

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

Brisbane Magistrates Court
Level 8/363 George Street, Brisbane

On Friday, 28 October 2022 at 9.30 am

Before: The Hon Walter Sofronoff KC, Commissioner

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

1 THE COMMISSIONER: Mr Hodge.

2

3 MR HODGE: Thank you.

4

5 <CATHERINE JANET ALLEN, recalled, on former oath: [9.34 pm]

6

7 <EXAMINATION BY MR HODGE:

8

9 Q. Ms Allen, can you hear me?

10 A. Yes, I can.

11

12 Q. Thank you. Now, yesterday we'd been talking about the
13 decision that was made on 6 June. I want to ask you about
14 a couple of things that happened around that same time.
15 One is about when the police were informed about the nature
16 of the decision that was made?

17 A. Yes.

18

19 Q. And I'll bring up an email that Ms Keller sent. Can we
20 bring up WIT.0019.0013.0688. Can we blow up the email at
21 the bottom of the page and what goes over the page. Thank
22 you. You see this is an email that Ms Keller sent to
23 Superintendent McNab and copied to you on 21 June 2022?

24 A. Yes.

25

26 Q. Do you recall whether Ms Keller discussed this email
27 with you before she sent it?

28 A. My recollection is that I had said to Lara that I
29 didn't think that we'd advised the QPS directly, so that we
30 probably needed to make them aware.

31

32 Q. And you didn't think that you'd advised the QPS of what
33 exactly?

34 A. The decision on 6 June and how samples were then being
35 processed from there forward.

36

37 Q. I see. So as far as you were aware when Ms Keller sent
38 this email it was in response to you raising the issue with
39 her?

40 A. That's my recollection, yes.

41

42 Q. And are you aware that Ms Keller gave evidence to the
43 effect that she thought that it was your responsibility to
44 inform the police?

45 A. I wasn't aware of that until you've just said that now,
46 no.

47

1 Q. Did you hold the view that it was your responsibility
2 to inform police?

3 A. From my perspective at that time Ms Keller had been in
4 contact with Superintendent McNab regarding the follow-up
5 report and so I guess it can fall into Ms Keller's or my
6 responsibility to advise QPS.

7
8 Q. And was there any reason why you, for example, hadn't
9 emailed Inspector Neville to tell him about the decision
10 that had been made?

11 A. My assumption was that the QPS would have been aware of
12 that because the Premier had made an announcement and that
13 - and I was then tied up with other tasks to do and it did
14 not occur to me and that's when I said to Lara I think we,
15 you know, "I think you need to advise the QPS about the
16 decision".

17
18 Q. And so you would have read the email when Ms Keller
19 sent it through?

20 A. Yes.

21
22 Q. Do you agree with me the email, on its face it doesn't
23 directly explain that samples within the DIFP range, or
24 what was the DIFP range, will not be concentrated?

25 A. That's right.

26
27 Q. And you must have realised that at the time the email
28 was sent?

29 A. I must have realised what, I'm sorry?

30
31 Q. That the email didn't directly explain that the samples
32 would not be concentrated?

33 A. That's right. We were explaining what option had been
34 chosen and moved forward.

35
36 Q. You see the email doesn't refer to options or anything
37 like that, it just says that the Premier has announced that
38 samples that fall into the category of DNA insufficient for
39 processing samples will be profiled, and then it says
40 something in the next sentence about an amendment to the
41 Forensic Register?

42 A. Yes, that's right.

43
44 Q. But it doesn't directly identify or explicitly identify
45 that this would mean that those samples wouldn't be
46 concentrated?

47 A. That's right, it doesn't.

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Q. And what I'm suggesting to you is you must have realised that at the time, that is on about 21 June?

A. Sorry, I was waiting - I thought you had more to say in that question. So I read that and to me it was still not clear to me that I had made an error back on 3 June so I read this and was like Lara has advised the QPS of the process and that was all I took from that email.

Q. No, I understand that you didn't realise that you'd made an error, but you knew that samples in the DIFP range were going straight to amplification rather than to concentration first?

A. Yes, that's right.

Q. And what I'm suggesting to you is in reading the email from Ms Keller you must have realised that that was not being explained to the police, that the samples were going direct to amplification and not being concentrated first?

A. No, I didn't realise at that time, no.

Q. I see. And I'm interested in that because you knew, for example, that Inspector Neville had views about auto micro concentration?

A. Yes, that's right.

Q. And you'd known that for at least some months, that he had use about, or at least you believed that he held views about what was appropriate for auto micro concentration?

A. Yes, that he was discussing about a particular threshold within that DIFP range.

Q. Well, more than that. I'll show you an email that you sent. Can we just take that email down and bring up FSS.0001.0079.2488. So you see this is an email you sent on 15 March 2022. It's about a vote that's occurring amongst the senior management team in relation to the level for auto microcon and you see you say:

While I support this, Inspector Neville has said that he doesn't support automatically microconning a sample and would prefer for a scientist to review it.

A. Yes, that was my understanding at the time. I could be wrong about that because that was my view at the time, but I don't have any correspondence to, that I'm aware of, to

1 back up Inspector Neville saying that.

2

3 Q. I understand. Whether it's true or not that Inspector
4 Neville held that particular view is a different thing, but
5 your evidence is that you held a view that Inspector
6 Neville had a particular opinion about microconning?

7 A. Yes, that's right.

8

9 Q. And so what I'm interested in understanding is why in
10 June of 2022, given that you knew that he had a particular
11 view about microconning, you would not have sought to
12 directly inform him or directly inform the QPS about what
13 was happening in relation to micro concentration?

14 A. Because at that time the Premier had announced there
15 was a Commission of Inquiry and there was a lot of other
16 tasks going on within that, that it didn't occur to me to
17 advise QPS, and so that's when I said to Lara, "I don't
18 think we have advised QPS, you should probably do that".

19

20 Q. Even accepting that explanation, though, Ms Keller
21 hadn't informed them as to what was happening in relation
22 to concentration?

23 A. That's right, she didn't, no.

24

25 Q. And so you having identified this issue, which is "we
26 need to inform QPS", why did you not inform them directly
27 and explicitly about what was occurring?

28 A. Because, as I said before, I said to Lara that I
29 thought it was best that she contact Superintendent McNab
30 about that at that higher level, given that it had been
31 announced within the media.

32

33 Q. Had Superintendent McNab ever, to your recollection,
34 expressed a view about the merits or otherwise of
35 concentration?

36 A. Not that I can think of right now, no.

37

38 Q. And you were often in email contact with Inspector
39 Neville?

40 A. Yes.

41

42 Q. So why not email Inspector Neville and say, "This is
43 what we're doing about concentration "?

44 A. Because, as I said before, I said to Lara that I
45 thought that she should email the Superintendent regarding
46 this because of it being announced in the media, et cetera.

47

1 Q. Because one possibility, or one possible inference that
2 could be drawn is that you were avoiding informing anybody
3 knowledgeable about what had happened in relation to
4 concentration and the decision on 6 June because you knew
5 that it was wrong?

6 A. No, that's not true.

7
8 Q. And otherwise I want to suggest to you there's no
9 rational explanation for why you would not have at least
10 emailed Inspector Neville to say, "This is what we're doing
11 about concentration "?

12 A. By this stage the Task Force for Women's - I can't
13 remember the name of it, I'm sorry, but the Task Force for
14 Women had come out and the Commission of Inquiry had been
15 announced, you know, on the week of 6 June, and so from my
16 perspective I didn't think that it was my role to advise
17 QPS, so I said to Lara that we should advise them about the
18 change in process, even though they may have been aware of
19 it through the media.

20

21 Q. Why wasn't it your role?

22 A. Because at that stage things had escalated. From my
23 perspective things had escalated because of the
24 announcement of the Commission of Inquiry and so I thought
25 that it was Lara's role, as the senior from FSS, to contact
26 Superintendent McNab regarding that because of how much
27 this had escalated.

28

29 Q. So do you say you said to Ms Keller, "You should inform
30 Superintendent McNab because this issue has escalated due
31 to the calling of the Commission of Inquiry"?

32 A. No, I didn't say those words, no.

33

34 Q. Can you explain to us how it is that the calling of the
35 Commission of Inquiry meant that you could no longer simply
36 tell Inspector Neville what it was that you were doing in
37 the lab?

38 A. From my perspective that's where things had changed and
39 also from the outcome of the Task Force, the Women's Task
40 Force had changed as well, so the landscape had changed,
41 and so from my perspective it had been elevated to a higher
42 level and I felt that a senior person, such as Ms Keller,
43 should advise a senior person within QPS, Superintendent
44 McNab.

45

46 Q. I have to suggest to you this explanation that you're
47 giving is untrue, that what you have offered as an

1 explanation for why you did not contact Inspector Neville
2 does not make any sense?

3 A. I'm telling you the truth. This is what I did, these
4 are the things that I considered, and that's why I said to
5 Ms Keller, "I think that you should contact Superintendent
6 McNab regarding this".
7

8 Q. Do you know when the QPS or when knowledgeable people
9 within the QPS finally realised that you weren't
10 concentrating samples?

11 A. It was after this, I believe.
12

13 Q. As in the second half of July?

14 A. Possibly. I'm sorry, I don't remember the date but,
15 yes, possibly.
16

17 Q. Do you regard it as a failure of, we can set aside for
18 a moment who the individuals are, but a failure of
19 management within Queensland Health that the QPS were not
20 directly informed of the fact that you were not
21 concentrating at any earlier time?

22 A. I don't consider it a failure, I consider it an
23 oversight on our behalf.
24

25 Q. Now, one other thing in relation to concentration. Do
26 you recall Ms Quartermain raising concerns about the lack
27 of micro concentration with you on 6 June?

28 A. I don't think it was on 6 June, I thought it was after
29 that.
30

31 Q. All right. You remember some time in early June
32 Ms Quartermain raising concerns with you about the fact
33 that samples were not being micro concentrated?

34 A. Yes, that's right.
35

36 Q. And you may have effectively answered this yesterday
37 afternoon, but just doing the best you can for us, why is
38 it that after 6 June you didn't raise with Ms Keller, for
39 example, that scientists within your lab were (a) confused
40 as to why the Government would choose the worse option, and
41 (b) that they were concerned about the consequences of the
42 Government having chosen the worse option?

43 A. Because from my perspective a directive had been given
44 to us and I was following that directive.
45

46 Q. I see. Now, I want to then ask about the development
47 of what's come to be referred to as the Update Paper. So

1 this is the paper that you were preparing in 2022 to
2 provide to police?

3 A. Yes.

4
5 Q. Do you agree with me that in getting that paper
6 prepared you sought to keep it secret from the rest of the
7 management team within the lab?

8 A. No, I don't agree with that at all.

9
10 Q. Do you agree with me that you only discussed it with
11 Ms Brisotto and Mr Howes?

12 A. And Ms Keller.

13
14 Q. Yes. Well she's not in the management team in the lab,
15 is she?

16 A. No.

17
18 Q. But Mr Howes and Ms Brisotto are?

19 A. Yes.

20
21 Q. But you didn't reveal this Update Paper to other
22 scientists in the management team in the lab?

23 A. I think they then became aware of it in about May.

24
25 Q. You think who became aware of it in May?

26 A. The management team.

27
28 Q. How did they become aware of it, do you say?

29 A. I think it was in a management team meeting, that there
30 was discussion around that data was being obtained from the
31 Forensic Register and we were waiting for advice from
32 Ms Keller and Legal regarding that.

33
34 Q. Is that something you've seen in minutes from a
35 management team meeting?

36 A. Yes.

37
38 Q. Okay. Well we'll come back to that. You know, don't
39 you, that Mr Howes suggested in April of 2022 that you
40 should raise a project?

41 A. Yes.

42
43 Q. And you told him not to?

44 A. I said not - could we hold off on that.

45
46 Q. And can you explain to us why in April of 2022 you
47 didn't want it to be made a project?

1 A. Ms Keller and I had had discussions, because I think at
2 that point there was discussions that there would be a
3 review of the laboratory and Lara was seeking some legal
4 advice around what we should do within that. Do we provide
5 it now? Do we wait for the review, et cetera? That was my
6 understanding.

7
8 Q. Well, let's just think about that, and we'll come back
9 to what you were told about legal advice, but that's about
10 providing the document to the police?

11 A. Yes.

12
13 Q. Just because it's created as a project doesn't mean
14 that a document is provided to police?

15 A. No, not all projects are provided to police, that's
16 true.

17
18 Q. And Mr Howes wasn't saying, "We should raise it as a
19 project because we're definitely going to provide it to
20 police", he was saying, "We should raise it as a project
21 because in accordance with the standard procedures within
22 the lab this type of exercise should be a project"?

23 A. Yes, that's right.

24
25 Q. So why did you think that you should depart from the
26 standard procedures within the lab and not raise it as a
27 project?

28 A. At that point I had asked him to hold off and that I
29 would seek advice from Lara and that's when Lara discussed
30 with me about the review and legal advice.

31
32 Q. Well, let's just pause on that. So when you told him
33 to hold off, you hadn't yet spoken to Ms Keller about it?

34 A. I don't think I had, no.

35
36 Q. So why would you tell him to hold off from following
37 the standard procedures within the lab?

38 A. Because I wanted to clarify with Ms Keller about what
39 we needed to do, what were the next steps.

40
41 Q. But why not follow the standard procedures in the lab?

42 A. Sorry, what was that question?

43
44 Q. Why not just follow the standard procedures in the lab?

45 A. Because, as I say, at that point the review had been
46 discussed and I was seeking direction from Lara regarding
47 what we needed to do for that, which is why I said, "Can

1 you hold off". I didn't say don't do, don't do it, just to
2 hold off, and I would seek further clarification.

3
4 Q. So you say when he sent the email you'd already been
5 told by somebody that there was to be a review of the lab?

6 A. That's my recollection, yes.

7
8 Q. And you say because you knew there was to be a review
9 of the lab, you thought, "I'll get him to hold off from
10 following the standard procedures in the lab"?

11 A. I asked him to hold off until I'd sought further
12 advise.

13
14 Q. Yes, but what you were asking him to hold off from
15 doing was following the standard procedures in the lab?

16 A. Not necessarily to do that, I just asked him to hold
17 off until we knew what the next steps were.

18
19 Q. No, no, you've agreed with me already, the reason he's
20 raising it with you to create a project is because that
21 would be in accordance with the standard procedures in the
22 lab?

23 A. Yes, that's why he asked, I asked him to hold off and
24 that I would seek clarification from Ms Keller about what
25 we needed to do.

26
27 Q. Yes. And so you were asking him to - as I understand
28 it, you were saying, "Hold off following the standard
29 procedures in the lab because I know there's going to be a
30 review of the lab and so I want to ask Ms Keller about it"?

31 A. That's right.

32
33 Q. You didn't put any of that in writing?
34 A. No, I did not.

35
36 Q. And what I'm suggesting to you is the explanation
37 doesn't make any sense because the fact that there was to
38 be an external review of the lab and the fact that
39 Ms Keller might have a view about the external review of
40 the lab could not make any difference to whether or not you
41 followed the standard procedures in the lab?

42 A. Well, from my perspective we were unsure about what was
43 going to happen and I was seeking advice from Ms Keller
44 about that because I didn't want to do anything that
45 wouldn't be in line with the way they wanted to go forward.

46
47 Q. I see. So did you say that you asked Ms Keller,

1 "Should I raise a project in accordance with the standard
2 procedures in the lab"?

3 A. No, I asked her for advice around what we had been
4 calling a follow-up paper and the review and the legal
5 advice.

6
7 Q. Did she tell you "don't follow the standard procedures
8 in the lab"?

9 A. No, she didn't, she told me that she was seeking legal
10 advice on that.

11
12 Q. Now, let's be clear: what she was seeking legal advice
13 on was providing the document to QPS?

14 A. She just advised me that she was seeking legal advice
15 about the follow-up paper and whether that would go to QPS,
16 but she didn't say it was about the follow-up paper.
17 That's my recollection of what that was about.

18
19 Q. Did you say to her, "Should I raise this as a project
20 in the lab"?

21 A. No, I did not ask her that specific question, no.

22
23 Q. So do you agree with me the issue that Mr Howes had
24 raised, which is, "Should we raise it as a project", even
25 accepting for a moment that your explanation as to why you
26 said hold off was true, because you wanted to get
27 Ms Keller's input, where that falls apart is you didn't ask
28 Ms Keller about whether or not you should raise it as a
29 project?

30 A. I didn't raise it with her, about the project part of
31 it, that's true, but I was asking her about where we were
32 at, what enquiries she was making, what was the landscape
33 that we were dealing with, et cetera, those were the things
34 that I was asking her about.

35
36 Q. I understand. But Mr Howes has said, "Should I raise
37 it as a project?" You said hold off. Your explanation to
38 the Commissioner as to why that is is because you wanted to
39 get Ms Keller's advice, and yet you didn't ask Ms Keller,
40 "Should we raise it was as a project?" So doing the best
41 you can for us, can you provide any explanation for why you
42 would not have asked Ms Keller whether you should raise it
43 as a project?

44 A. From my perspective she knew that we were working on
45 the follow-up report. It could be considered to be a part
46 of Project 184. She was seeking legal advice around this
47 particular topic. The landscape was quite difficult.

1 There was a review. There was a large number of things
2 going on, so I was trying to find out the best I could
3 about what we needed to do moving forward. I didn't
4 specifically ask her about a project because I didn't
5 necessarily think that that was top of the list, more of it
6 was around the legal advice and what we needed to, the next
7 steps that we needed to do.

8
9 Q. I have to put to you that the explanation that you are
10 giving as to why you told Mr Howes to hold off from raising
11 a project is a lie. Do you accept that?

12 A. It's not a lie. No, I don't accept that --

13
14 Q. You've made it up?

15 A. -- because I'm not lying.

16
17 Q. You've made it up?

18 A. No, I --

19
20 Q. And it's inexplicable because if you genuinely were
21 asking him to off hold because you wanted to see whether
22 Ms Keller thought you should raise it as a project, you
23 would have asked Ms Keller, "Should I raise it as a
24 project"?

25 A. No, I'm not lying, I haven't fabricated this. This was
26 my thought process at the time and they were the steps that
27 I undertook at the time.

28
29 Q. And the real reason you didn't want to raise it as a
30 project was because if it was raised as a project it might
31 then come under scrutiny and be revealed in its content to
32 the rest of the senior management team in the laboratory?

33 A. No, that's not true.

34
35 Q. And you knew, didn't you, that at least one member of
36 the senior lab team had held concerns about the use of this
37 DIFP process for years?

38 A. I knew that Ms Rika was not necessarily in favour of
39 that process, but from my perspective she was in a perfect
40 position to be able to suggest process improvements,
41 et cetera, and I wasn't withholding that particular report
42 for any particular reason at all.

43
44 Q. And you knew that other scientists in the lab had, over
45 the course of several years, raised concerns about the
46 consequences of the DIFP process?

47 A. They'd raised concerns with Mr Howes and I believe now

1 they had raised concerns with Ms Keller.

2

3 Q. Were you aware at the time, that is between 2018 and
4 2022, that scientists had raised concerns with Mr Howes?

5 A. Yes.

6

7 Q. Would he come and tell you that they'd raised concerns?

8 A. Yes. Not specifically - sorry, not specifically coming
9 to me and saying person A has come and said this and then
10 another occasion person B, he had said to me that there
11 were some staff that didn't necessarily think that the DIFP
12 range or the DIFP process, I should say, sorry, the DIFP
13 process, was the best way to move forward.

14

15 Q. And when he raised those concerns with you that had
16 come from other scientists in the lab, what was your
17 response?

18 A. Excuse me, commissioner, can I please provide a little
19 bit of context for this before I answer?

20

21 THE COMMISSIONER: Yes. Answer, Ms Allen, answer every
22 question as fully as you wish.

23 A. Okay, thank you. So the police have always let us know
24 that they do not want us to do unnecessary testing and so
25 they will provide us with electronic advice that says no
26 testing is, no longer is testing required on particular
27 samples after they'd delivered them, and they have let us
28 know that we shouldn't test samples that are not required
29 because they understand that those samples should be taken
30 out of the process so that other samples can move forward
31 and they can get DNA profiling results from that.

32

33 So my understanding is that forensic officers attend a
34 scene, they will triage the items that come from that
35 scene, they will then go back to their laboratories and
36 examine particular items with the view of their case
37 context, where it is at the moment, what other types of
38 things that they will need to submit to the laboratory.
39 The laboratory doesn't have an oversight of all DNA samples
40 that have been taken from that particular scene, so they
41 will then submit those items for testing.

42

43 My understanding is that those forensic officers still
44 have, may still have items that are remaining that they
45 haven't examined, so that they will be reviewing the DNA
46 results from the samples they have submitted to us to see
47 whether they need to examine other items because the

1 context of the investigation may have changed and so they
2 will, they will be aware of how that investigation has
3 changed, however Forensic DNA Analysis won't necessarily be
4 aware of all of the twists and turns of the investigation.
5

6 So the scientific officer has access to the DNA
7 results and then a forensic coordinator is also overseeing
8 all of those DNA results, plus also forensic results from
9 other areas such as fingerprints, et cetera, and then they
10 are liaising with the investigating officer regarding the
11 items that have been tested and the direction that they
12 could be going, and also providing any other scientific
13 advice. So this is the basis of moving forward, was to let
14 the QPS know.
15

16 In this particular process that we are doing in the
17 DIFP range, 90 per cent is a failure, 10 per cent is a
18 success, is this something that you still want us to do or
19 do we pause testing at this point and ask you whether this
20 needs to continue in testing and you can provide an
21 electronic response to us and we can then continue testing
22 on that sample because you have more information regarding
23 this sample, other samples that haven't been submitted and
24 the context of the case.
25

26 So this was the process that we were working under and
27 I'm not sure that all scientists were aware of all of the
28 other processes that were going on in the forensic officer
29 side of the world, or of the investigation, I should say.
30 So that was the context that we were working under where
31 there were senior scientific officers, senior forensic
32 officers that were reviewing the DNA results and that they
33 had access to more information and more items than we did.
34 So it was a question of going to them and saying do you
35 still want us to pursue this or not, or do you want to have
36 a say about pursuing this or not?
37

38 MR HODGE: Have you finished, Ms Allen?

39 A. Yes.
40

41 Q. Let me ask you some questions about that then. I think
42 where we began was I asked how did you respond when
43 Mr Howes came to you and told you that some scientists in
44 the lab were raising concerns. So perhaps if you answer
45 that question. What was your response to Mr Howes when he
46 came to you and said these things to you?
47

A. So in the context that I've just explained, that's

1 where I would be talking to him and saying a scientist
2 within Forensic DNA Analysis can request for a microcon,
3 that staff can put forward, you know, changes in process,
4 and that QPS are also reviewing these items as well.

5
6 Q. I see. And so you would - tell me if you agree with
7 this. You say there were reasons for it but would dismiss
8 the concerns that he was bringing to you that were raised
9 by scientists?

10 A. I didn't dismiss them, I talked to him about what the
11 options were that they were able to do.

12
13 Q. One option, tell me if you agree with this, one option
14 would be to go back to the QPS and say, "Do you understand
15 in percentage terms how many profiles you're missing out
16 on, do you want to continue with that"?

17 A. Well that's what, that's the premise that we had put
18 forward to them so are you suggesting that --

19
20 Q. Well, unfortunately - now what I'm - we'll come
21 back --

22 A. I'm sorry --

23
24 Q. We'll come back in a moment to what you said in 2018.
25 What I'm asking you about is: when Mr Howes was coming to
26 you over the course of the preceding four years and telling
27 you scientists have raised concerns, do you agree with me
28 one option is you could have at some point gone back to the
29 police and said to them, "Do you want to continue with this
30 process"?

31 A. Yes, we could have done a post implementation review,
32 yes.

33
34 Q. But you never did that?

35 A. No, we didn't.

36
37 Q. Why not?

38 A. It didn't occur to me to do that because it seemed to
39 be working from the perspective we were getting requests to
40 test those samples, scientists were also requesting those
41 samples to be tested, so from that basis the process was
42 working.

43
44 Q. Now, the other thing you said as part of the
45 explanation you gave to the Commissioner was that, "We'd
46 said to the police in 90 per cent of cases we don't get
47 profiles and in 10 per cent of cases we do, so do you want

1 to keep going with it"?

2 A. Sorry, if I said "cases" I should have said 90 per cent
3 of samples, 10 per cent of samples.

4
5 Q. No, that's my mistake. You might well have said that.
6 So you said to the Commissioner, "We had said to the police
7 in 90 per cent of samples we don't get profiles, in 10 per
8 cent of samples we do"?

9 A. That was the essence of the Options Paper, yes.

10
11 Q. Now that is - you must know that that is a lie. The
12 essence of the Options Paper is not to say that "in 90 per
13 cent of samples we don't get a profile and in 10 per cent
14 of samples we do". You well know that the essence of the
15 Options Paper is to seek to persuade the police that in
16 less than 2 per cent of cases will this matter. You know
17 that, don't you?

18 A. No. No, that's not true. That's not true.

19
20 Q. I'll bring it up. Can we bring up FSS.0001.0001.0891.
21 Now, let me just direct you to some parts. If we go to p6,
22 which is .0897. You see there there's the pie chart
23 showing success/fail?

24 A. Yes.

25
26 Q. And that's the chart that identifies that in 10 per
27 cent of cases you don't get - sorry, 10 per cent of samples
28 you get a profile but 90 per cent you don't?

29 A. That's right.

30
31 Q. And then on the next page it then switches to - just
32 scroll down a little bit, Operator - switches to talking
33 about NCIDD upload?

34 A. Yes, it does.

35
36 Q. And if we go over the page to p.0899, you see at the
37 top of the page it says:

38
39 *This 1.45 per cent of auto microcon samples*
40 *is considered to be the pertinent value for*
41 *the client to assess if the auto microcon*
42 *process was not performed.*

43
44 A. Yes, that's right.

45
46 Q. And then if we go to the conclusion on p.0900. And we
47 see there's the options under the heading and then we see:

1 *In continuing or discontinuing the*
2 *automatic concentration of DNA extracts for*
3 *priority 2 (major crime) samples, some key*
4 *elements to consider include, but are not*
5 *limited to*
6

7 and then there's a number of dashes and you see the first
8 one is about NCIDD upload?

9 A. Yes, that's right.

10

11 Q. And there's no reference there to missing out on
12 profiles in 10 per cent of samples?

13 A. Yes. (Indistinct words) mentioned before.

14

15 Q. Now that is - Ms Allen, both things had been mentioned
16 before, both the pie chart and also the NCIDD upload, but
17 you know that the paper says the pertinent value is
18 1.45 per cent and you know that in the options for
19 consideration the only percentage that is mentioned is the
20 1.45 per cent. You know those things, don't you?

21 A. If a case is within the DIFP range and so therefore it
22 wasn't tested, for an example a sexual assault case may
23 only be where there is touch DNA that has been obtained and
24 if it goes into the DIFP range and is not requested to be
25 microconned and it could get a profile that could go on to
26 the national DNA database in a no suspect case then that
27 could be of value to the QPS, which is why it was a risk.

28

29 Q. Ms Allen, my question was you know that the paper says
30 that the pertinent value is 1.45 per cent?

31 A. Yes, and I've just explained to you that that's the
32 step --

33

34 Q. You know - please, Ms Allen. Ms Allen, it's not
35 necessary for you to attempt to explain, and you know that
36 in the options for consideration section that the only
37 value that is called out is 1.45 per cent?

38 A. Excuse me, Commissioner, am I able to provide more
39 context around this?

40

41 THE COMMISSIONER: Ms Allen, you should answer the question
42 as responsively as you think proper to do yourself justice.
43 So take all the time you need to answer the question and
44 provided you remain responsive and relevant to what you're
45 being asked, feel free to be as lengthy as you need?

46 A. Thank you. So the discussion of the pie chart is
47 there. The reason that the pertinent value around the

1 NCIDD is referred to is because that is one of the things
2 that we wanted to ensure that the QPS were across, because
3 as I said an example is in a sexual assault case that may
4 have touch DNA involved with it, so therefore from our
5 perspective that's not likely to have large amounts of DNA
6 there, if they fell into that DIFP range and a scientist or
7 a QPS officer didn't request for that to be tested and
8 there weren't other items that were forthcoming for that,
9 and there was no suspect for that particular sexual assault
10 case, then that could be something that would be missing
11 from going to the national DNA database which could provide
12 them with intelligence to take that case forward. So that
13 was why that was referred to again, was because of that
14 risk. It wasn't necessarily to try to hide anything else.
15 It was to highlight the risk to ensure that they were aware
16 of that.

17
18 MR HODGE: Ms Allen, let's go back to page 8 and the top of
19 that page, that's .0899. You see the statement there is:

20
21 *This 1.45 per cent of auto-microcon samples*
22 *is considered to be the pertinent value for*
23 *the client to assess if the auto-microcon*
24 *process was not performed.*

25
26 A. Yes, that's as I say because of the risk to providing
27 them with further intelligence they may not have, so a cold
28 link.

29
30 Q. Ms Allen, you know, don't you, that the reason this
31 sentence appears there is in order to cause the reader of
32 the paper, which in this case was intended to be officers
33 of the QPS, to believe that the number that mattered was
34 1.45 per cent?

35 A. For their intelligence value, yes.

36
37 Q. And if you go then to page.0900, doing the best you can
38 for us explain to us why in setting out the things to
39 consider as the key elements there would be a specific
40 reference to the 1.45 per cent but no reference to the 10
41 per cent?

42 A. Because that had already been shown earlier in the
43 document around --

44
45 Q. No, no, no. Again, Ms Allen, please. The 1.45
46 per cent had also been shown earlier so that can't be
47 explanation. It may be that there is an explanation, or it

1 may be as I'm suggesting to you it is explicable only as a
2 deliberate choice. But I want you if you can to try to
3 focus and assist the Commissioner, and if you genuinely
4 believe there is an explanation why the 1.45 per cent is
5 repeated but not the 10 per cent, tell him what that
6 explanation is?

7 A. From my perspective it was obvious around the success
8 and fail, however the more pertinent risk for the QPS was
9 around any cold links that they may miss.

10

11 Q. When you say that do you agree with me that in the case
12 of priority 2 cases, which are serious crimes, that in at
13 least the majority of cases where there is a link that is
14 made, it is a link made from a crime scene sample to a
15 reference sample rather than from a crime scene sample to
16 an NCIDD upload link?

17 A. If there are suspects already identified for those
18 cases then, yes, they will come from warm links. But we
19 also get cases where --

20

21 THE COMMISSIONER: No, that wasn't the question, Ms Allen.

22

23 MR HODGE: In the majority of cases, in at least the
24 majority of priority 2 cases, which are the serious crime
25 cases, the relevant link that is obtained from DNA
26 profiling is a link from a crime scene sample to a
27 reference sample, rather than from a crime scene sample to
28 an NCIDD upload link, do you agree with that?

29 A. For the majority of the time, yes.

30

31 Q. So do you agree with me that it must follow that the
32 most significant consideration for police in deciding what
33 they lose as a consequence of not processing samples for
34 priority 2 cases, is the loss of obtaining a profile to be
35 matched against a reference sample?

36 A. Not necessarily because if there isn't a suspect
37 available then they're relying on any entered links to help
38 take that investigation forward. And so sometimes with
39 urgent cases, the reason they're urgent is because they
40 don't have a suspect.

41

42 Q. Can we put that document on one side of the screen and
43 we can we bring up on the other side of the scene the
44 document which is FSS.0001.0001.0914. So this is the first
45 version of the Project 184 report?

46 A. Yes.

47

1 Q. If we go to the page which is .0931. You see there's
2 originally drafted in the conclusion what it focused on was
3 the 89 per cent, that is the fact that in 10 per cent of
4 cases you obtained a profile and in 90 per cent of cases
5 you didn't?

6 A. Yes.

7
8 Q. Is there an explanation you want to offer to the
9 Commissioner as to why this was redrafted so that the
10 Options Paper focused on the loss of 1.46 per cent?

11 A. We could have included that in the options for
12 consideration but we didn't unfortunately, and we focused
13 on what we thought was the bigger risk to the QPS.

14

15 Q. Tell me if you agree with this: that must mean that you
16 deliberately decided to refocus the Options Paper on the
17 1.46 per cent?

18 A. No, it was not deliberate.

19

20 Q. Well it must be deliberate because you know that in the
21 draft only a couple of months earlier the focus was on the
22 10 per cent and by the time you came to the version that
23 you provided to the QPS the focus was on the 1.46 per cent.
24 It wasn't a miracle, it happened by deliberate choice,
25 didn't it?

26 A. No, it was not deliberate choice. The option - the
27 Project 184 was within the laboratory and that's what we
28 were focusing on for recommendations. When it went to the
29 Options Paper it became more about the risks that QPS
30 needed to be aware of, and yes, we probably should have
31 included again the 10 per cent as well as the percentage
32 for links.

33

34 Q. I think perhaps it's simpler if I once again put this
35 to you. Once again you're giving to explain this is a lie,
36 isn't it, Ms Allen?

37 A. No, it's not a lie. I'm not a liar. I'm not lying.

38

39 Q. You've set out quite deliberately in the Options Paper
40 to try to bring about a result where the police would
41 choose not to continue with the automatic processing of P2
42 samples in the DIFP range?

43 A. That is not true. It was about ensuring the resources
44 went into the samples that they wanted them to go into and
45 did they want to have input into those samples.

46

47 Q. Do you agree with me that in presenting the paper to

1 police the result that you personally wanted was for them
2 to agree to the DIFP process?

3 A. No, that's not true.
4

5 Q. That you were quite intent on wanting them to agree to
6 what's described as Option 2?

7 A. No, that's not true.
8

9 Q. That I'm suggesting to you was the outcome that you
10 wanted?

11 A. No, that's not true.
12

13 Q. Do you say you were indifferent as to whether they
14 chose Option 1 or Option 2?

15 A. I'm very clear that the QPS own the samples and that
16 they will direct us to do what is required with the
17 samples. So the options were put forward to them and if
18 they'd chosen Option 1 then we would have proceeded with
19 Option 1.
20

21 Q. No, no, but listen to my question. I'm asking if you
22 were indifferent between Option 1 and Option 2. Maybe I'll
23 put it a different way. What you wanted them to choose was
24 Option 2?

25 A. No, that's not true.
26

27 Q. It was not the case that you were neutral as between
28 Option 1 and Option 2?

29 A. I was neutral.
30

31 Q. In fact it went further than that, what it turned out
32 that what you wanted was for them to also do something that
33 would suggest they were willing to discontinue DIFP -
34 sorry, introduce DIFP for priority 1 samples as well?

35 A. Yes, that's right, that was my understanding from the
36 meeting.
37

38 Q. No, no, no. Not just your understanding from the
39 meeting. That was what you wanted?

40 A. No, that's not true.
41

42 Q. And you were gleeful, weren't you, when they expressed
43 agreement to do Option 2?

44 A. No, I was not.
45

46 Q. Let me show you a document. Can we bring up
47 FSS.1000.0106.1657. This is a chat log between you and

1 Luke Ryan on 6 February 2018. Have you read this in
2 preparation for giving evidence?

3 A. No, I have not.

4
5 Q. All right. Why don't you just take a moment to read
6 through this chat log?

7 A. Can you tell me the date of this, please?

8
9 Q. It's 6 February 2018.

10 A. Okay, I've read that.

11
12 Q. You thought it was great that the Queensland Police had
13 agreed to Option 2?

14 A. I thought it was a great decision, yes, that they had
15 made because as I said before, they would be advising us on
16 which samples to test or not.

17
18 Q. You were happy that they had chosen Option 2?

19 A. Because we could spend our time to get them better
20 results faster.

21
22 Q. It was the result that you wanted?

23 A. No, that's not true.

24
25 Q. You can see that in the chat log?

26 A. I said QPS made the decision.

27
28 THE COMMISSIONER: Even on your own evidence, Ms Allen, you
29 say that this was a good decision because it enabled you to
30 concentrate on samples that were more likely to yield
31 results. Doesn't it follow from that that was the result
32 that you preferred, that was a result that you wanted?

33 A. No, it's not. This was a QPS decision. If they wanted
34 to keep going with Option 1 then that's what we would have
35 done. I'm very clear that QPS - that this was a change for
36 QPS that had ramifications for them so they needed to make
37 those decisions because they own the samples. So they
38 needed to be aware of that and be involved in that
39 decision. Once the decision was made then I moved forward
40 with it and yes, I can see the benefits of that decision.
41 It doesn't mean that I wanted them to make that decision in
42 the first place. It was their decision to make, not mine.

43
44 MR HODGE: Whilst we've jumped back in time so much let me
45 ask you some questions about this. In the chat log you
46 refer to it being extended to P1?

47 A. That's right.

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Q. You say:

*Options Paper says can be extended to P1 so
it's been extended to P1.*

A. Yes, that's right.

Q. So is this something that you say was said orally in the meeting?

A. That's right, yes, it was.

Q. Who said it?

A. My recollection is that Superintendent Frieberg, I asked her about priority 1 samples and her advice to me was that priority 1 samples should be treated the same as priority 2 samples.

Q. You remember her saying that in the meeting?

A. Yes, I do.

Q. Tell me if I've understood this. You remember her saying priority 1 samples should be treated the same as priority 2 samples and that was it?

A. I remembered that specifically because that was part of one of the sub-sections of that option so I needed to be clear with her about was it only about priority 2 and what was her decision about priority 1.

Q. Did you make a note of her saying this?

A. No, I did not.

Q. Did you confirm it in writing?

A. No, I did not.

Q. Tell me if you agree with this, I can take you to the documents if you need it but I suspect you've looked at them recently, when Superintendent Frieberg wrote to you and said that they agreed, she only referred to priority 2?

A. Yes, that's right. She did only refer to priority 2. However all priority 1 samples are reviewed by QPS DNA management unit and so my understanding was that if I was incorrect in what I had heard Superintendent Frieberg say, they would - members within that group would come back and say that they needed to be auto-microconned and that they were excluded and I didn't get any feedback that's why I also thought, that's why I went with priority 1 was

1 included.

2

3 Q. Let me see if I understand this explanation.

4 Superintendent Frieberg said they agreed to priority 2.

5 But you thought you remembered that during the meeting she

6 said priority 1 should be treated the same as priority 2,

7 and then you thought because people within the forensic DNA

8 unit at QPS review all of the samples, if they disagreed

9 with what it was that Superintendent Frieberg had said

10 orally on the Friday, they would have come back to you

11 after Superintendent Frieberg's email on the Friday

12 afternoon to say: we need to correct what she said orally

13 even though it's not in her email.

14 Have I understood your explanation?

15 A. Acting Inspector Ewen Taylor, who was at the meeting

16 with us, was also responsible for the QPS DNA management

17 unit. So my understanding is that he would have advised

18 them of the outcome of this and that he had also heard in

19 the meeting priority 1 and priority 2 were to be treated

20 the same, and so he would have advised his team of that.

21 So if his team were unaware about priority 1 then I would

22 have expected feedback from them because they monitor

23 priority 1 samples very closely.

24

25 THE COMMISSIONER: Ms Allen, if what you're saying is true

26 why didn't you give that as the reason when Luke Ryan asked

27 you to clarify whether it was P1 and P2?

28 A. I think I had put it into an email that I had sent to

29 the management team around Superintendent Frieberg --

30

31 Q. I know you did. I know you did. What I'm asking you

32 is why you didn't tell Luke Ryan in the chat conversation

33 that we've seen on the screen on 6 February 2018 that the

34 reason P1 was included was because Superintendent Frieberg

35 had asked you to do that?

36 A. I don't know. I don't know why I didn't say that to

37 him.

38

39 Q. Well one possibility is that because she didn't say

40 that?

41 A. Well that was my recollection from the meeting, that I

42 had asked her specifically about priority 1 samples and

43 that she'd said to treat them the same as priority 2.

44

45 MR HODGE: Can we bring up FSS.0001 --

46

47 THE COMMISSIONER: Are you going to tender that?

1
2 MR HODGE: Sorry, I tender the chat log.

3
4 THE COMMISSIONER: Exhibit 176.

5
6 **EXHIBIT #176 CHAT LOG.**

7
8 MR HODGE: Then can we bring up FSS.0001.0051.7257. This
9 is the email that Superintendent Frieberg sent you on 2
10 February?

11 A. Yes.

12
13 Q. You see she says:

14
15 *As discussed I'm in agreement that.*

16
17 A. Yes.

18
19 Q. Just pausing there. Who did you think she was agreeing
20 with?

21 A. That was her wording. I wasn't necessarily focused on
22 the word agreement at all.

23
24 Q. You knew, didn't you, that she thought she was agreeing
25 with you?

26 A. No, I did not know that, because that's not the way I
27 presented it.

28
29 Q. She thought given the Options Paper and what the focus
30 seemed to be upon, that you thought that it was a good idea
31 to discontinue automatic micro-concentration for samples in
32 the DIFP range?

33 A. I put forward explanations around Option 1 and Option 2
34 and had left them, QPS, to make that decision.

35
36 Q. In fact you did think, didn't you, that discontinuing
37 the auto-microcon process for samples in the DIFP range was
38 a good idea?

39 A. If that would allow faster results to QPS then yes, it
40 was a good idea, and they would be giving us feedback on
41 pertinent items and we were testing items that they needed,
42 then yes, I did think it was a good initiative.

43
44 Q. Well it was the actually what was in the Project 184
45 you'd wanted to recommend to police?

46 A. We hadn't gotten to recommendations regarding that,
47 that hadn't been finalised.

1
2 Q. No, but the draft - two versions of the paper had been
3 prepared and they contained recommendations?

4 A. Yes, they did.
5

6 Q. And they recommended discontinuing the automatic
7 micro-concentration in samples in the DIFP range if they
8 were priority 2 samples?

9 A. Yes, and at that point that's where we realised that we
10 shouldn't be putting forward a recommendation to QPS, we
11 should be asking them given that it is a change for the
12 workflow that may have an impact on them and that they
13 would have to provide us with information back on whether
14 testing was required or not. So it required things from
15 them as well so therefore it should be put to them to ask
16 them about that.
17

18 Q. We'll come to that in a moment. But you signed off on
19 and were in agreement with the recommendations from two
20 versions of the Project 184 report?

21 A. What do you mean signed off?
22

23 Q. You agreed - well I'll put it in a different way. You
24 agreed with the recommendations in both versions of the
25 draft Project 184 report?

26 A. Yes.
27

28 Q. When we come to this email, you see in the email
29 Superintendent Frieberg in the first dot point says:
30

31 *There is clear data that it is not an*
32 *efficient use of time and resources to*
33 *continue with the auto-microcon process for*
34 *priority 2 samples.*
35

36 A. Yes.
37

38 Q. In the second dot point she says:
39

40 *Option 2: Cease the auto-microcon process*
41 *for priority 2 case work would appear to be*
42 *a more productive and efficient course.*
43

44 A. Yes.
45

46 Q. And nowhere in the email does she say anything about
47 the priority 1 samples?

1 A. Yes, that's right.

2

3 Q. And you didn't write back to her and say:

4

5 *Do you also intend it to extend to priority*
6 *1 samples?*

7

8 A. Because she had verbally said that to me I didn't write
9 back to her but I should have.

10

11 Q. I'm puzzled by this if it's true. Because, you see,
12 she is sending an email to confirm what the QPS's position
13 is in writing, do you agree with that?

14

15

16 Q. Even the Options Paper had not suggested discontinuing
17 auto-microcon for priority 1 samples?

18

19

20 Q. Well, we'll come to that in a moment. The priority 1
21 samples are the most critical and significant samples?

22

23

24 Q. And at least two different people within the laboratory
25 questioned you on 5 and 6 February about whether it was
26 really the case that you were discontinuing for priority 1
27 samples?

28

29

30 Q. Mr Ryan questioned you and Mr Howes questioned you?

31

32

33 Q. Tell us then how it is that you didn't think you ought
34 to at least confirm with Superintendent Frieberg in writing
35 that she wanted to discontinue priority 1 samples?

36

37

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Q. I see. Just explain to me the answer that you gave
earlier which was about how Ewen Taylor was at the meeting
and he would report back to the unit and if there was an
issue about what Superintendent Frieberg had said orally
then you thought he would tell members of the DNA unit and
then they would tell you. When did that thought come into
your head?

1 A. The QPS DNA unit provide us with feedback all the time
2 and so upon the first priority 1 samples coming through and
3 not --
4

5 Q. I'm sorry, I think you've misunderstood my question.
6 But maybe not. What I want to understand is I had thought
7 that you had offered as an explanation, as part of your
8 explanation for not confirming or going back and checking
9 this with Superintendent Frieberg, that you thought that if
10 there was an issue then it would be raised by the DNA unit
11 and you had this explanation of how it would come to the
12 attention of the DNA unit. What I just want to understand
13 is that thought that you're describing, that if there was
14 an issue it be raised by the DNA unit, when do you say that
15 you first had that thought?

16 A. That would have been for the priority 1 samples that
17 came through and that they weren't auto-microconned, the
18 DNA unit would have been aware of that and they would have
19 raised that was not the intention of the process and so
20 therefore we would have been alerted to that.
21

22 Q. Ultimately at the end of 2018 they did realise that
23 you'd discontinued P1, you'd discontinued auto-microcon for
24 P1 and they did raise an issue?

25 A. They specifically gave instructions that P1 were to be
26 micro-conned from that point forward, yes.
27

28 Q. We'll come to that in a moment, but do you agree with
29 me when they raised the issue you set out to discourage
30 them from reintroducing auto-microcon for P1 samples?

31 A. No, I did not.
32

33 Q. We'll come to that email in a moment.
34

35 THE COMMISSIONER: Just a moment, Mr Hodge. Just so I get
36 some background to this, Ms Allen, what proportion of the
37 lab's work involves P1 sampling, P1 in investigations?

38 A. Unfortunately it's difficult to quantify because it
39 will depend on the type of alleged offence that's occurred.
40 So sometimes we will have a number of P1s come from a
41 couple of different cases because there isn't a suspect.
42 So there could be three murders that happen in close
43 succession to each other and so we may get a number of P1
44 samples for each of those three at similar times. And then
45 other times we may only have one case that has got priority
46 1 samples with it at a time. So it all depends on what's
47 occurring in the community around priority 1 samples.

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Q. Yes, thank you.

MR HODGE: Again, Ms Allen, I have to suggest to you that a number of parts of your evidence are a lie. It's a lie, isn't it, when you suggest that you were in any sense neutral about whether the QPS agreed to Option 1 or Option 2?

A. No, it's not a lie.

Q. And it's a lie when you suggest that the Options Paper wasn't deliberately drafted so as to direct the QPS towards choosing Option 2?

A. No.

Q. And it's a lie, isn't it, when you suggest that you were confident that Superintendent Frieberg had chosen to also discontinue auto-microcon for priority 1 samples?

A. No, that's not a lie.

Q. And it's a lie when you say you didn't think you needed to write to confirm to her that she wanted to discontinue auto-microcon for priority 1 samples because she'd said it verbally to you?

A. It's not a lie but I do see in hindsight that I should have clarified that with her so that I had it in writing.

Q. You know, don't you, that had you written back to her and sought to clarify it, or sought to ask her what her position was, that inevitably the QPS would have said:

We want auto-microcon to continue for priority 1 samples.

A. No, I don't know that.

Q. And you knew that at the time?

A. No, I did not.

Q. And that's why you took no steps to seek to clarify this with the QPS?

A. That's not true.

Q. Now the way in which we ended up jumping back to 2018 was because you were giving an explanation to the Commissioner where you said you thought that QPS knew that they were missing out on profiles for 10 per cent of

1 samples - sorry, missing out on profiles for 10 per cent of
2 samples and that they could make the decision as to whether
3 or not they wanted to ask for retesting. Do you remember
4 that evidence a bit earlier?

5 A. Yes.

6
7 Q. I want to suggest to you the reason that you gave that
8 evidence or that explanation to the Commissioner, which
9 spoke about loss of 10 per cent of profiles rather than
10 anything to do with NCIDD upload, is because you well know
11 that the figure of significance to the QPS is the loss - in
12 the case of priority 2 samples is the loss of 10 per cent
13 of profiles?

14 A. So you're saying that I'm deliberately saying to the
15 Commissioner about the processes within QPS and leading him
16 down a particular path that's not true, is that what you're
17 asking me?

18
19 Q. No, I'll repeat to you the question that I asked you.
20 The reason that in the evidence earlier when you gave - you
21 asked the Commissioner if you could please offer some
22 context and then you gave an expansive explanation of
23 context, and throughout your context the only figures that
24 you referred to was the loss of profiles for 10 per cent of
25 samples, you said nothing about NCIDD upload. What I'm
26 putting to you is that the reason that you talked only
27 about the loss of 10 per cent of profiles is because you
28 know that that's the figure that actually matters for the
29 QPS in relation to priority 2 samples?

30 A. No, that's not why I put - why I said that.

31
32 Q. One of the things that must have been apparent to you
33 over the last few years was that the QPS had misunderstood
34 the Options Paper and thought that the 1.46 per cent
35 referred to the actual loss of profiles or usable profiles
36 rather than the 10 per cent?

37 A. No. It was understood at the meeting with
38 Superintendent Frieberg around the pie chart and then also
39 talking about the percentage for NCIDD.

40
41 THE COMMISSIONER: The Options Paper didn't reveal any data
42 that could have justified ceasing microconning low quant
43 samples in the priority 1 investigations, did it, and no
44 work had been done on it?

45 A. I can't remember whether priority 1 had been included.
46 I would have to check on that. I don't remember off the
47 top of my head, I'm sorry.

1
2 Q. How did it come about that Superintendent Frieberg
3 asked you to include priority 1 samples in this new
4 protocol?

5 A. So when we were talking about the options and what
6 Option 1 was and then what Option 2 was, there was a
7 sub-section around priority 1 samples and that's where I
8 said to her:

9
10 *What do you want us to do with the priority*
11 *1 samples?*

12
13 And that's where she said:

14
15 *We want you to treat them the same as*
16 *priority 2 samples.*

17
18 Q. Did she give any reasons for that decision?

19 A. Not that I can remember off the top of my head, no.
20 Because priority 1 samples are major crime samples, so they
21 are the same as priority 2 samples, the only difference is
22 that we fast-track the priority 1 samples to get them
23 results quicker. That's the only difference between
24 priority 1 and priority 2.

25
26 Q. Well there's another difference, isn't there? It's
27 that priority 1 cases are regarded by police as the most
28 pressing, urgent and important cases on their hands at that
29 time?

30 A. There can be priority 1 samples within a case that's
31 not considered, so the whole case is not considered a
32 priority 1 case. It can just be particular samples within
33 that case that's priority 1 and they may submit those
34 samples as priority 1 but may get other forensic evidence
35 that then the rest of the case is treated just as a
36 priority 2 case.

37
38 Q. Yes Mr Hodge.

39
40 MR HODGE: I want to come back though to the issue that I
41 want to try to understand. Do you say, setting aside your
42 evidence about the meeting on 2 February 2018, do you say
43 that after that time it never occurred to you that the
44 police seemed to misunderstand what the 1.46 per cent
45 referred to?

46 A. No.

47

1 Q. We'll come to these documents a bit later. But when,
2 for example, you were getting an email from Inspector
3 Neville saying:

4
5 *When we're asking for DIFP samples to be*
6 *worked we're getting it that 30 per cent*
7 *versus what was predicted to be the outcome*
8 *which was 2 per cent.*

9
10 What did you think was going on?

11 A. That's where I thought I had clarified with him what
12 that percentage was.

13
14 Q. No, no, come back to my question. You remember I asked
15 you a moment ago do you say that you never thought that
16 police were confused about the 2 per cent, so I just want
17 to understand did you think they were confused and you
18 clarified it or did you never think they were confused?

19 A. After the Options Paper had been implemented I did not
20 think that any police were confused regarding the
21 percentages that were included in the Options Paper.

22
23 Q. So when you were getting the email from Inspector
24 Neville referring to 30 per cent, did you think he was
25 confused?

26 A. No, because he was talking about the success that they
27 had seen.

28
29 Q. Yes, but he was comparing that success of 30 per cent
30 to the less than 2 per cent?

31 A. And that's where I thought I had clarified with him
32 about what that 2 per cent was, to clear that up with him.

33
34 Q. So do you think he was confused about the 2 per cent?

35 A. Yes.

36
37 Q. You then thought at the end of - that was at the end of
38 2021. You'd thought oh, Inspector Neville has been
39 confused about what the less than 2 per cent figure is in
40 the Options Paper?

41 A. Yes, because he wasn't there at the discussion and
42 wasn't there for the implementation of the Options Paper.
43 He was coming in - he came in later.

44
45 Q. And you thought he seems very concerned about the fact
46 that he thought it was less than 2 per cent that you were
47 missing out on but he thinks we're actually missing out on

1 30 per cent?

2 A. From what they had seen that that's what they were
3 saying, yes, and that's when I clarified with him about
4 what the 2 per cent was actually referring to.

5
6 Q. So do you say:

7
8 *I said to him, "No, you're missing out on*
9 *or what we expected you to miss out on was*
10 *10 per cent of profiles".*

11
12 A. He had the Options Paper and he was talking about, this
13 is my recollection of the email trail, he was talking about
14 the 2 per cent and then I clarified with him that that
15 particular percentage was regarding NCIDD wasn't regarding
16 what he was matching it to.

17
18 Q. I understand. What I'm interested in understanding
19 though is if you focus on my questions, your view was that
20 the correct percentage to compare to his 30 per cent was 10
21 per cent, correct?

22 A. Yes.

23
24 Q. And do you think you said to him:

25
26 *No, the figure to look at is the 10*
27 *per cent.*

28
29 A. No, I just clarified with him what the 1.5 per cent
30 was.

31
32 Q. Did you say to him at any time:

33
34 *It was always expected that you would miss*
35 *out on profiles for 10 per cent of samples.*

36
37 A. No, because my understanding was that there would have
38 been hand-over between Acting Inspector Ewen Taylor and
39 Inspector Neville regarding this and that that would have
40 come out from the police's side rather than, you know,
41 years later Inspector Neville requesting more information
42 from me, which I was happy to provide.

43
44 Q. But he was raising it as a concern with you?

45 A. Yes.

46
47 Q. And he was raising it as a concern as to whether or not

1 this DIFP process should continue?

2 A. Yes, and by advising --

3

4 Q. And so - go on?

5 A. And by advising him that the QPS made the decision on
6 this, also meant to me that QPS could also say they no
7 longer wanted that to occur.

8

9 Q. Let me just clarify this. When you say years later he
10 was raising it, he raised it first in 2018, didn't he?

11 A. Yes, and that's where I did more work with Acting
12 Inspector Gerard Simpfendorfer.

13

14 Q. We'll come to that in a moment. But do you agree with
15 me that in 2018 when Inspector Neville raised the issue you
16 didn't clarify it with him?

17 A. I don't specifically remember that particular email,
18 I'm sorry.

19

20 Q. And you didn't clarify it with Inspector Simpfendorfer?

21 A. He wasn't asking about - my recollection of that is he
22 wasn't asking about that. He was asking about how we could
23 show more transparency around what rework options were
24 available.

25

26 Q. All right. I'll come to that after the morning
27 tea-break, but before we do that I just want to tidy up on
28 another answer you gave this morning. You said that:

29

30 *The reason that we switched to the Options*
31 *Paper was because we realised that this*
32 *should be a QPS decision.*

33

34 A. Yes.

35

36 Q. I have to suggest to you again that evidence is a lie?

37 A. No, it's not.

38

39 Q. What happened was this, wasn't it, that you and
40 Mr Howes and Ms Brisotto decided to abandon Project 184
41 because you knew that you would not be able to get sign off
42 from the senior management?

43 A. No, that's not true.

44

45 Q. Can you offer an explanation to the Commissioner of why
46 it is that Project 184 was not concluded?

47 A. The three of us had discussed that particular project

1 and Ms Brisotto said that she'd taken a step back and
2 looked at it and said that this was really a decision for
3 the QPS. And Mr Howes and I agreed, that once we took that
4 step back and looked at it more holistically that we
5 shouldn't be making a recommendation to the QPS around the
6 workflow, that it should be their decision around the
7 workflow and that's where the Options Paper came about.
8 And yes, we should have closed off Project 184, I agree.
9 In hindsight we should have closed that off.

10
11 THE COMMISSIONER: I can understand you saying that it
12 should be a decision by Queensland Police, but you keep
13 saying that you never made a recommendation. Why did you
14 think you shouldn't make a recommendation?

15 A. Because, as I said, the QPS own the samples. They
16 delegate the responsibility for testing to us. They've
17 been very clear with us previously about, you know:

18
19 *If we deliver samples you will test all*
20 *samples, we will tell you when there is no*
21 *further testing required.*
22

23 They will give us directions about covert samples, et
24 cetera. So they have a vested interest in the samples and
25 they want us to provide them with results in a time frame
26 that means they can actively pursue, you know, active
27 investigations. So there is also the consideration around
28 turn around times and ensuring that things that are tested
29 require testing. So if we were going to change this and
30 also ask them to give us advice about things, then that's
31 why the option needed to be put to them. From my
32 perspective I didn't see that it was something that we
33 could say to QPS you will do this, this is what we're
34 changing and this is the advice we need from you. That
35 wasn't the way I went into it.

36
37 MR HODGE: That's not the question that you're being asked.

38
39 THE COMMISSIONER: We might adjourn and come back to that,
40 unless it's - did you want to go on?

41
42 MR HODGE: I think I probably should just ask a few
43 questions. It won't take very long.

44
45 THE COMMISSIONER: Go on.

46
47 MR HODGE: You agree with me though it was never the case,

1 at least in the design of the project, the intention was to
2 make a recommendation to the QPS and seek the QPS's
3 agreement?

4 A. Yes, that was the intention of the project, yes, I
5 agree.

6
7 Q. And making a recommendation and seeking the QPS's
8 agreement is different from telling the QPS that you would
9 make the change whether they agreed or not?

10 A. Yes.

11
12 Q. I suggest to you no one in the laboratory contemplated
13 the possibility that you would just make the change
14 regardless of whether or not the QPS agreed?

15 A. Sorry, can you ask me that question again? I'm sorry.

16
17 Q. Yes. No one within the laboratory as far as you were
18 aware contemplated the possibility that you would just make
19 the change regardless of whether the QPS agreed.

20 A. That's right. But also if we'd put forward a
21 recommendation it was highly likely that the QPS would
22 agree with our recommendation. So that was where we had to
23 be careful about what we were doing.

24
25 Q. The problem that had arisen by about 9 January was
26 this, wasn't it, that you and Ms Brisotto and Mr Howes had
27 a particular recommendation you wanted to make but you knew
28 that at least two members of the senior management team
29 disagreed with that recommendation?

30 A. No, that's not true.

31
32 Q. Well it was a recommendation that you'd wanted to make,
33 you've agreed with that already?

34 A. That's where I said --

35
36 Q. But you knew - go on?
37 A. That's where I said when we were - the three of us were
38 discussing it, that's when Ms Brisotto had said, you know,
39 we shouldn't be making this decision, we should be putting
40 this to the QPS for a decision, and that's when we agreed.

41
42 Q. And you knew when you and Ms Brisotto and Mr Howes had
43 that discussion that at least Ms Rika and Ms Reeves did not
44 think that it was appropriate scientifically to be
45 discontinuing auto-microconning for samples in the DIFP
46 range?

47 A. They had put forward some of their feedback and at that

1 time it was very difficult for us to have robust scientific
2 discussions because they then became personal. So that was
3 a factor at that time regardless of anything else, and so
4 when Paula had suggested - Ms Brisotto had suggested that
5 the decision should be made by QPS, we agreed that that was
6 a good decision, because if we went to QPS and they said:

7
8 *No, we want to continue with Option 1.*
9

10 Then that was the decision made, that we would continue to
11 auto-microcon.
12

13 Q. Do you agree with me that if what you're saying is
14 true, and you decided that you were just going to provide
15 neutral information to the QPS and leave the QPS to decide,
16 that an obvious thing to do would be to have the Options
17 Paper reviewed by other members of the management team who
18 had different views from you as to what was scientifically
19 relevant to making the decision?

20 A. Not necessarily, no.
21

22 Q. Why not?

23 A. Because at that point, as I said, it was a very
24 difficult and traumatic time for every member of the
25 management team, as well as other members within the team.
26 So what we were trying to do was actually ask the QPS:
27

28 *Do you want to make this decision?*
29

30 And then if they said:
31

32 *We want to stick with Option 1, we still*
33 *want it to be done.*
34

35 Then there didn't need to be more disharmony within the
36 management team.
37

38 Q. But if you just think about my question. Accepting
39 that you wanted the QPS to decide, wouldn't an obvious
40 thing to do would be to ask other members of the management
41 team if there was additional information that ought to be
42 provided to the QPS?

43 A. No, given that most of the information within the
44 Options Paper had come from the project reports that they'd
45 seen.
46

47 Q. But the problem with that answer you see is, as you

1 know, that the feedback on the project reports was that it
2 doesn't focus on the right information for making the
3 decision?

4 A. That's not the way I interpreted it at the time.

5
6 Q. And what I suggest to you is once again the evidence
7 that you're giving is a lie as to why it is that you did
8 the things that you did in January of 2018?

9 A. No, Mr Hodge, I'm not lying. I'm not a liar. I am not
10 lying.

11
12 Q. And what you're seeking to conceal - I withdraw that.
13 What you're not telling the truth about is that when you
14 and Mr Howes and Ms Brisotto realised that you could not
15 get the agreement from the senior management team to what
16 you wanted the QPS to do, you went behind their backs and
17 abandoned the ordinary processes of the labs?

18 A. No, that's not true because from my perspective I
19 didn't think that we were not able to make a final draft of
20 that. I still thought we could work forward on that. But
21 as I say, it became clear that it shouldn't be us putting
22 forward a recommendation to QPS, they should be making that
23 decision.

24
25 THE COMMISSIONER: That explains why you redrafted it? It
26 might explain it why you'd redrafted it into the form in
27 which it appeared as on Options Paper, but it doesn't
28 explain why you didn't show the Options Paper for comment
29 to other members of the management team as used to be the
30 usual practice, does it?

31 A. Well as I said the content was taken from the reports
32 that they had seen to be put into there. And as I also
33 said it was a very difficult time and very traumatic.

34
35 Q. How did it make a better - how could it have improved
36 matters not to include management staff in a proposal to
37 change the processes of the lab substantially? How would
38 that help?

39 A. Because I didn't know which option QPS would choose,
40 and so to me if QPS had chosen Option 1, then that actually
41 removed some of the disagreement, for want of a better
42 word, or disharmony within the management team and that
43 removed that and so therefore, you know, we could focus on
44 other things. Because I wasn't confident that they would
45 choose Option 2.

46
47 MR HODGE: Would that be a convenient time, Commissioner?

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THE COMMISSIONER: Yes, we'll resume at 25 to 12.

SHORT ADJOURNMENT

THE COMMISSIONER: Mr Hodge.

MR HODGE: Thank you, Commissioner.

Q. Ms Allen, can you see and hear me?

A. Yes, I can.

Q. I just wanted to cover off on a couple of other things about January of 2018. Can you tell us what the urgency was that had arisen by that stage for getting the QPS to make a decision?

A. I didn't think there was any urgency.

Q. So there was no time pressure to try to get the QPS to agree not to continue with testing auto microcon samples in the DIFP range?

A. Not from my perspective, no.

Q. Do you recall that there was about to be a change made from using Profiler Plus to PP21?

A. Yes.

Q. For priority 3 samples?

A. Yes.

Q. And the consequence of that was going to be that it would increase the workload within the laboratory?

A. Yes.

Q. And therefore be likely to lead to a blow out of turn-around times?

A. I wouldn't necessarily say blow out of turn-around times. It may have increased the turn-around times.

Q. And so do you agree with me that one way of mitigating against the increase in turn-around times caused by the switch from Profiler Plus to PP21 was if the police would agree to not continue with the DIFP process - sorry, would agree to not continue with auto microcon for P2 samples?

A. From my perspective those two things weren't linked together but I understand what you're asking and I see that you're saying now that those two things are linked together

1 and, yes, less work would assist that situation.

2

3 Q. Do you recall that when Mr Howes sent out the email
4 attaching version 2 of the report, that he asked for
5 feedback by the middle of the following day?

6 A. I don't specifically remember that, no.

7

8 Q. Okay. Do you remember whether there was urgency around
9 bringing the issue to the attention of the QPS?

10 A. From my perspective there wasn't an urgency to do that,
11 no.

12

13 Q. If there was urgency could there be any reason other
14 than the fact that PP21 was about to start being used for
15 P3 samples?

16 A. As I said, there wasn't any urgency from my
17 perspective.

18

19 Q. And from your perspective, in terms of the operating of
20 your lab, was there - what was the advantage for you in
21 reducing turn-around times?

22 A. For me personally?

23

24 Q. Yes?

25 A. That we were helping Queenslanders. But it wasn't - I
26 didn't get anything personally from it.

27

28 Q. Was that turn-around times a measure that you were
29 judged against?

30 A. The turn-around time from receipt to link was something
31 that QPS monitored, yes.

32

33 Q. And it was one of the things that they would complain
34 to you about if they thought the turn-around times were
35 blowing out too far?

36 A. Yes, they would see if there was any particular reasons
37 as to why the turn-around times had increased.

38

39 Q. And was it one of the things that your senior managers
40 would be concerned to know about or not?

41 A. I met with them and would talk to them about things
42 that were happening in the lab. I'm not sure that they
43 necessarily were concerned, because they were kept abreast
44 of the things that were happening within the lab.

45

46 Q. I see. Now, I want to then take you forward to
47 November of 2018 when Inspector Neville raises some issues.

1 And so I'll bring up a document which is
2 FSS.0001.0051.4972. This is a chain of emails. I want to
3 start with the one on 14 November from Inspector Neville.
4 Can we go to the p.4982. You see Inspector Neville emails
5 you on 14 November 2018 and he's identifying that in a
6 particular operation there were samples that were submitted
7 as priority 1 and four of them were reported as DIFP?
8 A. Yes.

9
10 Q. And he goes on to say that his understanding "as per
11 the below", and he's referring to the email from
12 Superintendent Freiberg over the page, was that it was only
13 to occur for P2 and he asks for it to be introduced as it
14 will stop delays in obtaining results that are considered
15 urgent?

16 A. Yes.

17
18 Q. And so as soon as you got this email you must have
19 understood the police were saying to you bring back - "We
20 don't know why you stopped but bring back auto microcon for
21 priority 1 samples"?

22 A. Yes.

23
24 Q. And then if we go over the page to p.4983, you see,
25 after he's extracted the email from Superintendent
26 Freiberg, he says:

27
28 *The removal of the microcon step in the*
29 *process was agreed to on 2 February 2018 by*
30 *Superintendent Freiberg based on the advice*
31 *included in the attached paper. This paper*
32 *estimates that there would be less than a*
33 *2 per cent reduction in the number of*
34 *usable results if the step was eliminated.*

35
36 A. Yes.

37
38 Q. Now, we know, because you responded that you read this
39 email, do you agree with me that on reading that statement
40 from Inspector Neville you must have immediately understood
41 that he did not understand the Options Paper?

42 A. I'm not sure about immediately but, yes, I probably
43 did.

44
45 Q. Because you knew that the Options Paper wasn't saying
46 that there would be a less than 2 per cent reduction in the
47 number of usable results, it was saying there would be a

1 less than 2 per cent reduction in the number of NCIDD
2 upload links?

3 A. Yes, that's right.

4

5 Q. And then you see he goes on to say:

6

7 *Based on the fact that three out of four*
8 *samples for this case yielded a result when*
9 *testing was continued, anecdotally it would*
10 *seem that we may be missing out on more*
11 *than 2 per cent of results.*

12

13 A. Yes.

14

15 Q. You see then he goes on to say:

16

17 *Since eliminating this step has your*
18 *laboratory undertaken any statistical*
19 *analysis to determine if there has been a*
20 *drop in the proportion of samples that give*
21 *a usable profile, please.*

22

23 A. Yes.

24

25 Q. And he says:

26

27 *There are other serious matters including*
28 *homicides where testing has stopped once*
29 *advice was received that there is*
30 *insufficient DNA for further testing.*
31 *Based on the results for this case (75 per*
32 *cent success rate for the ones received*
33 *back so far), would you recommend that*
34 *these cases be re-examined please.*

35

36 A. Yes.

37

38 Q. Now, tell me if you agree with this: this was an
39 officer of the QPS who was asking you, who was in a
40 position of superior knowledge, for advice on how to deal
41 with DNA testing for the most serious kinds of crimes?

42 A. Yes.

43

44 THE COMMISSIONER: Asking what?

45

46 MR HODGE: Asking for advice.

47

1 THE COMMISSIONER: Yes. And I think Ms Allen agreed.

2

3 MR HODGE: Yes.

4

5 Q. And then if we go to the p.4980. At the bottom of the
6 page is the start of your email in response?

7 A. Yes.

8

9 Q. And you see your email in response says:

10

11 *During a meeting on 1st of Feb 2008 Paul*
12 *Csoban and I met with Superintendent Dale*
13 *Freiberg to discuss the Options Paper that*
14 *had previously been provided to the QPS for*
15 *decision.*

16

17 A. Yes.

18

19 Q.

20 *During this meeting the Superintendent*
21 *agreed that option 2 was the preferred*
22 *option (which was later confirmed via email*
23 *as per below). During the discussion the*
24 *second of option 2 (section A) was*
25 *discussed, which related to priority 1*
26 *samples, and the Superintendent indicated*
27 *that priority 1 samples should be processed*
28 *the same as major crime and volume crime*
29 *samples, which is not to be automatically*
30 *progressed through the microcon process.*

31

32 A. I can't see the second part of that.

33

34 Q. Sorry, Operator, we'll just need to keep going so that
35 Ms Allen can see it. Do you see that?

36 A. Yes, and I was incorrect where I referred to volume
37 crime priority 3s not automatically processing through
38 microcon, because they hadn't progressed through microcon.

39

40 Q. Well, when you say that do you mean the recollection
41 that you gave in November of 2018 to Inspector Neville was
42 incorrect in that it wasn't the case that the
43 Superintendent had said that priority 1 samples should be
44 processed the same as P2 and P3 samples, she'd only said
45 the same as P2 samples?

46 A. That's right, because the QPS had requested that
47 minimal work be done on volume crime, so it would be

1 unusual for a volume crime sample to be auto microconned.

2

3 Q. Now, do you say sitting in the witness box here today
4 is the first time you've realised that the recollection you
5 gave to Inspector Neville back in 2018 was inaccurate?

6 A. Specifically about the part of "and volume crime
7 samples, priority 3", yes, that's incorrect, and that's the
8 first time that I've realised that I have made a mistake in
9 that email.

10

11 Q. You may not be able to answer this, but how do you
12 think it is that three years and 11 months ago you had a
13 less accurate recollection of a discussion that had
14 occurred about nine months earlier than you do today?

15 A. I'm only highlighting that when I said "and volume
16 crime samples, P3", I shouldn't have put that part in,
17 because that wasn't, that wasn't what was happening with
18 volume crime samples. That's the only part that I should
19 not have included.

20

21 Q. I understand. But I'm curious, this is a discussion
22 that you apparently remember with Superintendent Freiberg
23 on 2 February 2018, and it sounds like from your evidence
24 you say you have a more accurate recollection of it today
25 than the recollection you gave in November 2018 to
26 Inspector Neville. I'm interested in how that could be?

27 A. Can you point to me about where the difference is?

28

29 Q. Well you're pointing out the difference. You're
30 pointing out that what you explained to Inspector Neville
31 in November of 2018 is not right and it's not the same as
32 what you remember today?

33 A. The only part that's not right was actually saying that
34 the Superintendent indicated that priority 1 samples should
35 be treated as volume crime samples. That wasn't what she
36 said. She said that priority 1 samples should be treated
37 the same as priority 2 samples because they are all major
38 crime samples and it was my mistake to put in there about
39 volume crime samples because they weren't auto microconned.

40

41 Q. Do you agree with me you seemingly took no notes of the
42 meeting with Superintendent Freiberg on Friday 2 February?

43 A. Yes, I did not take any notes.

44

45 Q. But you are a note-taker in the sense that it is your
46 practice to regularly take notes of meetings?

47 A. Sometimes, yes. Not all the time.

1
2 Q. So why would it be, do you think, that you didn't take
3 a note of this meeting on 2 February with the police where
4 a Superintendent apparently agreed to cease testing samples
5 in the most serious cases and there's no other record of
6 it? Why do you think you didn't take a note of that?

7 A. My understanding is I was actually doing a lot of
8 talking, so I was talking them through the Options Paper,
9 what we had done, et cetera, with the Options Paper and
10 then we also discussed the massively parallel sequencing
11 project that was occurring with both QPS and FSS.
12

13 Q. You see in the email, if we go on, that in the next
14 paragraph it says:

15
16 *Automatic progression of samples through*
17 *the microcon process means that all*
18 *available DNA extract will be consumed, so*
19 *no further testing can be conducted on*
20 *these samples after this step.*
21

22 A. Yes.
23

24 Q. Now that was a lie, wasn't it?

25 A. It's not a lie. I should have clarified that but it's
26 not a lie.
27

28 Q. And when you say you should have clarified it, do you
29 mean you should not have said it because it's not true?

30 A. I should have clarified it and said that if the
31 microcon is to fail, then there will be no sample left. If
32 the sample is microconned to 35 and two amplifications are
33 done from that sample, then there's hardly any sample left
34 so therefore negligible sample left for them to do anything
35 with for another process, and also the microcon process can
36 fail. Whilst that's rare, it can also fail, so that the
37 sample is no longer retained. So I should have qualified
38 that because to me that's a risk for the QPS, that they may
39 not be able to send that DNA sample to somewhere else that
40 does testing that we don't do.
41

42 Q. Now, you know that that would only be if you did a
43 microcon to full?

44 A. No, it can also be if you microcon to 35. If
45 theoretically you have 35 microlitres left - they try to
46 get to 35. Two microlitres can be used for the
47 quantitation process and then if they do two amplifications

1 because one amplification shows that there is a mixed DNA
2 profile and they wish to confirm that mixed DNA profile,
3 they'll then do a second amplification which leaves barely
4 any sample left. So they're the situations that I should
5 have clarified with them but wanted to ensure that they
6 were aware that they could be left with no sample. So if
7 they're critical samples for particular cases, it's
8 something they needed to bear in mind.

9
10 Q. Now, I'm sorry, look at the sentence that you wrote,
11 Ms Allen. You said:

12
13 *Automatic progression of samples through*
14 *the microcon process means that all*
15 *available DNA extract will be consumed.*

16
17 That was a lie, wasn't it?

18 A. It's not a lie. I should have qualified that.

19
20 Q. Let me put it like this. No, no, stop. Do you agree
21 that it is not true? It is not true that automatic
22 progression through the microcon process means that all
23 available DNA extract will be consumed?

24 A. I should have said that it can --

25
26 Q. Do you agree that --

27
28 THE COMMISSIONER: Please answer the question, Ms Allen?

29 A. Can you ask me the question again, please.

30
31 MR HODGE: Do you agree that it is not true that automatic
32 progression of samples through the microcon process means
33 that all available DNA extract will be consumed?

34 A. Yes.

35
36 Q. And the reason that you made that statement to the
37 police was to discourage them from wanting to have auto
38 microcon reintroduced for P1 samples?

39 A. No, that's not true.

40
41 Q. You see, if you look about four paragraphs down, do you
42 see - I'm sorry, three paragraphs down, do you see the
43 words "if the QPS wishes"?

44 A. Yes.

45
46 Q. You see you said:

47

1 *If the QPS wishes for P1 samples to*
2 *automatically be processed through the*
3 *microcon process, which leaves no available*
4 *extract for other testing, this process can*
5 *be reintroduced.*

6
7 A. Yes.

8
9 Q. And you were emphasising that proposition, that if they
10 reintroduced the microcon process it would mean that all of
11 the extract would be consumed?

12 A. Yes, because in the instances where they do it to full
13 there is no extract left.

14
15 Q. And you knew that the standard process within the
16 laboratory was not to auto microcon to full?

17 A. Yes, it was down to 35 at that point, yes.

18
19 Q. And you didn't say that anywhere in your email?
20 A. No, I didn't.

21
22 Q. And you knew that the statement:

23 *Automatic progression of samples through*
24 *the microcon process means that all*
25 *available DNA extract would be consumed*

26
27
28 was false?

29 A. It's not that it's false, it's that I should have
30 clarified that further with them to ensure that they
31 understood the risk. That's all I was trying to
32 communicate to them, was the risk about their priority
33 samples and that if they chose to want to do anything else
34 they may not have that option.

35
36 THE COMMISSIONER: Don't you think it's a peculiar way to
37 point out a risk that it will happen?

38 A. In hindsight, yes.

39
40 MR HODGE: It's not in hindsight. This was quite
41 deliberate. You were deliberately seeking to mislead the
42 Queensland Police, weren't you?

43 A. No, I was not.

44
45 Q. You were lying to them to try to discourage them from
46 asking for the reintroduction of auto microcon for P1
47 samples, weren't you?

1 A. No, I was not.

2

3 Q. And the explanations you've sought to offer today are
4 also lies?

5 A. No, that's not right. They're not lies.

6

7 Q. And we'll come back then to auto microcon in a moment.
8 You see then, if you look a little bit further down, it
9 says in the next paragraph:

10

11 *The Options Paper reviewed 1449 major crime*
12 *samples that had been progressed through*
13 *the microcon process over a one year*
14 *period, as this was considered to be*
15 *sufficient samples numbers to demonstrate a*
16 *clear trend.*

17

18 A. Yes.

19

20 Q. Now, that was something you were writing in response to
21 this question that Inspector Neville had raised where he
22 was saying the paper estimates that there will be less than
23 a 2 per cent reduction in the number of usable results and
24 asks if you performed any further statistical analysis
25 given what they'd found for three out of four samples?

26 A. Yes, I was also talking to a different audience.

27

28 Q. And you see - sorry, what does that mean? What does
29 that mean, you were talking to a different audience?

30 A. Well that email was sent to Acting Inspector
31 Simpfendorfer and to Superintendent Bruce McNab.

32

33 Q. And then what difference does that make?

34 A. Well they may not necessarily have been across all of
35 the information that Inspector Neville had been at the time
36 so this was me trying to ensure that they had information.

37

38 Q. Right. Do you agree with this: none of the three
39 officers of the Queensland Police Service who are on this
40 email had been part of the discussion on 2 February 2018?

41 A. Yes.

42

43 Q. None of them had been involved in considering the
44 original Options Paper?

45 A. Yes.

46

47 Q. And Inspector Neville was saying to you that he

1 understood that the Options Paper showed that they would
2 lose less than 2 per cent of usable profiles?

3 A. Yes.

4
5 Q. And you knew that that was an incorrect understanding
6 of the Options Paper?

7 A. At that time I didn't necessarily focus on that because
8 he asked me to direct my answer to Acting Inspector
9 Simpfendorfer and Superintendent McNab. So I was then
10 dealing with two different people.

11

12 Q. Did you think they had a better understanding of the
13 Options Paper than Inspector Neville?

14 A. They may have.

15

16 Q. Do you seriously say that was what you thought at the
17 time?

18 A. I was just trying to provide information to them to get
19 to a point that we were all on the same page.

20

21 Q. And you see you then say in your email:

22

23 *The laboratory is unable to search the*
24 *Forensic Register to undertake any*
25 *statistical analysis regarding usable*
26 *profile numbers.*

27

28 A. Yes.

29

30 Q. And you are here, I want to suggest to you, directly
31 engaging, and when you use the work usable you're taking it
32 from Superintendent Neville's email referring to the less
33 than 2 per cent, you are directly engaging with the point
34 that Inspector Neville has raised?

35 A. No, it was around the Options Paper and we often talked
36 to QPS about usable profiles, rather than success/fail,
37 et cetera. It's about a usable profile because even
38 something that doesn't give you a, doesn't give you
39 information at all of the locations, it can still be a
40 usable DNA profile.

41

42 Q. And what you didn't say to Inspector Neville, or to
43 Inspector Simpfendorfer, or to Superintendent McNab was
44 that what they were missing out on, in case they hadn't
45 understood, was approximately 10 per cent of samples could
46 produce a usable profile on the analysis that you had done?

47 A. That's right.

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Q. And you knew if you pointed that out to them they might want to reconsider the entire question of whether they were not progressing to auto microcon for P2 samples?

A. No, I didn't know that.

Q. You must have known that because Inspector Neville had said in his email to you:

There are other serious matters including homicides where testing has stopped once advice was received that there is insufficient DNA for further testing. Based on the results for this case, 75 per cent success rate for the ones received back so far, would you recommend that these cases be re-examined please.

A. And that's where they were re-examined.

Q. You knew, didn't you, that if you were to properly inform the Queensland Police about what they were missing out on, then it was likely that they would ask for the auto microcon process to be reintroduced for P2 samples?

A. No, I didn't know that.

Q. And that's why you sought to mislead them?

A. No, I did not seek to mislead them at all.

Q. And then you see you go on to say in the next paragraph:

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

A. Yes.

Q. And that's false as well, isn't it?

A. No. My understanding was that that's what scientists were doing.

Q. How were they doing it?

1 A. They were requesting for samples in the DIFP range to
2 be microconned.

3
4 Q. So who were the scientists, in what section, that you
5 thought were reviewing all of the DIFP samples and asking
6 for them to be microconned, if they thought it would help
7 the case?

8 A. The reporting scientists.

9
10 Q. You knew, didn't you, that the only way in which a DIFP
11 result would come to them was if it came as part of a case
12 where other samples that were not DIFP or no DNA detected
13 had come to them?

14 A. Yes.

15
16 Q. And you couldn't possibly have thought that scientists
17 in general were reviewing the results where major crime
18 samples had come up as DIFP?

19 A. Some of the scientists do look at other samples within
20 cases when they're case managing them so I didn't have any
21 --

22
23 Q. You knew, didn't you - finish your answer?
24 A. It's okay.

25
26 Q. You knew, didn't you, that it was only in a fraction of
27 cases, sorry, a fraction of samples, where the scientists
28 would end up reviewing a DIFP result?

29 A. You mean reporting scientists?

30
31 THE COMMISSIONER: Any scientist.

32
33 MR HODGE: Any scientist?

34 A. Reviewing for rework strategies?

35
36 Q. Yes?

37 A. I couldn't tell you what percentage they were because I
38 don't know, but my understanding was that staff understood
39 that they were able to use, reporting scientists were able
40 to use the microcon process as a rework strategy within a
41 case.

42
43 Q. When you made this statement to the police, what you
44 intended to do was to comfort them that they were not
45 missing out on anything by the DIFP process because where
46 there were DIFP results they were being reviewed by
47 scientists?

1 A. I was trying to let them know that scientists within
2 cases could be reviewing those and --

3
4 Q. That's not what you said. That's not what you said.
5 You know that, don't you? You didn't say there could be
6 cases where scientists have reviewed them, you said:

7
8 *Whilst the microcon process has not been*
9 *automatically applied to major crime*
10 *samples since mid Feb scientists have*
11 *reviewed those results and requested a*
12 *microcon process if in the context of the*
13 *case it could have been of potential*
14 *benefit.*

15
16 A. I could have worded that much better for them to
17 understand what I was trying to convey to them, yes.

18
19 Q. And when you say you could have worded it much better,
20 do you mean you could have told them the truth?

21 A. No, I could have worded it --

22
23 Q. Go on?

24 A. I could have worded it better so that the true intent
25 of what I was trying to communicate to them was clear. It
26 was clear to me but it was not, as you're pointing out, it
27 was not clear to perhaps them.

28
29 THE COMMISSIONER: When you did the review paper this year,
30 or Mr Howes did it and you looked at it, what were the
31 results that you obtained in order to perform your
32 assessment?

33 A. I believe it was four year's worth of data for samples
34 that had been microconned. I think they were only
35 priority 2 samples, but I'll have to double-check because I
36 haven't read that paper for a while.

37
38 Q. Yes. Thank you. Yes, Mr Hodge?

39 A. Sorry, it could have also included priority 1 samples
40 as well.

41
42 Yes.

43
44 MR HODGE: Now you see in the paragraph you go on to say:

45
46 *If the QPS undertook a search of all DNA*
47 *insufficient results on P1 and P2 samples*

1 *since the 12th of February the laboratory*
2 *could undertake an analysis of the cases to*
3 *determine if additional testing through the*
4 *microcon process is required. This would*
5 *require resources and would reduce the*
6 *number of results that are reviewed by the*
7 *lab until the analysis was completed.*

8
9 A. Yes.

10
11 Q. And so what was it that you were proposing to police?

12 A. As the lab isn't able to directly get reports from the
13 Forensic Register, but the QPS can, they could have looked
14 back through for that time period to get that data for us
15 so that we could have then gone through that to see what
16 the state of play was, were there other samples that needed
17 to be reviewed, et cetera.

18
19 Q. Do you agree with me that your entire email is
20 constructed to seek to discourage the police from asking
21 for the reintroduction of the automatic microcon process?

22 A. No, I disagree with that.

23
24 Q. When you read your email can you identify any part of
25 it that offers a reason in favour of reintroducing the auto
26 microcon process?

27 A. That was a decision for the QPS and I was providing
28 them with information on that and --

29
30 Q. When you read your email can you identify any part of
31 it that offers a reason in favour of reintroducing the
32 automatic microcon process?

33 A. No.

34
35 Q. Can you identify reasons that it offers for not
36 reintroducing the automatic microcon process?

37 A. No.

38
39 Q. You honestly can't identify anything in the email that
40 offers a reason for not reintroducing the automatic
41 microcon process?

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

43
44 Q. You mean when you say more than once that if they do
45 automatic microcon it will consume all of the sample, you
46 don't think that that's offering a reason not to
47 reintroduce the automatic microcon process.

1 A. No, that's a decision for the QPS. If they're aware
2 that there is no sample left and they still want to proceed
3 because they want the best possible outcome at that time,
4 which means consuming the sample and they're aware of that,
5 to me that's not discouraging them from using the microcon
6 process.

7
8 Q. This evidence that you are giving is a lie, isn't it?
9 A. No.

10
11 Q. It is just another lie to cover up the lies that you
12 told to the Queensland Police?

13 A. No, it is not a lie.

14
15 THE COMMISSIONER: Ms Allen, if you were able this year to
16 get four years of data in order to study the results with a
17 view to assessing the new process after 2018, why did you
18 tell the QPS in this email that you weren't able to get
19 data?

20 A. Because at that time there'd been a transition across,
21 from the Forensic Register across to a commercial company
22 and they were undertaking a tender process at that time and
23 QPS - however QPS still had a staff member within QPS that
24 was able to do these reports for it but we weren't
25 necessarily - we needed QPS's approval to get that, which
26 is why I framed it if QPS got that data for us we would be
27 able to review it.

28
29 Q. Now the company that was running the Forensic Register
30 was BDNA?

31 A. Yes, they were the successful tenderer for that
32 process, yes.

33
34 Q. And you asked them to retrieve the data this year for
35 the review that was undertaken?

36 A. Yes, that's right.

37
38 Q. So what stopped you asking them in 2018 for the data to
39 perform the analysis that Inspector Neville suggested?

40 A. Because there was still the tender process going on and
41 I think the tender process took about 18 months or two
42 years to finalise, so BDNA didn't necessarily have that
43 yet, it was going to - so it was going to a staff member
44 within QPS for that.

45
46 Q. So if I ask BDNA whether at the date of this email they
47 were able to give you the data if you'd asked for it, they

1 would tell me they were unable, is that right?

2 A. That's my recollection of it, yes.

3

4 Yes, Mr Hodge.

5

6 MR HODGE: Can we then go, Operator, to p4978. So now by
7 this time, 20 November, you and Inspector Simpfendorfer
8 have exchanged a couple of emails and he sends you an email
9 on 20 November and says:

10

11 *You mention there are a number of factors*
12 *that would be taken into consideration*
13 *regarding the balance between concentrating*
14 *the sample versus preserving extract for*
15 *other testing and you gave some examples*
16 *including assessing the quality and*
17 *quantity of the DNA as a key factor to*
18 *obtaining a DNA profile.*

19

20 And then you see he goes on to say:

21

22 *Do you take these factors into*
23 *consideration only when sending through the*
24 *DNA insufficient result for all exhibits,*
25 *P1 and P2 only exhibits, P1 only exhibits,*
26 *or do you take these factor into*
27 *consideration only when QPS requests*
28 *further processing, or do you do take these*
29 *factors into consideration only when the*
30 *QPS requests advice on other testing*
31 *options?*

32

33 And then he goes on to ask a further question about if it
34 is option 1 or 2, how do you provide this advice to the QPS
35 to assist investigators? Do you see that email?

36 A. Yes.

37

38 Q. You agree with me what must have been apparent to you
39 on reading this email was that Acting Inspector
40 Simpfendorfer had understood you to be saying, as you were
41 saying, that if you put a sample through to automatic micro
42 concentration the entire sample would be consumed, and also
43 that scientists were reviewing all of the DIFP results to
44 decide whether in the context of a case you ought to put a
45 sample through for automatic micro concentration. Do you
46 agree with that?

47 A. From my reading of the email I took it that he was

1 asking for more information about different aspects of the
2 work that we do.

3
4 Q. And so your response, if we go to p.4977, was to say:

5
6 *Scientists in Forensic DNA Analysis apply*
7 *scientific principles to processing and*
8 *reworking of all samples that they review*
9 *as they are bound by the Code of Conduct*
10 *for the Queensland Public Service and are*
11 *committed to ensuring the best possible*
12 *outcome for the Queensland community.*

13
14 A. Yes.

15
16 Q. Do you agree with me that you didn't make any attempt
17 to directly respond to the questions that Acting Inspector
18 Simpfendorfer had asked?

19 A. I took the way that he had sent - I took what he had in
20 his email in a different way than what he had intended and
21 so that's why my response was like that.

22
23 Q. What I suggest to you is this: you well understood
24 from Acting Inspector Simphendorder's email that he was
25 taking the things that you had sent in your initial email
26 of 15 November as true and the problem was you couldn't
27 answer his questions because it would reveal that the
28 things that you'd said to him were untrue. Do you agree
29 with that?

30 A. No, I don't.

31
32 Q. And so that was why you simply didn't meaningfully
33 respond and instead said you follow scientific principles?

34 A. Like I said, I took his email in a different way than
35 what he had intended which is why my response was like that
36 and I believe the next email then clarifies that.

37
38 Q. I just want to understand, when you say the next email
39 clarifies that, do you mean the next email from him?

40 A. Yes, that's right.

41
42 Q. Because then he responds - this is on p.4976 - he
43 thinks that there must have been something in the phrasing
44 of his questions that was creating the problem, do you
45 agree?

46 A. It was the way that I had read it, that I didn't
47 understand what he was asking and so he has come back and

1 rephrased it.

2

3 Q. I'm sorry, let's go back to p.4978. Maybe we'll take
4 question 1. What was the part of question 1 you didn't
5 understand?

6 A. From my perspective it was the whole email and the way
7 that I read the email, I didn't necessarily understand what
8 he was driving at, which is why I responded in the way that
9 I did.

10

11 Q. Now, I suggest to you again this explanation that
12 you're giving is a lie, isn't it?

13 A. No, it's not a lie.

14

15 Q. And you understood from his email that he was operating
16 on the basis of the things that you had falsely told him on
17 15 November 2018?

18 A. No, I did not understand what he was wanting from me,
19 which is why my response was what it was, which is why he's
20 then sought to clarify that with me, to ensure that I did
21 understand.

22

23 THE COMMISSIONER: He was asking you, for example, whether
24 you took certain things into consideration at a particular
25 point in time, wasn't he?

26 A. Yes.

27

28 Q. So what was the problem with responding to that request
29 for information?

30 A. I don't remember this particular email but all I
31 remember is that from my response I obviously didn't
32 understand what he was requesting of me because of how I
33 talked about, you know, that we follow a Code of Conduct,
34 et cetera. And so then he's responded and said, you know,
35 perhaps we'll go in a different direction, which then made
36 me more clear about what he was actually wanting
37 information on.

38

39 Q. I must have misunderstood your earlier evidence. I
40 thought you said that you responded in the way that you did
41 because you misunderstood the tenor of his email and now
42 you say you don't remember the email and you're
43 reconstructing it from reading the email. Have I got that
44 right?

45 A. No, sorry, I don't remember why I didn't understand
46 what was in the email now, I don't remember why I took the
47 tact that I did in my response, I don't remember what that

1 particularly was.

2

3 MR HODGE: And if we then go to p.4976. You see Acting
4 Inspector Simpfendorfer comes back and he actually pulls
5 out some quotes from what you'd said, which are the things
6 he's saying he's trying to understand, and he points out
7 you'd said:

8

9 *There are a number of factors that would be*
10 *taken into consideration regarding the*
11 *balance between concentrating the sample*
12 *versus preserving extract for other*
13 *testing.*

14

15 and also you'd said:

16

17 *All of these factors are taken into*
18 *consideration prior to requesting a*
19 *microcon. We have assessed a large amount*
20 *of data to provide the best indication of*
21 *how profiles have behaved and provide this*
22 *advice to the QPS to assist.*

23

24 A. Yes.

25

26 Q. And it was obvious to you, wasn't it, that he thinks,
27 based on the things that you've said in writing, that
28 within the lab there's some sort of assessment process
29 that's going on, taking into account factors in order to
30 decide whether to request a microcon?

31

32 A. Yes.

33

34 Q. And he's asking you to explain that?

35

36 A. Yes. Now --

37

38 Q. He's wanting you to say --

39

40 A. Clarify.

41

42 Q. -- when do you do it.

43

44 A. Yes, and now I understand what he was driving at in
45 this particular email.

46

47 Q. But you already understood it because it was clear from
the first email that we were just looking at I suggest to
you?

48

49 A. No, it was not clear to me. I don't remember exactly
why it wasn't clear to me but my response shows that I

1 didn't understand where he was trying to go. He then
2 provided more information on that and then we were able to
3 progress from there.

4
5 Q. But the problem you had was this, wasn't it: you'd
6 lied to him initially and told him that whenever something
7 came up as DIFP, it was being reviewed by a scientist in
8 the context of a case?

9 A. That was not my attempt to lie. I agree that I could
10 have worded that much better so that he understood more
11 about what we were and weren't doing, but I was not
12 intentionally lying to him.

13
14 Q. And this email was sent on 22 November and then he
15 chases you for a response on 30 November, which is.4975.
16 Asks if you've had a chance to consider his below email?

17 A. Yes.

18
19 Q. Tell me if you agree with this: he is engaging with
20 you in a straightforward way because he thinks that you are
21 behaving professionally and providing him with proper
22 advice?

23 A. Yes, that's the way I've always engaged with QPS.

24
25 Q. And he doesn't realise that you are saying things to
26 him that are not true?

27 A. That's not right.

28
29 Q. And then if we go to p.4974. We see at the bottom of
30 the page you then respond on 30 November to say you've been
31 busy doing something else?

32 A. Yes, that's right. Both of my teams had a NATA
33 assessment that week.

34
35 Q. And then at the top of that page you see an email you
36 sent on 5 December where you say you've been working with
37 the team leaders. That's your team leaders, is that right?

38 A. Yes, that's right.

39
40 Q. You are then suggesting or saying to him that there's
41 going to be a change in the process that you've adopted up
42 until that point in time?

43 A. That we could be more transparent with QPS, yes.

44
45 Q. And he then in effect having been told you're going to
46 change the process, he doesn't pursue the issue any
47 further?

1 A. I thought there were other emails where we were
2 discussing what expanded comments could be put into the
3 forensic-register.
4

5 Q. Yes, he doesn't pursue the issue of what exactly it is
6 that the lab is doing in accordance with your claims that
7 they're reviewing the cases or reviewing the samples in the
8 context of cases?

9 A. I took it from that that they were wanting more
10 transparency around how they could rework samples, how
11 police could make decisions on reworking samples and that
12 we needed to provide them with more information around what
13 that type of rework was.
14

15 Q. And then can we bring up another chain of emails which
16 is FSS.0001.0066.4600. This is a chain of emails but if we
17 go to p.4603. You see this is an email that was sent by
18 Acting Inspector Simpfendorfer on 19 November 2018?

19 A. Yes.
20

21 Q. And he asks if all priority 1 samples can now proceed
22 with the auto-microcon process?

23 A. Yes.
24

25 Q. And then if we go to page.4602. You see you respond to
26 Acting Inspector Simpfendorfer on 20 November and say:
27

28 *Thank you for confirmation regarding the*
29 *automatic progression of P1 samples.*
30

31 And then you go on to say:
32

33 *As previously advised once the*
34 *microcon-concentration step has been*
35 *undertaken this will completely consume the*
36 *sample and no DNA extract will be available*
37 *for any further testing that the QPS may*
38 *wish to use.*
39

40 A. Yes, and as I've said before I should have been more
41 clear about what that was.
42

43 Q. Well again, and I want to suggest to you when you say
44 that what in truth is the case is you know that you lied to
45 Acting Inspector Simpfendorfer and you're now offering this
46 as an excuse to say well perhaps you could have been more
47 clear?

1 A. No, that's not true because if a scientist microcons to
2 35 and uses two amplifications there is no extract left.
3 And yes, I agree with the Commissioner's point that I
4 should have put that risk in a different light.

5

6 Q. Then can we go to p.4600. You see at the bottom of the
7 page you've - or this email chain has been passed on
8 Mr Howes and Ms Brisotto. You see that Mr Howes says to
9 you:

10

11 *I assume this is just for the P1 samples*
12 *rather than the case and the question*
13 *really is proceed to full microcon or to 35*
14 *microlitres. The better microcon is to*
15 *full but will take all the sample as you*
16 *mentioned as a process and given these are*
17 *P1 and therefore allocated should we have*
18 *the full versus 35 microlitre decision with*
19 *the allocated reporter or just proceed with*
20 *standard mic to full for all P1 samples in*
21 *this range.*

22

23 A. Yes.

24

25 Q. Do you agree with me even if it were true as you've
26 claimed that you had just worded things badly to Acting
27 Inspector Simpfendorfer and just left out of a bit of
28 detail, when you got this email from Mr Howes the problem
29 must have been apparent to you, acutely apparent, which was
30 you'd told Acting Inspector Simpfendorfer that if they went
31 with auto-microcon it would consume all of the sample, and
32 Mr Howes is pointing of course that's not the case and
33 asking what option should they adopt?

34

35 A. From my perspective I was going on the undertaking that
36 if it was to full the extract would be exhausted and if the
37 scientist had chosen two amplifications it would also be
38 exhausted, and given that some of them might be mixed DNA
39 profiles that were obtained it was likely that there would
40 be two amplifications. That was the premise under which I
41 was working.

41

42 THE COMMISSIONER: Mr Hodge, am I right that Inspector
43 Neville in his that set off this immediate chain asked for
44 P1 samples to no longer be ignored in that way and asked
45 for the discretion about concentration to be with the
46 reporter?

47

A. I remember about the --

1
2 Q. (Indistinct) the email?
3
4 MR HODGE: I'll bring that up. That's WIT.0020.0002.0430.
5 I'm not sure that this - so this the email that kicks it
6 off. His request is at the bottom of the page. See the
7 last paragraph?
8
9 THE COMMISSIONER: No, it was a later email I think where
10 he - it's a later email. It was a very short email.
11
12 MR HODGE: I'll see if I can find that email for you,
13 Commissioner. I think the recollection that I'm being
14 given from the Bar table is that Inspector Neville went
15 overseas about this time.
16
17 THE COMMISSIONER: No, but it was an email you showed just
18 a few minutes ago.
19
20 MR HODGE: I wonder if it's an Acting Inspector
21 Simpfendorfer email.
22
23 THE COMMISSIONER: It might have been, yes.
24
25 MR HODGE: I think I know the email that you're referring
26 to, I'm just trying to find it. I think it's
27 FSS.0001.0066.4603. Is it that sentence about --
28
29 THE COMMISSIONER: Yes, that's the one. So he's asking
30 that the decision be with the scientist. I don't know that
31 that was ever addressed in any of the responses, was it?
32
33 MR HODGE: I don't believe so.
34
35 Q. You tell me if - no, I'll go back a step.
36
37 THE COMMISSIONER: You deal with it as you wish, Mr Hodge.
38
39 MR HODGE: Ms Allen, did you understand the email from
40 Acting Inspector Simpfendorfer, which you can see on the
41 page, to be asking for a discretion to be with the
42 scientist?
43 A. My understanding was that he was saying can they do
44 this, not we want them to do this.
45
46 Q. I understand. Do you agree with me that if we then go
47 up to page.4600, you give a direction to Mr Howes that for

1 all P1 samples they should be microconned to full?

2 A. Based on his advice, yes.

3

4 Q. Based on who's advice, Mr Howes's advice?

5 A. Yes, isn't that what he said in the bottom - in his
6 email, he said that that's the best option?

7

8 Q. He says to you, if we go down to the bottom of the
9 page:

10

11 *The better microcon is to full but will*
12 *take all the sample as you mentioned. As a*
13 *process and given these are P1 and*
14 *therefore allocated should we have the full*
15 *versus 35 microlitre decision with the*
16 *allocated reporter or just proceed with*
17 *standard mic to full for all P1 samples in*
18 *this range.*

19

20 A. Yes, so my understanding was that the QPS wanted
21 priority 1 samples to be auto-microconned and that from
22 Justin's response was that the best option was to microcon
23 to full.

24

25 Q. That again, this evidence you are giving is a lie,
26 Ms Allen. You know that they asked for it to be
27 auto-microconned but they weren't making the choice as to
28 whether that was auto-microconned to full rather than
29 auto-microconned to 35 microlitres, you know that, don't
30 you?

31 A. They were asking for the best possible outcome and --

32

33 Q. Ms Allen, you know, don't you, that the Queensland
34 Police were not asking you to auto-microcon to full?

35 A. They were asking for auto-micro-concentration, yes.

36

37 Q. And you had told them that if they auto-microconned
38 that meant that all of the sample would be consumed?

39 A. Yes, I had.

40

41 Q. You hadn't told them that actually the standard process
42 in the lab for micro-concentration was to 35 microlitres?

43 A. At that point, no, I hadn't said that there were two
44 different options, you're right.

45

46 Q. At any point you never told them that?

47 A. The QPS are aware of microcon --

1
2 THE COMMISSIONER: That's not the question. The question
3 is whether you ever told them?
4

5 MR HODGE: Did you tell them?

6 A. I don't remember whether I did or I didn't tell them
7 that. I have no recollection regarding that.
8

9 In November of 2018 do you agree with me you did not tell
10 them that the standard process was to microcon to 35
11 microlitres?

12 A. No, that wasn't in the emails, no.
13

14 Q. And you didn't tell them that a scientist in the lab
15 could make a decision as to whether or not it was best for
16 the sample to microcon to full or to microcon to 35
17 microlitres?

18 A. No, I didn't tell them that, no.
19

20 Q. And when Mr Howes asked his question as to what you're
21 actually going to do, you just told him microcon to full?

22 A. Based on the best possible outcome for the priority 1
23 samples, yes.
24

25 Q. But you know that that's not true. That wasn't what he
26 was saying to you. He was saying to you a scientist is
27 assigned to every P1 case and they could make the decision
28 as to whether it was appropriate to microcon to full or to
29 35 microlitres?

30 A. Yes, but also QPS were asking for
31 auto-micro-concentration.
32

33 THE COMMISSIONER: You know, Ms Allen, I've heard evidence
34 that, and tell me if you agree with this evidence, that the
35 closer you get to .0011 ng/ μ L concentration the less likely
36 you are to get a usable profile and that the closer you get
37 to .0088 ng/ μ L the probability of getting a usable profile
38 is greater than at the lower end of the range, that's
39 correct, is it? Have I been correctly informed?

40 A. With concentration?
41

42 Q. Sorry?

43 A. Sorry, with concentration? So if the samples are
44 concentrated.
45

46 Q. Using whatever methods a scientist chooses to use,
47 you're less likely to get a result near .001 than you are

1 with .0088, correct?

2 A. Yes.

3

4 Q. In some cases having regard to the nature of the
5 sample, whether it's actually blood, for example, known to
6 be blood or known to be semen, it may be near .0088, near
7 the threshold above which you don't automatically
8 concentrate, a scientist might decide because of the nature
9 of the sample that concentration isn't advisable but rather
10 to go straight to amplification?

11 A. Yes.

12

13 Q. So would you agree that the best process is that in the
14 case of low quant samples a scientist should exercise a
15 judgment as to whether or not to subject the sample to
16 micro-concentration and, if so, what proportion of the
17 sample to use for that purpose, full or 35 microlitres,
18 would that be true?

19 A. Yes.

20

21 Q. So that being the best process why did you not advise
22 police that that was the best process, they having raised
23 it as a possibility in their email to you? Doing your best
24 by the people of Queensland as you suggested?

25 A. Can you ask me your question again, please?

26

27 Q. Yes. That being the best process to raise the highest
28 probability of getting a usable result, why isn't that the
29 process that you recommended to police for priority 1
30 samples, especially since in the email from police that was
31 the process that was suggested, namely that the scientists
32 make the decision?

33 A. Because these are urgent samples so we were trying to
34 ensure that they get through the process as fast as
35 possible, it would take - it would add to the turn around
36 time for a scientist to order that particular microcon,
37 whether it be 35 or full, within that process.

38

39 Q. How much time would it take a scientist to consider the
40 question and make a decision?

41 A. It depends on who it was allocated to, where they are,
42 if they're notified about the result being available,
43 whether they needed to look at the context of the case, the
44 other priority 1 samples that they might have. I don't
45 know how long.

46

47 Q. So you agreed with me that it's the best process to get

1 a usable profile and what you're telling me now is that
2 speed is more important than success?

3 A. Trying to balance those two, yes.

4
5 Q. How do you balance it by giving overriding weight to
6 speed, how do you say that that's a balance rather than a
7 choice?

8 A. Because microconning to full --

9
10 Q. I don't understand?

11 A. Microconning to full won't damage the sample.

12
13 Q. Well that would be a question for the scientist,
14 wouldn't it? I didn't ask you that. I asked you in
15 response to your answer how is it that you achieve a
16 balance by prescribing a single arbitrary process of
17 microconning to full which you just said might damage the
18 process. How is that the best process?

19 A. Sorry, it won't damage to the sample to microcon to
20 full, and I was just trying to ensure that we were able to
21 give speedy results to the QPS. And if I could take that
22 back and do it again I probably would and may make a
23 different decision, but at the time that was the decision
24 that I made.

25
26 Q. But how is it in your mind the best process for getting
27 a usable sample to impose an arbitrary regime for all
28 samples, whether they're merited or not?

29 A. Because as Justin had said, you know, the best option
30 is to microcon to full for --

31
32 Q. You're the managing scientist whose opinion it is that
33 the best option is for the scientist to have the discretion
34 so that the sample can be tested to its best potential. So
35 what does it matter what Mr Howes said to you?

36 A. Because Mr Howes is the team leader for the reporting
37 team that reports on those samples so I value his advice.

38
39 Q. Yes Mr Hodge.

40
41 MR HODGE: Is what happened this, Ms Allen, that you have
42 lied to the police by telling them that if they elected to
43 have P1 samples go through at a micro-concentration the
44 whole of the sample would be consumed, and you'd done that
45 hoping that it would discourage them from choosing that,
46 and once they chose it you were then in the unfortunate
47 position that you had to direct that now all of those

1 samples would be concentrated to full rather than letting
2 the police have the opportunity to discover your lie?

3 A. No, that's not true.

4
5 Q. So you then made a decision which you knew was not the
6 scientifically best one for the most critical criminal
7 cases in order to conceal the lie that you had told to
8 police?

9 A. No, that's not true because they are samples within a
10 case, so it's not about the entire case, and I didn't lie.

11
12 Q. So why not, when you got Mr Howes's email, respond to
13 him and say:

14
15 *I should ask the police what they want to*
16 *do.*

17
18 A. Because at that time I took his best judgment of it
19 from his experience and made a call.

20
21 THE COMMISSIONER: Ms Allen, you've spent half the morning
22 discussing how it had to be the police's decision, and now
23 you say it's the lab decision, is that right?

24 A. Well on that basis that they'd asked us for priority 1
25 samples to be auto-microconned, and so from that then
26 Mr Howes had said that the best option is for full, well
27 then that's the best scientific option that he'd offered,
28 so therefore that was around the science rather than the
29 process from my perspective.

30
31 Q. So why didn't you take that approach with the Options
32 Paper and tell police what the best scientific choice would
33 you?

34 A. Because the options that we put to them were around
35 workflow. So here was what Option 1 was that we were
36 doing, here was Option 2 that we were doing. Option 2
37 required QPS to make some decisions around samples and
38 provide feedback to us around those samples because they've
39 got the context of the case. They've got the context of
40 the other forensic evidence available. They're liaising
41 with the investigating officer around the twists and turns
42 of the investigation, and so they would be in a better
43 position to know whether that sample needed to proceed
44 through the rest of the testing or not.

45
46 THE COMMISSIONER: Weren't you talking about work process
47 here as well, it's the same thing, isn't it?

1 A. From my perspective this was - the microcon process was
2 around what you would get out of it scientifically. So
3 what would be --
4

5 Q. Isn't that exactly what the Options Paper was about?
6 I'm sorry to cut you off. Isn't that what the Options
7 Paper was about?

8 A. From my perspective the Options Paper was about there's
9 a group of samples that, you know, we're not getting great
10 success with. Do you want us to pause and you will then
11 provide further advice it's required or not and then we
12 will proceed through the process? So it was more around
13 their workflow and what they required and whether there was
14 any unnecessary testing that was occurring. We weren't
15 necessarily asking them about the thresholds. Whilst we
16 gave them all that scientific information, we weren't
17 asking them to make decisions about the thresholds and what
18 that was. We were saying this is what we were doing with
19 those samples and did they want us to continue or do a
20 different process.
21

22 MR HODGE: I'm going to move to a different document. Can
23 we bring up QPS.0001.1323.0001. This is a chain of emails
24 from December of 2021. Can we go first to page.0008. You
25 see on 1 December Inspector Neville emailed you and asked
26 if you'd be available to have a chat about some results
27 from Operation Tango Amunet?

28 A. Yes.
29

30 Q. And then the next email in the chain which is on the
31 bottom of page.0007, he sends you another email saying to
32 provide further context it has been raised with him that 33
33 items were examined with advice being received DIFP. A
34 request was made for these items to be further worked. Ten
35 returned a result with persons being identified with LRs of
36 greater than 100 billion?

37 A. Yes.
38

39 Q. LRs, that's likelihood ratios?

40 A. Yes, that's right.
41

42 Q. And where people, that is scientists and police, refer
43 to the use of likelihood ratios, that's ordinarily referred
44 to in relation to matching a reference sample against a
45 crime scene sample?

46 A. Yes, that's right.
47

1 Q. He says:

2

3 *I have attached a spreadsheet that includes*
4 *the results.*

5

6 A. Yes.

7

8 Q. And says:

9

10 *I wondered if there was a particular reason*
11 *for this case as to why approximately 30*
12 *per cent of the samples yielded a result*
13 *after the work was requested. Can you*
14 *please advise what the actual threshold is*
15 *and advice as to whether this needs to be*
16 *reviewed?*

17

18 A. Yes.

19

20 Q. And then he asks for information on your expected
21 likelihood of success in normal case work?

22

23 A. Yes.

24

25 Q. That is to say the likelihood of DNA insufficient
26 samples yielding a result if testing is continued. Do you
27 see that in the email?

28

29 A. Yes.

30

31 Q. Your response if we go up, and it's at the bottom of
32 p.0006 and the top of page.0007. You say:

33

34 *Thanks for the information for the*
35 *particular case.*

36

37 And you'll look at that and get back to him when you can.
38 Then you say:

39

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

47

48 Just pausing there?

49

50 A. Yes.

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Q. When you said in line with manufacturer's specifications what was that referring to?
A. The quantitation process that we were undertaking.

Q. I don't understand though. It says:

After we conducted a review of the large dataset it was found that below a particular quantitation threshold and in line with manufacturer's specifications a very small percentage of samples may provide some type of DNA profile.

Was there some manufacturer's specifications that identified that a very small percentage of samples below a particular threshold may provide some type of DNA profile?

A. I think I meant the limit of detection and above which we'd done in line with the manufacturer's specifications is what I was trying to allude to.

Q. I see. Then you say:

This information was provided to the QPS and the QPS advised that it would prefer that those samples that didn't exceed the quant threshold were not processed through to a DNA profile.

A. Yes.

Q. I assume that's referring to the Options Paper and DIFP being applied for samples between .001 and .0088 ng/ μ L?

A. Yes, that's right.

Q. And then you see that next sentence says:

We've monitored this and have found that with a larger dataset this small percentage didn't vary.

A. Yes.

Q. So tell us, perhaps we'll take it in turns. What was the monitoring that you'd done?

A. I don't remember this at all. I don't remember why I put that in. I can't.

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Q. What was the larger dataset?

A. My assumption was the larger dataset was within the Options Paper.

THE COMMISSIONER: Well that was the dataset. You're speaking here about a larger dataset?

A. Yeah, I'm sorry, I don't remember what I was referring to because I think the larger dataset was the Options Paper because of the approximately 1500 samples.

Q. Larger than what? What's the smaller dataset?

A. Yeah --

Q, if there's a larger dataset there must be a smaller dataset. Can you identify either of them?

A. No, I'm sorry, I can't. I don't remember.

MR HODGE: When you say you can't remember - tell me if you agree with this: you can't now think of anything that could make that sentence:

We've monitored this and have found that with a larger dataset the small percentage didn't vary.

You can't think of anything that could make that sentence true?

A. No, I honestly cannot remember what I was referring to in that email.

Q. We'll come back in a moment to that. Tell me if you agree with this: you cannot think of anything that has occurred in your lab, any monitoring, any dataset, that showed that the percentage didn't vary? You cannot think of anything that would make that sentence that you wrote to Inspector Neville true?

A. I cannot think of that at this point in time but I know that I would not have lied but I cannot think of what I was referring to within that.

Q. The problem you have with this email is that unlike all of the other things I've suggested to you are lies, you can't even say:

Oh, I just missed some context or I should have qualified it.

1
2 Because no part of this statement could possibly be true?
3 A. That's not right. I just cannot remember what I was
4 referring to.

5
6 THE COMMISSIONER: In fact didn't you say earlier in an
7 email that you weren't able to get data because GPS could
8 but you couldn't, and BDNA couldn't help you? So I'm just
9 puzzled, what dataset could you have been referring to in
10 December - is this December 2021, Mr Hodge?

11
12 MR HODGE: It is December 2021.

13
14 WITNESS: I'm sorry, Commissioner, I don't know. I just
15 have no context around this. I can't remember what this
16 was about. I honestly cannot remember.

17
18 THE COMMISSIONER: We'll adjourn now, Mr Hodge, until 2.30.

19
20 **LUNCHEON ADJOURNMENT**

21
22 THE COMMISSIONER: Mr Hodge.

23
24 MR HODGE: Ms Allen, can you see and hear me all right?
25 A. Yes, I can.

26
27 Q. Thank you. Can we bring back up the document we were
28 looking at just before we adjourned. And can we go to
29 p.0007 again. I just need to check off with some things
30 with you, Ms Allen. Do you agree with me that there was no
31 ongoing monitoring that to your knowledge had been done in
32 the lab between February 2018 and December 2021 of what
33 percentage of samples within the DIFP range were producing
34 a profile after concentration?

35 A. I've thought about this during the break and I can't
36 remember what I was referring to. It's made me quite
37 anxious and stressed, which isn't going to make, going to
38 help me remember, so I can't answer why I put that into the
39 email.

40
41 Q. I understand, and I'm not going to ask you again why
42 you put that into the email. But I just need to check with
43 me whether you agree with me that to your knowledge there
44 was no ongoing monitoring that was being done within the
45 lab between February of 2018 and December of 2021 of what
46 percentage of samples within the DIFP range were producing
47 a result after concentration?

1 A. I'm not sure that I remember that being done.

2

3 Q. All right. Do you also agree with me that to your
4 knowledge there was no dataset larger than the one that was
5 used for the Options Paper that was being maintained by or
6 looked at or examined by the lab in relation to samples
7 within the DIFP range that had gone through concentration?

8 A. Not as far as I'm aware.

9

10 Q. Thank you. Now then if we then go to p.0006. You see
11 Inspector Neville responds and says - this is in the middle
12 of the paragraph:

13

14 *For our reference, and moving into the*
15 *future, what is the actual percentage that*
16 *your dataset has indicated? Obviously this*
17 *information will be helpful in guiding*
18 *future requests for retesting.*

19

20 A. Yes.

21

22 Q. And you see that's sent on 3 December 2021?

23 A. Yes.

24

25 Q. And you know, don't you, that you didn't respond
26 directly to that email?

27 A. I'd just returned from leave at that point.

28

29 Q. I understand. You know, don't you, that you didn't
30 respond directly to that email?

31 A. Okay, if I haven't responded, I haven't responded. I
32 don't have any recollection of that.

33

34 Q. Do you agree with me that if you had a large dataset
35 that showed that the small percentage from the Options
36 Paper didn't vary, then that's information that it would
37 have been obvious for you to provide in response to
38 Inspector Neville's email?

39 A. The only thing that I can think of regarding that is
40 that I was thinking about project, I think it's 163, that
41 had already been done regarding auto microcon and then
42 comparing that to Project 184 and that the numbers looked
43 at in Project 163 were less than the numbers looked at in
44 184. So that's the only thing I can think of around that
45 discussion point.

46

47 Q. Project 163 was a project that had been undertaken in

1 2015?

2 A. Yes, that's right.

3

4 Q. So it was certainly not a project that came after
5 Project 184?

6 A. No, it was not.

7

8 Q. Or came after the Options Paper?

9 A. No, it wasn't.

10

11 Q. And you agree with me, I'm sure, it's not something
12 that could meet the description:

13

14 *We've monitored this and have found that*
15 *with a larger dataset the small percentage*
16 *didn't vary.*

17

18 A. That's the only explanation I can give, is around the
19 datasets. Apart from the monitoring, as I've said, I've
20 reflected on that and I don't, I'm feeling anxious and
21 stressed about that and I can't remember.

22

23 Q. I understand. Let's go to p.0005. So you see what's
24 happened is Inspector Neville wrote to you on 3 December to
25 ask you what percentage you showed and then he writes to
26 you again on 13 December?

27 A. Yes.

28

29 Q. And says:

30

31 *Since sending you my last message I found*
32 *some correspondence from February 2018*
33 *where QHFSS made a recommendation to QPS*
34 *that testing of samples that contained less*
35 *than .008 nanograms per microlitre of DNA*
36 *should discontinue because the chances of*
37 *obtaining a profile is less than 2 per*
38 *cent.*

39

40 A. That's what his email says, yes.

41

42 Q. And, again, you would have known immediately on
43 receiving this email that he had misunderstood what the
44 2 per cent figure from the Options Paper was referring to?

45 A. I believe that in my next email that's where I
46 clarified that with him.

47

1 Q. We'll come to that in a moment. You see that Inspector
2 Neville, about two paragraphs down, he refers to
3 14 November and he's referring to 14 November of 2018 and
4 he says:

5
6 *At that time QHFSS provided reassurance*
7 *that the success rate would be lower than*
8 *2 per cent and that the matter should be*
9 *treated as aberration.*

10
11 A. Yes, I see that in his email.

12
13 Q. And in your view had you provided reassurance to him in
14 November 2018 of the kind he's describing?

15 A. That's not my understanding. I believe that I talked
16 about the processes in the Options Paper and that that's
17 how we had got to the data.

18
19 Q. And then you see about two paragraphs down from that he
20 says:

21
22 *I think the 30 per cent success rate of*
23 *retesting warrants a little further*
24 *examination to make sure we are maximizing*
25 *the chances of solving crime, particularly*
26 *for major crime matters.*

27
28 A. Yes.

29
30 Q. And that connects to what he said in the preceding
31 paragraph where he says:

32
33 *Given the result of the recent cases where*
34 *continued testing was successful, might it*
35 *be timely to review the practice of*
36 *truncating testing of lower quantity items.*

37
38 A. Yes.

39
40 Q. And so on getting this email you would have understood
41 that he was asking:

42
43 *Should we be reviewing this practice of not*
44 *processing further samples within the DIFP*
45 *range?*

46
47 A. Yes.

1
2 Q. And then if we go to the next page, which is .0004.
3 This is the email that you send in response on 16 December.
4 You say:

5
6 *Thank you for your email and feedback*
7 *regarding this. We will review scientific*
8 *data available to us and will provide*
9 *further advice to the QPS in due course.*

10
11 A. Yes.

12
13 Q. Perhaps if we just pause there. So you've sent an
14 email to Inspector Neville on 16 December 2021 saying, "We
15 will review scientific data available to us". Did you take
16 steps on or about that day to have a review undertaken?

17 A. Can we please just go back down to Inspector Neville's
18 email, please? Okay, thank you. I believe that the review
19 of the scientific data was in relation to the operation
20 that he had put forward so that we could have a look at
21 that.

22
23 Q. Ms Allen - actually, all right. You say you asked for
24 a review to be undertaken in relation to the particular
25 case that was the subject of the operation?

26 A. Yes, I believe that's what I did.

27
28 Q. Who did you ask to do that?

29 A. I would have asked Justin or the scientist that had
30 that particular operation.

31
32 Q. And is the reason that you say you did that, do you say
33 that you thought Inspector Neville was asking for a review
34 of the data in relation to that particular case?

35 A. Yes.

36
37 Q. And what was it that you thought he wanted you to
38 review in relation to that particular case?

39 A. The particular success rate that they'd had in that
40 case.

41
42 Q. Had he asked you to review the success rate in that
43 case?

44 A. He had asked previously about success rates in other
45 particular cases.

46
47 Q. No. Listen to my question. Had he asked you to review

1 the data in relation to the success rate for that
2 particular case?
3 A. That's one of the things I took on board from his
4 email, was about the success rates for that particular
5 operation.
6
7 Q. Had he asked you to review the data in relation to the
8 success rate for that particular case?
9 A. Not explicitly, no.
10
11 Q. He had, though, asked you to provide data as to what
12 actual percentage your dataset was indicating?
13 A. Yes, that's right.
14
15 Q. And he had asked you whether or not it would be
16 appropriate to review the practice of truncating testing of
17 lower quant items?
18 A. Yes, that's right.
19
20 Q. And you understood those things weren't about that
21 particular case, they were about the practice of the lab?
22 A. Yes, and that the QPS could have requested that process
23 to stop immediately.
24
25 THE COMMISSIONER: What's that got to do with what you were
26 asked?
27 A. The QPS had approved the process, so if they had said
28 it's no longer to be done, then we would have stopped that
29 process.
30
31 Q. You're being asked about what data he was asking you to
32 review and what data you promised you would review, what's
33 that got to do with the right of QPS to ask you to change
34 your processes?
35 A. I guess from my perspective it was a QPS decision that
36 could be made at that time regardless of whether we
37 provided data or not.
38
39 Mr Hodge.
40
41 MR HODGE: Now, you see your email, you say:
42
43 *We will review scientific data available to*
44 *us and will provide further advice to the*
45 *QPS in due course.*
46
47 A. Yes.

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Q. And the advice that he was asking about was whether or not the threshold should be reviewed?

A. Yes, that's right.

Q. And so tell me if you agree with this: it must be that whatever data you were going to or saying you were going to review would be relevant to whether or not the threshold should be revised?

A. So we'd would be looking at that, what I understood from that, we'd be looking at the microcon samples and doing a similar process to what we'd done in the Options Paper and be able to look at the success rate within that particular range and whether the threshold needed to be less.

Q. Yes. So that is a review of the data across all samples, not just the case that is the subject of Operation Tango Amunet?

A. Of microcon samples, yes.

Q. And so on or about 16 December 2021 did you ask someone in the lab to begin reviewing that data?

A. No. At this point it was after we'd had adverse media and there were other things going on. We were also managing COVID, so we didn't have a lot of staff, so at that point, no, I didn't.

Q. You didn't ask anyone to do it?

A. No.

Q. I want to suggest to you the problem that you found yourself in in mid-December of 2021 was that you'd lied to Inspector Neville and told him that you'd been monitoring this and reviewed a larger dataset and he'd then asked you what does it show?

A. No, I didn't lie to Inspector Neville.

Q. And then when he followed you up with a further email, you told him:

We will review scientific data available to us and will provide further advice to the QPS in due course.

And that was also a lie because you weren't intending to take any steps to undertake that task?

1 A. No, that's not true.
2
3 Q. And you didn't take any steps at that time to undertake
4 the task?
5 A. Due to the other issues that I was managing I didn't
6 take any steps at that time, no.
7
8 Q. Just so I understand, do you say that on 16 December
9 2021 a COVID issue had arisen in the lab so you couldn't
10 ask anyone to undertake the task?
11 A. We would need to request the data from BDNA and then we
12 would need a staff member to be able to review that data
13 and, yes, we were having difficulties with staff numbers
14 because it's also school holidays and COVID issues as well.
15
16 Q. Ms Allen, I have to put this to you: this evidence
17 that you're giving to try to explain why you didn't do
18 anything, it's a lie, isn't it?
19 A. No, it's not a lie.
20
21 Q. You're making up reasons to cover up the fact that you
22 didn't do anything because you were trapped?
23 A. No, that's not true.
24
25 Q. You were trapped by the lies that you'd been telling
26 for several years?
27 A. That's not true.
28
29 Q. And you were trapped by the lie that you'd told
30 Inspector Neville only 15 days earlier when you said,
31 "We've been monitoring this and a larger dataset hasn't
32 shown - has continued to show a small number"?
33 A. That's not true.
34
35 Q. And then if we go up the page to the top of p.0004, you
36 see Inspector Neville writes back and says:
37
38 *Thanks. This is a high priority for us, we*
39 *would appreciate advice as soon as possible*
40 *please.*
41
42 A. Yes.
43
44 Q. So you understood this was something of great
45 importance to the QPS?
46 A. It was a high priority, yes.
47

1 Q. And, of course, it was obvious to you why it would be
2 of high importance, because this was affecting the testing
3 of samples from the most serious crimes?

4 A. Yes, but QPS and scientists could request reworks for
5 those samples. There was a mechanism in place to be able
6 to request those samples to be tested.

7
8 Q. And, again, even after Inspector Neville told you that
9 this was a high priority, you took no steps at that time to
10 do anything about it?

11 A. Because, as I said before, it was school holidays, we
12 were dealing with negative media and there was COVID issues
13 and that meant that there were less staff available, plus
14 we were also trying to continue with getting work, DNA
15 results across to the QPS.

16
17 THE COMMISSIONER: Did you write to Inspector Neville and
18 say you wouldn't be able to do it promptly for those
19 reasons?

20 A. I think I did that in January.

21
22 MR HODGE: We'll come to what happened later. You didn't
23 write back to him in December and tell him that you were
24 having difficulties?

25 A. Not at that point I didn't, no.

26
27 Q. You didn't write to anyone in the lab and ask them to
28 undertake any tasks when they had the opportunity to assist
29 you with this?

30 A. Not to my recollection, no.

31
32 Q. You didn't email Mr Howes and say, "What would we need
33 to be able to perform this data analysis"?

34 A. I don't think I did, but I may have, but I don't have a
35 recollection of that.

36
37 Q. You didn't email BDNA at that time and ask for a quote
38 to do a data extraction?

39 A. No, I don't think I did at that time, no.

40
41 Q. And then Inspector Neville emailed you again and this
42 is, it starts at the bottom of p.0002. And you see he
43 emails you, then the next day after your email, so on
44 17 December, and he explains - he gives a particular
45 example and explains or asks a question which is whether
46 the lab use the image that's available when they're making
47 an assessment to stop testing?

1 A. Yes, I see that.

2

3 Q. And you tell me if you agree with me, but the lab staff
4 don't use the image on the Forensic Register when they
5 validate a sample as either no DNA or DNA insufficient for
6 further processing?

7 A. Yes, that's right.

8

9 Q. And they could do that, they have access to the
10 photographs?

11 A. Yes. So that's a process improvement that we could put
12 in place, is for them to look at the images, but also to
13 look at a presumptive screening test that QPS may have
14 already informed and to use that to make a more informed
15 decision.

16

17 Q. You see, tell me if you agree with this, in his email
18 he's asking just one question:

19

20 *I wondered if lab staff used this*
21 *information when making a decision on*
22 *stopping testing.*

23

24 Do you agree with that?

25 A. Yes.

26

27 Q. And you knew what the answer was?

28 A. Yes.

29

30 Q. You knew when you got his email that the answer is no,
31 they don't use that information?

32 A. Yes.

33

34 Q. And you could have responded to him and said, "No, we
35 don't do that"?

36 A. Have I not responded to him at all on that email chain.

37

38 Q. You have. I'll show you how you responded. Can we go
39 to the top of p.0002. You say:

40

41 *Thank you for the follow up email regarding*
42 *samples within this case. To ensure that*
43 *we're all on the same page I'd like to*
44 *clarify the process.*

45

46 And then you can take your time, read what you wrote there?

47 A. Yes.

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Q. Do you agree with me, you didn't answer his one question?

A. No, I didn't, I clarified the process with him to let him know about why the DNA results, they had obtained from that.

Q. You knew what the answer to his question was?

A. I overlooked his question. I responded about the case that he was asking about and wanted to ensure, wanted to let him know that there had been concentration on those samples to provide the DNA profile.

Q. The truth is this, isn't it, Ms Allen: you were deliberately avoiding answering his question because you didn't want to have to admit to him that the scientists within your lab would just validate samples without even looking at the photographs of them?

A. No, that's not true.

Q. And if it was so obvious that a process improvement could have been made to require the scientists to look at the photographs before they validated a sample as no DNA or DNA insufficient for further processing, that was something you could have put in place years ago?

A. I've only thought of this process improvement since the Commission of Inquiry.

Q. But that's inexplicable, isn't it? I mean Inspector Neville is asking you a question which is --

THE COMMISSIONER: Can we see his email again with the photograph?

MR HODGE: Can we go back down to the top of p.0003. He's asking you:

I wondered if lab staff use this information when making a decision on stopping testing?

A. Yes, that's what he's asked, yes.

Q. And even that, even that direct question didn't prompt you to make a change to the process?

A. I don't undertake that process at all but my expectation is that if staff put forward suggestions

1 regarding, you know, process improvement, that they would
2 do that, because they're doing those processes every day.

3
4 Q. Now, are you just, so I understand, are you trying to
5 suggest it's the fault of your staff for not having
6 suggested that process improvement?

7
8 A. No, I'm just saying that quality improvement is
9 everybody's responsibility and those that are closer to the
10 process would have more of an insight than I would into how
11 we could improve that process.

12
13 THE COMMISSIONER: What was being shown to you was a
14 photograph of blood, a result that came back DIFP and
15 Inspector Neville was putting to you that if somebody had
16 looked at the photograph and looked at the result that
17 person would have immediately recognised an inconsistency
18 or at least an anomaly and would then have considered
19 retesting the sample, and he asked you whether people ever
20 looked at the photos. So I need to ask you two things.
21 One is why didn't you answer his question honestly, that
22 no, nobody ever looked at the photos? And secondly, having
23 regard to what you've just said about it being everybody's
24 responsibility to improve process where they can see a gap,
25 why did you not fulfil your responsibility and improve the
26 process to require the validator of the DIFP results to
27 look at photographs before validating them, this example
28 having been shown to you as an example of what can go
29 wrong. So first, why didn't you answer his question?

30 A. It was no intent for me not to answer his question. I
31 guess I was focused on the result that he was talking
32 about, the picture, et cetera, from that. I was not trying
33 to avoid his question.

34
35 Q. Well one explanation for not answering his question
36 might be that it would have been embarrassing for you to
37 admit the lab didn't bother looking at the photos that
38 police took the trouble to take and deliver. Can you think
39 of another explanation?

40 A. Like I said, I was more focused on the results from
41 that and, you know, ensuring that he understood that we had
42 concentrated that sample to get that DNA profile. It
43 wasn't that it had just gone straight through from
44 quantitation to amplification, we had done additional work
45 for that sample to get the DNA profile, that was my focus
46 within that. You're right, Commissioner, I should have
47 taken that further and at the time I didn't because of all

1 of the other things that I had going on and the
2 responsibilities that were happening within the lab.

3
4 MR HODGE: From your perspective did it seem like one of
5 the problems with making this process change would be that
6 it would slow down turn around times?

7 A. Not necessarily, because the more I've thought about
8 this since the Commission of Inquiry is that we could have
9 placed the flag on to any samples that were labelled as
10 blood or semen, those types of things, so that that flag
11 then if they were within the DIFP range could go to a work
12 list that a scientist could then review and look at
13 presumptive screening tests and also images and then decide
14 next steps from there. But I didn't think about that until
15 the Commission of Inquiry.

16
17 Q. What do you think it says about the adequacy of your
18 management of the lab that you didn't think about this
19 apparently until the Commission of Inquiry was called?

20 A. I think it shows that I have a large number of tasks to
21 do.

22
23 Q. Do you need a break, Ms Allen?
24 A. Yes, please.

25
26 Q. Can we adjourn for five minutes?

27
28 THE COMMISSIONER: We'll adjourn until twenty five past.

29
30 **SHORT ADJOURNMENT**

31
32 THE COMMISSIONER: Mr Hodge.

33
34 MR HODGE: Thank you. Ms Allen, can you see and hear me?
35 A. Yes, I can.

36
37 Q. Continuing on with this chain we were looking at. So
38 if we go to page.0002. This is your email that we just
39 looked at where you'd said to ensure that we're all on the
40 same page and then described the process. And if we then
41 go up to page.0001, you'll see Inspector Neville responds
42 the same day, in fact he responds about 17 minutes later -
43 not about, he responds 17 minutes later and he says to you:

44
45 *Thanks for the clarification. That was my*
46 *understanding too. I was of the belief*
47 *that QHFSS stopped this doing as a matter*

1 *of routine for low quant samples because*
2 *there was a lower than 2 per cent chance of*
3 *success. However QPS has found the success*
4 *rate to be 30 per cent when we requested*
5 *this to be done. It is the difference*
6 *between these success rates that I am*
7 *interested in.*

8
9 A. Yes, I see that.

10
11 Q. Again, you would have known immediately on reading his
12 email that the 2 per cent chance of success, or the less
13 than 2 per cent chance of success he was referring to was
14 about NCIDD upload, not about the chance of obtaining a
15 usable profile?

16 A. Yes.

17
18 Q. And you knew that the 30 per cent that he was referring
19 to was about the chance of obtaining a usable profile?

20 A. After micro-concentration, yes.

21
22 Q. He was saying to you:

23 *It's the difference between these success*
24 *rates that I am interested in.*

25
26
27 A. Yes.

28
29 Q. And why didn't you respond to explain to him:

30 *Well actually the Options Paper never*
31 *showed less than a 2 per cent chance of*
32 *obtaining a usable profile, it only showed*
33 *a less than 2 per cent chance of NCIDD*
34 *upload success.*

35
36
37 A. That's right.

38
39 Q. Why didn't you respond to say that?

40 A. I thought I did respond to clarify that with him after
41 this.

42
43 Q. When?

44 A. I don't remember the date but I have a recollection of
45 responding to him regarding the percentages.

46
47 Q. Did you mean the following year, this year?

1 A. Earlier this year. I'm sorry, I don't remember the
2 date but I do remember responding to him about the 1.45
3 per cent to clarify that with him.
4

5 Q. I understand. What I'm suggesting to you is that was
6 the following year?

7 A. Okay.
8

9 Q. I'm just interested in understanding why not say to him
10 in December:
11

12 *Actually we always thought there was a 10*
13 *per cent chance of obtaining a profile from*
14 *these samples that we'd stopped, so you*
15 *need to judge the 10 per cent against the*
16 *30 per cent.*
17

18 A. At this particular point in time we had had negative
19 media for forensic DNA analysis and I also look after or
20 manage forensic chemistry as well, so my attention was
21 diverted elsewhere and so this, you know - I didn't
22 necessarily put managerial judgment to this when I could
23 have probably done this in a more timely manner.
24

25 Q. It's so strange, isn't it, though, if you're under
26 criticism from the media about the quality of the testing
27 that you're undertaking, that when the police are raising
28 with you an issue about the quality of the testing that
29 you're undertaking that you just wouldn't engage with them
30 about it?

31 A. It's not that I didn't want to engage with them,
32 because I did, but I had other things that I was
33 undertaking at that time regarding the negative media and
34 the other HR issues that I'd been dealing with, COVID, all
35 of those other things that I was dealing with at that time.
36

37 Q. Now then the next year there was a meeting on 1
38 February 2022, that was the joint meeting between the QPS
39 and Forensic and Scientific Services?

40 A. Okay.
41

42 Q. This is the meeting where you said to - just to help
43 you orient yourself, this is the meeting where you referred
44 to cherry picking when you spoke to Inspector Neville?

45 A. I believe those were the words that Inspector Neville
46 had used during the meeting.
47

1 Q. We'll come back to that. But in any event you know the
2 meeting that I'm talking about?

3 A. Yes, I have a recollection of that meeting, yes.
4

5 Q. And what happened was that there was an agenda for that
6 meeting that I think you prepared and Ms Keller sent on to
7 the police, and then the police responded and said they
8 wanted to add this DIFP issue to the agenda?

9 A. My recollection is that Lara asked me if I had any
10 agenda items and then she sent them on, and yes, QPS added
11 agenda items.
12

13 Q. Yes, and they added the DIFP issue?

14 A. Yes.
15

16 Q. Perhaps you can tell us why, given that in the middle
17 of December the previous year QPS had told you that this
18 was a priority issue for them to address what was going on
19 with DIFP processing, why did you not put it on the agenda?

20 A. I don't know. Possibly because I assumed that we would
21 be talking about it anyway.
22

23 Q. Is it possible that the explanation is this: by the
24 time you got to the beginning of this year, to put it in
25 the colloquial way, the walls were closing in on you?

26 A. No, that's not true.
27

28 Q. And you had media attention on the quality of the work
29 being undertaken by the lab that you'd been the managing
30 scientist for since 2008?

31 A. For a particular case, yes, we had negative media, yes,
32 that's right.
33

34 Q. And you had Inspector Neville doggedly raising issues
35 about what was going on with the DIFP process?

36 A. Yes, he did raise those with me.
37

38 Q. And throughout the end of 2021 you had been avoiding
39 directly engaging with those issues with Inspector Neville?

40 A. That's not true.
41

42 Q. You weren't meaningfully responding to the questions he
43 was raising, we've looked at the emails already?

44 A. I didn't respond to the question that he asked about
45 that but I wasn't trying to avoid him. As I said, I had
46 other things that I was attending to and I didn't have that
47 as the highest priority and I misjudged - perhaps I

1 misjudged that and in the situation that I was in that's
2 what I - I was just trying to do the best I could with what
3 I was dealing with at the time.
4

5 Q. You hadn't taken any steps within your own lab to
6 undertake the data analysis that you promised to Inspector
7 Neville?

8 A. I think I said that before that no, I had not.
9

10 Q. You had another issue in relation to this DIFP issue
11 which was that scientists within the lab had for some years
12 been raising a concern about it?

13 A. They hadn't directly come to me about that. I
14 understand that they had gone to Justin.
15

16 Q. And he'd come to you?

17 A. It had been discussed.
18

19 Q. And by November of 2021 you knew that Ms Rika had
20 started compiling a spreadsheet in which she recorded
21 instances where DIFP results had gone through retesting and
22 produced a result?

23 A. I wasn't at that meeting where that was discussed.
24

25 Q. In that answer you reveal a level of knowledge that
26 we'll need to tease out. There was a management team
27 meeting that occurred in November of 2021 where Ms Rika's
28 spreadsheet was discussed?

29 A. Yes.
30

31 Q. You're saying you weren't at that particular meeting?

32 A. I was on leave at that particular time.
33

34 Q. But presumably when you returned from leave you would
35 have looked at what your management team had been doing for
36 the period when you were on leave?

37 A. When I came back that's when the negative media had
38 first started, so I was involved in other things to do with
39 that. I didn't have a chance to review the management team
40 meeting minutes that I had missed.
41

42 Q. So when do you say you first became aware of Ms Rika's
43 spreadsheet?

44 A. This year some time.
45

46 Q. But when this year?

47 A. I'm sorry, I don't know. I honestly don't know when I

1 became aware of it.
2
3 Q. So then you went to this meeting on 1 February and this
4 issue that Inspector Neville had been raising was
5 discussed?
6 A. Yes.
7
8 Q. And was it the case that once again you sought to fob
9 him off?
10 A. No, that's not true.
11
12 Q. Did you suggest to him that the data that QPS was using
13 was cherry picked?
14 A. No, I believe those were Inspector Neville's words that
15 he had used during that and he then sent up a follow up
16 email to clarify what he meant by that.
17
18 Q. Did you at that meeting say that you were going to
19 undertake a data analysis?
20 A. I believe I advised him of the issues that we had been
21 experiencing in January and that we would get data for
22 that, yes.
23
24 Q. When you said that, was that your genuine intention?
25 A. Yes, it was.
26
27 Q. So when did you take your first step after that meeting
28 to get data for an analysis?
29 A. I don't recall when I asked for the data. I don't
30 remember the date, I'm sorry.
31
32 THE COMMISSIONER: What was the date of the meeting,
33 Mr Hodge?
34
35 MR HODGE: 1 February 2022.
36
37 THE COMMISSIONER: Thanks.
38
39 MR HODGE: You don't remember?
40 A. No, I'm sorry, I don't remember the date of when I
41 asked for that.
42
43 Q. Do you recall that on about 17 February The Australian
44 newspaper published another story about the operation of
45 the lab?
46 A. Not specifically but okay.
47

1 Q. Do you remember whether there was a link between The
2 Australian publishing an article and you requesting a quote
3 from BDNA?

4 A. I don't necessarily recall that, no, I don't.

5
6 Q. Did you immediately after the meeting on 1 February
7 take any steps to have the data analysis undertaken?

8 A. I discussed it with Ms Keller and I thought I had
9 discussed it with Mr Howes but I could be wrong about that
10 because I don't specifically remember.

11
12 Q. Could we bring up FSS.0001.0057.7533. Then can we go
13 to page 5 of that document. You see, Ms Allen, you email
14 Mr O'Malley on 18 February 2022?

15 A. Yes.

16
17 Q. This is the request for a quote from BDNA?

18 A. Yes.

19
20 Q. If we just scroll down a bit further. You see Mr Howes
21 emails you on 16 February with parameters?

22 A. Yes.

23
24 Q. Can you tell us why, given that the request for data
25 analysis had been made by Inspector Neville in December and
26 you'd been told it was a priority, and you told him on 1
27 February that you'd been delayed by COVID, why did it still
28 take another couple of weeks before you took any action to
29 get data?

30 A. As I said before, the tasks that I was undertaking, the
31 negative media, the stress and anxiety that went along with
32 that has obviously affected my judgment and my memory, and
33 when I was able to do this I did.

34
35 Q. I see. Can we bring up QPS.0001.1326.0001. Then if we
36 go to page.0013. You see this is an email Inspector
37 Neville sent you on 21 February?

38 A. Yes.

39
40 Q. You see again he's asking you, or he's following up his
41 queries from December and you see he says in the paragraph
42 that's the second-last line from the bottom of the page:

43
44 *I know you are busy but since 1 December I*
45 *have raised concerns in relation to the*
46 *truncating of testing based on DNA quant*
47 *values because of the significant number of*

1 *below threshold samples yielding a profile*
2 *when testing is continued.*

3
4 A. Yes.

5
6 Q. And he tells you this is still a high priority matter
7 for QPS?

8 A. Yes.

9
10 Q. And he again identifies that what he wants to try to
11 understand is the difference between what he describes as
12 the predicted, which is less than 2 per cent, and observed
13 success rates which is 30 per cent?

14 A. Yes.

15
16 Q. So do you agree with me that still at this point he has
17 misunderstood the Options Paper as suggesting that the
18 actual success rate in obtaining a profile is expected to
19 be less than 2 per cent?

20 A. Yes.

21
22 THE COMMISSIONER: What's the date of this?

23
24 MR HODGE: This is 21 February 2022.

25
26 THE COMMISSIONER: Thank you.

27
28 MR HODGE: I want to suggest this to you, Ms Allen, at no
29 point in December or January or February of 2022 were you
30 under the impression that the QPS were concerned about
31 missing out on NCIDD upload link results for priority 2
32 cases, do you agree with that?

33 A. So you're saying I wasn't concerned about QPS missing
34 links?

35
36 Q. No, I'm saying at no stage in December of 2021 or
37 January or February of 2022 were you under the impression
38 that the QPS were concerned about what NCIDD upload links
39 they might be missing out on?

40 A. I was aware that the QPS were concerned about DNA
41 results, yes.

42
43 Q. The only results that they were concerned about in
44 raising with you was the chance of obtaining a profile
45 rather than the chance of successfully making an NCIDD
46 upload link, do you agree?

47 A. They were concerned about DNA profiles, yes, but they

1 also track the turn around time from receipt to link
2 report, so they would have been monitoring that as well.
3 So whilst we didn't talk about it I knew that they were
4 monitoring that.

5
6 Q. This is the email that Inspector Neville sends and then
7 if we go up the page to page.0012 you see that Ms Keller
8 responds and says you were off, you were not at work that
9 day on the 21st?

10 A. Yes.

11
12 Q. If we scroll up further, beginning at the bottom of
13 page.0011 and continuing over the page, we see an email
14 from you on 22 February responding to Inspector Neville's
15 questions?

16 A. Yes.

17
18 Q. And you see here you say:

19
20 *During the bimonthly meeting on 1 February*
21 *I provided a verbal update to you and*
22 *Superintendent Freiberg regarding this.*

23
24 A. Yes.

25
26 Q. And you say:

27
28 *Minutes from this meeting are yet to be*
29 *circulated, it was recorded. I have*
30 *detailed notes that I took during the*
31 *meeting and I have referred to those for*
32 *this email.*

33
34 A. Yes.

35
36 Q. Is that true?

37 A. Yes.

38
39 Q. So you had detailed notes of the meeting on 1 February
40 that you referred to for the purpose of this email that
41 then follows?

42 A. Yes.

43
44 Q. You see in your email you say that you advised that due
45 to the community transmission of COVID-19 and two urgent
46 cases there had been slow progress made on this request?

47 A. Yes.

1
2 Q. Now in fact, of course, there'd been no progress made
3 on the request as at 1 February, had there?

4 A. There'd been consideration but we hadn't made any
5 attempt to get the data.

6
7 Q. Who had considered it?

8 A. Lara and myself, we had discussed this. I discussed
9 with her during our meetings about the workload that we
10 were currently under.

11
12 Q. And then you see in your email you say:

13
14 *During the meeting you advised that you*
15 *were aware that the QPS had cherry picked*
16 *particular samples to be tested further and*
17 *that this may be the reason behind the*
18 *results that were achieved.*

19
20 A. Yes.

21
22 Q. And then you go on to say:

23
24 *The data that is required to be analysed is*
25 *within the Forensic Register and FSS have*
26 *submitted a request to BDNA for a quote to*
27 *extract the data required.*

28
29 A. Yes.

30
31 Q. And that was a quote that you only requested three days
32 earlier?

33 A. That's right.

34
35 Q. Now, can we put that email on one side of the screen
36 and on the other side of the screen can we bring up
37 FSS.0001 - you'll just need to wait one moment. It's our
38 fault. Whilst that's happening I'll keep going. Can we
39 scroll up to p.0010. Do you see at the bottom of the page
40 Inspector Neville responds?

41 A. Yes.

42
43 Q. And you see that he says - he calls you out, doesn't
44 he, for not responding to his query?

45 A. Sorry, which paragraph?

46
47 Q. He says:

1
2 *However, the response does not address the*
3 *main query posed.*

4
5 A. Sure, yes.

6
7 Q. And then over the page he clarifies what he'd said
8 about cherry picking?

9 A. Yes.

10
11 Q. And then once again he makes the point at the end of
12 that paragraph:

13
14 *The sample selection may have had some*
15 *impact, however it could not explain the*
16 *vast difference between less than 2 per*
17 *cent and 30 per cent success rate.*

18
19 A. Yes.

20
21 Q. And he says:

22
23 *Having said this, I do appreciate the work*
24 *that you have done so far in reviewing the*
25 *dataset. I understand that this may not be*
26 *a simple task.*

27
28 A. Yes.

29
30 Q. Because he thinks you've done some work reviewing the
31 dataset?

32 A. Yes, but we had put together the parameters that we
33 needed.

34
35 Q. But you hadn't done any work reviewing the dataset by
36 this stage, had you?

37 A. No.

38
39 Q. And then if we go up the page to - now it's at the top
40 of .0009 is when your response to Inspector Neville on
41 24 February begins?

42 A. Okay.

43
44 Q. Tell me, if you can, where in this email do you explain
45 to him that the less than 2 per cent is for NCIDD upload,
46 whereas the 30 per cent that he keeps talking about is
47 about obtaining a profile?

1 A. I don't think it is in that email. I think it is in a
2 subsequent email because his previous email was about
3 thresholds, which is what I took out of it, it was about
4 thresholds, and I think that's where I've discussed that in
5 that email.

6

7 Q. Isn't what happens this, Ms Allen: you know throughout
8 the course of these emails that Inspector Neville has not
9 understood what the less than 2 per cent refers to and you
10 never seek to correct his misunderstanding?

11 A. I guess that's the answer, yes, but I'm not sure.

12

13 Q. And actually you never do it. He rereads the paper and
14 realises, isn't that the case?

15 A. I don't, I don't recall the email chain.

16

17 Q. If we go further up in the chain and .0007. You see he
18 sends a further email on 24 February. And you'll see
19 what's happened is he's re-read the paper and he says in
20 the second paragraph:

21

22 *I wondered if you can clarify my*
23 *understanding of the paper? The success of*
24 *rate of less than 2 per cent relates to the*
25 *likelihood of the process resulting in a*
26 *new link rather than the likelihood of*
27 *obtaining a profile. The actual success*
28 *rate of obtaining a profile is roughly*
29 *10 per cent overall according to figure 1.*

30

31 A. Yes.

32

33 Q. Then he says:

34

35 *I'll be honest, using the number of new*
36 *links to measure the value of analysis is*
37 *very problematic because the probative*
38 *value of the evidence will vary hugely*
39 *depending on the sample type and location.*

40

41 A. He does say that, yes.

42

43 Q. Now, it seems like he probably still hasn't quite
44 understood that it's about NCIDD links rather than links in
45 general, do you agree with that?

46 A. Yes.

47

1 Q. And do you regard it as a failure by you in your
2 dealings with the QPS that you never expressly and directly
3 explained to Inspector Neville at an earlier time his
4 error?

5 A. I don't consider it a failing but in hindsight I can
6 see that I could have done more with Inspector Neville,
7 rather than assuming that there had been a hand-over
8 between Acting Inspector Ewan Taylor and Inspector Neville.

9
10 THE COMMISSIONER: On my count, Ms Allen, Inspector Neville
11 stated on five different occasions his belief that the
12 relevant figure in the Options Paper which justified the
13 new process was that only 2 per cent of samples tested
14 within the range generate a usable process, so there were
15 five occasions upon which you could have corrected his
16 mistaken view, but you didn't take up any of them. Can you
17 explain that? I don't think each of them can be explained
18 on the basis of COVID or Christmas holidays, you see, so
19 here's your opportunity to explain why you didn't do it?

20 A. I don't have an explanation.

21
22 Q. One explanation is that you wanted him to continue in
23 his mistaken view?

24 A. No, I don't believe that is because I don't lie to the
25 QPS, so I don't believe that that is why I didn't respond
26 with him. I do find exchanging information with Inspector
27 Neville very difficult because I think that he and I talk
28 or email in different ways and that I could have used more
29 opportunities to ask my team leaders to review his emails
30 because I wasn't getting it.

31
32 MR HODGE: Mr Operator, have you got the image that's been
33 sent to you? Could you just bring that up. Now, you see
34 the image that you're looking at, that's an image from the
35 diaries that you keep?

36 A. Notebooks, yes.

37
38 Q. And you see about six lines down it says:

39
40 *QPS-FSS meeting 01/02/2022.*

41
42 A. Yes.

43
44 Q. And this is the notes or these are the notes that you
45 made for the 1 February meeting?

46 A. I may have made additional notes to that.

47

1 Q. Where?
2 A. Within my notebook or another piece of paper, I don't
3 remember.
4
5 Q. Now, Ms Allen, why, when you were taking notes in your
6 notebook, would you take notes of the meeting and then stop
7 during the meeting and start taking notes on a different
8 piece of paper?
9 A. I may have started them on a different piece of paper
10 in the beginning. I don't recall.
11
12 Q. Ms Allen. What I want to suggest to you is if we go
13 back down to p.0011, when you said to Inspector Neville, "I
14 have detailed notes that I took during the meeting and I've
15 referred to those for this email", that was a lie too,
16 wasn't it?
17 A. No.
18
19 Q. Even on the simplest thing, whether you had notes for a
20 meeting, you were prepared to lie to Inspector Neville?
21 A. No.
22
23 Q. You were --
24 A. I don't believe - from looking at those notes, they
25 don't have as much information as I remember taking from
26 that meeting.
27
28 Q. You see it says QPS/FSS meeting 01/02/2022?
29 A. Yes, I understand that and that's what I'm saying is
30 that --
31
32 Q. That's the meeting?
33 A. Yes, that's the meeting.
34
35 Q. We'll just scroll down so you can see the next page.
36 So you do keep making notes over the page.
37 A. Sorry, can you please go up the page again. Yes, okay,
38 I'm sorry, I thought that it was the only the top paragraph
39 that was from that meeting, but it's not, it's basically
40 the whole page and then over the page.
41
42 Q. Yes?
43 A. Yes.
44
45 Q. But is there any part of those notes that relate to
46 what you put in your email to Inspector Neville?
47 A. Which particular part?

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Q. Look at your email. You said:

I advised that due to the community transition of COVID-19 affecting DNA analysis staff members and the two urgent cases that the QPS requested we process slow process had been made on this request.

A. Yes.

Q.

At the meeting you provided an assurance that you understood the situation.

In the next paragraph:

During the meeting you advised that you were aware that the QPS had cherry picked particular samples.

In the next paragraph:

The data that is required to be analysed is within the Forensic Register.

Does any of that information appear in your notes?

A. Could you scroll down to the second page, please? Definitely about the slow progress on quant and that IOs, investigating officers, were noticing that. And the other things were, from memory, by the discussion that we had around the slow progress, et cetera, where Inspector Neville was talking about, you know, cherry picking, which stuck in my mind about that.

Q. Sorry, where it says "slow progress on quant determined, IOs are noticing", what do you say that note's about?

A. That's where Inspector Neville was talking about the DNA sufficient item, agenda item, was advising that investigating officers were noticing this, which is where we had then come to talk about the issues that had been happening within the lab.

Q. Ms Allen, I'll put it to you again: even on the simplest thing in this case, claiming to have detailed notes that you've referred to for the purpose of an email

1 that you just set out, you were prepared to lie to the QPS
2 about it?

3 A. I used the detailed notes to help my memory of all the
4 things that we discussed.

5
6 Q. And, again, unfortunately, the explanation that you're
7 now giving to the Commissioner for the lie that you told to
8 Inspector Neville earlier this year, this explanation is
9 also a lie, isn't it?

10 A. No, it's not. I could have been more specific in my
11 email to say that I'd relied on the detailed notes and my
12 memory regarding the things that we had discussed, which is
13 what I had used my notes to help me with that email.

14
15 Q. So now in about March of 2022 you started to or
16 Mr Howes began preparing what became known as the Update
17 Paper?

18 A. Yes.

19
20 Q. And you didn't circulate a copy of the Update Paper to
21 the other members of the management team as we've talked
22 about already?

23 A. Yes, that's right.

24
25 Q. At some stage did you speak to Ms Keller as to whether
26 you should provide the Update Paper to police?

27 A. Yes.

28
29 Q. And what did she tell you?

30 A. That's where she was discussing with me about, because
31 I think by that stage there was likely to be a review of
32 the laboratory processes and she said that she was seeking
33 legal advice about that.

34
35 Q. About what?

36 A. About whether to provide the paper to QPS or whether
37 that was going to be as part of the review.

38
39 Q. Between the beginning of April then and the end of May,
40 what happened in relation to the Update Paper?

41 A. I believe that Justin was still working on that.

42
43 Q. And then at the end of May do you recall that there was
44 an email that Inspector Neville sent the day before QPS's
45 submission to the Task Force was published where he
46 re-agitated the issue of what was going on with the DIFP
47 results?

- 1 A. Yes, he sent me an email again about the 30 per cent.
2
3 Q. And he had a spreadsheet that was attached to it with
4 data?
5 A. Yes, that's right.
6
7 Q. And did you review the spreadsheet?
8 A. Yes, I did.
9
10 Q. And what did you do about it?
11 A. I looked at the sexual assault barcodes and wanted to
12 have a look for myself around whether there was new DNA
13 profiles that had been obtained or whether they were
14 similar to what had been obtained from other samples.
15
16 Q. And did you do all of that on the day Inspector Neville
17 sent his email?
18 A. I'm sorry, I can't remember whether it was on that day
19 or not, I'm sorry.
20
21 Q. So then the following day the Task Force submission of
22 the QPS was published?
23 A. Okay, I don't remember the date but okay.
24
25 Q. And at that point you must remember, I assume, that
26 there was a significant amount of agitation at management
27 levels above you?
28 A. Yes.
29
30 Q. And Ms Keller was summonsed in to speak to the Minister
31 and the Director General, or the Acting Director General?
32 A. I'm not sure that I was aware of that at the time but I
33 could have been, I just don't remember, because I do
34 remember her going to see the Minister, sorry, to see the
35 DG about something as well, so I could be getting those two
36 confused.
37
38 Q. Do you remember you were called in to a meeting?
39 A. Yes.
40
41 Q. And was that a meeting with the Minister and the Acting
42 Director General?
43 A. Yes, it was.
44
45 Q. And you were asked some questions about the Blackburn
46 case?
47 A. Yes, I was.

1
2 Q. And at that meeting you said something to the effect
3 that you were 1000 per cent certain that all samples had
4 been fully tested to the end in that case?
5 A. Yes, because that's the advice I'd been provided.
6
7 Q. By whom?
8 A. Staff members in the lab.
9
10 Q. I just want to pause on that to ask you about
11 something. Can we bring up WIT.0014.0046.0001. You see
12 this is a chain of emails where Ms Brisotto is emailing you
13 on the evening of 2 June 2022?
14 A. Yes.
15
16 Q. And so this is about five hours or, in any event, it's
17 after the meeting that had occurred that same day with the
18 Minister and the Acting Director General?
19 A. Yes.
20
21 Q. This version 17 of the SOP, that wasn't the version
22 that applied immediately before the 2018 decision had been
23 brought into effect?
24 A. Sorry, could you say that again. I'm sorry.
25
26 Q. Yes. Maybe I'll do it in a different way. You see
27 that if you look in about half way down the page
28 Ms Brisotto emails you and says she's found the version 16
29 SOP, updated December 2012?
30 A. Yes.
31
32 Q. And then if you scroll up she says she's now found the
33 version 17 SOP which had effect from February 2013?
34 A. Yes.
35
36 Q. Are you able to tell us why Ms Brisotto was finding
37 information for you about the SOPs that were in effect as
38 at the end of 2012 and the beginning of 2013?
39 A. I think I had asked her for that particular table
40 that's in there. I was asking her around, you know, what
41 sorts of processes had been undertaken because I couldn't
42 remember about the change of quant value and, you know,
43 those sorts of things. So that was the table I was trying
44 to find at that point.
45
46 Q. Yes, but why were you interested in knowing what the
47 process had been as at the end of 2012 and the beginning of

1 2013?

2 A. Because I couldn't remember the changes that had
3 happened from that and that's what I was asking her for to
4 prompt my memory about that.

5
6 Q. I understand. Perhaps I'll put it in a different way.
7 Was the reason you were interested in that particular time
8 period because you were checking what SOP was in effect for
9 the Blackburn case?

10 A. I don't know that it was that. I do know that the
11 Blackburn case was tested in 2013 and when I was talking
12 with the DG and the Minister I was unaware that additional
13 samples had been delivered in 2019 and 2021 I think it was.

14
15 Q. Can I then bring up a document which is
16 WIT.0017.0228.0001. What you'll see on the screen is an
17 email that you sent on 2 June to Ms Keller?

18 A. Yes.

19
20 Q. You were providing her with the Options Paper and your
21 draft update paper?

22 A. Yes.

23
24 Q. That was because they had been requested by the
25 Minister and the Acting Director-General?

26 A. I wasn't aware of that.

27
28 Q. Okay. Then if we bring up WIT.0017.0228.0001. While
29 the document I'm looking for is coming, do you remember
30 speaking to Ms Keller about what the relevant percentage
31 numbers were to provide to the Minister and the Acting
32 Director-General?

33 A. I don't have a recollection of a discussion about that.

34
35 Q. Do you remember whether you directed Ms Keller towards
36 the NCIDD upload numbers?

37 A. I don't have any recollection of that.

38
39 Q. Do you remember telling her that the relevant numbers
40 that the police were concerned with were the percentage of
41 usable profiles obtained?

42 A. I don't have any recollection of this discussion with
43 her.

44
45 Q. I'll show you another email. Can we bring up
46 WIT.0017.0144.0001. You see the email at the bottom is the
47 email that we looked at a moment ago where you've sent an

1 email to Ms Keller with the attachments, and then if we
2 scroll up to the top of the page, Ms Keller then emails the
3 Acting Director-General and says:

4
5 *Papers attached as discussed.*

6
7 And she identifies the 1.8 6 per cent and the 5.3 per cent?
8 A. Yes.

9
10 Q. Did you tell her that those were the relevant
11 percentages?

12 A. I don't have any recollection of discussing that with
13 Ms Keller.

14
15 Q. Do you agree with me that by this time, that is by the
16 beginning of June 2022, you could have been in no doubt
17 whatsoever that the percentage that the police were
18 concerned with was the percentage of usable profiles that
19 were being lost?

20 A. Yes.

21
22 Q. Do you think it's likely that you would have told
23 Ms Keller that the relevant percentages are the percentage
24 of NCIDD uploads that are lost?

25 A. I don't remember discussing this or the follow up paper
26 with Lara, so that's what we called it, sorry, was follow
27 up paper. I think you called it update paper. I don't
28 remember having any discussion with Lara about those two
29 papers, the percentages, no recollection whatsoever of a
30 discussion like that.

31
32 Q. Can I show you another document. Can we bring up
33 FSS.0001.0052.1255. You see this is a chain of emails but
34 if you look at the bottom email at the bottom of the page
35 it starts with an email from you?

36 A. Yes.

37
38 Q. And you say in that email:

39
40 *Attached is the Excel spreadsheet that I've*
41 *been working on revealing whether the*
42 *processing of a DNA insufficient gave a new*
43 *DNA profile that hadn't been seen before.*

44
45 A. Yes.

46
47 Q. You said:

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I haven't finished but here's what I've got so far.

A. Yes.

Q. Was this a spreadsheet that you'd been preparing?

A. So when Inspector Neville had emailed the spreadsheet I think he said the day before the Women's Task Force report came out, that was the spreadsheet that I was using.

Q. Sorry, are you saying you took Inspector Neville's spreadsheet and were editing it?

A. Yes.

Q. Can we bring this up, that's WIT.0017.0151.0001. This was something where - I suspect, Commissioner, you're going to need a non-publication order over that spreadsheet because it's got the details and case file numbers.

THE COMMISSIONER: I direct that document WIT.0017.0151.0001, an Excel spreadsheet, not be published.

MR HODGE: Yes, can we hide column A, thank you. So tell us what the editing process was by which you came up with this version of the spreadsheet?

A. Now I'm unsure. Perhaps I just copied the bar codes from the sexual assault tab from Inspector Neville's and created a new spreadsheet for myself. Maybe that's what I did. To be honest, you know, that's the only thing I can come up with because there is only one sheet on this. Whereas my recollection is that there was more than one sheet on the spreadsheet that Inspector Neville had sent. So I think started a new Excel spreadsheet.

Q. Can we just scroll down a little. Do you agree with me that this is a spreadsheet in which none of the cases that are identified are things where the result was something new to the case?

A. From the ones I can see on the screen, yes.

Q. Why were you preparing a spreadsheet or sending a spreadsheet to be passed on to the Director-General which only identified cases where nothing new was identified?

A. I didn't know that it was being passed on to the Director-General. I let Lara know that I was looking into those because I wanted to see what had been generated out

1 of that, and she asked me for it and I gave it to her. I
2 did not know that it was being passed on to the
3 Director-General.
4

5 Q. I'm struggling with that one. You'd attended a meeting
6 with the Acting Director-General and the Minister that
7 afternoon?

8 A. About the Blackburn case, yes.
9

10 Q. No, it wasn't about the Blackburn case or only about
11 the Blackburn case. The day before the QPS's submission to
12 the task force had been published, which was not about the
13 Blackburn case, it was about the results they thought they
14 were missing out on due to the DIFP process?

15 A. And I had attended with Lara at what meeting, I'm
16 sorry?
17

18 Q. On the next day after the submission was published you
19 attended a meeting with the Minister and the
20 Director-General and you were called in to the meeting, not
21 for the whole meeting but you were called in for part of it
22 in order to answer some questions Ms Keller couldn't answer
23 about the Blackburn case?

24 A. Yes, that's right.
25

26 Q. You understood that the attention of the Health
27 Department was not limited to the Blackburn case. They
28 were trying to understand what's going on in relation to
29 this submission that the QPS has just published?

30 A. I was only party to the small portion about the
31 Blackburn case and then I left the meeting. I wasn't in it
32 for the whole time.
33

34 Q. And then afterwards, after the meeting Ms Keller asked
35 you for information?

36 A. Yes, she did.
37

38 Q. What did you think the information was for?

39 A. I didn't know what she was doing with it. She asked me
40 for that information. She could have been drafting briefs,
41 she could have been trying to, you know, understand this
42 herself. She could have been liaising with her direct line
43 manager regarding this. I didn't know where this was
44 going. She just asked me for it, she's my line manager, I
45 gave it to her.
46

47 Q. So in any event why were you providing your line

1 manager with a spreadsheet that only identified cases where
2 no new results had been produced as a result of further
3 processing of DIFP samples?

4 A. Because I hadn't finished that particular spreadsheet.
5 So Inspector Neville had supplied me with a spreadsheet
6 that was broken down into samples that had gotten a profile
7 from DIFP and they were broken into sexual assault cases
8 and something else, I can't remember. So I looked at the
9 sexual assault bar codes and I put them into the
10 spreadsheet and that's where I started looking down and I
11 never got to finish the spreadsheet. That was as far as I
12 had managed to do in the time that I had. So it wasn't
13 that I was trying to put forward just ones that didn't have
14 new DNA profiles, that was just as far as I had got.

15
16 Q. Did you ask within the lab if anyone had some
17 information that they could provide any kind of data about
18 where results had appeared from DIFP samples?

19 A. No, I didn't. I was just working on what Inspector
20 Neville had provided me.

21
22 Q. It's likely, isn't it, that at least by then, by the
23 middle of this year that you were aware of Ms Rika's
24 spreadsheet?

25 A. Like I said I can't tell you when I was aware of it.
26 Maybe I was aware of it at this time. I honestly do not
27 remember.

28
29 Q. I have to put some propositions to you to finish for
30 today. Isn't this what happened in relation to DIFP: that
31 you set out at the beginning of 2018 to mislead the QPS
32 into agreeing to discontinue the automatic processing of P2
33 samples in the DIFP range?

34 A. No, that's not true.

35
36 Q. And then throughout the course of the next few years as
37 scientists within the lab would raise issues about it you
38 would dismiss those issues?

39 A. That's not true.

40
41 Q. And when Inspector Neville and Acting Inspector
42 Simpfendorfer wrote emails to you at the end of 2018 and
43 then at the end of 2021 about these issues, you told lies
44 to them about what was going on with the process and the
45 data that had been presented to the QPS?

46 A. No, that's not true.

47

1 Q. And at the end of 2021 you told a lie to Inspector
2 Neville about further monitoring and a larger dataset?

3 A. No, that's not true. I don't recall what that's about.
4

5 Q. And then throughout December and January of - December
6 of 2021 and January of 2022 you did nothing to respond to
7 Inspector Neville's request that as a matter of priority
8 the issue be reviewed?

9 A. As I said, I was engaged with other things which have
10 affected my ability to think about Inspector Neville and
11 the issue at hand.
12

13 Q. And then it was only after repeated pressing from
14 Inspector Neville and a media article from The Australian
15 that you took a step towards obtaining data so that you
16 could perform some form of analysis?

17 A. I requested the data before Inspector Neville had sent
18 me that email about the media article.
19

20 Q. But you requested the data after the media article had
21 appeared?

22 A. Okay, I don't remember because those two things aren't
23 linked for me.
24

25 Q. And after the media article had been emailed to you by
26 somebody else?

27 A. Okay. Like I say, those two things aren't linked for
28 me.
29

30 Q. And you never corrected what you could see was
31 Inspector Neville's misapprehension about the less than 2
32 per cent because it served your purposes for him to
33 misunderstand what the less than 2 per cent meant?

34 A. I didn't correct Inspector Neville but it wasn't to
35 serve my own purposes, no.
36

37 Q. And then by the beginning of June of 2022, when the QPS
38 submission had been made public, you then had to tell a
39 series of - I withdraw that. You at that point made a
40 series of misrepresentations to people to try to conceal
41 your responsibility for what had occurred over the course
42 of the preceding three and a half to four years?

43 A. No, that's not true.
44

45 Q. And so you misdirected Ms Keller by providing this
46 spreadsheet that we've just looked at which only referred
47 to cases where it hadn't added any information?

1 A. I advised Ms Keller what I was doing with that and she
2 asked me for that and I provided it to her, where I was up
3 to.

4
5 Q. And you told Ms Keller that the relevant figures were
6 the 1.86 per cent and the new figure of about 5.1 per cent,
7 even though you knew that that was plainly not the
8 percentage numbers that the QPS were concerned about?

9 A. No, I told you I have no recollection of discussing
10 that with her and I would have a recollection if we did
11 have a discussion.

12
13 Q. Then you set about creating a recommendation for the
14 Director-General that contained false information as to
15 what the pre-2018 process was so as to impede the obtaining
16 of results once a decision was made to change back to the
17 pre-2018 process?

18 A. I made a human error and when that was brought to my
19 attention I then corrected that and also asked if all of
20 the samples that had been in that six week period to
21 actually undergo to microcon to remedy that situation.

22
23 Q. And you did that because you were trying to conceal
24 from the public the consequences of the misleading conduct
25 that you'd engaged in at the beginning of 2018 to bring
26 about this DIFP process?

27 A. No, that's not true. I did not have misleading
28 behaviour. I was not trying to mislead the public. I was
29 trying - in that June period I was trying to rectify as
30 best I could the human error that I had made and attempted
31 to fix that with the samples.

32
33 Q. And then in June of 2022, as scientists within your lab
34 raised concerns with you about why it was that samples were
35 going direct to amplification, you dismissed those concerns
36 because it served your purposes?

37 A. That's not true.

38
39 Q. And then when you've come to give evidence to the
40 Commission, throughout the course of yesterday afternoon
41 and today you have lied consistently and repeatedly about
42 your conduct because you are unwilling to admit what it is
43 that you have done?

44 A. That is not true and I refute that.

45
46 Q. Is that a convenient time, Commissioner?

47

1 THE COMMISSIONER: Yes. We'll adjourn to 9.30 on Monday.

2

3 THE WITNESS WITHDREW

4

5 AT 4.37 PM THE COMMISSION ADJOURNED UNTIL MONDAY, 31
6 OCTOBER 2022 AT 9.30 AM

7