to
43 the management committee, at the conclusion of the document
44 there was a heading that included recommendations?

45 A. I believe so, yes.

46

47 Q. All right. Commissioner, can I ask if that draft can

1 be brought up, it is FSS.0001.0001.0914. If we can go
2 through to the page that contains the recommendations, I
3 think it's the second-last page of the document. So there
4 you'll see - thank you Mr Operator - there you'll see,
5 Mr Howes, under the heading of conclusions and
6 recommendations there are five recommendations that are
7 listed?

8 A. Yes.

9

10 Q. What I suggest to you is that the first four of those
11 recommendations are rather than recommendations directed to
12 the QPS, rather recommendations directed to the management
13 committee about what the lab should do?

14 A. I agree.

15

16 Q. And then the fifth recommendation is that the lab tell
17 the police what the change is that the lab has made?

18 A. Yes.

19

20 Q. Thank you. Then if we can go to the second draft,
21 which is FSS.0001.0001.0933, and again to the second-last
22 page it ought be. Again you'll see there, Mr Howes, that
23 there are four recommendations that are articulated in the
24 second draft of the document. The first three of those I
25 suggest to you are again recommendations being made to the
26 management committee about what the laboratory should do.

27 A. Yes.

28

29 Q. And then the fourth recommendation is that the
30 laboratory should then communicate the change in process
31 that it has decided upon to the police?

32 A. That's right.

33

34 Q. So appreciating these were drafts of documents you were
35 circulating, drafts of the report that were being
36 circulated for comment, you would agree, would you not,
37 that in adopting that formulation in fact there'd been a
38 slight straying away from what the project plan called for
39 which was the making of recommendations to the police about
40 what might be done?

41 A. Yes, I take your point.

42

43 Q. You've spoken of a conversation that you were a party
44 to with Ms Brisotto also being a party to it after the
45 second draft was circulated in which you received some
46 feedback from Ms Brisotto - I'm sorry, I withdraw that. In
47 which you say that Ms Brisotto had a moment of clarity I

1 think you described it in your evidence on Wednesday, about
2 how the paper that was to be prepared in fact ought be one
3 that was offering options to the police for the police to
4 choose about what to do?

5 A. Yes, what's that I recall.

6

7 Q. Words to that effect?

8 A. Yes.

9

10 Q. In that respect what Ms Brisotto identified as the
11 process that ought be being followed was truer to the
12 initial project proposal than was the two drafts that had
13 been prepared, do you agree?

14 A. Yes, I see that.

15

16 Q. And in other words regardless of what feedback had been
17 received, other feedback had been received about the drafts
18 that you had caused to be circulated, that idea of
19 Ms Brisotto's was a sound one?

20 A. I thought so, yes.

21

22 Q. You've spoken in your evidence, including today in
23 answer to questions from Mr Hunter about the spreadsheet
24 that was prepared for collecting the data and you've
25 described how that was a document that you were the person
26 putting the input into, making the entries?

27 A. Yes.

28

29 Q. Sometimes with projects where you are the project lead
30 and you're undertaking this role of uploading feedback into
31 the spreadsheet that is created for the project, you
32 receive feedback in the form of emails; is that so?

33 A. Yes.

34

35 Q. And you will then cause that feedback in the written
36 form to be uploaded into the spreadsheet?

37 A. Yes.

38

39 Q. Sometimes though the feedback you receive can be in an
40 oral form?

41 A. Yes.

42

43 Q. In which case you will then enter yourself words to the
44 effect of what you'd been told by the person?

45 A. Recollection, yes.

46

47 Q. Yes. You continued to do that in the ordinary course

1 of these things as it was back in early 2018, whilst
2 however there is a draft report that people are providing
3 feedback for. So in other words you are only uploading
4 information into that document where it is for the purposes
5 of reporting the feedback that has been provided upon the
6 report that has been circulated?

7 A. Correct.

8

9 Q. The idea of doing that is that that document is
10 accessible to the other members of the management committee
11 in terms of them being able to look at what feedback is
12 being provided?

13 A. Yes.

14

15 Q. And when it's being provided?

16 A. Yes.

17

18 Q. And that is there to assist them when they come to
19 deliberate upon any further drafts or indeed a final draft
20 of the document?

21 A. Yes.

22

23 Q. It is a document that is accessible not only by the
24 management committee but by all of the staff in the
25 laboratory; is that right?

26 A. Yes, it's in an open network drive.

27

28 Q. Is it the case that you caused that feedback to be
29 entered into the spreadsheet in the usual practice of these
30 things in the order in which it's received?

31 A. I believe so, yes.

32

33 Q. If I can ask please for the spreadsheet, the native
34 copy to be put on the screen, FSS.0001.0001.0785. This
35 part of the spreadsheet is dealing with the feedback that
36 you received with respect to the second draft that you had
37 circulated?

38 A. Yes.

39

40 Q. Early January of 2018?

41 A. Correct.

42

43 Q. There we can see that you had received feedback as late
44 as 10 January 2018 from Mr McNevin; is that so?

45 A. Yes.

46

47 Q. The earliest feedback you appear to have received was

1 on 9 January coming from Mr Ryan it would appear?

2 A. Yes.

3

4 Q. We see there in the entry for Ms Brisotto PMB, you've
5 record there two elements as to what she's advised you
6 about in terms of her feedback, the lack of application
7 with respect to P3 samples and also this second reference
8 to an option paper as QPS should make the decision on this?

9 A. Correct.

10

11 Q. I think I understood your evidence correctly but tell
12 me if I didn't this morning to be to say that you're not
13 saying necessarily that Ms Brisotto used the term option
14 paper but she used words that could be captured by the
15 description of Options Paper?

16 A. Yes.

17

18 Q. If we look down then to the next entry, KDR and AJR, so
19 that's Ms Rika and Ms Reeves?

20 A. Yes.

21

22 Q. And they provided combined feedback to you?

23 A. Yes, they did.

24

25 Q. That was in the form of an email with an attachment?

26 A. Yes.

27

28 Q. Track changes on the document that you had sent you may
29 recall?

30 A. Yes.

31

32 Q. You may need me to show you this document for you to be
33 able to say so but I suggest to you that that email was
34 sent to you at 1.11 pm on 9 January?

35 A. Okay.

36

37 Q. You can't agree to that without seeing the document; is
38 that so?

39 A. I think I can trust you on that.

40

41 Q. I'll put it up on the screen in any case,
42 FSS.0001.0011.1830. You'll see there that being the email
43 from Ms Reeves copied to Ms Rika directed to you at 1.11 pm
44 attaching their final feedback?

45 A. Yes.

46

47 Q. Commissioner, I'm not sure if that's in evidence, it

1 may well be but I should tender it perhaps.

2

3 THE COMMISSIONER: Yes, do that. Exhibit 159.

4

5 **EXHIBIT #159 DOCUMENT FSS.0001.0011.1830.**

6

7 MR DIEHM: If we go back to the spreadsheet please,
8 Mr Operator. Given the practice that you say of entering
9 this data in the order in the order in which the feedback
10 was received, is it right to regard then you as having
11 received Ms Brisotto's feedback that you've entered into
12 the spreadsheet prior to receiving that feedback from
13 Ms Rika and Ms Reeves?

14 A. I didn't - well I didn't actually speak to Paula until
15 after the feedback, so that part there, they're both on the
16 9th of the 1st but that's not in sequence of being received
17 in this instance.

18

19 Q. This is based on your recollection that there was a
20 meeting between you and Ms Allen and Ms Brisotto where that
21 was discussed, feedback discussed?

22

23

24 Q. Commissioner, can I ask, and I don't have a document
25 number - perhaps before I leave there I should tender the
26 spreadsheet.

27

28 THE COMMISSIONER: I think that's in evidence, isn't it,
29 Mr Hodge, the spreadsheet?

30

31 MR HODGE: I thought it was. I'd be surprised if it isn't.

32

33 MR DIEHM: I'm happy to accept that it is if that's the
34 case, thank you. Commissioner, I'm asking through you if
35 the operator is able to bring up a diary entry from
36 Mr Howes's work diary for 9 January 2018. Mr Howes, I
37 presume you recognise that as being a page from your work
38 diary with your handwriting in it?

39

40

41 Q. And the top entry is a reference to you having received
42 some feedback from Ms Brisotto concerning Project 184?

43

44

45 Q. If you look at the content of what's recorded there,
46 and perhaps for the sake of the record I might ask you to
47 read out that top entry as you can recognise from your

1 handwriting as to what you've recorded there?

2 A. Okay. It says:

3

4 *Feedback on #184 V2 (version 2) received.*
5 *Some points verbal, example P3 was decided*
6 *with PP21 validation.*

7

8 Q. So the reference to P3 and PP21 validation is
9 consistent with what you had recorded in the spreadsheet as
10 having been information or feedback given to you by
11 Ms Brisotto on 9 January?

12 A. Yes.

13

14 Q. The reference to EG is to connote, is it not, that this
15 wasn't the only thing that she said to you but that was the
16 one particular thing you chose to note as an example of the
17 verbal feedback she had provided?

18 A. Yes.

19

20 Q. For the sake of clarity, having regard to the document
21 and its layout, the times that might appear on the page in
22 the original version of the document are cut off there but
23 it's positioned on the page, if one was to take it
24 literally, would be saying that the discussion happened at
25 some time around about 8 am or something like that?

26 A. No, I don't keep my notes according to the time.

27

28 Q. That's what I was about to confirm with you. It's
29 apparent from the face of the document because the next
30 entry is also recorded against a time in the morning that
31 speaks of a conversation that happened in the late
32 afternoon?

33 A. That's right.

34

35 Q. So as much as we may take it is that you have recorded
36 the things in the order in which they compared to each
37 other on the page occurred, they are chronological as they
38 appear on the face of the document?

39 A. Yes.

40

41 Q. It's the one and the same conversation that you've
42 recorded concerning that feedback from Ms Brisotto in that
43 top entry in which she made reference to what you later
44 described as the Options Paper?

45 A. I believe so.

46

47 Q. You'll see that that note of yours doesn't identify

1 this as being a meeting involving Ms Brisotto and Ms Allen
2 but rather as just feedback, verbal feedback, by which I
3 take it you mean an oral conversation with Ms Brisotto in
4 which she has told you these things as her feedback?

5 A. Yes, unless there was another meeting, another chat
6 with Paula, but I can't remember another discussion, but I
7 think that was in reference to the discussion with Cathie
8 as well.

9
10 Q. Why wouldn't you, Mr Howes, if this was a meeting with
11 Ms Allen, have made a reference in your diary note to this
12 being not just feedback about the report, the draft report
13 that had been circulated, but rather that this was a
14 meeting between the three of you in which there was some
15 more substantial conversation?

16 A. I think at the time I was just recording that there was
17 feedback that was verbal and that was different to all the
18 other feedback that I'd received.

19
20 Q. There is no other reference in your diary between 9 and
21 12 of January to you having a meeting with Ms Brisotto and
22 Ms Allen?

23 A. Okay.

24
25 Q. Is there?

26 A. I don't know. Unless you know.

27
28 Q. We can see from the document that's on the screen that
29 there is no reference to such a meeting on that page for
30 the night, do you agree?

31 A. In terms of a meeting as such, yes.

32
33 Q. Between the three of you I'm asking about here. It's
34 obviously speak of a discussion between you and
35 Ms Brisotto?

36 A. Yes.

37
38 Q. I tender that page, please, Commissioner.

39
40 THE COMMISSIONER: Yes, Exhibit 160.

41
42 **EXHIBIT #160 DIARY ENTRY FROM MR HOWES'S WORK DIARY FOR 9**
43 **JANUARY 2018.**

44
45 THE COMMISSIONER: Mr Howes, do you see the second entry on
46 your diary for 9 January for 2018, and I don't want to
47 mention any names here but that relates to a staff member

1 leaving the DNA section of FSS, doesn't it?
2 A. Yes.
3
4 Q. And that person asked to be moved to a position off the
5 campus, off the address where you were working?
6 A. Yes.
7
8 Q. We see that the person that you were speaking to, who'd
9 spoken to the departing staff member, told you that that
10 staff member was experiencing breathing difficulties just
11 talking to your informant about leaving, do you see that?
12 A. Yes.
13
14 Q. Is it true that that particular staff member was
15 leaving because of the stress that he felt he was under
16 while working at the DNA section?
17 A. I think he felt stressed, yes.
18
19 Q. Did Ms Reeves also leave, take leave because of stress?
20 A. I think that there were some periods certainly where
21 there was stress involved.
22
23 Q. So you had two staff members at around the same time
24 experiencing stress to such a degree that one of them took
25 leave and one of them quit; is that right?
26 A. In terms of - I'm not sure what happened to this staff
27 member here in terms of quitting or --
28
29 Q. Well he wasn't coming back to the DNA section, do you
30 see?
31 *Has asked to be moved to a position off*
32 *campus, I expressed disappointment and that*
33 *TG has transferrable skills.*
34
35 A. Yes.
36
37 Q. The second line:
38
39 *TG not coming back to DNA.*
40
41 That's why I say that he quit?
42 A. Sorry, yes.
43
44 Q. So you had two staff members reacting so strongly to
45 stress at the lab, why was that?
46 A. I think I've mentioned I think a couple of days ago
47 that there was a lot of stress around the laboratory at the

1 time, the atmosphere was very stressful for a large number
2 of people inside and outside the management team.

3

4 Q. Did you take any steps to discover the source of the
5 stress or to try to alleviate the stress or to eradicate
6 it?

7 A. I think that - well I was certainly feeling stressed
8 myself.

9

10 Q. You were too?

11 A. Yes.

12

13 Q. I think you said that yesterday?

14 A. Yes. So the steps that we were taking at the time, we
15 were trying to be positive, trying to get through the work,
16 we were trying to talk to each other and support each other
17 where we could. I think that --

18

19 Q. Where do you think the stress was coming from? Lots of
20 places do hard work and don't have people departing because
21 the stress is unbearable. What do you think was the root
22 cause, to use a scientific expression, of the stress?

23 A. I think very much a common element was interpersonal
24 relationships throughout.

25

26 Q. With whom?

27 A. With various people, Commissioner, within and outside.

28

29 Q. What about the leadership?

30 A. Yes, I think that that was involved. I think we all
31 had to take a part of interpersonal relationships to that
32 point.

33

34 Q. Yes Mr Diehm.

35

36 MR DIEHM: Thank you, Commissioner. I had tendered the
37 document.

38

39 THE COMMISSIONER: Yes, Exhibit 161.

40

41 **EXHIBIT #161 SECOND ENTRY IN MR HOWES'S DIARY FOR 9 JANUARY**
42 **2018.**

43

44 MR DIEHM: Thank you Commissioner. Can I asked there's a
45 redacted version of a diary page for 10 January. If I can
46 ask for that to be brought up on the screen. As much as I
47 want to ask you about this page, Mr Howes, is that it does

1 not record you as having had a meeting with Ms Brisotto and
2 Ms Allen on that day?

3 A. Correct.

4
5 Q. I tender that page, Commissioner.

6
7 THE COMMISSIONER: Mr Howes, would you mind reading your
8 entry. It's a bit difficult to read?

9 A. Okay.

10

11 *The person mentioned the collusion scene*
12 *when reading a doc yesterday at AJRs desk.*
13 *Also involved EJC.*

14

15 AJR, sorry, it's meant to read, EJC is Emma Caunt.

16

17 *And called RGP in, example what should we*
18 *write here? She said she provided feedback*
19 *to KDR on apparent issues in managing*
20 *statements from spreadsheet. This person*
21 *had found files not tracked, notes not*
22 *added. Person said KDR replied thanks for*
23 *constructive feedback and CC'd AJR. Not*
24 *sure why CC'd Amanda as person had seen*
25 *spreadsheet cleaned up and appeared KDR had*
26 *actioned something.*

27

28 Q. What's all that about?

29 A. So a person came and had said there was something going
30 on and she needed to make me aware of that.

31

32 MR DIEHM: Commissioner, there's a further redaction that
33 ought be made on the second-last line.

34

35 THE COMMISSIONER: Exhibit 162.

36

37 **EXHIBIT #162 DIARY ENTRY FOR MR HOWSE ON 10 JANUARY 2018.**

38

39 MR DIEHM: Thank you Commissioner. If I could ask then for
40 the page for 11 January to be brought up as well. To deal
41 with the negative proposition first, Mr Howes, nothing on
42 this page that indicates that you had a meeting with
43 Ms Brisotto together with Ms Allen on 11 January?

44 A. No.

45

46 Q. The first entry is an administrative matter about
47 contacting payroll about a particular staff member?

1 A. Yes.
2
3 Q. The second entry concerns a conversation you had with
4 Ms Rika about particular processes concerning P3 samples
5 and PP21?
6 A. Yes.
7
8 Q. Then the third entry was a note that you were to check
9 or that you had checked with Ms Brisotto concerning a
10 matter of leave for a particular staff member?
11 A. Regarding Commonwealth Games leave.
12
13 Q. Commonwealth Games leave, was that in fact for
14 Ms Brisotto?
15 A. I'm not sure whether it was with her, something
16 associated.
17
18 Q. Again an administrative matter?
19 A. Yes.
20
21 Q. Thank you. I tender that page 2, thank you,
22 Commissioner.
23
24 THE COMMISSIONER: Why are you tendering these documents,
25 Mr Diehm?
26
27 MR DIEHM: To go to the fact that the documents do not
28 record there as having been a meeting between those three.
29
30 THE COMMISSIONER: Thanks. Exhibit 163.
31
32 **EXHIBIT #163 DIARY ENTRY FOR MR HOWES ON 11 JANUARY FOR**
33 **2018.**
34
35 MR DIEHM: You were absent from work yourself on 12
36 January?
37 A. I think so, yes.
38
39 Q. That is the day you may recall that you emailed from
40 your home, your personal email address asking for the
41 second draft of Project 184 paper to be emailed by
42 Ms Brisotto to you?
43 A. Yes.
44
45 Q. Because you were then intending to start converting it
46 to an Options Paper?
47 A. Correct.

1
2 Q. You would recall that Ms Brisotto herself at that time
3 did not work on Wednesdays?

4 A. Yes, I think that's right.

5
6 Q. In this case Wednesday was the 10th of January?

7 A. Yes.

8
9 Q. What I'm suggesting to you, Mr Howes, is that the
10 conversation that you had with Ms Brisotto in which she
11 said words to the effect as you described them in the
12 spreadsheet, that this should be done in the form of an
13 Options Paper for the QPS to make a decision, was simply a
14 casual conversation between the two of you on 9 January in
15 which you noted in your diary and then noted on the
16 spreadsheet as having occurred on 9 January, and that
17 Ms Allen was not involved in the conversation?

18 A. No, it was in Ms Allen's office.

19
20 Q. And that you had in fact received that feedback from
21 Ms Brisotto before you had received the feedback from
22 Ms Rika and Ms Reeves in the email of 1.11 pm?

23 A. Okay, so if my note the verbal feedback on the P3,
24 mentioned back on 9 January, if my conversation with Paula
25 the verbal feedback was only on P3, that would have been
26 before, I suppose I think before the feedback from Kylie
27 and Amanda, however the conversation with Cathie was after
28 receiving Kylie and Amanda's feedback.

29
30 Q. You recorded it as one set of feedback in the
31 spreadsheet?

32 A. Yes, I did.

33
34 Q. I suggest that's because it was the one set of feedback
35 given on the one occasion?

36 A. On the same day.

37
38 Q. You are unable to say when the meeting that you
39 described occurring as between Ms Brisotto and Ms Allen
40 occurred?

41 A. At the time it would be after the feedback that was
42 received from Kylie and Amanda.

43
44 Q. You can't say what day?

45 A. I recorded it on the 9th.

46
47 Q. See, when you were answering questions from Mr Hodge on

1 Wednesday you described as I recall your evidence that the
2 meeting occurred some time between the 9th and the 12th?
3 A. Okay. I thought it was on - it was certainly after
4 receiving the feedback from Kylie and Amanda.
5

6 Q. You had no record of having provided the feedback that
7 you had received from Ms Rika and Ms Reeves to Ms Brisotto?
8 A. No, I don't think that I forwarded that at all, no. I
9 don't know.

10
11 Q. Thank you Commissioner.

12
13 THE COMMISSIONER: Yes. Mr Hickey.

14
15 MR HICKEY: Thank you. Commissioner, can I first deal with
16 a housekeeping matter?
17

18 THE COMMISSIONER: Yes.

19
20 MR HICKEY: It's come to our attention that one of
21 Mr Howes's statements contains some personal identifying
22 information. We mentioned it to the operator this morning
23 but just as a matter of formality could we ask please that
24 document WIT.0016.0188.0001 be brought up. The particular
25 concern is on p.0042. It's already been redacted. Those
26 boxes contain Mr Howes's personal address and other
27 identifying information.
28

29 THE COMMISSIONER: Yes.

30
31 MR HICKEY: Could we ask naturally that the Commissioner
32 makes a direction that the previous iteration not be
33 further published and that this redacted version be
34 replaced for the existing Exhibit 148, please.
35

36 THE COMMISSIONER: Yes. What's the date of the statement,
37 Mr Hickey?
38

39 MR HICKEY: It is - sorry, Commissioner, just give me a
40 moment please.
41

42 THE COMMISSIONER: It doesn't matter. I direct that the
43 original version of the curriculum vitae of Mr Howes, being
44 Exhibit JH1 to his statement and identified as document
45 WIT.0016.0018.0042 not be published.
46

47 MR HICKEY: It's the statement of 6 October 2022.

1
2 THE COMMISSIONER: That statement is attached to Mr Howes's
3 statement of 6 October 2022. Thanks for doing that,
4 Mr Hickey.

5
6 <EXAMINATION BY MR HICKEY: [12.58 PM]

7
8 Q. Mr Howes, could I ask start with some general questions
9 about your experience at the lab. You began working there
10 in 2005?

11 A. Yes.

12
13 Q. That means you've been working there now for some 17
14 years. Throughout that period you've had a variety of
15 different roles within the lab?

16 A. Yes.

17
18 Q. Can I ask you please to explain what is the difference
19 or differences in the culture of the lab when you reflect
20 on what it was like when you started there and what it's
21 like now?

22 A. Okay. What it was like when I started was quite
23 festive, people were sociable, there were pub crawls, team
24 bonding sessions like that. I guess at the time too there
25 was a large intake of staff that had come, it was a new
26 energy that was involved. As opposed to now, I think also
27 you have to understand the sensitivities at the moment as
28 well, but certainly not in every team but in some teams
29 there are some very difficult and challenging interactions.

30
31 Q. Could I ask you to confine yourself for present
32 purposes to your team or at least to the teams for which
33 you're responsible. At what point if you can identify it
34 did the culture begin to deteriorate?

35 A. Very difficult to pinpoint but I think 2008 was
36 difficult, moving through - I think 2009 was difficult and
37 that difficulty was associated to changes within the model
38 at the time, that we changed from the model that we had
39 previously up to 2008 and then there was a lot of I guess
40 coming to grips with that new model.

41
42 THE COMMISSIONER: Was there a change in management at the
43 time?

44 A. There was. The Chief Scientist Vanessa Ientile, she
45 left towards the end of 2008, I think towards mid to late
46 year. Above that, there were some movements above Vanessa
47 Ientile around those years as well.

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Q. Who took over from her?

A. Cathie Allen took over from Vanessa.

Q. Yes, Mr Hickey.

MR HICKEY: Thank you, Commissioner. And at the time you're talking about, 2008 to 2009, were you yet in the team leader that you currently hold?

A. I was acting in what was called major crime at the time. I was acting in a team leader capacity there from about April, April/May 2008 until the model changed and the names of the team changed. We became known, in fact we named ourselves, Forensic Reporting and Intelligence team, and I was in an acting capacity for a number of years until I was permanently appointed I believe in 2012.

Q. When you began to act in those positions which ultimately became known as the team leader role, what support were you given in terms of transitioning from your role as a reporting scientist into a managing position?

A. Okay, I transitioned to a supervising scientist prior to the team leader. In terms of support, we did have some all team bonding sessions, but those sessions were really around I guess it was working with a - sorry, I don't know what the actual term of what her role was but she facilitated workshops on how we can be with other people, how we can work with each other. So in terms of other support I don't recall much at all.

Q. The kind of support that you've just explained, was that information that was given to the team generally or to you specifically?

A. To the team generally.

Q. Did you receive any kind of training about how to lead people at that time?

A. No, I don't recall specific training at that time.

Q. And have you received from the Department at any time since any training about how to lead people?

A. I have had the opportunity to do a Diploma of Management through TAFE Queensland some years ago.

Q. And how long was that course?

A. That course if I remember correctly was a couple of weeks I think in order to complete the course and the

1 assessment followed. I can't remember exactly how long. I
2 think it was actually a couple of days over a couple of
3 weeks, but there was a TAFE course that I participated in.
4

5 Q. And but for that course have you received any training
6 at all in the time that you've been in the management team
7 about how to manage?

8 A. Not specifically. I have participated in some I guess
9 workshops that have been provided by Queensland Health.
10 Workshops where you have the opportunity to meet up with
11 other people say from the payroll team and other teams
12 within Queensland Health to talk about I guess how to
13 handle people, how to talk within groups.
14

15 Q. And how regularly do those things occur?

16 A. Not regularly but there are opportunities to do those.
17 I haven't done one for some time.
18

19 Q. Why is that?

20 A. To be honest I've been busy, I haven't continued with
21 some of those. I have done a few of them in the past.
22

23 Q. With what have you been busy?

24 A. With work.
25

26 Q. By that do you mean your day-to-day responsibilities?

27 A. Yes.
28

29 Q. Could I ask you then about HR support. What kind of
30 support do you receive in your day-to-day role as a manager
31 from HR representatives from within the Department?

32 A. Yes, so HR business partners aren't I guess available
33 in person every day, or they haven't been for a long period
34 of time I've been a team leader.
35

36 Q. When you say a long period of time, since when do you
37 think?

38 A. Look, going back many years I don't recall we've
39 actually really had a consistent number of HR support on
40 campus to help us out.
41

42 Q. How many HR people do you think you've been engaged
43 with over the years on campus?

44 A. I would say about five or six.
45

46 Q. Over what kind of period?

47 A. Going back to 2008.

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Q. And in that period there's never been an HR person who's permanently on campus; is that so?

A. Not permanently on campus, that's correct.

Q. Did you receive from HR any assistance with dealing with the kinds of workplace stressors that you've given evidence to the Commissioner about?

A. From time to time, yes, but not really about any personal struggles with myself.

Q. All right. Let's deal with it separately then. I take it from your answer then that the assistance you received was in respect of broader team issues rather than you personally?

A. Yes.

Q. The support that you received around the team issues that you encountered, did you feel that it was adequate?

A. I think that it could have been a little bit more helpful and a little bit more timely is my feeling.

Q. All right. You understand that part of the Commissioner's function is to identify what's happened to this point and another part of the function is to make recommendations about what might happen in the future to ensure it doesn't happen again?

A. Yes.

Q. As you sit here now reflecting on the things that you've been asked about over the last few days, and you've had the opportunity to reflect on events over the last few years, how might a person in your position have been better supported by HR in particular to navigate the kinds of workplaces issues you've encountered?

A. I think having permanent people who have got a good rapport with staff and certainly with management staff on campus would have been a good idea. I think that even running local sessions and refresher sessions with management on campus would have been a good idea, and would be a good idea moving forward. I think that that availability and I guess contact would be very helpful to management staff.

Q. Do I take it then from those answers those are things which in your experience that were not available to you during the period that you've been part of the management

1 team?

2 A. Yes.

3

4 Q. We've dealt with the broader workplace stressors that
5 occurred for you. If I ask you then to turn to matters
6 which are more of a personal nature for you. Did you feel
7 as though you were adequately supported yourself in respect
8 of your own personal workplace stressors?

9 A. Reflecting back I think that - I would have to say
10 knowing what I've been through I don't think adequately. I
11 think that there has been some support and I don't want to
12 dismiss that, I appreciate the support that has been given.
13 But I think that refresher sessions to help and to keep
14 track of how people are going would be something that I
15 consider would have helped me on reflection.

16

17 Q. Is it the case then that you made it known to people
18 superior to you in the management sense that you were
19 experiencing some personal workplace stressors?

20 A. Yes.

21

22 Q. Do I take it from your answer then that the sorts of
23 things that you've identified would have been preferable to
24 occur did not occur or did not adequately occur?

25 A. Yes.

26

27 Q. Do you think that you felt comfortable at work to
28 explain the degree of personal stress that you were feeling
29 in your job to those people who were superior to you in
30 management?

31 A. Yes, I did.

32

33 Q. In terms of performance management for you personally
34 in your role, how frequently did that occur?

35 A. Okay, so we have our what are called career success
36 plans, so these are annual meetings to talk about, you
37 know, plans moving forward and how you've gone for the
38 previous year. It's more focused on, so if you're my line
39 manager, it is a meeting with your line manager, your
40 immediate line manager. If you're my line manager you'd be
41 asking me what do I want to do to develop. That occurs, as
42 well as I have weekly meetings with my line manager to talk
43 about team performance or any emerging issues.

44

45 Q. Do you ever have any access to people above your
46 immediate line manager to receive feedback about the way
47 you're performing your duties?

1 A. I guess I do have the ability to be in contact above my
2 line manager, yes.

3
4 Q. Did you at any time ever receive feedback from somebody
5 superior to your line manager to give you the impression
6 that they were dissatisfied with your duties, the way you
7 were performing them?

8 A. No.

9
10 Q. Did you ever receive any feedback in the period that
11 you were in the management team from your line manager
12 which led you to conclude you were not performing your
13 duties in the way you were expected to do?

14 A. No.

15
16 Q. You've been asked some questions during the course of
17 your session in the box about some scientific matters for
18 which you were responsible and some administrative and
19 managerial matters for which you were responsible. I think
20 the Commissioner asked you yesterday afternoon, perhaps it
21 was earlier in the day yesterday, about ways in which those
22 functions might be dealt with or separated. If I ask you
23 to consider the fact that on the one hand in your role you
24 had some scientific responsibilities and on the other hand
25 you had administrative and managerial responsibilities,
26 which of those two functions consumed most of your working
27 day in an average week?

28 A. It has varied over time but certainly has moved into
29 more around the managerial aspect than the scientific.

30
31 Q. In your view is that balance between your managerial
32 responsibilities and your scientific responsibilities
33 appropriate?

34
35 THE COMMISSIONER: Sorry, what did you say was the balance,
36 the percentage?

37 A. I think it was put to me scientific and then managerial
38 which I also interpret to be personal.

39
40 Q. Yes, and what was the percentage that you devoted to
41 each?

42 A. I feel it's moving more into the managerial more so
43 than the scientific.

44
45 Q. Yes.

46
47 MR HICKEY: Doing the best you can, and I think to assist

1 you, Commissioner, I don't think he did attribute a
2 percentage, but if you can, can you volunteer a ratio?
3 A. In order to try work out a ratio I'm trying to reflect
4 on the amount of actual scientific work that I used to do
5 which was significant for a number of years in the team
6 leader role. I would say at the moment probably looking at
7 80 to 90 per cent managerial than scientific.
8
9 Q. Do you think that's an appropriate - given what you
10 understand to be your duties, your ideal job description -
11 let me try it again. If you turn your mind to what your
12 job description calls upon you to do, do you think that
13 that ratio that you've just described is appropriate?
14 A. With my role description it really should be around 50
15 per cent mark.
16
17 Q. Is that something that has occurred recently or is that
18 something that's been the case for quite some time?
19 A. I believe it has been for some time, certainly.
20
21 Q. Is that something that you have made others within the
22 organisation superior to you aware of?
23 A. Yes. I do recall some of us were lucky enough to speak
24 with Queensland Audit Office representatives and we did
25 sort of express that there is a large number of scientific
26 staff who are doing really managerial work. Yes, so that's
27 one forum where it has been described.
28
29 Q. When was that?
30 A. Within the last few years, I can't pinpoint exactly
31 when the Queensland Audit Office interviews were conducted.
32
33 Q. The Audit Office is separate from Queensland Health and
34 the Department with which you work. Have you ever had
35 those discussions or communicated your concerns about that
36 ratio to anybody within the Department who is in the up
37 line from you?
38 A. I think through staff surveys we've indicated that but
39 I can't recall specifically at this point passing on any
40 percentages or anything similar.
41
42 Q. Now is the fact that that ratio is out of balance - I
43 think you said you think it ought to be 50/50 and it's not
44 that - am I right then in assuming that that's something
45 that's of concern to you?
46 A. Yes, so I think it is. I mean I think there are
47 different ways but I guess that's the way - the role

1 description when we have it is really part managerial, part
2 clinical, which I assume to be the 50/50 percent.

3

4 Q. But notwithstanding the fact that in your mind there's
5 an imbalance, you seem rather than to have done anything
6 proactive about that, you've just got on with it, is that
7 right?

8 A. Yes.

9

10 Q. And why is that?

11 A. I think that's in my nature, just to get on with the
12 job.

13

14 Q. Now it's the case, isn't it, that within the lab there
15 are a number of people with stakeholder interests in what
16 the lab does day to day?

17 A. Yes.

18

19 Q. Could you tell us as best you understand them who are
20 the various people who have stakeholder interests in the
21 work that's done in the lab?

22 A. In terms of our client base? So certainly our primary
23 client Queensland Police and then the Justice system that
24 we strongly identify with community as being the ultimate.

25

26 Q. If I can deal with those in turn. First, I assume the
27 department has some overarching objectives for the way the
28 lab goes about its work?

29 A. Yes.

30

31 Q. How do you come to know what those are at any given
32 time?

33 A. Within our Queensland Health quips we are aware of our
34 vision purpose and our values.

35

36 Q. And are you given any real opportunity to influence the
37 way the lab's work is conducted having regard to
38 overarching objectives that are set by others?

39 A. We do go about trying to work out - for example, at the
40 moment we have three strategic priority projects which are
41 under way, so these are the some of the things that we do
42 try to focus on which would feed in to then to the vision
43 of promoting a safer Queensland.

44

45 Q. You were asked some questions about the way the
46 efficiency of the lab is measured and you gave some
47 evidence about turn around time being one of the ways in

1 which the lab's efficiency is measured?

2 A. Yes.

3

4 Q. As I understood your evidence, that seems to, in part
5 at least, to be informed by what you understand to be the
6 Queensland Police's imperatives?

7 A. Yes.

8

9 Q. I'll deal with that in a moment or two. But do you
10 also understand as a member of the management team that the
11 department itself has some desire that you will ensure the
12 work is performed in an efficient kind of way?

13 A. Yes.

14

15 Q. And do you understand how the department assesses
16 whether or not the lab itself is operating efficiently?

17 A. I'm not sure how they assess how it's operating
18 efficiently.

19

20 Q. Do I take it from your answer then that you've never
21 been party to a conversation in which anybody superior to
22 you in the management structure has explained to you: this
23 is the measure by which we will ourselves be satisfied that
24 the lab is performing its duty efficiently?

25 A. No, I don't recall being party to any of those.

26

27 Q. That being so, how then do you go about attempting to
28 inform yourself about how you should ensure you're making
29 the members of your team perform efficiently? What informs
30 that for you?

31 A. Well, I guess what we have is the information from
32 Queensland Police on how we're going with our turn-around
33 time. We have been given, I guess, a request for, at least
34 back to 2008, 2009, to strive for a ten day turn-around
35 time for all sample types, which we strive for. It's, in
36 my opinion, it's ambitious and it's hard to get to a ten
37 day turn-around but we know that that is a desire of our
38 client and we do whatever we can to try and meet that.

39

40 Q. Do you understand why turn-around time is important to
41 Queensland Police?

42 A. Yes.

43

44 Q. And what's your understanding of the reason?

45 A. Well it's in line with trying to promote a safer
46 Queensland, trying to provide information that could
47 possibly assist with any criminal investigations.

1
2 Q. And beyond merely satisfying your client, are those
3 sorts of imperatives things that motivated you in terms of
4 the way you managed your team?

5 A. Yes, certainly.
6

7 Q. Were there any formal ways in which you were informed
8 about the Queensland Police's objectives for the way the
9 lab would go about performing its work?

10 A. Formal ways, do you mean back to the model of 2008?
11

12 Q. I assume that there were discussions that you had from
13 time to time with the likes of Inspector Neville?

14 A. Yes.
15

16 Q. There were discussions that you had from time to time
17 with various other representatives of the Queensland
18 Police?

19 A. Yes.
20

21 Q. But was there a formal process of which you were aware
22 that happened with any kind of regularity at which the
23 Queensland Police would formally articulate to the lab in a
24 way that you understood how it intended the lab would go
25 about its function?

26 A. I believe there were meetings that occurred between FSS
27 and QPS, that may be some information that is communicated
28 around a desire for us to achieve a ten day turn-around
29 time. I certainly remember the period of 2009 when that
30 was, perhaps that's when it was first apparent, but I do
31 remember around that time it was quite an alarming request
32 for staff and it did take some time to come to terms with
33 it.
34

35 Q. All right. You keep referring back to that period in
36 2008 and 2009. Do I take it from that that that was a
37 particularly significant change as far as you were
38 concerned?

39 A. It was a very significant change.
40

41 Q. And was it the case that there was some pressure on the
42 lab at that point because of what was perceived to be a
43 delay in the turn-around time?

44 A. Yes. So we were coming out of the backlog, as it was
45 known at the time, so we were coming out of that period, we
46 were doing our best to address that and then it was around
47 2009 when we were really given, like I said, a pretty firm

1 request to meet the ten day turn-around.

2

3 Q. And has that firm request, or at least the background
4 against which it was made, is that something which has
5 continued to inform your thinking as a manager even to this
6 day?

7 A. Yes, we are very aware that ten days is the desire of
8 our primary client.

9

10 Q. Now, one of the other stakeholders that you mentioned
11 is the Justice system?

12 A. Yes.

13

14 Q. In your role as a team leader, or the various ways that
15 kind of role has been described over the years, what, if
16 any, direct engagement have you had with the Justice
17 system, other than giving evidence in court?

18 A. I'd say very little over that period. I've had a
19 couple of meetings with personnel from DPP over the years
20 but that was really as part of a panel, and I go back now
21 to I think there was a period where I was, I attended some
22 DNA (indistinct) project meetings back in 2008, but overall
23 very little.

24

25 Q. And again, turning your mind to the fact that the
26 Commissioner has obligations around recommendations,
27 reflecting on the experiences that you've had, and given
28 the things you now know, are there deficiencies in the
29 contact that you might have had with the Justice system, if
30 I can use that term collectively, that you think ought to
31 have been attended to before now?

32 A. I think that, I think it would be a good idea to have
33 more regularly some meetings with FSS personnel, senior
34 personnel, QPS, DPP, perhaps all together, defence
35 representatives. I think that that could be a periodic
36 stocktake of where we're at.

37

38 Q. Before this Commission, and putting aside any social
39 interactions you might have, have you, in all of the years
40 you've been doing this role, had any serious discussions
41 with lawyers around what they're looking to the lab to do
42 in terms of discharging its obligations to the Justice
43 system?

44 A. No.

45

46 Q. And looking back on it now, is that something that you
47 think would have assisted you to better inform your

1 decision making in your role?

2 A. On reflection, yes.

3

4 Q. And why do you think it is that that's never occurred
5 to you before now?

6 A. Why it hasn't occurred to me before now? Look,
7 certainly I guess within my day-to-day role I don't - are
8 you talking about personally? Yes. So within my
9 day-to-day role it hadn't occurred to me, simply we're just
10 getting on with getting our work done.

11

12 Q. I want to talk to you about your day-to-day role and I
13 want you to give us some sense - before the Commission
14 occurred, before public attention began to be turned to
15 this particular issue in late 2021, what does your
16 day-to-day role look like?

17 A. Yes. So I guess we get queries from Queensland Police,
18 I get the odd queries that might come through external
19 sources, say RSPCA, for example. Not often, I'm just
20 giving an example of some communications that we get. I
21 would get phone calls from Queensland Police, sometimes,
22 yeah, in the morning to get started for the day, somebody
23 following up on something from late the day before, but
24 then it's - yeah, these days I don't get much of an
25 opportunity to do profile interpretation, but then it's
26 just, it's very - it's varied, absolutely varied, and it's
27 really what pops up and we do have a number of meetings as
28 well to attend to as part of our role.

29

30 Q. Thinking generally, is your sense within your role that
31 you have enough time to get through the work each day or is
32 it always the case that there's more work than you can cope
33 with?

34 A. Look, I guess by the nature of the work that we do
35 there will always be criminal work to do, so there'll
36 always be - it's always ticking along. There are some days
37 where I do feel overwhelmed and haven't got through
38 everything, I haven't felt that I've actually ticked off
39 something and said that's been - that's complete. But
40 other days I feel like I've achieved a sense of completion.

41

42 Q. Again if I can ask you to think about the difference
43 between the managerial kinds things for which you're
44 responsible and the scientific kinds of things for which
45 you're responsible. Would you agree with me that the
46 managerial and administrative sorts of things that you are
47 responsible are roles that require active engagement, that

1 is to say, you need to do things, physically act upon
2 matters on your task list in order to get through those
3 jobs?

4 A. Yes.

5
6 Q. And lots of the things that you've been asked about
7 during the course of the last couple of days, particularly
8 in respect of the scientific side of things, would you
9 agree with me are matters which require time for
10 reflection?

11 A. Yes.

12
13 Q. And intellectual engagement?
14 A. Yes.

15
16 Q. Thinking then about your average working week, is there
17 really an opportunity for you to undertake serious
18 reflective intellectual engagement with the kinds of things
19 you've been asked about here, or is your time really
20 consumed by the managerial and administrative tasks that
21 we've talked about?

22 A. I think there's certainly the time - look, I don't feel
23 I've got that much time, however I could schedule more time
24 and just make that time black out. Also, I guess, close my
25 door, have some quiet time to devote to that other work.

26
27 Q. You say you could do that. Do I take it then from that
28 that you generally don't do that?

29 A. Generally don't.

30
31 Q. And why is that?

32 A. I guess, again, it goes back to just trying to get our
33 work done.

34
35 Q. Now, you've given some evidence about the fact, and I
36 don't wish to probe you upon this in a way that you feel
37 uncomfortable speaking about, but I take it - you've spoken
38 euphemistically about some workplace stressors that you
39 experienced for which you sought help?

40 A. Yes.

41
42 Q. On reflection, do you think that those experiences that
43 you had clouded your clear decision making ability?

44 A. On reflection I'd agree to that.

45
46 Q. Is that something that you were aware of at the time?
47 A. No.

1
2 Q. If you had been aware of that at the time is that
3 something that you think you would have felt comfortable
4 bringing up with your superiors?

5 A. Yes, I would have felt comfortable.
6

7 Q. Now you've been asked a lot of questions through the
8 course of the evidence that you've given here about various
9 pieces of correspondence. You've been asked to review
10 emails, you've been asked whether you've read them, what
11 you thought about them?

12 A. Yes.
13

14 Q. Can you give us a sense of how many emails you might
15 receive on a day-to-day basis?

16 A. I would - it does vary. In trying to measure that by
17 when I've had a day off, and again it does vary, sometimes
18 I come back and I've got about 100, sometimes I come back
19 and there might only be, you know, ten, so it does vary, it
20 depends.
21

22 Q. And is it the case that if you were to read every email
23 you received with the kind of detailed attention that
24 you've been invited to give them here, you'd never really
25 get through your workday?

26 A. It would certainly make it difficult.
27

28 Q. And because of that is it your experience that it's
29 become necessary for you to, in our own mind at least,
30 delegate or, rather, prioritise those emails in your own
31 mind based on who might be responsible for the actions or
32 the topics that are within them?

33 A. Yes, I'm getting better at that.
34

35 Q. And so, for instance, if somebody sent an email to you
36 that was marked an FYI, you wouldn't necessarily regard
37 that as indicating that it was your priority to attend to?

38 A. Correct, yes.
39

40 Q. Now, I want to ask you about the events after December
41 2021. Obviously in the early part of 2022 you became aware
42 that others outside the lab were interested in what was
43 happening inside the lab?

44 A. Yes.
45

46 Q. Was that itself a cause of stress for you?

47 A. Absolutely.

1
2 Q. And why was that stressful?
3 A. In terms of, I guess, exposure.
4
5 Q. Exposure in what way?
6 A. Our work that we're very proud of being exposed.
7
8 Q. Do you mean that you were fearful that there was
9 something that you had done that would be exposed?
10 A. I think - I guess we were very proud of our work and to
11 have it - don't like to draw any attention to ourselves, we
12 like to just our work done, and so having that sort of
13 exposure was distressing for staff.
14
15 Q. Was it distressing for you?
16 A. Yes.
17
18 Q. Did it add an additional modicum of stress to what
19 you've said was already a stressful job?
20 A. Yes.
21
22 Q. And did that, do you think, interfere with your ability
23 to make clear decisions and judgments?
24 A. It was always present on my mind so I can't exclude
25 that as not having an effect.
26
27 Q. Has that stress that you've been experiencing had any
28 discernible physical effects upon you over the last few
29 months?
30 A. Yes.
31
32 Q. To the extent that you're comfortable telling me about
33 them, what are those?
34 A. Yes, so I am - you raise a point of mental health
35 because it's very important in the community, but I
36 certainly have been feeling not myself, I have been seeking
37 help, had some mental and physical effects certainly the
38 last month more than anything.
39
40 Q. All right. You mentioned the last month. Perhaps it's
41 not coincidental, but does that coincide with you being
42 suspended from your position?
43 A. Yes.
44
45 Q. Were you given any notice of that?
46 A. I was given - yes, I had a meeting in the morning, I
47 went to coffee and I was then notified to speak to Acting

1 Executive Director Lara Keller and at that point was when I
2 was delivered the news.

3

4 Q. What was the news that you were delivered?

5 A. The news was that there was a direction handed to her
6 that I was to be stood down full pay.

7

8 Q. Were you given any reasons for that?

9 A. No.

10

11 Q. Have you received any explanation for it since then?

12 A. Not clear.

13

14 Q. And so is it right then to say that even now you're not
15 entirely aware of upon what basis it is the department has
16 suspended your employment?

17 A. I have been informed by a family member of something
18 raised within evidence during the Commission.

19

20 Q. And what's that?

21 A. I was notified that it was to provide space during the
22 period of the Inquiry.

23

24 Q. That's something that Mr Drummond, I think, said in
25 evidence?

26 A. Correct.

27

28 Q. Is that something that anybody within the department
29 has ever communicated to you?

30 A. No.

31

32 Q. Is it the case then that all of those events have added
33 an even further layer of stress upon you in attending to
34 this Commission?

35 A. Yes. Look, however, I want to make it clear I feel
36 I've addressed everything I could for the Commission when
37 notice has come my way.

38

39 Q. And to the best of your ability, notwithstanding those
40 challenges, you've attempted to give evidence to the best
41 of your recollection here in the Commission?

42 A. Yes.

43

44 Q. Now, I want to ask you, please, about some questions
45 you were asked yesterday about data review that was
46 undertaken in 2022. Could we please, Mr Operator, bring up
47 FSS.1000.0095.8988. And while that's coming up, just to

1 put you in the frame, this is a series of correspondence
2 which ultimately leads to you saying some things about, you
3 saying to Ms Allen that you'd ask Allan to do this but
4 would have to show him what was done. Do you recall
5 yesterday being asked about that?

6 A. Yes.

7
8 Q. Can we just walk through this suite of correspondence
9 and if we start at 2.46 on Friday, 3 June. If we just
10 scroll down, please. So there we see Ms Allen saying to
11 you:

12
13 *Justin, is it possible to have it done by*
14 *then?*

15
16 Do you see that?

17 A. Yes.

18
19 Q. If we scroll down a little bit further, the "then" to
20 which she refers comes from an email that's earlier on.
21 Keep scrolling, please, Mr Operator. From Ms Keller. Just
22 stop there. So you see Ms Keller was saying to Ms Allen:

23
24 *Could you kindly arrange for the final*
25 *version of the second paper to be sent to*
26 *my by COB Tuesday.*

27
28 You see that?

29 A. Yes.

30
31 Q. That's Friday, 3 June. Now if we just scroll up,
32 please, Mr Operator. What we see, just pause there, is
33 that Ms Allen then forwards that to you and to Ms Brisotto
34 ?

35 A. Yes.

36
37 Q. That same day?

38 A. Yes.

39
40 Q. If we scroll up again, please. Stop there. Shortly
41 after receiving that email from her you explained to her
42 that the source data and the findings are not peer
43 reviewed, so will need to be clearly marked as such. And I
44 don't need to go over that, my learned friend Mr Hodge has
45 already asked you about this. But if we go up a little
46 further, that's the first email that I asked you about?

47 A. Yes.

1
2 Q. Now if we scroll up a little bit please, Mr Operator.
3 There. You wrote this email minutes after Ms Allen sent
4 her email to you and you're responding her. You say:

5
6 *Hi possibly. I would ask Allan to do this*
7 *but would have to show him what was done.*
8

9 When you said "would have to show him what was done", what
10 did you mean by that?

11 A. To show him what was gathered within the data, to show
12 him what I looked at and how I broke it down.
13

14 Q. And why would it be necessary to do that?

15 A. To help him understand and to be able to, I guess, more
16 efficiently get through the review.
17

18 Q. And how long would it take you to explain those things
19 to Allan?

20 A. Look, probably half an hour to go through, maybe not
21 that much.
22

23 Q. But in any event, for him to perform the peer review
24 that's a step that would need to take place first in your
25 mind?

26 A. In my mind, yes.
27

28 Q. And so is that why when you say "I would ask Allan to
29 do this", was what you were intending to say was that you
30 couldn't ask him to do it unless you did that other step to
31 which you've referred?

32 A. Yes.
33

34 Q. Did you mean you would ask him to do it but you'd have
35 to shown him what was done and you didn't want to do that?

36 A. No, I - no.
37

38 Q. All right, thank you. Now, could we look, please,
39 Mr Operator at FSS.0001.0052.7588. And if we can just zoom
40 in on - scroll down please. There. And again I don't
41 intend to ask you questions you've been already asked, I'm
42 just orienting you. You see there this is the email in
43 which you ask Mr McNiven to work in either of those rooms
44 or work from home?

45 A. Yes.
46

47 Q. That's that same afternoon that you've been

1 corresponding with Ms Allen?

2 A. Yes.

3

4 Q. Why did you write to him that same afternoon and say
5 these things to him?

6 A. Because we had a time frame to meet and this would,
7 this is simply to get going, to get on to it and to have a
8 concentrated effort.

9

10 Q. Could we go then please to FSS.0001.0052.7588. Now,
11 here, if we can zoom in on that bottom part of the page
12 where you're redacting, please, Mr Operator - and include
13 the date panel if you don't mind. So here we see this is
14 the Tuesday after that correspondence was sent on the
15 Friday?

16 A. Yes.

17

18 Q. And you understood that this was the day by which that
19 data review was to have been undertaken, is that right?

20 A. I believe it was - sorry, it was the 7th from before?

21

22 Q. Yes?

23 A. Yes.

24

25 Q. The Friday had been the 3rd?

26 A. Yes.

27

28 Q. So you understood - just again to orient you, Ms Keller
29 had said "can we have it by close of business on Tuesday"?

30 A. Yes.

31

32 Q. So here we see Mr McNiven, he writes to you?

33 A. Yes.

34

35 Q. And he says:

36

37 *Two full days of data checking.*

38

39 Do you see that in the top line?

40 A. Yes.

41

42 Q. How long did you expect the data checking might take?

43 A. Longer than that. He really - it took me longer.

44 Well, I think that, yeah - look, I think he certainly had a
45 concentrated effort there.

46

47 Q. Then if we can go, please, to FSS.1000.0114.2481, and

1 we zoom in just on the top email please. You can see now
2 this is Friday the 10th of that same week, that is the
3 Friday of the same week, and here is Mr McNiven writing to
4 you and to Ms Brisotto. He says:

5
6 *I've had a look over everything again*
7 *(mostly looking at the changes) all good.*
8

9 Now did you understand that to mean that on Friday 10 June
10 he was still working on the data review?

11 A. Yes, because after he's reviewed I think that I
12 naturally had to look at it again, recalculate, so then it
13 was back and forward.

14
15 Q. Now, again, was this time line consistent with how long
16 you thought that task might take?

17 A. With a concentrated effort I think it was, I think he's
18 done very well to meet that time frame.

19
20 Q. Now, could I ask you some questions please about
21 Ms Allen's role. You mentioned yesterday that you had had
22 some experience acting in that position?

23 A. Yes.

24
25 Q. And you gave some evidence to the effect that your
26 experience of it, that there were pressures and stressors
27 attendant in that role?

28 A. Yes.

29
30 Q. Can you tell us what was your experience of the
31 stressors, what was the nature of them?

32 A. Look, I think that it just, I think at that level there
33 is a lot more responsibility on the decision making part,
34 so the stressors really is that - I guess a number of
35 requests and then balancing financials, balancing time.
36 For example, you know, in Cathie's role it's not just
37 looking after Forensic DNA Analysis, it's also looking
38 after Forensic Chemistry, so with that are two big distinct
39 teams and so you have to make decisions on whether it's
40 appropriate to allocate resources to various things at any
41 particular time, whether we can sign off on any particular
42 instrumentation coming its way, but also at that point you
43 do have a number of stressors from above as well and these
44 are very - the stressors that I experienced in that role
45 are really around the urgency to meet, providing brief
46 notes and so forth.
47

1 Q. Thinking about that as best you can, do you think those
2 stressors are things which arose because of some particular
3 vulnerability that you might possess or do you think they
4 are inherent in the role itself?

5 A. No, I think they're in the role, yes.

6

7 Q. Now could I just go back to a topic I was asking about
8 before I move on. That data review that was being
9 undertaken by Mr McNiven, I think you said he'd made a
10 concentrated effort, words to that effect. What did you
11 mean by that?

12 A. Look I think to achieve that sort of time frame, it's
13 him allocating - he worked with his line manager to be able
14 to allocate time to that particular project.

15

16 Q. All right. Now, I've asked you about some emails
17 today, in particular the one I have in mind is the one
18 where I asked you about Mr McNiven and you having to show
19 him the data or what you'd done. Do you recall that email?

20 A. Yes.

21

22 Q. I use that as an example of a process which you've been
23 asked to undertake during the course of giving evidence
24 here. You've been asked to look very carefully at and
25 scrutinise correspondence, do you agree with that?

26 A. Yes.

27

28 Q. That kind of process, of scrutinising very carefully
29 the language used in emails, is that something that you've
30 had occasion to do in the course of your role in this kind
31 of way at any time since joining the lab in 2005?

32 A. No, I think it's been certainly an experience working
33 closely with lawyers.

34

35 Q. What do you mean by that?

36 A. Look, I think we just see things slightly differently,
37 but we'll diverse, I guess, but I think that, yeah, looking
38 at a few words, yeah, I can see their point of view but I
39 guess for us in writing them we probably didn't have that
40 feeling at that time.

41

42 Q. Is the kind of attention to language that you've
43 experienced here something which in your experience is the
44 kind of attention which is paid to language in
45 correspondence, in particular, during the course of your
46 kind of work?

47 A. Not to the degree that I've experienced here.

1
2 Q. All right. Now I want to ask you some questions about
3 working in the public service in particular. You've been
4 in the public service for a long time and would you agree
5 with me that the public service has in recent years moved
6 from a kind of management style which is quite
7 heirarchical, which is to say people have very particular
8 levels of responsibility and power, to assist them now
9 where increasingly flatter hierarchies are being encouraged
10 within work groups?

11 A. I'm not sure beyond our workplace.

12
13 Q. What about in your workplace then?

14 A. In our workplace, look, we do have, I guess, the same
15 sort of structure that we've had for a long time, which is
16 management team, but we have had above us, above Cathie,
17 sorry, we have had a cycle of Executive Directors for the
18 last number of years and higher, and we've moved, moved
19 organisational groups, we've had a significant business
20 change recently - it's been worked on for the last year -
21 so there are a number of changes that have occurred within
22 the department that we need to keep up with.

23
24 Q. What I'm particularly interested in is that you gave
25 some evidence yesterday about a particular decision that
26 had been taken and you were challenged and asked about why
27 you didn't do things in the face of the decision. The
28 answer that you gave was that the decision had been made.
29 What I'm interested in understanding is what did you mean
30 by that?

31 A. Okay. I guess what I meant was that I understand where
32 roles and responsibilities are, I understand my boundaries,
33 I understand that if a decision is made at a level - I
34 think I spoke a couple of days ago about working out, you
35 know, what is within our control and not to, you know,
36 worry or, I guess, focus so much on the uncontrolables. So
37 what I meant by that response that you first referred to,
38 if a decision is made at a certain level then we just need
39 to trust and believe that that is the decision and that's
40 what we would then follow as public servants.

41
42 Q. And that approach that you've just described, does
43 that, in your mind, typify your approach to discharging
44 your duties within the lab?

45 A. Yes.

46
47 Q. And if that's so, what informs that, why do you

1 approach the task in that particular way?
2 A. I guess going back to really reflect on myself, I guess
3 it's going back to my personal values of respect and
4 loyalty and then positivity, which is one of my stronger
5 strengths. We've actually done an exercise on that not so
6 long ago with Lara Keller. But I think for me it's really
7 understanding where the roles are and then to work within
8 our roles and understand that if decisions are made beyond,
9 whether that be in Queensland Health structure or so forth,
10 well then understand that's where the decision is made and
11 then we can work with that.
12
13 Q. Did you understand it to be your role to challenge
14 decisions that were made by your superiors or merely to
15 comply with them?
16 A. I think it's my role to question and clarify and so I
17 think that I have done that.
18
19 Q. Now, you said that you had an obligation to discharge
20 your duty as a public servant. In your mind is there a
21 difference in the duties that inure to a scientist within
22 the public service from those which might inure to a
23 scientist working in some other private laboratory?
24 A. I guess that would be something which I find difficult
25 to answer because I haven't had the experience of working
26 outside of the public service. I've worked in three
27 different public services in Forensics and so, look, that
28 would be hard for me to know that and to answer that.
29
30 Q. Let me ask you this then: turning your mind to the
31 other Public Service environments within which you've
32 worked, is the Queensland lab, as you've experienced it,
33 remarkably different from any of the others?
34 A. No, not in my opinion.
35
36 Q. Is there anything that comes to mind that is different
37 in any substantial way or significant way from the others
38 in which you've worked?
39 A. In terms of structure and the system or - because I
40 guess the other two forensic laboratories that I have
41 worked at are very different models and it was a very long
42 time ago now, so it's very difficult to answer.
43
44 Q. Can I ask you this: what impact, if any, did the
45 COVID-19 pandemic and its effects have on the laboratory?
46 A. Some good and bad effects actually. So I guess one
47 good effect is that it did open up the possibility for

1 remote work and that has been, it's been great for many
2 people. A lot of people don't like working like that, a in
3 fact lot of people unfortunately they don't have the
4 opportunity to do it because their work is lab based, but
5 for people who are office based it has been a good thing
6 because they can - you know, if they've got a bit of car
7 trouble or if they've got a sick child, then instead of
8 using some sick leave they might chose to be able to work
9 for some hours. So that flexibility has been something
10 which has been a good thing.

11
12 On the flip side of that it does disconnect people.
13 Remote working, there's a lot of literature around, it does
14 lead to some disconnection between yourselves and your work
15 colleagues. But certainly I think nobody enjoyed the
16 sickness that came with COVID as well.

17
18 Q. And for you as a manager did it lead to an increase in
19 the managerial and administrative responsibilities that
20 we've talked about?

21 A. I guess not so much for me. It was difficult - as best
22 our teams are trying to organise and inform where people
23 were, that would be, that would have been one of the only
24 difficulties, and setting up some meetings, but we also do
25 have that opportunity of MS Teams, so that's been another
26 positive within the COVID experience.

27
28 Q. You were asked some questions about communications that
29 Ms Allen had with QPS and you were challenged as to why you
30 didn't intervene or take up with her the issue of her
31 communications with QPS. Did you understand it to be your
32 role to insert yourself or to counsel her or to guide her
33 in respect of the way she was communicating with external
34 agencies?

35 A. Not in a way, no.

36
37 Q. Would you have felt uncomfortable about doing that?

38 A. No, I don't think so, no.

39

40 Q. But is it right to say you simply didn't regard it as
41 the appropriate thing for you to do?

42 A. No, I trusted that was all under control.

43

44 A. And you've described boundaries, levels of
45 responsibility. Did you regard that as something that was
46 within your bounds of responsibility?

47 A. Yes, that's right.

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Q. Sorry, did you understand guiding or correcting Ms Allen's discussions with external agencies was something within your bounds of responsibility?

A. No, I understood that that was within the responsibility of Ms Allen.

Q. Thank you. Now, this issue that we've all been spending an extraordinary amount of time over many weeks thinking and talking about is but one issue, isn't it, that you were responsible for managing and considering during the course of your role as the team leader?

A. Yes.

Q. If I can ask you to think of some of the other kinds of issues for which you were responsible over the last few years, say from 2018 through to 2022. How significant to you at the time did this issue seem, the issue of the DIFP processing, sperm microscopy, the validation of instruments that we've now heard some things about, those issues that you're aware the Commission is interested in, how important by comparison to lots of the other kinds of issues for which you were responsible did those things seem?

A. Look, I guess to start with they're all important issues. I guess, if I think back, and you mentioned 2018 through to now, some of the dominant things we've had is a cultural change program that we've had from around 2020 and that cultural change program was brought about to try to assist with the, I guess, interpersonal challenges that we were having within our team. So I'd say that - I mean, look, they're all important, we see them all as important, but there are a number of things that come up in the functioning of a laboratory.

Q. Now could I ask you please some questions about events that occurred in December 2021 when --

THE COMMISSIONER: Just before you move on, Mr Hickey. Mr Howes, the cultural change program, who initiated that, whose idea was it or whose initiative was it to bring that forward?

A. I believe that was Executive Director John Docherty.

And I see it's 1 o'clock. Were you going to move on to a new subject?

MR HICKEY: I am, Commissioner, but I'm almost finished and

1 so I wonder whether I might --
2
3 THE COMMISSIONER: No, no, please. If you think --
4
5 MR HICKEY: Let's take the lunch.
6
7 THE COMMISSIONER: All right. We'll adjourn until 2.30.
8
9 **LUNCHEON ADJOURNMENT.**
10
11 THE COMMISSIONER: Mr Hickey.
12
13 MR HICKEY: Thank you, Commissioner. Mr Howes, before
14 lunch I was about to ask you some questions about a meeting
15 that occurred in December of 2021 shortly after initial
16 press interest in the goings at the lab came to light. The
17 Commissioner's heard some evidence about a meeting that
18 occurred between you and Lara Keller and Cathie Allen in
19 December 2021. Do you recall a meeting with those three in
20 December of 2021?
21 A. Not specifically.
22
23 Q. All right. Could I perhaps assist to refresh your
24 memory about that. This is a document, Commissioner, which
25 is not yet in the database but which has been provided to
26 Mr Operator and I hope you'll indulge me and permit me to
27 bring it up.
28
29 THE COMMISSIONER: Bring up anything you need to,
30 Mr Hickey.
31
32 MR HICKEY: Thank you. It's the document, Mr Operator,
33 CAJH.0001.0002.1. I understand that's its current number,
34 I don't know whether it has a formal database number.
35 First of all I'll ask you this, do you recognise that
36 document such of it as we can see?
37 A. That is a diary entry which looks like handwriting:
38
39 *Media day re Blackburn podcast.*
40
41 Q. Is that your handwriting?
42 A. Yes, it looks like it.
43
44 Q. Could we turn then please to page 2 and could we see
45 there there's what's described I think as a whole team
46 meeting Friday; is that right?
47 A. Yes.

1
2 Q. Then off to the right-hand side we see what appears to
3 be:

4
5 *Invite Lara Keller.*

6
7 Is that so?

8 A. Yes.

9
10 Q. So what are these notes that we see recorded here?

11 A. So these are notes in relation to a meeting with the
12 whole team to keep them informed on what was happening at
13 that point in time.

14
15 Q. All right. If I could ask please, do you see adjacent
16 to 11 o'clock on that document there's an entry, would you
17 read to us what that says?

18 A.

19
20 *Engage interstate boss WA.*

21
22 Q. Do you recall what that entry is about?

23 A. No, I don't. I can't remember at this point.

24
25 Q. Let me just --

26
27 THE COMMISSIONER: Mr Howes, who are the team? What is the
28 whole team?

29 A. Whole team, okay. That's whole team as in whole DNA
30 forensic analysis team.

31
32 Q. Everyone from the reporters, analysts, everybody?

33 A. Correct.

34
35 Q. Thanks. Go ahead, Mr Hickey.

36
37 MR HICKEY: Thank you, Commissioner. Can I suggest to you
38 that what that note might have been was the recording of a
39 discussion about the appointment of representatives of an
40 interstate laboratory to conduct some kind of external
41 review of the Queensland lab?

42 A. (Indistinct) yes.

43
44 Q. Do you recall a discussion of that kind?

45 A. Yes, I do.

46
47 Q. Do you recall having a discussion of that kind with

1 Ms Keller?

2 A. Yes.

3

4 Q. Do you recall whose idea it was that an interstate lab
5 or representatives of it might be engaged to conduct an
6 external review?

7 A. That was Cathie Allen, she had that idea.

8

9 Q. Do you recall at all why the suggestion might have been
10 possibly WA?

11 A. I think - I'm trying to recall, I believe - yeah, WA
12 are very similar in size I guess jurisdictional wise and
13 with technology to us.

14

15 THE COMMISSIONER: Had they recently undertaken a review
16 into their own DNA lab?

17 A. Not that I'm aware of. There has been some reviews by
18 other jurisdictions over time.

19

20 MR HICKEY: Could I move on to a new topic then, please. I
21 tender that document, please, Commissioner.

22

23 THE COMMISSIONER: Both diary notes, Mr Hickey?

24

25 MR HICKEY: I think it's the same document, sir.

26

27 THE COMMISSIONER: I see. Exhibit 164.

28

29 **EXHIBIT #164 DIARY NOTES OF MR HOWES.**

30

31 MR HICKEY: You were asked some questions yesterday about
32 changes to the standard wording for the DIFP line item?

33 A. Yes.

34

35 Q. You were beginning to tell us some things about the
36 review, what you considered was the appropriate response to
37 that was that a review of the standard operating procedures
38 would be undertaken, do you recall that?

39 A. Okay, yes, so I think you're referring to suggested
40 wording to be added to a standard operating procedure.

41

42 Q. Yes?

43 A. Yes.

44

45 Q. And the answer you began to give was that that process,
46 you expected a review of the standard operating procedures
47 would occur and you were interrupted before you completed

1 that answer. Could I ask you, in your experience in the
2 lab were changes to the line items that were given in court
3 reports, were they things which ordinarily occurred by way
4 of changes to standard operating procedures?

5 A. So we do have - within our standard operating
6 procedure, one of our standard operating procedures, we do
7 have suggested wording, you know, recommended wording to be
8 used within statements, which was worked on originally by
9 all staff in 2013. So the suggested wording that I
10 provided in 2018 for that particular result, that would
11 have been the place for that standard operating procedure
12 to be put in.

13

14 Q. Can we just go back. You mentioned that in 2013 there
15 was some statement wording that a variety of people had had
16 some input into. That kind of process was something that
17 happened from time to time within the lab?

18 A. From time to time. Certainly in 2013 we were bringing
19 on new technology, new ways of reporting DNA profile
20 results so it was appropriate at that time to revise what
21 we were doing.

22

23 Q. Could I ask please that we bring up document
24 WIT.0012.0027.0001_R. This is a document that certainly
25 we've considered already and I think you were asked some
26 questions about it. If we can just - you see in the first
27 paragraph what's said:

28

29 *This wording for STRmix statements had the*
30 *opportunity for input from all reporting*
31 *scientists in meetings in 2013 and as an*
32 *outcome the wording was standardised.*

33

34 Is that what you were referring to?

35

A. Yes.

36

37 Q. Was it the case then that the concept of standardised
38 wording for statements was not something that was
39 restricted to these DIFP samples that we've been asking but
40 for other things within the lab?

41

A. Yes.

42

43 Q. And was it the case that staff members typically were
44 afforded an opportunity from time to time to input to
45 changes that they might suggest for the statements, for the
46 wording in the statements?

47

A. That opportunity exists every day.

1
2 Q. Can we go please to document WIT.0016.0085.0001. Can
3 we scroll to the next page, please. Could we just zoom up
4 please, Mr Operator, on the first paragraph of the email.
5 There we see you sending some correspondence to various
6 members of the management team in March 2018 about some
7 advice that you'd sought about the best place for the
8 Justices Act to appear in the statements, do you see that?
9 A. Yes.

10
11 Q. If we could just remove the zooming please,
12 Mr Operator. Could we zoom in please on the last paragraph
13 of that correspondence. We see here that you are talking
14 about turn around time of statements and that was because
15 in 2018 that continued to be an issue for the lab?

16 A. Our goal was to improve our turn around times, yes.

17
18 Q. You think that the change will take some time to be
19 added to the forensic-register?

20 A. Yes.

21
22 Q. You say.

23
24 *We'll take another step towards the auto*
25 *statement goal.*

26
27 What was the auto statement goal?

28 A. So the auto statement goal was to - based on the
29 results that we had, the codes that we would put into the
30 forensic-register for the DNA profile interpretations, it
31 would prompt the reporting paragraphs that had been worked
32 on by staff to be automatically added to a template, that
33 being the statement template, and that would allow the
34 statement to proceed through the process of writing and
35 reviewing quicker.

36
37 Q. Was that something that had been proposed for some
38 increase in the efficiency of the lab's work?

39 A. Yes, certainly in that aspect, the writing and issuing
40 the statements.

41
42 Q. Was that something that you understood was supported by
43 other members of the management team?

44 A. Yes.

45
46 Q. I tender that, Commissioner.

47

1 THE COMMISSIONER: Yes. Just before I deal with it,
2 Mr Howes, just explain to me again if you wouldn't mind
3 what auto statement involves?

4 A. Okay. So within our process of interpreting and
5 issuing results to police we add in the information to the
6 forensic-register. So that line of information, and we've
7 heard a lot about DIFP and no DNA detected, for example, so
8 that line will prompt a paragraph for an explanation of
9 what that information means into a statement template which
10 will have, I guess be designed in the way that we issue our
11 statements with a bar code description and anything else.
12 So when we actually - the idea is to, you know, press a
13 button effectively to produce a draft statement which will
14 then go for review by the person reporting and then to a
15 second peer reviewer.

16
17 Q. I see, thank you. Exhibit 165.

18
19 **EXHIBIT #165 EMAIL FROM MR HOWES TO OTHERS ON 7 MARCH 2018.**

20
21 MR HICKEY: Could we go please to document
22 WIT.0016.0085.0001. Could we just zoom that up please.
23 Thank you. What did you apprehend were the benefits of
24 that standardisation other than efficiency?

25 A. Well I guess, well with the efficiency what it would
26 mean is that it would mean less time writing statements and
27 more time therefore could be afforded to interpreting DNA
28 profiles. So the two functions of reporting scientists are
29 to interpret DNA profiles and review those of other people,
30 but also to write statements and to review other people's
31 statements in addition to the court work.

32
33 Q. Here we have an email that you send on 4 April 2018 to
34 some members of the management team; is that so?

35 A. Yes.

36
37 Q. In the second paragraph, could I just ask you to read
38 that to yourself?

39 A. Yes.

40
41 Q. There you say you're after advice on a small working
42 party to review the add wording to the statement template?

43 A. Yes.

44
45 Q. Was this an example of a circumstance where other
46 members of the team were invited to have input into the
47 language that's used in statements?

1 A. Yes.

2

3 Q. I tender that.

4

5 THE COMMISSIONER: Exhibit 166.

6

7 **EXHIBIT #166 EMAIL FROM MR HOWES OF 4 APRIL 2018 TO OTHERS.**

8

9 MR HICKEY: Then could we go please to document
10 WIT.0006.0134.0001. If we can just scroll down please when
11 you're ready, Mr Operator. Here we see at the bottom of
12 that top page an email from Jacqui Wilson sent to Ms Rika
13 and Ms Johnstone and you were copied in on 21 May; do you
14 see that?

15 A. Yes.

16

17 Q. Who's Jacqui Wilson?

18 A. She's a reporting scientist within the team.

19

20 Q. Was she in that small working group that you'd proposed
21 about standardised wording?

22 A. Yes.

23

24 Q. There we see her send you some communication around the
25 minimum standard wording proposed for FR documents and
26 various other things of that nature. Is this an example of
27 other people in the team, aside from you, having some
28 involvement in the standard wording that was adopted within
29 the lab?

30 A. Yes.

31

32 Q. I tender that.

33

34 THE COMMISSIONER: Exhibit 167.

35

36 **EXHIBIT #167 EMAIL FROM MS JOHNSTONE TO MS WILSON AND**
37 **OTHERS OF 22 MAY 2018.**

38

39 MR HICKEY: Thank you, Commissioner. Mr Howes, you were
40 asked some questions yesterday about some opinions that had
41 been expressed by Dr Budowle, in particular in respect to
42 the limitation of detection and the validation process
43 around that, do you recall that?

44 A. Yes.

45

46 Q. Could I ask you some questions about that, please.
47 Whose job is it, as far as you're aware, to decide what the

1 limitation of detection validation process will be within
2 the lab?

3 A. Well in a change management process there's usually a
4 project and project team and then that will go to
5 management team for review of the experimental design,
6 testing and then review.

7
8 Q. And so is any one person responsible for making
9 decisions around validation?

10 A. No.

11
12 Q. Can I ask you about, it's an opportune moment, we've
13 heard a lot throughout the course of the inquiry about
14 projects, we've various projects and project numbers and
15 we've heard various things about how they're established
16 and so forth. Is it right that the projects which are
17 undertaken is work which is expected to be performed in
18 addition to your usual tasks, or do you regard the project
19 work as part and parcel of your usual tasks?

20 A. Look, it's all in addition to our usual tasks, but yes,
21 we do try to share around projects where we can so it has
22 become part of our job, but it's certainly on top of the
23 general day-to-day work.

24
25 Q. Would you agree with me that the project work is one
26 kind of work within the lab which requires that kind of
27 reflective scientific opportunity that I asked you about
28 before lunch?

29 A. I'd agree with that.

30
31 Q. And insofar as in your experience you've been engaged
32 in performing the project work, do you feel as though you
33 have sufficient time to devote to that kind of reflective
34 scientific practice?

35 A. I think finding the time is part of the challenge of
36 balancing, you know, work and project work, so yeah, that's
37 my answer.

38
39 Q. Can I ask it this way: in your experience should you
40 have more or less time available to devote to that kind of
41 work?

42 A. I think if you're assigned a project it really takes,
43 you really need to really dedicate your mind to it and we
44 do try to set some time aside, some dedicated time. That
45 is one of our challenges that we have is having to, is
46 being able to find that time to be able to dedicate to the
47 projects.

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Q. You were asked yesterday afternoon some questions about issues that had arisen around the testing or examination of sperm, in particular in respect of sperm microscopy, do you recall that?

A. Yes.

Q. We were shown - I don't think I need to bring it up again - some correspondence that Ms Rika had forwarded which included some concerns which had been identified by Ms Reeves, do you remember that?

A. Yes.

Q. We saw some further correspondence in which you forwarded those concerns in the email to Mr Luke Ryan, do you recall that?

A. Yes.

Q. Now you were asked some questions about that and I just want to clarify what you had in your mind around that process. It was the case, wasn't it, the reason you forwarded that email to Mr Ryan at that time was because he was acting in Ms Brisotto's role?

A. Correct.

Q. And when we think about the organisational hierarchy, while he was acting in that role Mr Ryan was on an equivalent level to you, wasn't he?

A. Yes.

Q. Albeit in respect of another team, but nevertheless he was your hierarchical peer, would you agree with that?

A. Yes.

Q. So was it the case that when you - sorry, I'll go back a step. You forwarded that email to him because it was an issue which was within his team's domain, was that so?

A. Yes.

Q. If the roles had been reversed and Mr Ryan had forwarded something to you which was within your team's domain, do you think it would have been appropriate for him to have expected that you would deal with the issue without needing to be followed up?

A. Yes, I think if roles were reversed, yes.

Q. And was that your expectation of Mr Ryan?

1 A. My expectations of the team would start to look at
2 that, yes.

3
4 Q. My learned friend Mr Hunter for the police asked you
5 some things about the 2012 process for samples within the
6 DIFP range, do you recall that?

7 A. Yes.

8
9 Q. Can I just ask you some things about that just to
10 clarify. Could we have a look please at document
11 FSS.0001.0001.9191. If we could turn, please, Mr Operator,
12 to page 9197. If we could zoom up please, Mr Operator, the
13 third and fourth bullet point after the text in the middle
14 of the page that says "for samples". Let me make it
15 simple, just the bottom of the page will be fine please.
16 That first bullet point that we can see there, it's
17 referring to samples with a quantitation value of less than
18 0.01?

19 A. Yes.

20
21 Q. Those are the samples which the current DIFP samples
22 would fall within; is that right?

23 A. Yes, at that time.

24
25 Q. The fourth paragraph deals with samples with initial
26 quantitation value between 0.01 and 0.017?

27 A. Yes.

28
29 Q. That's a range which is higher than the DIFP range that
30 we've been dealing with?

31 A. It is but I think we established with Mr Hunter that
32 that was a slightly different process at that stage.

33
34 Q. Could I ask you finally, we've heard some evidence
35 during the course of Dr Moeller's testimony about an
36 altercation which had happened between you and her in about
37 2008 I think, it was called operation golf something or
38 other, do you recall that?

39 A. Yes.

40
41 Q. And the effect of the evidence was that you had said
42 something to Dr Moeller which was inappropriate, do you
43 recall that?

44 A. Yes.

45
46 Q. Can I ask you, first of all, did that occur?

47 A. Yes.

1
2 Q. I raised this issue with you shortly after Dr Moeller
3 had given that evidence. Were you aware before I told you
4 that that Dr Moeller was still aggrieved by things you had
5 said concerning that altercation?

6 A. No.

7
8 Q. Was it the case that from time to time you made
9 reference to that altercation?

10 A. Yes.

11
12 Q. And when I say that altercation, you swore at
13 Dr Moeller?

14 A. I swore at the situation.

15
16 Q. In any event you swore?

17 A. Yes, I did.

18
19 Q. And you make no bones about that?

20 A. No.

21
22 Q. And it's the case, isn't it, that from time to time
23 afterwards you did make reference to that event?

24 A. Yes.

25
26 Q. And why did you do that?

27 A. Really because it was a very unusual - I mean fair to
28 say very out of character thing for me to do and because of
29 that I was really just taking the Mickey out of myself.

30
31 Q. Were you aware that by doing that you were inflicting
32 distress upon Dr Moeller?

33 A. Not at all.

34
35 Q. And when I explained to you that that had been the
36 effect of Dr Moeller's evidence what was your response?

37 A. I was shocked and surprised.

38
39 Q. To the best of your recollection has there ever been an
40 incident of that kind between you and any other staff
41 member in all the years you've worked at the lab?

42 A. No, in fact probably my friends and family would
43 probably attest not at the lab not with anyone other than
44 my, unfortunately, two young kids.

45
46 Q. Those are the questions, Commissioner.

47

1 THE COMMISSIONER: Thank you Mr Hickey. Anybody else?
2 Ms McKenzie, no?

3
4 MS MCKENZIE: No, Commissioner.
5

6 THE COMMISSIONER: Mr Hodge, do you have any
7 re-examination?
8

9 <EXAMINATION BY MR HODGE: [3.00 PM]

10
11 Q. Mr Howes, I just want to bring up Exhibit 164 that you
12 were shown, it's an extract from your diary from 2021,
13 CAJH.0001.0002.0001. Then if we go to page 2 of that.
14 Thank you. And I'm sorry, I might have misunderstood some
15 of your evidence, but this is from your diary, is that
16 right.

17 A. Yes it is.
18

19 Q. And these are notes that you made?

20 A. Yes.
21

22 Q. And I may have misunderstood this, but the way in which
23 I understood the evidence that you gave to Mr Hickey, it
24 sounded like you were saying these were notes of - did you
25 say these were notes of the whole team meeting?

26 A. These were notes in my diary of the whole team meeting
27 Friday to come.
28

29 Q. Yes. Do you remember what the meeting was that these
30 notes are from?

31 A. I think that's in preparation for a meeting on Friday.
32

33 Q. Now, just again, listen to my question. Perhaps I'll
34 put it a different way. So when you say in preparation for
35 a meeting on Friday, are these themselves notes of a
36 meeting?

37 A. So I'll have to have a look to see when - no, this is
38 - that's talking about a whole team meeting Friday, this is
39 a Wednesday, so this was, this was a meeting on, it would
40 have been in preparation for a meeting or --
41

42 Q. Do you remember what these are notes of?

43 A. This was - I'm trying to remember. I think this was -
44 we had a meeting. I think this was when - I was acting for
45 Cathie Allen. Cathie returned to work and we had a meeting
46 after Cathie returned and I think this was a reflection of
47 that meeting.

1
2 Q. You think these are notes of a meeting you had with
3 Cathie Allen?
4 A. And I believe - yes, and I believe also Lara Keller.
5
6 Q. Do you remember the meeting now?
7 A. I do remember a meeting where we had discussed - I know
8 that Cathie came back and she had some thoughts on what we
9 could do and that was - and this was, I believe, that
10 meeting.
11
12 Q. I see. You gave some evidence to Mr Hickey to the
13 effect that there'd been a discussion about engaging
14 somebody from interstate?
15 A. Yes.
16
17 Q. And I might have misunderstood your evidence but it
18 sounded like you were saying that what was discussed was
19 engaging an interstate expert to review the lab?
20 A. Yes, that's what I recall.
21
22 Q. Is it? You remember that now, do you?
23 A. I do remember that Cathie had an idea to engage
24 interstate, yes.
25
26 Q. Perhaps just focus it on this meeting. Do you remember
27 a meeting on about 1 December 2021 where Ms Allen suggested
28 to you that you should engage an interstate expert to
29 review the lab?
30 A. Yes, I think this is what flowed from that.
31
32 Q. I see. Can I just check, this is your diary, you've
33 looked at it recently in preparation to give evidence?
34 A. No.
35
36 Q. I see. Have you discussed at all the idea that
37 Ms Allen suggested engaging an interstate expert to review
38 the lab with Ms Allen?
39 A. No.
40
41 Q. You say you have a recollection that that's what
42 happened?
43 A. I do remember Cathie having that thought.
44
45 Q. Can I suggest this to you: that the discussion in this
46 meeting, and I'll come in a moment to what this meeting
47 was, the discussion in this meeting was about engaging

1 somebody from interstate to review the Blackburn case file?
2 A. I believe so, yes.
3
4 Q. It wasn't about reviewing the operation of the lab?
5 A. Okay, yes, you're right.
6
7 Q. You made that up?
8 A. No, I'm just trying to recollect as best I can.
9
10 Q. Are you? When you look at that file note, that file
11 note is a file note about the Blackburn case?
12 A. Yes, you're right.
13
14 Q. And let me tell you what happened, or you tell me if
15 you remember these things, that there was to be a whole
16 team meeting on 3 December 2021?
17
18 THE COMMISSIONER: That's the Friday?
19
20 MR HODGE: Yes.
21 A. I think so, yes.
22
23 Q. And the notes that you have here are notes of a senior
24 leadership team meeting on 1 December 2021?
25 A. They were on Wednesdays, yes.
26
27 Q. And the members of the senior leadership team were you,
28 Ms Brisotto, Ms Allen and was Ms Keller also a member of
29 that senior leadership team?
30 A. She would come sometimes, yes.
31
32 Q. This was a meeting of the four of you?
33 A. I believe so.
34
35 Q. And this was a meeting discussing the recent issues
36 that had arisen in the media about the Blackburn case?
37 A. I believe so, yes.
38
39 Q. And what had happened a few days earlier, perhaps by
40 this stage almost a week earlier, was that Heather Thomas
41 had sent a series of queries about the Blackburn case?
42 A. Yes. I can't remember when that came but that was in
43 November.
44
45 Q. And there were emails that had been exchanged about how
46 to respond to those queries?
47 A. Yes.

1
2 Q. And then there had been I think a meeting that had
3 occurred, and I'll just give you the date, there had been a
4 whole team meeting that had occurred a few days earlier
5 than this, some time in late November?
6 A. Yes.
7
8 Q. And then there was a meeting of the analysis management
9 team on 29 November, so two days earlier?
10 A. The Forensic DNA Analysis - if that's the all team
11 meeting, yes.
12
13 Q. No, no, sorry, there was a meeting of the - there had
14 been a full team meeting that had occurred perhaps about a
15 week previously and then there'd been a meeting on
16 29 November which was the management team meeting?
17 A. Okay.
18
19 Q. And then you don't remember this?
20 A. I don't remember the sequence, no.
21
22 Q. And then there was this meeting on 1 December which was
23 a meeting between you and Ms Brisotto and Ms Keller and
24 Ms Allen?
25 A. Yes. I'd have to think back. There may have also been
26 Dr Peter Culshaw from Forensic Chemistry, I just can't
27 remember the attendees at this stage.
28
29 Q. What you were discussing at this meeting in part was a
30 whole team meeting presentation that was going to be given
31 on 3 December?
32 A. I think so, yes.
33
34 Q. And that was a presentation, I think it was going to be
35 given by Mr Parry?
36 A. Yes, he was going to give an update, yes.
37
38 Q. As part of that there was going to be an attempt to
39 refute the claims that were being made in the media about
40 the Blackburn case file?
41 A. Wanted to give some information to the staff about the
42 matter.
43
44 Q. The particular independent review that was discussed
45 was specifically an independent review of the Blackburn
46 case file?
47 A. Yes, I recall that now.

1
2 Q. Whether it was with Ms Allen or somebody else that
3 suggested it, nobody at that stage was suggesting a review
4 of the lab?

5 A. Okay, yes, you're right.

6
7 Thank you. I don't have any further questions.

8
9 THE COMMISSIONER: Thank you. Thank you, Mr Howes, you're
10 free to go. And thank you for your assistance.

11
12 <THE WITNESS WITHDREW

13
14 MR HODGE: The next witness is Ms Allen. I think we need
15 to stand down briefly so that the link can be put together.

16
17 THE COMMISSIONER: We'll adjourn until not before 25
18 past 3, but otherwise I'll wait to be told that you're
19 ready.

20
21 MR HODGE: Thank you, Commissioner.

22
23 **SHORT ADJOURNMENT**

24
25 THE COMMISSIONER: Yes, Mr Hodge.

26
27 MR HODGE: Commissioner, the next witness is Catherine
28 Allen. She's on the screen.

29
30 THE COMMISSIONER: Ms Allen can you see me?

31 A. Yes, I can.

32
33 Q. Yes. Do you want to take an oath or make an
34 affirmation?

35 A. I can take an oath.

36
37 <CATHERINE JANET ALLEN, sworn: [3.27 pm]

38
39 <EXAMINATION BY MR HODGE:

40
41 Q. Ms Allen, could you state your full name for the
42 Commission?

43 A. Catherine Janet Allen.

44
45 Q. And could you state your occupation?

46 A. Managing scientist, Police Services Stream at Forensic
47 and Scientific Services.

1
2 Q. Thank you. Now, you've provided a number of statements
3 to the Commission. I'm just going to take you through
4 those. The first is a statement dated 21 July 2022. Could
5 we bring up FSS.001.0011.5372. And if we go to p9, which
6 is .5380. You'll see there the 21 July 2022 date?
7 A. Yes.

8
9 Q. Do you have any corrections to that statement?
10 A. No, I don't.

11
12 Q. Is that statement true and correct to the best of your
13 knowledge and belief?
14 A. Yes, it is.

15
16 I tender that statement, Commissioner.

17
18 **EXHIBIT #168 STATEMENT OF CATHERINE ALLEN DATED 21 JULY**
19 **2022**

20
21 Q. And then the next statement is dated 12 August 2022 and
22 that's WIT.0019.0001.0001. If we go to p.0008. You'll see
23 there at the bottom of the date of 12 August 2022?
24 A. Yes, that's correct.

25
26 Q. Do you have any corrections to that statement?
27 A. No, I do not.

28
29 Q. Is that statement true and correct to the best of your
30 knowledge and belief?
31 A. Yes, it is.

32
33 I tender that statement, Commissioner.

34
35 **EXHIBIT #169 STATEMENT OF CATHERINE ALLEN DATED 12 AUGUST**
36 **2022**

37
38 Q. And then the next statement is dated 25 August 2022.
39 That's WIT.0019.0011.0001. And if we go to the page which
40 is .0005. And you'll see there the date 25 August 2022?
41 A. Yes, that's correct.

42
43 Q. Do you have any corrections to that statement?
44 A. No, I do not.

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

1 A. Yes, it is.

2

3 I tender that statement, Commissioner.

4

5 **EXHIBIT #170 STATEMENT OF CATHERINE ALLEN DATED 25 AUGUST**
6 **2022**

7

8 Q. And then the next statement is dated 16 September 2022
9 and that's WIT.0019.0012.0001. And if you go to p.0069.

10 You'll see there the date 16 September 2022?

11 A. Yes, that's right.

12

13 Q. And do you have any corrections to that statement?

14 A. No, I do not.

15

16 Q. And is that statement true and correct to the best of
17 your knowledge and belief?

18 A. Yes.

19

20 I tender that statement, Commissioner.

21

22 **EXHIBIT #171 STATEMENT OF CATHERINE ALLEN DATED 16**
23 **SEPTEMBER 2022**

24

25 Q. And then the next statement is dated 19 September 2022
26 and that's WIT.0019.0013.0001. And if you go to p.0029.

27 You can see there at the bottom of the page 19 September
28 2022?

29 A. Yes, that's correct.

30

31 Q. Do you have any corrections to that statement?

32 A. No, I do not.

33

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

36 A. Yes, it is.

37

38 I tender that statement, Commissioner.

39

40 **EXHIBIT #172 STATEMENT OF CATHERINE ALLEN DATED 19**
41 **SEPTEMBER 2022**

42

43 Q. And then the next statement is dated 20 October 2022.
44 That's WIT.0019.0037.0001. If you go to p.0002. You'll
45 see there the date 20 October 2022?

46 A. Yes, that's correct.

47

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

3 A. Yes, it is.

4

5 Q. Sorry, I should have asked, you don't have any
6 corrections to that statement?

7 A. No, I do not.

8

9 I tender that statement.

10

11 **EXHIBIT #173 STATEMENT OF CATHERINE ALLEN DATED 20 OCTOBER**
12 **2022**

13

14 Q. And then I think there's a second statement dated
15 20 October 2022 and, I apologise, I don't have a doc ID for
16 that one.

17

18 THE COMMISSIONER: There's a statement dated - do you mean
19 a second statement dated 11 October?

20

21 MR HODGE: No, a second statement dated 20 October 2022.

22

23 THE COMMISSIONER: All right. But you haven't tendered a
24 first statement of 20 October --

25

26 MR HODGE: Yes, that last one that I tendered was 20
27 October 2022.

28

29 THE COMMISSIONER: I'm sorry, I might have lost track --

30

31 MR HODGE: Perhaps if I just check. I'll tell you,
32 Commissioner, what I've got.

33

34 THE COMMISSIONER: I have 19 September and 11 October so
35 far. 11 October was --

36

37 MR HODGE: Then the one that we just looked at which was
38 WIT.0019.0037. 0001, that's 20 October. I'm sorry, I may
39 not have tendered that.

40

41 THE COMMISSIONER: No, you haven't.

42

43 **EXHIBIT #174 STATEMENT OF CATHERINE ALLEN DATED 20 OCTOBER**
44 **2022**

45

46 MR HODGE: Thank you. And then there's one more but I
47 don't have that. I now have a doc ID for it. It's

1 WIT.0019.0040.0001.

2
3 MR HUNTER: Commissioner, can I indicate that we don't have
4 the statement dated 20 October 2022. Some of our
5 colleagues don't either.

6
7 THE COMMISSIONER: I see. All right, we'll sort that out.

8
9 MR HUNTER: Thank you.

10
11 THE COMMISSIONER: Mr Hodge, you were dealing with
12 20 October, the second one of 20 October 2022.

13
14 MR HODGE: Yes. So that's up on the screen now and if we
15 go to p43 of that statement. You can see there the date
16 20 October 2022?

17 A. Yes, that's right.

18
19 Q. Do you have any corrections to that statement?
20 A. No, I do not.

21
22 Q. Is that statement true and correct to the best of your
23 knowledge and belief?

24 A. Yes, it is.

25
26 I tender that statement, Commissioner.

27
28 **EXHIBIT #175 STATEMENT OF CATHERINE ALLEN DATED 20 OCTOBER**
29 **2022**

30
31 MR HODGE: We'll deal with that overnight, Commissioner, to
32 make sure --

33
34 THE COMMISSIONER: You're not going to get to that
35 statement in the next hour anyway.

36
37 MR HODGE: I will not.

38
39 Q. Ms Allen, I think that's all of the statements you've
40 provided to the Commission. Can I begin with this: how
41 long have you worked at the Queensland Health Forensic and
42 Scientific Services?

43 A. Twenty three years.

44
45 Q. And how long have you held the role of Managing
46 Scientist?

47 A. Since 2008.

1
2 Q. And immediately before you held the role of Managing
3 Scientist, what role did you hold?

4 A. I was team leader for volume crime.
5

6 Q. And how long did you hold that role for?

7 A. Approximately two years I think.
8

9 Q. Thank you. Now, I just need to ask you some questions
10 just so I have some sense of what your level of knowledge
11 is. Have you been able to read or have you read the
12 statements of other witnesses who have been called before
13 the Commission?

14 A. I've read statements that have been provided to me by
15 my lawyers to read, yes.
16

17 Q. And have you read the expert reports that have been
18 obtained by the Commission?

19 A. From Dr Linzi Wilson-Wilde and Dr Bruce Bidelli, yes.
20

21 Q. You haven't read another report about validation?

22 A. From?
23

24 Q. You haven't read any report by anybody other than
25 Wilson-Wilde and Bidelli?

26 A. Yes, that's right.
27

28 Q. Just to be clear, you haven't red the report of Clint
29 Cochrane in relation to sperm microscopy?

30 A. Yes, I'm sorry, I have read that one. Yes, sorry.
31

32 Q. Thank you. And have you been able to watch any of the
33 hearings of the Commission of Inquiry?

34 A. I watched the opening address on the first day and I've
35 watched small snippets of other days just to see who was
36 on, but not very much.
37

38 Q. And have you read any of the transcript of the evidence
39 that's been given by witnesses?

40 A. I've read a small portion of the transcript from
41 Mr Drummond.
42

43 Q. I see. Where I'd like to begin is at the end, and that
44 is in relation to concentration and the period June to
45 August of this year.
46

47 Now, I wonder if we might start by bringing up your

1 statement of, and I think it's the 19 September statement,
2 so that is WIT.0019.0013.0001. If we go first to p6 of
3 that statement. On this page you set out the two, or you
4 set out your recollection of what happened in relation to
5 the two options that were ultimately provided by Lara
6 Keller on 3 June 2022 to some of her superiors, including
7 the Director General?

8 A. Yes, that's right.

9
10 Q. Then later in your statement, if we go to p8, you see
11 question 6, you set out in response to that an explanation
12 as to how it was that, how there had been an issue with the
13 information that was provided to the Director General on
14 3 June 2022?

15 A. Yes, that's right.

16
17 Q. If we go over the page, you see at paragraph 31 in the
18 second sentence you say:

19
20 *The meeting discussed that the advice being*
21 *put forward was to correct my unintended*
22 *human error and to provide additional*
23 *context and information due to different*
24 *staff members now being involved.*

25
26 A. Yes, that's right.

27
28 Q. Now, as I understand it, in August of this year you
29 told a number of people within Queensland Health that you
30 had made an unintended human error in the information that
31 you provided to Ms Keller on 3 June 2022?

32 A. Yes, that's right.

33
34 Q. And perhaps we can just start by identifying with some
35 specificity what the error in the information was that was
36 provided to Ms Keller. You told Ms Keller that immediately
37 prior to the change in 2018 to the DIFP process that
38 samples in the DIFP range, that is between .001 nanograms
39 per microlitre and .0088 nanograms per microlitre had gone
40 direct to amplification rather than going to concentration?

41 A. I had used the words "pre-2018" and in my attempt to be
42 succinct in describing that it lost its meaning, because
43 that's not what I had intended for that sentence to say.

44
45 Q. Now let's unpack that. Perhaps you can - perhaps then
46 I should confirm this. You maintain to the Commission that
47 on 3 June 2022 you made an unintended error in the

1 information that you provided to Ms Keller?
2 A. Yes, that's right.
3
4 Q. You say it wasn't deliberate?
5 A. That's exactly right, it was not deliberate.
6
7 Q. And you say that you realised that this error had been
8 made when?
9 A. When I had a meeting with Mr Rice.
10
11 Q. That is, the Senior Counsel acting for Queensland
12 Health in this Inquiry?
13 A. Yes, that's right.
14
15 Q. And that, as I understand your evidence, was on
16 15 August 2022?
17 A. Yes, that's right.
18
19 Q. Let's then return to what you say the error was. Tell
20 me again what the error was?
21 A. So Ms Keller asked me to supply workflow options that
22 did not include the DIFP process, and so when I described
23 the two workflow options that were available, I didn't
24 describe the first one accurately and in trying to be
25 succinct and say that it was a workflow used prior to 2018,
26 I should not have said those things because I now realise
27 that saying immediately prior to 2018 Options Paper is
28 different to pre-2018.
29
30 Q. Perhaps what we might do is bring up your email. Can
31 we bring up FSS.0001.0051.7341. This is the email that you
32 sent to Ms Keller and Ms Slade on 3 June 2022?
33 A. Yes, that's correct.
34
35 Q. And when you sent this email you were, were you in the
36 same room as Ms Keller?
37 A. No, I believe I was in my own office.
38
39 Q. Did you then go around to Ms Keller's office?
40 A. Yes, that's right.
41
42 Q. You say, do you, that Ms Keller asked you for options?
43 A. Yes, that's right.
44
45 Q. Options to do what?
46 A. I was asked for workflow, DNA workflow options that did
47 not include the DIFP process which had been introduced in

1 February 2018.

2

3 Q. I see. So you came up with two options?

4 A. Yes, that's right.

5

6 Q. You say to the Commissioner that one of the options you
7 came up with was for samples in the DIFP range to go
8 straight to amplification?

9 A. Yes, that's right.

10

11 Q. That's what in your email you describe as Option 1?

12 A. Yes, that's right.

13

14 Q. You thought that was the preferred option?

15 A. At that time, yes.

16

17 Q. And the other option, Option 2, was for samples in the
18 range .001 to .0088 to go automatically to
19 micro-concentration before amplification?

20 A. Yes, that's right.

21

22 Q. And tell me if you agree with this, what you've
23 described as Option 2 was in fact the process immediately
24 before the decision was made in 2018 to introduce the DIFP
25 process?

26 A. Yes, that's right.

27

28 Q. And on 3 June 2022 you knew that that was the process
29 immediately before the decision had been made in 2018 to
30 change the process?

31 A. Yes, I knew there was those two workflow options, yes.

32

33 Q. No, no, sorry. Just listen carefully to my question.
34 On 3 June 2022 you knew that the process immediately before
35 the change had been made in 2018 was what in your email was
36 described as Option 2?

37 A. Yes, that's right.

38

39 Q. You say you decided to describe a process that was not
40 the process that was in place immediately before 2018 as
41 the revert to pre-2018 workflow?

42 A. That's right, that's the mistake I made.

43

44 Q. You decided to describe the process that was in place
45 immediately before the 2018 decision as discontinued 2018
46 workflow and concentrate samples?

47 A. Yes, that's right.

1
2 Q. There's a number of propositions I need to put to you.
3 The first is Option 2 is also on any view a pre-2018
4 workflow?

5 A. Yes, that's right.

6
7 Q. And Option 2 is more accurately described as a pre-2018
8 workflow than Option 1?

9 A. Yes, it is.

10
11 Q. And when had Option 1 last been in place in the lab?

12 A. It was in place for volume crime samples prior,
13 immediately prior to change over to Profiler - sorry, when
14 volume crime samples were processed in Profiler Plus that's
15 the workload that they used.

16
17 Q. That is when volume samples were processed in Profiler
18 Plus they weren't concentrated, is that your evidence?

19 A. Yes, that's right.

20
21 Q. Ms Allen, I think it might be simpler if I just put
22 this to you. The evidence you're giving is a lie, isn't
23 it?

24 A. No, that's not right. I'm not lying. I genuinely made
25 a mistake on that day. I had previously - to provide some
26 context, prior to getting this request I had previously put
27 together what's described as a hot issues brief to provide
28 information to the Director-General, and I was asked to do
29 this in a short time frame and also provide costing data
30 with it, and I made a genuine human error.

31
32 Q. Perhaps then we might - unfortunately now I'll have to
33 test this. Why don't you tell the Commissioner why it is
34 that going straight to amplification was the preferred
35 option?

36 A. To progress to amplification, that can give you an
37 indication of what the profile looks like and then you can
38 make decisions around that about whether you need to
39 microcon that sample or whether you're able to report on
40 that profile.

41
42 Q. Ms Allen, why was going straight to amplification the
43 preferred option over going to concentration?

44 A. Because I didn't accurately describe what that process
45 was, which would have made it more obvious that Option 1
46 was actually the preferred.

47

1 Q. No, no, you said you did. You described Option 1 as
2 the preferred. My question is on your evidence why was
3 Option 1, going direct to amplification rather than
4 concentration first, the preferred option?

5 A. Because as I said I didn't describe that process
6 properly, which would have then flagged that Option 1 was
7 actually the preferred option.

8
9 Q. No, I'm very sorry, I don't understand, Ms Allen. You
10 describe, we can see your email, you described Option 1 as
11 the preferred option. Do you see that on the screen?

12 A. Yes, I do. When I say that it was pre-2018 workflow,
13 if I had been more descriptive around what that was, that
14 would have then made it clear that that was the option that
15 was immediately prior - sorry, that was not the option
16 immediately prior to 2018 and I would have been able to
17 pick up my mistake.

18
19 Q. I understand that you did not accurately describe what
20 was the pre-2018 workflow, we'll come back to that.

21
22 THE COMMISSIONER: Ms Allen, let's forget about whether
23 something was the pre-2018 process or not. In fact for the
24 whole time from 2012, at least from 2012 until early 2018
25 the standard operating procedure at the lab for low quant
26 samples was to micro-concentrate them before amplifying
27 them, that's right, isn't it?

28 A. Yes, that's right.

29
30 Q. That decision had been made because it was regarded as
31 the best way of achieving the highest proportion of
32 successful profiles from samples of that kind?

33 A. Yes, that's right.

34
35 Q. So why in your opinion did taking samples straight to
36 amplification without first concentrating them become the
37 preferred process over the process of concentrating them
38 before amplifying them?

39 A. Because as I say I didn't accurately describe what that
40 was and then that meant that that became the preferred
41 option. Whereas if I had accurately described it, it would
42 not have been referred to as the preferred option because
43 of my error.

44
45 Q. But I understood that your error was in describing one
46 of the two options as the pre-2018 process. I understand
47 that's what you say. I'm asking you about something

1 different. Whether you call something the pre-2018
2 process, why did you recommend - advise that a process that
3 did not involve micro-concentrating low quant samples was
4 preferable over the one that did involve
5 micro-concentration? How in your mind was that the
6 preferable way to proceed?
7 A. That was part of my error as well. So in describing it
8 I didn't describe it right and I also then didn't put
9 forward the preferred option.

10
11 Q. So you have made two mistakes. One was to describe
12 something as a pre-2018 process which it wasn't, and the
13 second is that you described as the preferable process the
14 one that was least preferable, is that what you're saying?

15 A. Yes, I am.

16
17 Q. Mr Hodge.

18
19 MR HODGE: Immediately before you sent this email had you
20 discussed the options with anybody else?

21 A. Yes, I had a phone conversation with Mr Howes.

22
23 Q. I see, I'll come to that in a moment. Did you speak to
24 Ms Brisotto as well?

25 A. Yes, I did, to ask her about costing.

26
27 Q. What it costs depending on which the option was?

28 A. Yes, that's right, I was asked to also include a
29 costing within that.

30
31 Q. When you spoke to Mr Howes, do the best you can for us,
32 what do you remember about that conversation?

33 A. That Lara had asked me to provide options on workflows
34 that did not include the DIFP process and we discussed the
35 two options.

36
37 Q. Did he express a view to you about which was the
38 preferred option?

39 A. No, he did not. We just discussed what the options
40 were.

41
42 Q. I see. And then after you sent this email to Ms Keller
43 did you go around to Ms Keller's office?

44 A. Yes, that's right.

45
46 Q. And then you and Ms Keller and Ms Slade were in the
47 office and Ms Keller was crafting the final email that she

1 sent to the Director-General?
2 A. Yes, that's right.
3
4 Q. So she was discussing it with you what changes she
5 would make in order to send it to the Director-General?
6 A. Yes, that's right.
7
8 Q. So then can we put up on one side of the screen that
9 email that we've got up at the moment, operator, and then
10 on the other side of the screen can we bring up
11 FSS.0001.0051.5400. So you see, just to put this in some
12 timeline, you emailed Ms Keller at 3.58 pm?
13 A. Yes.
14
15 Q. Then she sent her email at 5.10 pm?
16 A. Yes.
17
18 Q. You must have spent about an hour together discussing
19 the email that she was going to send?
20 A. I think I spent most of my proportion of the time with
21 Ms Slade.
22
23 Q. Doing what?
24 A. Discussing the costings and also what would be finally
25 sent as well.
26
27 Q. Did you see the final draft before it was sent by
28 Ms Keller?
29 A. No, I did not.
30
31 Q. But you were discussing what exactly was going to be
32 sent in the email?
33 A. Yes, that's right.
34
35 Q. Have I understood your evidence to be that you also
36 knew on 3 June that the preferable scientific course would
37 be to concentrate first rather than going direct to
38 amplification?
39 A. Yes, if we were reverting to that, yes, that's right.
40
41 Q. It's not just if you were reverting to that, it's that
42 as a matter of science in the sense that you had validated
43 and studied these things in the lab, concentrating was
44 preferable to going straight to amplification?
45 A. Yes, that's what the validation showed, yes.
46
47 Q. And you knew that on 3 June?

1 A. Yes, I did.

2

3 Q. As I understand your evidence to the Commissioner you
4 say another unintended error you made was to describe going
5 straight to amplification as the preferred option when
6 actually the preferred option was going to concentration?

7 A. Yes, that's right.

8

9 Q. You say during the course of being in Ms Keller's
10 office and talking to Ms Slade and discussing the email,
11 you just never realised that you were incorrectly
12 describing the nonpreferred option as the preferred option?

13 A. Unfortunately I did not.

14

15 Q. That is very unfortunate. Can I give us an explanation
16 of how it could be that you hadn't realised?

17 A. It seemed clear in my mind what I was describing but in
18 hindsight it was not clear.

19

20 Q. I think that's a difficult answer to accept, Ms Allen,
21 because the email - both emails are quite clear, there are
22 two options. One is described as preferred and one is
23 described as not preferred. So it doesn't seem as if there
24 was some lack of clarity in how you were describing it, do
25 you agree with me?

26 A. From my perspective in describing Option 1 I didn't
27 describe that accurately and so therefore that's when I
28 then attached that as being preferred when that wasn't
29 correct, and that's my error. I made an error.

30

31 THE COMMISSIONER: What was the inaccuracy in the
32 description, in your description of Option 2?

33 A. When I said revert to pre-2018 workflow and then
34 describing (indistinct words).

35

36 Q. Yes, you made two errors you said. One is to call
37 Option 1 the pre-2018 workflow when it wasn't, and the
38 second was to describe the least preferred option as the
39 preferred option. The trouble with that answer is that for
40 each of Option 1 and Option 2 you explain why it's better
41 or worse. So with Option 1 you explain why not
42 concentrating the samples is the preferred option, you give
43 reasons for it. So how was it that you made a mistake in
44 giving the reasons why Option 1 was better than Option 2,
45 how could you have done that by mistake?

46 A. Because I was describing two different options that we
47 could use and so within Option 1 it was a feasible option

1 and here's why it was a feasible option, and then in Option
2 2 this is the option that it was and this is why it was
3 feasible. And so that's how I've described them but it's
4 the beginning of each of those revert to, you know,
5 pre-2018 workflow, that wasn't an accurate description,
6 that was me trying to be succinct, and then also with
7 describing Option 2 around discontinue 2018 workflow, I
8 should have been more specific around what that was.

9
10 Q. So in Option 1 is it true that the process described
11 under Option 1 will generate about six weeks of backlog for
12 six months?

13 A. Sorry, I'm just re-reading the email again.

14
15 Q. Yes, take your time please?

16 A. My understanding was that discussing a backlog was
17 around the additional labour that we were attempting to
18 bring on.

19
20 Q. Yes. Was it true that Option 1 would have resulted in
21 six weeks' backlog, that was a fair estimate?

22 A. At the time yes, it was.

23
24 Q. And was it true that Option 2 would have generated
25 three months' backlog for six months, was that your
26 estimate at the time?

27 A. Yes, that was the estimate at the time.

28
29 Q. So was it true that Option 1 would have resulted in a
30 cost of \$60,000 and Option 2 would have resulted in a cost
31 of \$80,000?

32 A. Yes, they were the best estimates that I could get.

33
34 Q. So they were the reasons you put forward for why Option
35 1 was better, it was cheaper and would lead to less
36 backlog, so it was the preferred option, wasn't it, on
37 those facts?

38 A. If only those facts were taken into consideration, yes.

39
40 Q. So what was the mistake that you made?

41 A. That I didn't accurately describe either the option,
42 Option 1 I didn't accurately describe, and then I called it
43 preferred option, because the other costings and additional
44 labour, costs of labour that we were trying to get to come
45 into the lab weren't based on either of those two options.

46
47 Q. Well, it's plain that taking a course that involved

1 less work has to be cheaper and has to involve less work,
2 so it was true that Option 1 from that point of view was
3 more advantageous wouldn't you say?

4 A. Yes, that's right.

5

6 Q. So what's the error?

7 A. The error's that I described Option 1 incorrectly.

8

9 Q. Yes Mr Hodge.

10

11 MR HODGE: Do you see, Ms Allen, reading the email that you
12 sent you identified only costs of choosing Option 2 over
13 Option 1?

14 A. That's what I was asked to do.

15

16 Q. No, no, no, I'm sorry, just listen to my question. Do
17 you see when you set out the case for Option 1 and Option
18 2, in respect of Option 2 you only identify costs of
19 choosing Option 2 over Option 1, you don't identify any
20 benefits of choosing Option 2 over Option 1?

21 A. Yes, that's right.

22

23 Q. The point the Commissioner is just trying to tease out
24 with you is it seems like if your reasoning process only
25 identifies costs of Option 2 over Option 1 and no benefits
26 of Option 2 over Option 1, it would follow on that
27 reasoning process that Option 1 would be preferred?

28 A. That wasn't my thinking at the time. I gave those
29 costings because that's what I was asked to also give, was
30 costings around that. But my error was around the
31 description of Option 1 and saying preferred, that's my
32 error.

33

34 Q. Do you agree with this: that if the Director-General
35 had to choose between two options, if there were benefits
36 of one option over another he would need to know about
37 those benefits to make that choice?

38 A. Yes.

39

40 Q. Do you agree that you, I think you've already agreed,
41 you haven't set out any benefits of Option 2 in your email?

42 A. That's right.

43

44 Q. So did you make a third error, do you say, that you
45 also failed to identify what the actual relevant
46 considerations were in choosing between Option 1 and Option
47 2?

1 A. Sorry, could you just repeat that again?
2
3 Q. Yes. Do you think you made a third error then in that
4 you also failed to identify what the actual relevant
5 considerations were in choosing between Option 1 and Option
6 2?
7 A. I didn't identify the benefits, yes, that's right.
8
9 Q. Was that an error or was that deliberate?
10 A. In hindsight that was an error as well.
11
12 Q. Do you think you might have made a fourth error because
13 --
14
15 THE COMMISSIONER: Excuse me, Mr Hodge. What was the
16 error? What should you have identified? What should you
17 have made plain in that respect?
18 A. The benefits and risks of both of the options and then
19 the costings of both of the options to provide, you know,
20 more transparent information for decision-making.
21
22 Q. What are the benefits of Option 1?
23 A. I think I said there the benefits there are that, you
24 know, you can check the profile to see if it requires
25 additional work on it with auto - you know, with
26 micro-concentration for that, and it is a faster process to
27 go from step one all the way through to step five without
28 having necessarily the microcon process taking place within
29 that.
30
31 Q. What are the benefits of Option 2 that you didn't
32 provide?
33 A. That you can concentrate those samples as the PowerPlex
34 21 validation highlighted to try to increase the DNA
35 profile that you get from low quant samples.
36
37 Q. And so the benefit of Option 2 is that you're more
38 likely to get a usable profile?
39 A. That's right.
40
41 Q. Did you really think that the Queensland Government was
42 concerned about spending an extra \$20,000 when what that
43 \$20,000 would - I'll put that another way. Did you really
44 think the Queensland Government was interested in saving
45 \$20,000 every six months in testing these samples if they
46 knew that spending \$20,000 every six months, an extra
47 \$20,000 every six months would have resulted in the greater

1 likelihood of serious violent crimes being solved? Did you
2 really think the \$20,000 difference was a relevant
3 criterion to be putting forward as something that the
4 Minister or the Director-General should consider?

5 A. That's what I was asked to do was to put forward
6 costings within that. That was part of what Lara had asked
7 me to do.

8
9 Q. Mr Hodge, I'd be interested in the instructions that
10 Ms Keller gave.

11
12 MR HODGE: Yes.

13
14 Q. Is it possible that actually what Ms Keller asked you
15 to do was to identify for her what the pre-2018 workflow
16 had been?

17 A. No.

18
19 Q. So she wasn't looking for options, she was looking to
20 have an explanation of the process to undo the decision
21 that was made in 2018?

22 A. She asked me for workflow options that did not include
23 the 2018 options. That's what she asked me to do.

24
25 Q. I'm sorry, I didn't mean to interrupt you, Ms Allen.
26 You finish your answer?

27 A. And so then once the options were starting to be
28 formulated, she also then asked about costings for that and
29 what might be needed for that change.

30
31 Q. Sorry, maybe we'll just try to put this in some sort of
32 context. You send your email at 4 pm in the afternoon.

33 When did Ms Keller, as you recall it, ask you for options?

34 A. Maybe an hour before that. I'm sorry, I don't remember
35 an exact time but maybe an hour.

36
37 Q. And when do you say she asked you for costings?

38 A. When I started to draft them and was talking with
39 Ms Slade, then there was the request about that we would
40 need to include costing as well.

41
42 Q. That can't be true and I'll show you why. You see, you
43 send your email to Ms Keller and Ms Slade at 4 pm and then
44 your evidence earlier was you then went round to
45 Ms Keller's office but you were primarily talking to
46 Ms Slade. So you'd already sent the information about
47 costings before you went round to talk to Ms Slade?

1 A. Okay, maybe I've got that timing wrong. I'm sorry, the
2 clarity of that is not good for me.

3
4 Q. You see, it looks quite obviously, Ms Allen, like you
5 deliberately provided misleading information?

6
7 THE COMMISSIONER: Well false information, you should put
8 that.

9
10 MR HODGE: I should. It looks, Ms Allen, like you
11 deliberately provided false information?

12 A. That was not what I was doing.

13
14 Q. And you did that for a purpose, which was that you
15 wanted the change in workflow to be to one that was less
16 likely to be successful in producing profiles?

17 A. No, that's not true.

18
19 Q. And the reason that you wanted that was because it
20 would then make it look like the decision in 2018 had not
21 been as significant as it was?

22 A. No, that's not true.

23
24 Q. And that's why you described falsely option 1 as the
25 pre-2018 workflow so that people would think that what was
26 being switched back to was the workflow immediately before
27 the 2018 decision had been made?

28 A. No, that's not what I was trying to do.

29
30 Q. And that would be to your personal advantage, because
31 it would perhaps help you to avoid criticism for the
32 decisions that you had made and brought about in 2018?

33 A. No, that's not true.

34
35 Q. Let me then ask about this: you remember then on
36 6 June you were told that the decision had been made to
37 adopt your option 1?

38 A. Yes, to adopt option 1, yes.

39
40 Q. And that was announced to the staff?

41 A. Yes, that's right.

42
43 Q. And do you remember Mr Howes speaking to you afterwards
44 about the adoption of this direct to amplification process?

45 A. The conversation as I remember it, he said this is the
46 option that we are going with, and I said yes, because that
47 was what I'd been advised.

1
2 Q. I just want to check this out. You know Mr Howes
3 has been giving evidence in the last few days?
4 A. Yes, I do.
5
6 Q. And have you been watching his evidence?
7 A. No, I have not.
8
9 Q. Okay. But you say you remember a conversation on
10 6 June where Mr Howes spoke to you about what option was
11 chosen?
12 A. He just said, "Is this the option that we're going
13 with?" And I said, yes, that's the option that was chosen.
14 It was a very simple conversation.
15
16 Q. Why was he asking you that question?
17 A. From my perspective he was just double-checking that
18 that's what we were doing.
19
20 Q. So where did this conversation occur?
21 A. I think it was in the hallway outside my office but I
22 could be wrong.
23
24 Q. And you say he just said to you, "Is this the option
25 we're going with"?
26 A. That's my recollection, yes.
27
28 Q. Did it occur to you on 6 June that the option that had
29 been chosen was the one that you knew was not the preferred
30 option?
31 A. If I had realised my human error at that time I would
32 have come forward and said --
33
34 Q. Sorry, Ms Allen, just stop. I'm not - we'll come back
35 to whatever it is that your human error is. Just listen to
36 my question if you will. I've understood your evidence to
37 be that one of the other errors that you made was that you
38 wrongly described the non preferred option as the preferred
39 option and, conversely, you described the preferred option
40 and the non preferred option. That's your evidence, isn't
41 it?
42 A. Yes, that's right.
43
44 Q. And so my question is: did you realise on 6 June that
45 the option that had been chosen was the one that you
46 regarded as not the preferred option?
47 A. No, I didn't.

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Q. But how could you not have realised that?

A. Because the options went forward. Option 1 was chosen and that's what Lara advised me of and that's what we implemented.

Q. No, I understand, but setting aside whatever was in the emails, there were two options and one of them you regarded as the preferred option, which was going to concentration. Surely you must have realised on 6 June that strangely, inexplicably the Government has chosen what you think is the not preferred option?

A. No, at that time I didn't realise the error that I'd made.

Q. And then a couple of weeks later Dr Moeller sent you an email?

A. She did, yes.

Q. And you remember this email?

A. Yes, I do.

Q. Have you looked at it recently?

A. No.

Q. I'll bring up WIT.0011.0017.0001. Can we show both pages of the email. You see at the bottom of the page, of the first page, is the start of Dr Moeller's email?

A. Yes.

Q. And she's says she's been off sick and she's just come back and discovered DIFP samples are going straight through to a 15 microlitre amplification and not being concentrated first with a microcon?

A. Yes, that's right.

Q. And she says she's confused about this new approach?

A. Yes.

Q. And notes that other samples in the DIFP range are going for a microcon. Do you see that?

A. That that was the process used prior, yes, I see that line.

Q. No, no, no. We haven't got to the third dash yet. You see the first two dashes are:

1 *If QPS request work on a DIFP sample it*
2 *goes for a microcon first.*

3
4 A. Yes.

5
6 Q.
7 *P1 samples in the DIFP range go for a*
8 *microcon.*

9
10 A. Yes.

11
12 Q. And then she points out that the auto microcon process
13 was the process used prior to the DIFP process?

14 A. Yes, that's right.

15
16 Q. And perhaps you might help us understand why was it
17 that P2 samples within the DIFP range were going straight
18 to amplification, whereas P2 samples where the QPS
19 requested a rework were going to a microcon first and P1
20 samples in the DIFP range were going for a microcon?

21 A. My understanding is that that first line was the
22 current - well, the process that was in place prior to
23 6 June was QPS request work on a DIFP sample and it would
24 go for a microcon. And the same for P1 samples. That's my
25 understanding of what she was talking about there.

26
27 Q. Sure. So just tell us why was it in your lab that for
28 DIFP samples that were P2 or P3 that had been identified as
29 DIFP prior to 6 June, they would go to a microcon first if
30 QPS requested that they be worked up, and P1 samples in the
31 DIFP range would continue with the pre 6 June process of
32 going to a microcon, but samples that hadn't been
33 processed, because they were in the DIFP range, would now
34 be processed but go straight to amplification? Who made
35 that decision?

36 A. I believe that was based on the fact that the
37 discussion may have been around priority 2 samples, rather
38 than priority 1 samples.

39
40 Q. But who made the decision?

41 A. I don't remember, I'm sorry, I can't recall off the top
42 of my head.

43
44 Q. It must have been you, wasn't it?

45 A. That I said this is the options and this is what we do
46 after 6 June?

47

1 Q. You must have made the decision as to how in your lab
2 the samples that had tested DIFP pre 6 June were to be
3 dealt with where police requested that they be worked up
4 after 6 June and you must have made the decision about how
5 P1 samples would be dealt with after 6 June and that they
6 would be dealt with differently from what you apparently
7 thought had been the decision by the Director General?

8 A. My recollection is that the Forensic Register was
9 amended after 6 June for priority 2 samples and so that's
10 why priority 1 samples within the DIFP range would still
11 have been auto microconed. That's my recollection of that.

12
13 Q. All right. Well let's leave aside for the moment P1
14 samples. Taking just the first point. If a sample had
15 tested in the DIFP range before 6 June, then after 6 June
16 it would only be worked up if the police requested that it
17 be worked up?

18 A. A scientist could also request microcon for that sample
19 as well.

20
21 Q. But in terms of ordinary practice, when it happened it
22 happened because the QPS requested it?

23 A. My understanding is that scientists also requested
24 microcon as well.

25
26 Q. How often?

27 A. I don't have any figures on that, I don't know how
28 often they did, but they may have done those decisions
29 based on the sample type, the case, the results they
30 already had, et cetera.

31
32 Q. By this time, that is by June of 2022, had the police
33 adopted a practice of requesting that every sample that
34 tested DIFP and hadn't been processed be processed?

35 A. My understanding is not every sample. They had
36 selected particular samples to go back for auto micro
37 concentration prior to amplification.

38
39 Q. So focusing on the period after 6 June, why were P2
40 samples in the DIFP range that had been identified in that
41 range pre 6 June to go to auto microcon whereas P2 samples
42 in the DIFP range that were identified after 6 June to go
43 straight to amplification?

44 A. We'd previously had QPS provide advice that P1 samples,
45 if they were in the DIFP range, would automatically be --

46
47 Q. I'm sorry, it would be good if you just direct your

1 attention to my question. I didn't ask about P1 samples,
2 I'm asking about P2 samples. Why, what is your explanation
3 for why after 6 June 2022 a P2 sample that had tested
4 within the DIFP range before 6 June would go to auto micro
5 concentration if somebody requested that it be tested, but
6 a P2 sample that tested within the DIFP range after 6 June
7 would go straight to amplification?

8 A. It was based on the options that we had provided with
9 my error and I was told that option 1 was the option that
10 was chosen and so that's where, that's why that occurred.

11

12 Q. But why if option 1 was chosen, that it was decided
13 that it would be a good idea for all samples in the DIFP
14 range to go straight to amplification, why did that only
15 apply to samples that tested in the DIFP range after
16 6 June?

17 A. I'm sorry, I don't follow your question. Could you
18 please ask me again.

19

20 Q. Yes. Why, if it had been decided, as you understood
21 it, that the preferred course was that DIFP samples go
22 straight to amplification, why did that only apply to P2
23 samples that had tested in the DIFP range after 6 June and
24 not P2 samples that had tested in the DIFP range before
25 6 June?

26 A. Because the decision had been made on 6 June.

27

28 Q. Yes. But requests for samples to be worked up that had
29 tested in the DIFP range before 6 June were coming in after
30 6 June. That's the point being made by Dr Moeller. So why
31 did option 1 not get applied to all of the samples?

32 A. I didn't make that decision. I would only be making an
33 assumption that you would apply the pre 6 June rules to any
34 sample received pre 6 June and that you would apply the new
35 rules to anything that was received after or tested after
36 6 June.

37

38 Q. You did make the decision, didn't you? Didn't you give
39 Mr Ryan the instructions to send out an email advising of
40 the change?

41 A. I discussed with Paula and Justin around the option
42 that had been made, sorry, the option that had been chosen.

43

44 Q. When did you discuss that?

45 A. I think as soon as Lara had phoned me to tell me what
46 the option was, my recollection is that I spoke with them.
47 Maybe I didn't. To be honest, I actually can't recall.

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Q. So just, given the time, I just want to ask you a few more questions before we finish for the afternoon. You got this email from Dr Moeller and having received this observation from a more junior scientist within the lab, did you take any action?

A. I said that Justin would be able to discuss this with her.

Q. Did you go back to look at your email that you'd sent on 3 June to see "what on earth did I tell them"?

A. No, I did not.

A. Did you at any stage say to Ms Keller "what we've chosen is not the preferred option"?

A. No, I didn't, because I didn't realise at that time.

Q. No, no, no, but you did realise, you realised that it was - regardless of realising that you'd made an error in your email, as you claim, you realised that what was being done was not scientifically the preferred option?

A. Scientifically you can still get DNA profiles.

I understand.

THE COMMISSIONER: Then why did you have this tedious process of micro concentrating everything for six years between 2012 and 2018?

A. That was what the PowerPlex 21 validation had shown, that for that particular range, that you could get some DNA profiles if you auto microconed them prior to amplification.

Q. That created the best prospect of getting a usable profile?

A. Yes.

Q. So when Dr Moeller pointed out to you in this email "that auto microcon was the process that we had been using until that day", it must have struck you immediately that you'd made a mistake?

A. Unfortunately, no, it didn't.

Is that a convenient time or did you want to go on?

MR HODGE: I just wanted to ask a few more questions, Commissioner.

1
2 Q. Even if it didn't strike you that you'd made a mistake,
3 it was obvious to you that the course that had been chosen
4 would produce less usable profiles than if the other option
5 had been chosen?
6 A. Not necessarily, no.
7
8 Q. You say that wasn't obvious to you?
9 A. No.
10
11 Q. And when Dr Moeller sent her email that must have
12 identified this to you, it still didn't occur to you?
13 A. No, because, as I say, I was quite clear about what I
14 thought I had meant with providing the options, so it
15 didn't occur to me about that until I later had a meeting
16 with Mr Rice.
17
18 Q. Now, you remember on 6 June Ms Keller held a meeting
19 with all of the staff of the lab?
20 A. Yes.
21
22 Q. And do you remember that she said you were returning to
23 the pre-2018 process?
24 A. No, I don't remember her saying that.
25
26 Q. How do you remember her explaining what was being done?
27 A. That options had been put forward and this was the
28 option that was chosen.
29
30 A. I see. I think I have to put this to you before we
31 finish up so that it's fresh. The evidence that you have
32 given this afternoon about having made an error on 3 June
33 in the information that you communicated is false?
34 A. No, that's not true. I made a human error and I have
35 degraded myself since then for that but I made a human
36 error.
37
38 Q. And I better just check one thing or confirm one thing.
39 You're at your solicitors' offices, aren't you?
40 A. Yes, I am.
41
42 Is that a convenient time, Commissioner?
43
44 THE COMMISSIONER: Yes, it is. We'll adjourn until 9.30
45 tomorrow.
46
47 <THE WITNESS WITHDREW

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3

AT 4.38 PM THE COMMISSION WAS ADJOURNED TO FRIDAY,
28 OCTOBER 2022 AT 9.30 AM