

COMMISSION OF INQUIRY
INTO FORENSIC DNA TESTING IN QUEENSLAND

Brisbane Magistrates Court
Level 8/363 George Street, Brisbane

On Wednesday, 28 September 2022 at 9.30am

Before: The Hon Walter Sofronoff KC, Commissioner

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

1 <DAVID HAROLD NEVILLE, on former oath, continuing

2

3 <EXAMINATION BY MR JONES, continuing

4

5 THE COMMISSIONER: Yes, Mr Jones.

6

7 MR JONES: Thank you, Commissioner.

8

9 Q. Mr Neville, yesterday I asked you some questions about
10 the number of requests for further work to be done on
11 samples that had been recorded to Police as "DNA
12 insufficient" between the years of 2018 and 2021. Do you
13 recall that?

14 A. Yes.

15

16 Q. And you undertook to carry out some investigations
17 overnight?

18 A. I did.

19

20 Q. And you've done that?

21 A. I have.

22

23 Q. What have those investigations revealed, or that
24 investigation revealed?

25 A. Okay. So I tasked a member of my staff to do some
26 checks of data, and for the year 2018, there were 141
27 requests for samples reported initially as DIFP to be
28 further tested. For 2019, there were 102 samples requested
29 to be tested that were originally, obviously, reported as
30 DIFP. 2020, 139 samples originally reported as DIFP were
31 requested to be tested. And then 2021, there was 278 that
32 were requested to be tested.

33

34 Q. Thank you.

35 A. So a total of - and that is up until 2021, up until 1
36 December when I became alive to the issue again. So the
37 grand total was 660.

38

39 Q. Thank you. We got up to in your evidence a discovery
40 of a problem in --

41

42 THE COMMISSIONER: Mr Jones, at some point we are going to
43 need the other number, which is the number of DIFP results
44 that were put forward.

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46 MR JONES: Yes. And then you could perhaps make a
47 direction about that.

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THE COMMISSIONER: Yes, thanks.

MR JONES: Q. Yesterday, you gave evidence that in November 2018, a murder investigation was brought to your attention because P1 samples were coming back as "DNA insufficient for further processing"?

A. Yes.

Q. And your understanding was that that had never been agreed to?

A. Correct.

Q. Then you raised the issue, you went on leave, and you came back in January 2019?

A. Yes.

Q. Apart from communicating with Queensland Health, internally the Police had resolved to make an amendment to the information provided to frontline police officers by making the addition to QPRIME that you spoke of yesterday?

A. Correct.

Q. Then between January 2019 and November 2021, there's no other issues that are brought to your attention about "DNA insufficient for further processing"?

A. That's right.

Q. And in November 2021, an issue was brought to your attention regarding another murder investigation; is that right?

A. That's right.

Q. And you were told that 33 samples had been returned with "DNA insufficient for further processing" from the lab?

A. Yes.

Q. And officers had requested those to be further worked?

A. Yes.

Q. And they came back with 10 samples with full profiles?

A. 10 samples with profiles.

Q. With profiles, sorry.

A. Yes.

1 Q. You raised this issue with your superintendent at the
2 time, Superintendent Dale Frieberg?

3 A. I did.

4
5 MR JONES: Commissioner, there are two exhibits in
6 Superintendent Dale Frieberg's statement of 5 September
7 2022. I seek to tender the statement and have it marked
8 for identification. The Superintendent will be called
9 later today and it will be tendered proper. It is
10 [WIT.0035.0001.0001_R]and the two exhibits that I will take
11 the Commissioner to are 25 and 26.

12
13 THE COMMISSIONER: Thank you. And you are going to put
14 them up on the screen?

15
16 MR JONES: I am. Mr Woolridge, could you bring up
17 [WIT.0035.0001.0001_R at 0153], please. Could you blow it
18 up, just so that we can't see the full text. Just scroll
19 down. Thank you.

20
21 This is the email where you raised the issue with
22 Superintendent Dale Frieberg?

23 A. Yes.

24
25 Q. It is dated 29 November 2021 at 12:58?

26 A. That's right.

27
28 Q. You identified to the Superintendent that there had
29 been a potential issue with DNA testing in relation to a
30 murder investigation?

31 A. Correct.

32
33 Q. Which was solved over the weekend?

34 A. Yes.

35
36 Q. And you identified that the 10 samples that were
37 reported as "DNA insufficient", which were part of the
38 33 --

39 A. Yes.

40
41 Q. -- had come back with profiles?

42 A. Yes.

43
44 Q. Then underneath that you identified the importance of
45 the samples. Are you able to indicate to us in some way
46 how they were important, other than the nature of the
47 Investigation? Were they important in solving or

1 identifying an accused?

2 A. One of the samples - well, actually a couple were.
3 But one of the samples was taken from the deceased's calf,
4 and that was identified to the accused.

5
6 Q. Thank you.

7
8 THE COMMISSIONER: Q. One of the samples had been
9 reported "DNA insufficient for further processing"?

10 A. That's right.

11
12 Q. In a murder case?

13 A. Yes.

14
15 Q. And it was a tape-lift from the deceased's calf?

16 A. That's right.

17
18 Q. And when you asked for it to be retested, it returned
19 a usable profile identifying the accused?

20 A. It did. Yes, that's right.

21
22 THE COMMISSIONER: Yes.

23
24 MR JONES: Q. You have identified there that after these
25 were retested, each yielded a profile that could be linked
26 to a person with a likelihood ratio of greater than
27 100 billion?

28 A. Okay, yes.

29
30 Q. Yes?

31 A. Yes.

32
33 Q. Over the page at [WIT.0035.0001.0001_R at 0514] - and,
34 sorry, on that page and then over the page you have
35 identified the samples, where they are from, and their
36 initial reporting. And it is cut off on the side, but
37 presumably you go on to say what the results were of the
38 retesting; is that right?

39 A. I presume so. I can't see it.

40
41 Q. Over the page at 0514 at the bottom there, you
42 articulate the process as you understand it; that is, that
43 the initial part of the testing is quantifying the DNA?

44 A. Correct.

45
46 Q. Extracting and quantifying it?

47 A. Yes.

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Q. The sample only goes to be profiled if it is over a certain threshold?

A. Yes.

Q. And you are talking about there about the 0.001 to 0.0088 threshold?

A. Yes.

Q. You have identified that:

Given what has occurred, I think this threshold needs to be reviewed. Are you happy for me to raise this with [Queensland Health]?

A. Correct.

Q. Back to [WIT.0035.0001.0001_R at 0153], please, Mr Woolridge. At the top you get a response from the superintendent. And the superintendent, this is on the same day, says:

Perhaps verbal in the first instance. Keep me posted if you have any issues.

A. Yes.

Q. Thank you. You then called Ms Allen and Mr Howes on 1 December 2021?

A. I did.

Q. And you had a telephone discussion with them about this case?

A. We had. Yes. Yes.

Q. Could [WIT.0020.0002.0458_R] be brought up, please.

THE COMMISSIONER: What exhibit number was that again?

MR JONES: Exhibit 64A, my apologies --

THE COMMISSIONER: 64A?

MR JONES: -- to Inspector Neville's --

THE COMMISSIONER: Yes, thank you.

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MR JONES: Q. Did you take a diary note of the conversation?

A. I did, yes.

Q. Is that the copy on the screen there?

A. Yes.

Q. Can you step us through that telephone discussion, please?

A. So I spoke to Cathie and Justin over the telephone. I advised of the matter where 33 samples originally recorded as "DNA insufficient", but when we asked for further testing, 10 of them gave a profile. I indicated concern had been raised about the current media attention in relation to another matter that was in the media at the time. And issues raised in that case around samples not yielding a profile.

Cathie advised me that Queensland Health had done repeated testing and had revealed it's highly unlikely to get a profile below a particular quant value. She told me that it was incumbent on the QPS to decide whether or not testing should continue, and she indicated that we had agreed to that in 2008. I may have misheard; it might have been 2018 she was referring to.

Q. Is that potentially a reference to the subsampling in 2008?

A. Yeah, it could have been that or the Options Paper in 2018. It's probably more likely the Options Paper. I just may have just misunderstood at the time. She told me her staff were not in a position to make an assessment of the likelihood of a result from a particular, given they no longer get case information. I raised with her that we actually place a photo of the sampled area, of the stain, and the presumptive screening results, on the exhibits screen in the Forensic Register, which is visible to Queensland Health.

I asked her if Queensland Health ever looked at that information to make a decision as to whether testing should be conducted or continued. Cathie advised me, or words to the effect, that "Just because it's a red stain, it doesn't mean it was blood to us", and "You are the ones now doing the screening." I reiterated that approximately 30 per cent of the samples, in this case, yielded a profile after the

1 work was requested. Sorry, that was a reference maybe back
2 to the previous case. No, no, no. Sorry, that was for
3 that case. Cathie said that she believed this was an
4 outlier but would review if the information was provided to
5 her, which I did later.

6
7 Cathie then went on to raise some concerns about
8 information in the media and that someone from QPS was
9 potentially leaking that information because they didn't
10 have the FR at the time of the matter that was in the
11 media. I indicated to her that perhaps it was court
12 transcripts that the information was being gleaned from.

13
14 I then met with Superintendent Frieberg and discussed
15 the matter with her.

16
17 Q. And you put a post-script there a little bit further
18 on?

19 A. Oh, yes, yes. During the conversation, too, she
20 mentioned again or reinforced --

21
22 Q. Mr Woolridge, please. Back to 001? Is it there or
23 not? That's dropped off, but do you recall?

24 A. I think it was something along the lines of that,
25 again, that if you micro-concentrate you exhaust the
26 example.

27
28 THE COMMISSIONER: Q. Your note [WIT.0020.0001.0001_R at
29 0035] reads:

30
31 *She also advised that they were hesitant to*
32 *test low quant samples because they should*
33 *be retained in case a more sensitive method*
34 *[becomes available].*

35
36 A. Okay. Yes.

37
38 Q. You noted that Ms Allen said her staff were not in a
39 position to make an assessment on likelihood of a result
40 for a particular sample because they didn't have the
41 information. Ms Allen had written to you that long letter
42 that you looked at yesterday?

43 A. Yes.

44
45 Q. That you were giving evidence about at the end of your
46 evidence yesterday?

47 A. Yes.

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Q. And she made a reference to - there was a reference there, as I recall, to scientists making a judgment about testing further?

A. Yes. She --

Q. That gave you comfort, you said?

A. Yes. She had mentioned in the email that the scientists have a look at the samples and the information and make an assessment as to whether micro-concentration might be appropriate or not in the context of the case and the sample.

Q. How does that fit in with this statement?

A. It seems to be in conflict, to me.

Q. Did it occur to you at the time or did you think about it at the time, that the two statements were inconsistent?

A. No, that email that I received at late 2018 --

Q. Yes?

A. -- it was three years earlier.

Q. Yes, of course. All right. All right.

A. But the information is there. There is a photograph, and there's presumptive screening results.

MR JONES: Q. She also - can I say this: at 1 December 2021 is the first time that you're learning that the scientists can't look at the photos or aren't looking at the photos when considering the samples?

A. It's when I first suspected, yes. So I asked the question then because some of those samples were of a condom and things like that, and wondered why you wouldn't get DNA from that. So --

Q. And you are still being told in December 2021 that they had done repeated tests and it revealed it is highly unlikely to get a profile below a particular quant value?

A. That's right.

Q. So Ms Allen, in that conversation, is still urging on you or pushing on you that there is a very low chance of getting a profile through the DIFP quant that we've spoken about?

A. That's right.

Q. And this is the first time she raises with you that

1 the scientists are not in a position to assess the samples
2 at that stage?

3
4 THE COMMISSIONER: Well, that is not what she says. She
5 ignores the point and says, really, words to the effect
6 that it's not very informative, because if it is a red
7 stain, it doesn't mean it's blood. So Ms Allen isn't
8 saying that they can't look at the photos. She's really
9 giving an example to illustrate the point that looking at
10 the photos isn't very helpful in making a decision. Is
11 that how you read it, Mr Jones?

12
13 MR JONES: No, at [WIT.0020.0002.0001_R at 0458], it is
14 written. She said her staff were not in a position to make
15 an assessment of likelihood of result for a particular
16 sample given they no longer get that information.

17
18 THE COMMISSIONER: Yes, I see.

19
20 MR JONES: Q. This is the first time that it has been
21 brought to your attention that they are not in fact in a
22 position to consider a further working of a sample at the
23 DIFP stage?

24 A. It was the first time it was brought to my attention
25 that they weren't taking note or looking at the information
26 that we had been provided in 2008 to make those decisions.

27
28 THE COMMISSIONER: Mr Jones, you might not be able to help
29 me immediately, but what is the evidence about the
30 availability of contextual information in the form of
31 photographs available to scientists at the lab?

32
33 MR JONES: Because the DIFP threshold is a hard
34 threshold --

35
36 THE COMMISSIONER: I mean generally are the photographs of
37 the - showing the provenance of a sample available to
38 scientists at the lab? Were they in 2018 to 2021?

39
40 MR JONES: As I understand the state of the evidence, they
41 are available on the Forensic Register --

42
43 THE COMMISSIONER: To the scientists?

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45 MR JONES: -- to the scientists, together with a
46 description of the sample, whether it is an SAIK, high
47 vaginal swab, or something like that, a substrate.

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THE COMMISSIONER: I see. Yes.

MR JONES: Q. You followed up that telephone call with an email to Ms Allen on 1 December?

A. I did.

Q. Could [WIT.0020.0003.0001_R at 0008] be brought up, please? At the bottom of the page is an email arranging the telephone conversation that you have just taken us to in your file note?

A. Yes.

Q. And that was sent on 1 December 2021 at 10:24. And then above that is your follow-up email to Ms Allen after your telephone call?

A. Yes.

Q. Again, you place further context by citing that there were 33 items sent in and that returned a "DNA insufficient for further testing"?

A. Yes.

Q. Requests made for further work, and 10 of the samples returned a result with persons being identified greater than 100 billion?

A. Yes.

Q. You attached a spreadsheet that includes the results?

A. I did.

Q. And you wondered if there was a particular reason for this case as to why approximately 30 per cent of the samples yielded a result after the work was requested?

A. Yes.

Q. And you asked for her advice about what the actual threshold is and advice as to whether the threshold ought to be reviewed?

A. Yes, I did.

Q. And then you apologise for being demanding, and you say:

... can you also provide information on your expected likelihood of success in normal casework, (i.e. the likelihood of

1 *DNA insufficient samples yielding a result*
2 *if testing is continued).*

3
4 A. Yes.

5
6 Q. To page [WIT.0020.0003.0001_R at 0006], please.
7 Ms Allen, down the bottom, if that could be blown up,
8 replies on 3 December 2021?

9 A. Yes.

10

11 Q. And:

12

13 *I appreciate the timely feedback.*

14

15 My apologies. That's at [WIT.0020.0003.0001_R at 0007].

16 If that can be blown up, please. 3 December 2021 at 9:55?

17 A. Yes.

18

19 Q.

20

21 *Thanks for the additional*
22 *information [provided].*

23

24 A. Yes.

25

26 Q.

27

28 *After we had conducted a review of a large*
29 *dataset, it was found that below a*
30 *particular quantitation threshold and in*
31 *line with manufacturer's specifications, a*
32 *very small percentage of samples may*
33 *provide some type of DNA profile, if they*
34 *proceeded through DNA processing.*

35

36 Did you understand what Ms Allen was referring to there?

37 A. Again reinforcing to me that the success rate was very
38 low and, in fact, she's indicating there that the
39 micro-concentration process for samples in that range was
40 very low success rate to give any type of profile.

41

42 Q. She is referring, of course, after the next sentence,
43 to the Options Paper?

44 A. Yes, yes.

45

46 Q. And she goes on to say:

47

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

4

5 A. Yes.

6

7 Q. Do you understand that after the inception of the
8 Options Paper, that the lab was continuing to monitor the
9 results?

10 A. I had no idea whether they were or not. I've never
11 seen any data to suggest that, but.

12

13 Q. But what she is saying there, "We've monitored this"?

14 A. Yes.

15

16 Q. Having just spoken about the Options Paper and said,
17 "We did a large dataset and have found with a large dataset
18 the small percentage didn't vary"?

19 A. That's right. Again, to me there was further advice
20 that, you know, the success rate was low.

21

22 THE COMMISSIONER: Mr Jones, that sentence that you have
23 just dealt with:

24

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

28

29 It implies that work was done by way of processing "DNA
30 insufficient for further processing" samples, that such
31 samples had been processed, resulting in a large dataset
32 that showed only a small percentage of results?

33

34 MR JONES: That's right. And Inspector Neville says he
35 wasn't provided with any data to suggest that that had been
36 done.

37

38 THE COMMISSIONER: Are you aware of any documents or
39 information about the further monitoring of such samples?

40

41 MR JONES: No, save for a fact that shortly, as the story
42 will unfold, the Inspector starts to have --

43

44 THE COMMISSIONER: No, well he does.

45

46 MR JONES: That's right. But not from --

47

1 THE COMMISSIONER: Inspector Neville does

2

3 MR JONES: Not that I'm aware of from --

4

5 THE COMMISSIONER: And the other thing is at the beginning
6 of that paragraph:

7

8 *It was found that below a particular*
9 *quantitation threshold and in line with*
10 *manufacturer's specifications ...*

11

12 What does that reference mean, "in line with manufacturer's
13 specifications"?

14

15 MR JONES: I suspect it is a reference the validation of
16 the equipment down to 0.001 to get a reliable result.

17

18 THE COMMISSIONER: All right. Thanks.

19

20 MR JONES: The review of the dataset, Commissioner, you'll
21 recall, is the updated paper which I am getting to. But
22 that's about June 2022.

23

24 THE COMMISSIONER: No, but that hasn't been done yet. But
25 that wasn't done by this stage.

26

27 MR JONES: That's right. That's the only review that
28 we're aware of.

29

30 THE COMMISSIONER: Mm.

31

32 MR JONES: Q. Over the page to [WIT.0020.0003.0009_R at
33 0006] and down the bottom there, you replied to Ms Allen on
34 3 December at 10:07?

35

A. Yes.

36

37 Q. And you appreciate the timely feedback and refer to
38 the conversation you had on 1 December 2021.

39

A. Yes.

40

41 Q. And you make reference again to:

42

43 *... I am assuming these discussions*
44 *occurred in 2008.*

45

46 A. Yes, I did. Yes.

47

1 Q. So at the moment, you are - is that a typographical
2 error, or do you recall now that there was some discussion
3 about it --

4 A. Well, no. I must at that point have thought it was
5 2008. I diarised 2008. Again, like, the Options Paper
6 wasn't, you know, fresh in my mind. It had been some time
7 since I had seen that. I had been very heavily involved in
8 things that occurred in 2008, and I think that was just my
9 misconception --

10
11 THE COMMISSIONER: It seems that at this point in 2021,
12 December last year, when you were asking questions about
13 results with this description --

14 A. Yes.

15
16 Q. -- and the anomalies that you were finding --

17 A. Yes.

18
19 Q. -- you didn't have in mind the Options Paper. I mean,
20 now it is very prominent, but it seems that at this point
21 it didn't figure in your thinking as the origin of any of
22 this because you don't mention it and you're talking about
23 2008. So it looks like it just didn't have it in mind?

24 A. That's correct, Commissioner. And it had been,
25 unfortunately, you know, three years since I had --

26
27 Q. Yes, I understand.?

28 A. And a lot of things had occurred in the meantime and
29 it just wasn't at the front of my mind. But it came to my
30 attention soon afterwards.

31
32 THE COMMISSIONER: Yes.

33
34 MR JONES: Q. But you are still investigating it. You
35 are asking again:

36
37 *Is there any correspondence that was*
38 *provided to base this decision on that you*
39 *can provide, please? For our [reference]*
40 *and moving into the future, what is the*
41 *actual percentage that your dataset has*
42 *indicated?*

43
44 A. Yes. Correct.

45
46 Q.

47

1 *Obviously this information will be helpful*
2 *in guiding future requests for retesting.*

3
4 A. Yes.

5
6 Q. And then over the page at [WIT.0020.0003.0001_R at
7 005], down the bottom, it is now 13 December.

8 A. Yes.

9
10 Q. 2021 at 14:06.

11 A. Yes.

12
13 Q. And you sent an email again to Ms Allen?

14 A. Yes.

15
16 Q. And you cc an officer working with you, Libby Harris,
17 into the email?

18 A. Yes.

19
20 Q. And then back over to [WIT.0020.0003.0001_R at 0006],
21 can we assume that you haven't received a reply?

22 A. No, I hadn't received any feedback at that point.

23
24 Q. And what's that, 10 days? And you respond saying:

25
26 *Since sending you my last [email] I found*
27 *some correspondence from February 2018 ...*

28
29 And here, you are now making the link to the Options Paper?

30 A. That's right.

31
32 Q. You mention there that chance of obtaining a profile
33 was less than 2 per cent?

34 A. Yes.

35
36 Q. You used the word "profile"?

37 A. Yes.

38
39 Q. You don't make mention of the database?

40 A. No.

41
42 Q. That is, the National Criminal Database as your
43 measure/metric?

44 A. That's right.

45
46 Q. You say:

47

1 *Samples below this threshold were*
2 *previously micro concentrated in an effort*
3 *to attain a profile.*

4
5 A. Yes.

6
7 Q.

8
9 *Based on the advice from [Queensland*
10 *Health], the [Police] agreed to discontinue*
11 *[that process] under such circumstances and*
12 *the result would be reported as ...*
13 *(DIFFT).*

14
15 And that's your understanding at that time of the Options
16 Paper?

17 A. That's right.

18
19 Q.

20
21 *I am assuming this is the information I was*
22 *seeking ...*

23
24 And that's a reference to what you were saying in 2008, but
25 it's 2018?

26 A. Yes.

27
28 Q. So we can take it that you had to go and work that out
29 for yourself. Ms Allen didn't respond and say, "Here's the
30 Options Paper"?

31 A. That's my recollection, yes.

32
33 Q. You then make a reference to a murder
34 operation/investigation and the fact that you have asked
35 your staff to undertake a wider review of further testing
36 that was originally reported as DIFP in the year of 2021.

37 A. Yes.

38
39 Q. What did you discover from that review that you're
40 referring to there in the paragraph?

41 A. Yeah. So at the start of December, I had tasked
42 Sergeant Libby Harris to go back for the previous six
43 months and have a look at where police had requested the
44 further testing of the DIFP results, what were we seeing?
45 What were the number of profiles coming back? So this is
46 the first time I was getting a larger dataset. And out of
47 the 160 samples that were requested to be tested, 51

1 yielded a profile. So I thought that was pertinent
2 information then to provide Health to assist them in
3 investigating and us, I guess, reviewing the threshold of
4 whether that was appropriate.

5
6 Q. And to seek Ms Allen's advice?

7 A. Yes.

8
9 Q. And then in the next paragraph down you make reference
10 to the November 2018 murder investigation?

11 A. That's right.

12
13 Q. Where P1s were being cut off at the same threshold?

14 A. Yes, but at that point my recollection of the previous
15 event three years earlier - I recalled it again - and, I
16 guess, reminded Ms Allen that this is the second time now
17 we've seen this, and previously in 2018, I had raised this
18 concern when three out of four samples, when further
19 tested, yielded a profile.

20
21 Q. And then in the final three paragraphs, you continue
22 your plea for a review?

23 A. Yes.

24
25 Q. And you raise it as a question. That is, should a
26 review happen of this practice of truncating testing lower
27 quants?

28 A. Yes.

29
30 Q. You ask a question:

31
32 *For instance, is the threshold value still*
33 *valid?*

34
35 A. Yes.

36
37 Q.
38 *Also, within implementation of the latest*
39 *version of STRMix that can deconvolute more*
40 *complex mixtures, is it more likely to get*
41 *a result now?*

42 A. Yes.

43
44 Q. And then you say:

45
46 *I think the 30 per cent success rate of*
47 *retesting warrants a little further*

1 *examination to make sure we are maximising*
2 *our chances of solving crime, particularly*
3 *for major crime matters.*

4

5 A. Yes.

6

7 Q. Thank you.

8

9 THE COMMISSIONER: Q. Do I understand you to be taking
10 this position with this email, that whatever might have
11 been agreed to in 2018, and however valid that decision
12 might have been in February 2018, you were aware that,
13 first, the results were better than expected from
14 retesting?

15 A. Yes.

16

17 Q. And, secondly, you were aware that at least one thing
18 had changed in the lab to make their work more sensitive,
19 namely, the - more "sensitive", I'll call it, in making
20 usable profiles - namely, the introduction of this software
21 system called STRmix?

22 A. Yes.

23

24 Q. And that that might be the reason why a decision made
25 in 2018, valid then, might no longer be valid?

26 A. That's right. I wanted to explore why.

27

28 Q. Yes, thank you.

29

30 MR JONES: Q. Are you starting perhaps to get a
31 suspicion that perhaps November 2018 and November 2021 are
32 not isolated, one-off events?

33 A. Absolutely.

34

35 Q. And on 16 December 2021, you get a response from
36 Ms Allen at 12:42 pm. Page 5, please, Mr Woolridge. At
37 the top. Thank you. Zoom in. [WIT.0020.0003.0001_R at
38 0005]. You get a two-line response to your two earlier
39 emails?

40 A. Yes.

41

42 Q. Three earlier emails. The two on 3 December and then
43 your other one on 13 December. You get:

44

45 *Thank you for your email and feedback*
46 *regarding this. We will review scientific*
47 *data available to us and will provide*

1 *further advice to the QPS in due course.*

2

3 A. Yes.

4

5 Q. About 13 days after you first raised the issue with
6 Ms Allen?

7 A. Yes.

8

9 Q. Over the page please, Mr Woolridge, page 4. Down the
10 bottom there [WIT.0020.0003.0001_R at 0004]. You respond
11 14 minutes later:

12

13 *Hi Cathie.*

14

15 *Thanks, this is a high priority for us, we*
16 *would appreciate advice as soon as possible*
17 *please.*

18

19 A. Yes.

20

21 Q. Why was it a high priority for you?

22 A. I was forming a suspicion that we were missing out
23 potentially on profiles of evidence. So I wanted to
24 resolve it.

25

26 Q. You then sent a follow-up email on
27 [WIT.0020.0003.0001_R at 0003], Mr Woolridge, over the
28 page. Down the bottom. Zoom in, please. You then send a
29 follow-up email on 17 December the next day at 12:04 pm?

30 A. Yes.

31

32 Q. And you say:

33

34 *In addition to the items on the list*
35 *provided previously, last week we requested*
36 *a blood swab ... to be retested which was*
37 *originally reported as "insufficient DNA*
38 *for further testing". This sample was*
39 *taken from blood on a broken shard of glass*
40 *as depicted in the photo below.*

41

42 *Given the nature of the stain and inert*
43 *substrate, we were surprised with the*
44 *original result which is what prompted the*
45 *request to further test. Today we were*
46 *advised that subsequent testing yielded a*
47 *single source 20 loci profile. This was an*

1 *excellent result solving the crime which*
2 *would have been otherwise missed.*

3
4 A. Yes.

5
6 Q. And over the page, it was your understanding that
7 blood is a rich source of DNA?

8 A. It is.

9
10 Q. And there you attached the photo?

11 A. I have, yes.

12
13 Q. It is photographed with a sticky label that says
14 "blood"?

15 A. Yes.

16
17 Q. It has:

18
19 *[Something] ALMA [something].*

20 *RTN*

21 *BLOOD SW*

22
23 Are you able to help us out with that? Is that indicating,
24 for example, that it has been presumptively tested for
25 blood and that it's come up positive?

26 A. No, no. That will be the address of the crime scene.

27
28 THE COMMISSIONER: That's near where I live.

29
30 MR JONES: Q. Sorry, that should have been redacted.

31 A. But the presumptive screening tests are indicated on
32 the exhibit screen together with that image that is visible
33 to the scientists on the Forensic Register.

34
35 Q. So at the very least it has got the word "blood"
36 there, it has got a shard of glass, presumably from a
37 broken window or something, suggesting that it is blood?

38 A. Yes.

39
40 Q. And in fact, confirmed later that it was blood?

41 A. Right.

42
43 Q. I am asking you, is that right?

44 A. I'm not sure. I believe - I'd have to look at the
45 Forensic Register. I believe this had a - presumptive
46 screening results on there that were positive for blood.
47 And if it's positive presumptively and yields a DNA profile

1 and by the appearance, we would come to the conclusion it
2 is in fact blood.

3

4 Q. But in the text above, you're again agitating for
5 confirmation whether this information is looked at by the
6 scientists?

7 A. That's right.

8

9 Q. And you ask that Ms Allen and her scientists consider
10 it together with the other material you provided earlier?

11 A. Yes.

12

13 Q. We will go to page 3, please, [WIT.0020.0003.0001_R at
14 0003]. At the top there. Thank you. You get a reply that
15 evening from Ms Allen. Sorry, could you just go back down
16 to the bottom, please. In fact, could you go to page 0004,
17 to the bottom, please, Mr Woolridge. [WIT.0020.0003.0001_R
18 at 0004]. We see there that you have introduced on 16
19 December Superintendent Dale Frieberg to the conversation?

20 A. Yes.

21

22 Q. And you have introduced Lara Keller to the
23 conversation?

24 A. They may have been present in the previous emails.
25 I'm not really sure. But, yes, they were definitely
26 included in this.

27

28 Q. We can go over that. [WIT.0020.0003.0001_R at 0005].

29 A. Yes.

30

31 Q. And then down a bit further. There we go. On the
32 13th, they're not there.

33 A. Right. Yes, okay.

34

35 THE COMMISSIONER: But I think it is Ms Allen who
36 introduced them in her email at the top of that page.
37 December 16, 12:42 pm, she introduced - she cc'd --

38

39 MR JONES: Yes, it is. Thank you, your Honour.

40

41 Q. Now to [WIT.0020.0003.0001_R at 0002] at the bottom of
42 the page is an email from Ms Allen, 17 December at 5:06 pm?

43 A. Yes.

44

45 Q. And over the page at [WIT.0020.0003.0001_R at 0003]:

46

47 *Thank you for the follow-up email regarding*

1 *samples within this case.*

2

3

4

5

6

7

8

9

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14

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18

19

A. Yes.

20

21

22

23

24

Q. Then over the page at [WIT.0020.0003.0001_R at 0002]
you reply at about 17 minutes later, 16 minutes later, that
evening. And you say:

25

Hi Cathie

26

27

28

29

30

31

32

33

34

35

36

37

*Thanks for the clarification. That was my
understanding too. I was of the belief
that QHFSS stopped doing this as a matter
of routine for low quant samples because
there was a lower than 2 percent chance of
success. However, QPS has found the
success rate to be 30 percent when we
requested this to be done. It is the
difference between these success rates that
I am interested in.*

38

Correct?

39

A. Yes.

40

41

42

43

44

Q. And you are still bringing to her attention that your
understanding is that there was only ever a 2 per cent, or
less than 2 per cent, chance of missing a profile?

45

A. That's right.

46

Q. And that you have discovered a 30 per cent --

47

A. That's right.

1
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Q. -- if I can call it that.

THE COMMISSIONER: Q. Is it correct - Mr Jones will go through the emails - but is it correct that you put forward your belief that the decision to cull these tests, these samples from the testing regime, was based upon the proposition that only 2 per cent of them - less than 2 per cent of them - resulted in a usable profile, and you put that proposition a number of times in these emails?

A. That's right.

Q. And the Options Paper in fact didn't say that, you now appreciate?

A. That's correct.

Q. It said that fewer than 2 per cent give rise to a cold link?

A. That's right.

Q. But that on the face of the Options Paper, about 10 per cent of these samples give rise to a usable profile, correct?

A. That was - it is now my understanding.

Q. Yes, that's the position now. Yes, I understand.

A. That's right.

Q. But you had put to her your then mistaken belief that the decision to cull these samples was based upon the assumption that fewer than 2 per cent of them gave rise to a usable profile. But that proposition, as you put to Ms Allen, she never corrected it?

A. That's right. In fact, earlier in the string, which I believe led me to believing it was 2 per cent, she said that they had a very large dataset and a very small number would produce a profile.

Q. Yes.

A. And --

Q. Consistent you with the proposition you were advancing?

A. That's right. Well, actually, that was the proposition that she advanced at that point.

Q. No, I understand. But what she put to you there was

- 1 consistent with the mistaken view that you were putting to
2 her?
- 3 A. I think that in that case it actually led me to the
4 mistaken view.
- 5
- 6 Q. Right.
- 7 A. So she had given me the information they had a large
8 datasets, they had a very low percentage --
- 9
- 10 Q. I see, so you have then gone to the Options Paper and
11 seen the number?
- 12 A. That's right.
- 13
- 14 Q. And came to the conclusion that that's what she was
15 talking about?
- 16 A. I saw that the pertinent figure is 1.45 per cent.
- 17
- 18 Q. I see, yes.
- 19 A. I was dealing with a number of other issues at the
20 time.
- 21
- 22 Q. Yes.
- 23 A. I had put the two and two together and came up with
24 the incorrect call.
- 25
- 26 Q. Yes, I understand.
- 27 A. But I was never corrected.
- 28
- 29 Q. No, that's what I'm putting to you.
- 30 A. No, I was never corrected.
- 31
- 32 Q. When did you learn that that view was mistaken and
33 that the true number on the Options Paper was 10 per cent?
- 34 A. So I actually went on leave pretty much after this
35 email and I came back at the end of February and turned my
36 mind --
- 37
- 38 Q. Of this year?
- 39 A. Sorry, the start of February. Yes, this year. Turned
40 my mind to the matter again immediately returning to work
41 and had explored the Options Paper a lot deeper.
- 42
- 43 Q. Yes.
- 44 A. And that's when I came to the conclusion it was 10 per
45 cent.
- 46
- 47 Q. Yes.

1 A. And I had asked Ms Allen - you will see emails - "I
2 think it's 10 per cent. It's 10 per cent, isn't it?" But
3 still there was no clarification. She came back with
4 2 per cent. But at that point I knew it was 10 per cent,
5 so --

6
7 Q. Mr Jones will take you through.

8
9 MR JONES: You will recall, Commissioner, at page 7 of the
10 Options Paper [CCC.0085.0027.0001 at 0008], the relevant
11 paragraphs starts with:

12
13 *If samples were not processed through the*
14 *'auto-microcon' process, what DNA*
15 *intelligence would the client miss out on ?*

16
17 THE COMMISSIONER: Yes.

18
19 MR JONES: And it goes on to talk about the 1.5 and the
20 1.8.

21
22 THE COMMISSIONER: Yes.

23
24 MR JONES: Q. Above that, you have an email to your
25 superintendent, it seems. You don't have a date. Do you
26 recall whether that was sent soon after your final December
27 exchange with Ms Allen?

28 A. I think it would be the same day. I can't recall
29 exactly, but --

30
31 Q. What you say there is that there is a meeting in an
32 hour with Queensland Health, because you just saw it in
33 your Outlook. Just have a little read of that?

34 A. Okay. This may have been when I returned in February.
35 I'm sorry.

36
37 Q. Sorry, I'll just give you - there are some minutes
38 which I am going to take you to.

39 A. It is unfortunate that the email doesn't have a date
40 on it.

41
42 THE COMMISSIONER: I don't suppose we can work it out,
43 Inspector? In December you were raising these issues, and
44 the last email we have from you in 2021 is 17 December?

45 A. Yes.

46
47 Q. And you put the 2 per cent figure in that email?

- 1 A. Yes.
2
- 3 Q. And then you said you went on leave, so you were on
4 Christmas leave from then?
5 A. Yes.
6
- 7 Q. And you came back, you said, in early February?
8 A. Yes, and there was a meeting on 1 February.
9
- 10 Q. Yes, so you must have been speaking about that meeting
11 in this email?
12 A. I assume so.
13
- 14 Q. "There is a meeting in an hour". So we can - there
15 might be other documents that will pinpoint the date, but
16 we can proceed upon the assumption that this is
17 early February 2022.
18 A. Yes.
19
- 20 MR JONES: Q. The email below, you have said to
21 Ms Allen, "This is the difference I am interested in, the
22 success rate between 2 and 30 per cent"?
23 A. Yes.
24
- 25 Q. And then up above you tell the Superintendent:
26
27 *... the chance of getting a profile is less*
28 *than 2%. Based on that advice we agreed to*
29 *discontinue testing in those circumstances.*
30
- 31 A. Yes.
32
- 33 Q.
34 *However, we have found that [it was] for*
35 *testing to continue, we have a success rate*
36 *of 30%. I have asked Cathie a few times to*
37 *explain this and she has not provided one*
38 *yet.*
39
- 40 A. Yes.
41
- 42 Q. And so, we can take it that on 17 December you didn't
43 get a response to that email either?
44 A. I don't think so, no.
45
- 46 Q. Thank you. On 14 February, you prepared a Ministerial
47 Briefing Note, 2022?

1 A. Yes.

2

3 Q. What is a Ministerial Briefing Note?

4 A. Oh, it's a brief prepared for the Minister, usually a
5 two-page document. If there is an issue that's critical
6 that should be raised to that level, it provides advice on
7 the background, the issues and sometimes a recommendation
8 forward.

9

10 Q. You drafted the Ministerial Briefing Note and gave a
11 background to what you were discovering?

12 A. That's right.

13

14 Q. Do you know whether that Ministerial Briefing Note was
15 ever sent?

16 A. No. I had discussed the matter again with
17 Superintendent Frieberg. We came to the conclusion that it
18 might be more appropriate to make it an Executive Briefing
19 Note, which is a similar document but it is designed for
20 the Commissioner and the Executive of the QPS, and that, in
21 that document, we would recommend that a letter be
22 forwarded from the Commissioner to the Director-General of
23 Health requesting a review of the threshold.

24

25 Q. That was done on 22 February. You drafted that on
26 22 February 2022?

27 A. No. It was drafted around the 14th. It was
28 submitted, I believe, on the 22nd. So submitted to the
29 Assistant Commissioner of Support Command.

30

31 Q. Thank you?

32

33 MR JONES: I am not going to take you there, Commissioner,
34 but they are exhibits 80 and 78 of Inspector Neville's
35 statement.

36

37 THE COMMISSIONER: All right.

38

39 MR JONES: Q. You further emailed Ms Allen on
40 21 February 2022, and that's exhibit 70, Commissioner. Is
41 that right, Inspector?

42 A. Yes.

43

44 Q. [WIT.0020.0003.0001_R at 0063]. Would you take us
45 through your email there of 21 February 2022 to Ms Allen,
46 please.

47 A. Look, I alluded to some ongoing coverage in The

1 Australian about a particular high profile case and that it
2 may have been causing stress for her staff. I indicated
3 that I had been drawn in to comment internally around
4 peripheral matters that related to a similar thing, which
5 is around thresholds.
6

7 So there was an article in The Australian that claimed
8 that Queensland required the equivalent of 22 cells to get
9 a profile, which was double that of the New South Wales
10 laboratory. And I referred back that I know that she had
11 been busy, but:
12

13 *... since 1 December 2021 I have raised*
14 *concerns in relation to the truncating of*
15 *testing based on DNA quant values because*
16 *of the significant number of below*
17 *threshold samples yielding a profile when*
18 *testing is continued.*
19

20 I wanted to reaffirm that it remains a priority for the QPS
21 and:
22

23 *To date I have not received any feedback or*
24 *explanation as to difference between the*
25 *predicted (<2%) ...*
26

27 The 2 per cent is what I was operating on at that point:
28

29 *... and observed success rates (30%) for*
30 *samples that reportedly contained a low*
31 *concentration.*
32

33 Q. And then you go on to plead for her advice, as you had
34 done on the previous occasions?

35 A. Yes.
36

37 Q. About thresholds?

38 A. Yes.
39

40 Q. And how they now accord with other jurisdictions in
41 Australia?

42 A. Yes.
43

44 Q. At this stage, had you started to do any
45 investigations yourself with other jurisdictions?

46 A. I had. I didn't get a lot of feedback. So I had
47 emailed or spoken to South Australian Police and

1 New South Wales Police. Well, actually the South
2 Australian Forensic Science - FSSA. I can't remember.
3 Forensic Services of South Australia. And I had spoken to
4 a laboratory manager there. I can't remember his exact
5 name. And I was advised that their threshold was actually,
6 supposedly, higher. I think it was 0.01, so slightly
7 higher than the Queensland. I had spoken to, I think it
8 was, Sharon Neville at the Forensic or FAS. I can't
9 remember what the acronym stands for, but it's the New
10 South Wales Health DNA laboratory. She was hesitant,
11 really, to provide any comment, I think, because it was in
12 the media. And I don't think she affirmed or really denied
13 that there was a difference, or the information in the
14 newspaper about 22 cells and 11 cells, I didn't get any
15 advice from her whether that was correct or not. She sort
16 of avoided the subject.

17

18 Q. Did you speak to Pam Scott at all?

19 A. Yes, sorry, I did. I spoke to Pam Scott, too.

20

21 Q. Who is Pam Scott?

22 A. She is from Hobart. She is the leader in charge of
23 the DNA laboratory down in Hobart. And I know Pam because
24 I'd been on an NATA committee with her, so I had contacted
25 her, and she was an NATA assessor. So I'm not sure if I
26 spoke to her about this matter or a previous matter that
27 was about mixed profiles, or both. Are you - what part of
28 my statement are you referring to?

29

30 Q. No, I'm not. I am asking you whether you spoke to
31 her?

32 A. I don't know that I did. I had spoken to her
33 previously about a mixed profile issue and I may not have
34 asked her in this case. I can't recall.

35

36 Q. And then in your penultimate sentence in the final
37 paragraph, you say:

38

39 *Can you also please advise the outcome of*
40 *any internal review that you have*
41 *undertaken based on the information I*
42 *provided.*

43

44 You are talking about the information you provided on or
45 about 1 December and through to about 13 December?

46

47 A. Yes.

1 Q. And we are now 21 February 2022?

2 A. Yes.

3

4 Q. And we can take it then that you haven't received any
5 feedback about those urgent matters you were raising?

6 A. No.

7

8 Q. And you sign off with:

9

10 *I need this information as a matter of*
11 *urgency to brief the executive in relation*
12 *to this matter.*

13

14 A. Yes.

15

16 Q. Then over the page [WIT.0020.0003.0001_R at 0062] at
17 the bottom Ms Keller responds 21 February 2022, 16:24?

18 A. Yes.

19

20 Q. And, it seems, provides you a copy of the Options
21 Paper?

22 A. Yes.

23

24 Q. And it may go some way to answering your enquiries,
25 and tells you that Cathie is away but back the next day.

26 A. Yes.

27

28 Q. And of course, it doesn't answer any of your
29 enquiries, because all of your enquiries are about the
30 Options Paper?

31 A. Right.

32

33 Q. And the consequences, correct?

34 A. Yes.

35

36 Q. You then respond 10 minutes later or so just to
37 Ms Keller?

38 A. Yes.

39

40 Q. And take us through your response there, please?

41 A. I indicated to Ms Keller that I already had that
42 document and:

43

44 *Based on the paper, a recommendation was*
45 *made to QPS that testing of samples*
46 *containing less than 0.008ng/ μ L of DNA*
47 *should discontinue because the chance of*

1 *obtaining a profile would be less than 2%.*

2

3 So at that point I was still operating on the incorrect
4 assumption that it was 2 per cent:

5

6 *As a result of this research [Queensland*
7 *Health] advised that they would report*
8 *samples below this threshold as*
9 *'insufficient DNA for further testing' and*
10 *that QPS could request testing to continue*
11 *if the sample was critical to a case.*

12

13 Anyway, moving on:

14

15 *In November 2021 the QPS undertook a review*
16 *of the success rate of obtaining a profile*
17 *when it requested testing to continue for*
18 *samples initially reported as [DIFP]. This*
19 *revealed that 30% of the samples yielded a*
20 *useable DNA profile when testing was*
21 *continued.*

22

23 Again, I reinforced:

24

25 *It is the difference between the 2%*
26 *(expected) and 30% (observed) that I am*
27 *concerned about.*

28

29 Q. You don't get a response from Ms Keller, but on
30 22 February you get a response. This is exhibit 71,
31 Commissioner, [WIT.0020.0003.0001_R at 0083]. And a
32 response here from Ms Allen on 22 February at 16:32?

33

34

35 Q. And there is a reference to the bimonthly meeting on
36 1 February?

37

38

39 Q. Which is probably the meeting that you informed
40 Superintendent Dale Frieberg was coming up shortly?

41

42

43 Q. And Ms Allen says she provided you a verbal update to
44 you and the Superintendent at that meeting?

45

46

47 Q. And the minutes are being circulated, and that

1 Ms Allen has, in her possession, detailed notes that she
2 took during that meeting?

3 A. Yes.

4

5 Q. And she says that she was having some difficulty
6 because of the community transition of COVID-19 in the lab
7 and there was slow progress?

8 A. Yes.

9

10 Q. And she says that you gave her assurances that you
11 understood the situation?

12 A. Yes.

13

14 Q. And during the meeting, she says that you advised her
15 that QPS had cherry-picked particular samples to be tested
16 further and that this may be the reason behind the results
17 that were achieved?

18 A. Yes.

19

20 Q. That the data that is required to be analysed is
21 between the Forensic Register, within the Forensic
22 Register, and that Ms Allen needs to receive a quote from
23 "bdna" in order for them to extract that data. And once
24 she has received the quote and approval for it, then
25 received the data, they will provide a report to the QPS
26 regarding this?

27 A. Yes.

28

29 THE COMMISSIONER: Q. So now this is three months since
30 you asked for an explanation, I think?

31 A. Yes. Time is ticking.

32

33 MR JONES: Q. Over the page at [WIT.0020.0003.0001_R at
34 0082], you replied the next day at 8:51 am.

35 A. Yes.

36

37 Q. Would you take us through your reply, please.

38 A. So I thanked her for her email. However, the response
39 did not address the main query posed. I said:

40

41 *I am seeking information from you in*
42 *relation to the comments in the Australian*
43 *claiming that the thresholds in Queensland*
44 *are twice that of other states and three*
45 *times higher than the manufacturer's*
46 *recommended value. These claims in the*
47 *national newspaper come at a time when the*

1 *QPS has raised similar concerns around*
2 *testing triage thresholds.*

3
4 I said:

5
6 *Unfortunately the gears have shifted since*
7 *our meeting on 1 February due these claims*
8 *in the media and I am being asked questions*
9 *in relation to these very issues.*

10
11 Q. You go on to then clarify in the meeting what you
12 meant in the meeting when you said that QPS had "cherry
13 picked" the samples?

14 A. That's right.

15
16 Q. And you said?

17 A. I said:

18
19 *The dataset that was provided included the*
20 *barcodes of samples that the QPS requested*
21 *to continue testing after receiving a*
22 *result 'insufficient DNA for further*
23 *testing'. Some of these were selected*
24 *because we found it unusual for the sample*
25 *type to yield low DNA. This included*
26 *samples from blood and a used condom.*

27
28 And I guess, yes, that is some cherry-picking in those:

29
30 *The fact that these produced low quant*
31 *value is concerning to some extent.*
32 *However, the majority of them were selected*
33 *due to the probative value of the sample*
34 *rather than the sample type.*

35
36 *For [a particular operation] 33 samples*
37 *with 10 later providing a full profile.*
38 *Yes, [I agreed,] the sample selection may*
39 *have had some impact, however it could not*
40 *explain the vast difference between >2% and*
41 *30% success rate.*

42
43 *Having said this, I do appreciate the work*
44 *that you have done so far in reviewing the*
45 *dataset. I understand that this may not be*
46 *a sample task. I know that we share a*
47 *common interest in ensuring the*

1 *effectiveness of DNA in enhancing community*
2 *safety. To that effect, could you please*
3 *provide an estimated timeframe for*
4 *completion.*

5
6 *For clarity, could you please provide*
7 *advice on the threshold values used within*
8 *[Queensland Health] as a matter of priority*
9 *including how they accord with other*
10 *jurisdictions. I assume that this*
11 *information will be readily available*
12 *within your procedures.*

13
14 Q. And you made the assumption from her earlier emails
15 that she had commenced considering data by this stage?

16 A. Yes.

17
18 Q. And the question you're asking here about thresholds
19 in other jurisdictions does not require any consideration
20 of any data, does it?

21 A. No.

22
23 Q. There had been a meeting a few days earlier, on
24 17 March 2022 --

25
26 THE COMMISSIONER: Sorry, we are in February 2022.

27
28 MR JONES: Sorry, my apologies. I got out of order there.
29 Thank you, Commissioner.

30
31 Q. Over the page, please, to [WIT.0020.0003.0001_R at
32 0081]. At the bottom of 00800 it has this email from
33 Cathie Allen on 24 February 2022 at 8:37?

34 A. Yes.

35
36 Q. In response to your email?

37 A. Yes.

38
39 Q. And she says:

40
41 *The laboratory has conducted an extensively*
42 *validation process prior to the*
43 *implementation of the current quantitation*
44 *process.*

45
46 A. Yes.

47

- 1 Q. And:
2
3 *The validation outcomes were in line with*
4 *the manufacturer's specification.*
5
6
- 7 A. Yes.
8
- 9 Q. She identifies that:
10
11 *From August 2018 onwards, if a sample*
12 *obtains a quantitation of 0.001ng/ μ L or*
13 *below, the laboratory reports this to the*
14 *[Police] as 'no DNA Detected'?*
15
- 16 A. Yes.
17
- 18 Q. And if a sample was between 0.001 and 0.0088 it would
19 be reported as "DNA insufficient"?
20
- 21 A. Yes.
22
- 23 Q. And there was reference to the expanded QPRIME result
24 supplied below, which she has cut and pasted into the
25 email?
26
- 26 A. Yes.
27
- 28 Q. And she goes on to identify that they are the values
29 that were listed in the Options Paper attached that was
30 provided to the Police, and she says that it was the lab's
31 understanding that forensic officers; that is, police
32 forensic officers --
33
- 33 A. Yes.
34
- 35 Q. -- review DNA results within the context of the case
36 and can request testing or submitting additional items for
37 testing?
38
- 38 A. Yes.
39
- 40 Q. Correct? Then Ms Allen goes on to speak of the
41 theoretical values regarding human cells to derive DNA
42 profiles?
43
- 43 A. Yes.
44
- 45 Q. And makes reference to the values the lab uses to
46 obtain from quantitation?
47
- 47 A. Yes.

- 1
2 Q. And identifies that they are approximate amounts?
3 A. Yes.
4
5 Q. Then in the next paragraph Ms Allen says:
6
7 *Each year, the forensic laboratories will*
8 *exchange information regarding profiling*
9 *kit and equipment used, however details*
10 *regarding quantitation values has not been*
11 *exchanged or collated so I'm unable to*
12 *comment or draw comparisons to other*
13 *jurisdictions.*
14
15 A. Yes.
16
17 Q. She's answering your question now without giving you
18 any information, correct?
19 A. I guess so.
20
21 Q. That is to say, "I can't give you information"?
22 A. Yes.
23
24 Q. She goes on to say:
25
26 *Validation studies conducted within each*
27 *laboratory ensures that the method or*
28 *equipment is fit for purpose within that*
29 *laboratory environment, so it's not*
30 *unexpected that different laboratories [use*
31 *different thresholds].*
32
33 A. Yes.
34
35 Q. And then speaks about in-house validation --
36 A. Yes.
37
38 Q. -- of their equipment. She says:
39
40 *If the QPS request a 'DNA insufficient'*
41 *sample to be processed, it first undergoes*
42 *a concentration step then amplification and*
43 *associated DNA interpretation (excluding*
44 *Priority 1 samples). The concentration*
45 *step is required to give the sample the*
46 *best opportunity to obtain ... 'useful' DNA*
47 *[profiles] ...*

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A. Yes.

Q. And she doesn't deal there with your misunderstanding yet of the 2 per cent or the difference between the 2 and 30 per cent questions?

A. No.

THE COMMISSIONER: Q. Nor, as I see it, are you told about the ability to get usable profiles from samples returning quants below 0.0088 ng/ μ L quants?

A. No, there's no information there about their own observations or what in that - you know, so it's still - I am still under the assumption it's 2 per cent.

Q. I am sorry, Inspector Neville. I was interrupting you.

A. No, it's fine, I had finished.

THE COMMISSIONER: Mr Jones, do we know whether a quote was ever sought from this company, bdna, that runs the forensic register, or the data that Ms Allen referred to at the foot of her email?

MR JONES: No, we don't, but I will make that a rule, that --

THE COMMISSIONER: We better send a requisition to them. Thanks.

MR JONES: We will look into that, Commissioner.

Q. At [WIT.0020.0003.0001_R at 0079] 24 February, on the same day at 1 o'clock, you respond to Ms Allen, correct?

A. Yes.

Q. You have a moment to refresh your memory of that, because we are going to get you to summarise it for us in a moment.

A. Yes.

Q. Right.

A. So this is when the penny dropped for me that the success rate wasn't 2 per cent. 2 per cent relates to the likelihood of the process resulting in a new link rather than the likelihood of obtaining a profile.

1 Q. That's what we see at paragraph 2 there.

2 A. The actual success rate is roughly 10 per cent
3 overall, according to Figure 1 in the Options Paper.
4 I made comment that:

5
6 *... using the number of new links to*
7 *measure the value of analysis is ...*
8 *problematic because the probative value of*
9 *the evidence will vary hugely depending on*
10 *the sample type and location.*

11
12 Q. I will just get you to explain what you are saying
13 there.

14 A. Well, for instance, they're treating all samples as if
15 they have the same probative value or evidential value, and
16 I said something yesterday, and I will use the same sample.

17
18 For instance, for a rape case, DNA on the swab, on the
19 internals of - an internal swab of a victim, is a lot more
20 important than DNA on a cigarette butt 300 metres up the
21 road. So according to this logic, if you had got the
22 cigarette butt, you discount the vaginal swab. It just
23 defies logic. It really does, although I did say I could
24 see the logic to some extent, but it does over-simplify it.
25 I have said here that the 10 per cent is much closer to the
26 30 per cent that I observed. I then alluded to that I did
27 some calculations. So in the Options Paper there is a bar
28 graph, basically.

29
30 Q. Mr Woolridge, can you shrink that so that the
31 Inspector can see what is on the next page of his email
32 response. Or perhaps scroll up. Perfect. Thank you.
33 [WIT.0020.0003.0001_R at 0080]. And could you just zoom in
34 on his graph there. Thank you.

35 A. So that graph shows success versus failure of testing
36 these samples in the range. So at the bottom of the bar
37 graph, it's the bottom of the range at 0.001. At the top
38 is the top of the range, 0.0088 ng/ μ L. And understandably,
39 the ones that have less DNA right at the bottom, the
40 success rate - there is much more failures than successes.
41 But at the top, the success rate has increased.

42
43 So I did a little sort of summing-up of the numbers
44 there in the range between 0.0088 and 0.0066, at the top
45 end, and I counted the number of successes and the number
46 of failures, and it appeared to me then the success rate,
47 in that area of the range, the top end of the range, is

1 24 per cent. So I drew that to Ms Allen's attention and
2 said that's closer to what I'm seeing, 30 per cent.

3

4 Q. Right.

5 A. The other thing that is interesting in this graph,
6 too, is that the number of samples, it seems, that they
7 have actually tested, there's more in the bottom end, which
8 may skew that figure, which may actually be a reason why
9 the 24 per cent is lower than what I had seen in
10 30 per cent.

11

12 Q. Can you just close off the graph a little, please and
13 keep that image there. You conclude on the first page -
14 sorry, Ms Allen says to you on that first page in the
15 second-last paragraph - sorry.

16

17 You in the second-last paragraph say to Ms Allen that:

18

19 *Investigators are advised to let the DNA*
20 *Management Section know if they seek for*
21 *this to occur.*

22

23 That is, the testing?

24

25 A. Yes.

26

27 Q. You make reference to the onus to make a decision?

28

29 A. Yes.

30

31 Q. And you identify that that's problematic for members
32 of the police to make, whether testing should proceed,
33 because they do not have access to information about the
34 quality and quantity of DNA present. You will remember
35 yesterday I asked you what uses you could have had for the
36 information on the Forensic Register that you had a brief
37 access to?

38

39 A. Yes. You go on then to identify that you had access to, for
40 some time, some visibility of that information. That is,
41 quant values and the quality of the DNA?

42

43 A. Yes. It's the quant, the degradation values, yes.

44

45 Q. And are you saying there that your DNA Management
46 Unit, that could see that for a small period, would assist
47 them in making decisions if they were consulted by
frontline police officers about whether things could and
should be reworked or further worked?

1 A. Not really the DNA management but more the forensic
2 officers, yes. Because some or most of my staff are
3 administrative officers, but if we are to make decisions
4 about whether testing should be undertaken or not, based on
5 my evaluation of that bar graph, you could see that the
6 ones at the top of the chart are going to have a higher
7 success rate. So that information, it would be very useful
8 in informing us whether you should go ahead with the
9 testing or not.

10

11 Q. And then on page 80 there, [WIT.0020.0003.0001_R at
12 0080]. We will zoom in to your text at the bottom of the
13 email, you inquire whether, after cutting and pasting that
14 table, it would be worthwhile revisiting the threshold?

15 A. Yes.

16

17 Q. At that stage, you say you are not supportive to
18 returning to automatically processing of all of the
19 samples?

20 A. That's right.

21

22 Q. You think it would be a retrograde step and
23 unnecessarily tie up the scientists. This is in the
24 context you have been told an increase to the budget will
25 slow down the scientists and that you may lose your whole
26 sample. Are you still of that understanding at this time?

27 A. There was some --

28

29 Q. This was February 24th?

30 A. It was more you could see at the bottom end of that
31 range there was a lot of failures. You can see the
32 majority of them, there was - well, the overwhelming
33 majority would not yield a sample. So I didn't think -
34 yes. So you can see there that in fact there were no
35 successes. I can't read the gradient there, but towards
36 the bottom of that table there was virtually no success.
37 So I didn't think that auto-micro-concentration of every
38 sample would be an effective use of resources, but I did
39 think that we really needed to have a look at the threshold
40 and fine-tune that to maximise the opportunity of getting
41 profiles.

42

43 Q. And in fact, you say at the end:

44

45 *However it also highlights a need for us to*
46 *modify our practices. Can you please*
47 *provide advice on the practicality of the*

1 *suggestions I have made? Alternatively I*
2 *would be very interested in any improvement*
3 *suggestions you may have.*

4

5 A. Yes.

6

7 THE COMMISSIONER: Mr Jones, is this an opportune time?

8

9 MR JONES: It is.

10

11 THE COMMISSIONER: We will adjourn for 20 minutes.

12

13 **SHORT ADJOURNMENT**

[10.57am]

14

15 THE COMMISSIONER: Yes, Mr Jones.

16

17 MR JONES: Q. Commissioner, we are still on exhibit 71
18 of Inspector Neville's statement at [WIT.0020.0003.0001 at
19 0077 and 0078]. Ms Allen replies to your email and she
20 replies on 3 March 2022 at 12:34?

21

22

23 Q. She thanks you for your recognition of them, being the
24 DNA lab, as experts in DNA profiling?

25

26

27 Q. And she goes on to speak about the Queensland
28 Government having made:

29

30 *... significant investment in the expertise*
31 *and skills of all staff in Forensic DNA*
32 *Analysis in our area ...*

33

34 A. Yes.

35

36

37 Q. *... profiling and interpreting and it's*
38 *great that they are recognised for that.*

39

40 Then, for what seems to be the first time since you raised
41 this issue in 2018 and then in December 2021, Ms Allen
42 clarifies the Options Paper figure of 1.86?

43

44

45 Q. She makes reference to it being data from 2017 there
46 in that paragraph?

47

47

- 1
2 Q. That's incorrect. The data is on page 3 of the report
3 as having come from 2016, but otherwise she makes reference
4 to the 1.86 being attributable to or linked to the National
5 Database?
6 A. Well, being uploaded to the database. Yes.
7
8 Q. My apologies.
9 A. There doesn't have to be a link, but yes, it's
10 uploaded.
11
12 Q. Then in the next paragraph, Ms Allen refers to:
13
14 *The Commissioner ...*
15
16 I assume that's the Commissioner of Police?
17 A. Yes.
18
19 Q.
20
21 *... delegates the responsibility for DNA*
22 *testing [to the lab].*
23
24 A. Yes.
25
26 Q. Ms Allen makes reference to a spreadsheet used within
27 your DNA Management Unit regarding quant values, et cetera?
28 A. Yes.
29
30 Q. Do you know what she is referring to there?
31 A. We didn't have access to the quant values, so I wasn't
32 really aware of the spreadsheet that she was talking about.
33
34 Q. She goes on to ask you for a copy of it, because it
35 would help if that could be incorporated into the Forensic
36 Register?
37 A. Right.
38
39 Q. But you don't know what she is referring to there?
40 Just have a moment to have a read of the paragraph.
41 A. Yeah, I wasn't sure what she was referring to.
42 I think now, as time has moved forward, she may have been
43 referring to a spreadsheet that the cold case people were
44 using to make decisions on - because for that period of
45 time they would ask, sorry, Queensland Health for the quant
46 values, and I think they use some kind of formula to make
47 decisions on whether they would ask for retesting. That

1 was based on the degradation and quant values.

2

3 Q. In any event, the quant values or degradation values
4 are coming from the lab, aren't they, not QPS?

5 A. That's right. I'm not sure what she was asking.

6

7 Q. Then she seems to refer to your quote, or quote you
8 from your email:

9

10 *... you've rightly pointed out 'there is a*
11 *lot to assimilate when you don't work in*
12 *the field'.*

13

14 A. Yes.

15

16 Q. And this is the first substantive assistance she has
17 given you in assimilating the Options Report, isn't it?

18 A. Yes.

19

20 THE COMMISSIONER: Well, what's the assistance, Mr Jones?

21

22 MR JONES: Paragraph 2. She has identified now that there
23 has been --

24

25 THE COMMISSIONER: Q. But Inspector Neville --

26 A. I guess it was more confirmation that I was right.

27

28 Q. You had already put that. You weren't corrected
29 earlier, but once you let the secret out, you were then
30 told what the secret is?

31 A. Yes.

32

33 MR JONES: Q. Then in the final paragraph again Ms Allen
34 incorrectly attributes the data to 2017, but ultimately
35 goes on to say:

36

37 *We anticipate providing a follow-up paper*
38 *to [your superintendent] in approximately*
39 *two weeks.*

40

41 A. Yes.

42

43 Q. And that's on 3 March 2022?

44 A. Yes.

45

46 Q. Over the page at page 76, [WIT.0020.0003.0001_R at
47 0076], two hours later, you replied to Ms Allen?

1 A. Yes.

2

3 Q. And you say:

4

5 *Without doubting your obvious expertise ...*

6

7 You then go on to - well, I might suggest you are doubting
8 her expertise. And say, "I think you have misinterpreted
9 the data".

10

11 THE COMMISSIONER: Where are we now, Mr Jones?

12

13 MR JONES: Page 76.

14

15 THE COMMISSIONER: Yes.

16

17 MR JONES:

18

19 *Hi Cathie*

20

21 *Without doubting your obvious expertise, I*
22 *think you may be misinterpreting the data*
23 *in the paper.*

24

25 A. Yes.

26

27 Q. What are you referring to there?

28

29 A. That her response was that the 1.86 refers to - I
30 quoted her:

31

32 *"The value of 1.86% refers to DNA profiles*
33 *that are able to be uploaded to the NCIDD*
34 *('loadable profile')." However, in part 4*
35 *of the paper it describes 'success' as what*
36 *appears to be a loadable profile and*
37 *figure 1 indicates [that] this is 10.6% ...*

38

39 Q. And then over the page - sorry, you've then got a cut
40 and paste of section 4 of the Options Paper?

41

42 A. Yes.

43

44 Q. And then over the paper you have got the screenshot of
45 the success/fail pie chart?

46

47 A. Yes.

48

49 Q. And you identify that first paragraph under there
50 that:

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The 1.86% refers to where 'success' occurred and it was the only sample in the case that was NCIDD ...

That is the database?

A. Yes. I think I was wrong. I might have outsmarted myself because I think it should have been the 1.45 per cent, not the 1.86 per cent. There was a level of frustration when I wrote this email.

Q. What was the cause of that frustration?

A. I'd been asking for information or, you know, some sort of, I guess, agreement between the two agencies that we review the threshold, and I just wasn't getting any traction.

Q. And then you go on to query the spreadsheet and say that the reason you are querying it or requesting - sorry, you don't have access to the quant values, so no such spreadsheet exists.

A. That's right.

Q. And you request that - you make reference to your earlier requests about having access to degradation values and quant values?

A. Yes. I indicated it would be helpful for us if we had to make that decision.

Q. You then go on to agree that the scientists are in the best position to make the determination as to whether Microcon or further testing ought to occur?

A. Yes.

Q. And that you would much rather the decision be made by an expert with access to all the data?

A. Yes.

Q. But your understanding, now --

A. Yes.

Q. -- is that that does not occur?

A. Yes.

Q. And by that you mean the scientists in that DIFP range are not reviewing the data or the uploads of the Forensic Register?

1 A. Yes. So, rather, that the testing is automatically
2 ceased and it is left up to the QPS to make a request
3 without access to any of this information.
4

5 Q. And you agree that any change should be
6 evidence-based, and you would request that the Options
7 Paper give consideration. That is, I am assuming, the next
8 Options Paper coming?

9 A. Yes. She prompts a report, and I was hoping that that
10 would give consideration to lowering the threshold value.
11

12 Q. And you look forward to receiving that report?

13 A. Yes.
14

15 Q. And that's on 3 March?

16 A. Yes.
17

18 Q. Over at [WIT.0020.0003.0001_R at 0075], there is a
19 reply from Ms Allen, 7 March 2022.

20 A. Yes.
21

22 Q. And there is a clarification about the 1.86 per cent
23 uploadable?

24 A. Yes. She correctly clarified it. I had made a
25 mistake. 1.86 was uploadable profiles, not the requirement
26 for it to be new evidence for the case.
27

28 Q. And says that she will:

29
30 *... work with Lara Keller on how this is*
31 *best resolved and we'll provide a*
32 *recommendation/s in the follow -- up*
33 *report.*
34

35 A. Yes.
36

37 Q. At [WIT.0020.0003.0001 at 0074], you reply on 16 March
38 2022?

39 A. Yes.
40

41 Q. Nine days later. And you identify that you are
42 continuing to track the success rates?

43 A. Yes.
44

45 Q. I take it you don't have a report by 16 March?

46 A. No.
47

- 1 Q. And you identify that you are seeing usable profiles
2 from matters that you are sending back for further work?
- 3 A. I indicated that we are seeing the same trend, that
4 30 per cent of profiles for the next period that we
5 assessed were - sorry, 30 per cent of samples were yielding
6 some sort of profile if we ordered testing be continued.
7 And I provided the information of the details of those
8 samples in a spreadsheet to Ms Allen for her assistance if
9 she was looking at the data, preparing her report.
- 10
- 11 Q. And it's the case, isn't it, around March/April is
12 when you said yesterday you directed your staff to
13 automatically send anything back --
- 14 A. Yes.
- 15
- 16 Q. -- for further work if it was DIFP?
- 17 A. By that time my suspicion - I had suspicion. I was
18 absolutely of the firm belief now that there was problems,
19 and so I directed my staff to any result that came back
20 from Major Crime as DIFP, just ask for them to test it.
21 And we initiated some review of cases or historical cases,
22 back to 2018, particularly around sexual offences, because
23 the success rate was much higher. And the plan was to, in
24 time, go through every major crime.
- 25
- 26 Q. And so you give her an Excel sheet with different tabs
27 and different data and things that you collected?
- 28 A. Yes.
- 29
- 30 Q. And you identified that between 1 October and 15
31 March --
- 32 A. Yes.
- 33
- 34 Q. -- I am taking that is from 2021 to 15 March, the day
35 before your email 2022; is that right?
- 36 A. Yes.
- 37
- 38 Q. That there are a total of 155 samples that have
39 finalised testing?
- 40 A. Yes.
- 41
- 42 Q. 43 of those samples obtained a usable profile, a
43 single source, 2-, 3- and 4-person mixed source DNA
44 profiles?
- 45 A. Yes.
- 46
- 47 Q. Two samples returned a quality control failure result?

- 1 A. Yes
2
3 Q. And 110 samples did not return a usable result?
4 A. That's right.
5
6 Q. The remainder of the samples that were submitted for
7 further processing for this period, 47 samples, are still
8 undergoing testing.
9 A. Yes.
10
11 Q. Therefore, it is unknown at that time what the results
12 will be?
13 A. That's right.
14
15 Q. And you provided that information to her to assist
16 with the report that you understood had been prepared?
17 A. Yes.
18
19 Q. And would be provided to you, I think, soon?
20 A. It was to be in the next few days. They promised it
21 in two weeks previously.
22
23 Q. You finish there with:
24
25 *It would be very interesting to see how the*
26 *quant and degradation values correlate with*
27 *success of further processing.*
28
29 A. Yes.
30
31 Q.
32 *It may also assist with any review of*
33 *thresholds as requested by QPS.*
34
35 A. Yes.
36
37 Q.
38 This is provided for information only.
39
40 A. Yes.
41
42 Q. So you try to give her some context from the Police
43 perspective?
44 A. I was trying to - I had already given data for a
45 period of six months in 2021, and so this was further
46 testing that was undertaken in a later period. And so I
47 think it would have totalled about 300 samples and some

1 results, so the dataset was bigger, to assist them, to
2 assist with, I guess, the development of their own report.

3

4 Q. You met with Ms Keller and Ms Allen on 17 March 2022?

5 A. Yes.

6

7 Q. Exhibit 76 to your statement which is
8 [WIT.0020.0003.0001_R at 0150] --

9 A. Yes.

10

11 Q. -- is a copy of the minutes?

12 A. Yes.

13

14 Q. And 3.0 is what we are concerned with today.

15

16 THE COMMISSIONER: Which one?

17

18 MR JONES: 3.0:

19

20 *Insufficient DNA for further processing*
21 *results.*

22

23 There is discussion recorded about the 30 per cent.

24 A. Yes.

25

26 Q. And you explain the difficulties involved with QPS
27 making the decisions of testing samples when they don't
28 have access to quality and quantity?

29 A. Yes.

30

31 Q. And under "ACTION ITEM" there, the lab is to provide
32 you a report by 25 March 2022?

33 A. That's right. That undertaking was given by, I
34 believe, Lara Keller on the day. Bruce McNab was also
35 present at that meeting.

36

37 Q. Yes. And then at [WIT.0020.0003.0001_R at 0073 and
38 0074], which is the email we were going through before, you
39 replied to Cathie Allen on 1 April 2022.

40 A. Yes.

41

42 Q. Being after 25 March when you were promised a report?

43 A. That's right.

44

45 Q. You say you were previously promised a report, have
46 spoken to Bruce who indicated that he has not received a
47 report, and you are asking her to confirm whether it's been

- 1 prepared and sent?
2 A. That's right.
3
4 Q. And if not, is there an expected release date?
5 A. Yes.
6
7 Q. And then you say there Bruce, that is Superintendent
8 McNab, has also requested that the report be provided to
9 you?
10 A. Yes.
11
12 Q. By this stage, was Ms Allen not responding to you and
13 only responding to your superior? Or --
14 A. During the meeting on the 17th, Cathie made it quite
15 clear that she was displeased with me for providing her the
16 additional data that I did. Words to the effect she said
17 it wasn't appreciated . And then she said on numerous
18 occasions in the meeting that the report would be given to
19 Bruce McNab, basically not me, and said that on a few
20 occasions. So I said to Bruce after the meeting, "I'm just
21 going to tell her to provide it to me", and he agreed.
22
23 Q. Then on page 73 [WIT.0020.0003.0001_R at 0073], you
24 send an email to your superintendent on 6 April 2022?
25 A. Yes.
26
27 Q.
28
29 *As per our discussion this morning, I am*
30 *hesitant to accept any delay in responding*
31 *to this concern raised by QPS in December*
32 *last year.*
33
34 A. Yes.
35
36 Q.
37
38 *As you would be aware, the Women's Safety*
39 *and Justice Taskforce has now raised this*
40 *same matter as issue and has requested*
41 *advice from the QPS as to the impact of DNA*
42 *testing thresholds on justice outcomes.*
43
44 A. Yes.
45
46 Q. You identify the analysis you had undertaken about how
47 the thresholds may be impacting on samples?

1 A. Yes.

2

3 Q. On sex offences?

4 A. Yes.

5

6 Q. And you have identified that 66 per cent of samples
7 initially reported as "DNA insufficient" were yielding
8 yielded a profile when requested to continue?

9

10 A. Yes.

11

12 Q. And then you say:

13

14 *Based on this observation, I don't think it*
15 *is appropriate to delay any review or*
16 *provision of information that might assist*
17 *in understanding the nature or extent of*
18 *the issue. Failure to take timely action*
19 *could place people in the community at risk*
20 *by allowing a perpetrator to go*
21 *unidentified.*

22

23 A. Yes.

24

25 Q. And then at page 72 and the top of page 73,
26 [WIT.0020.0003.0001 at 0072 and 0073], your superintendent
27 responds to you a couple of hours later?

28 A. Yes.

29

30 Q. Sorry, that afternoon - the next day, on 7 April 2022.
31 And he says that he has spoken to Lara and that:

32

33 *... their legal unit has asked all such*
34 *reporting ...*

35

36 That is, your request for this report:

37

38 *... is held until the review of [the lab]*
39 *is commenced at the direction of*
40 *government.*

41

42 *I've expressed to Lara that as the client*
43 *we are very uncomfortable that such a*
44 *serious matter would be delayed for the*
45 *same reasons you outlined, but not just*
46 *from a public optics point of view, but*
47 *also as you outlined, from a potential risk*

1 *to victims particularly those who are*
2 *victims of sexual assault.*

3
4 And:

5
6 *She is going to speak to their legal*
7 *department and get back to [the*
8 *superintendent].*

9
10 A. Yes.

11
12 Q. Then over the page at [WIT.0020.0003.0001_R at 0072],
13 you respond at 16:18. This is exhibit 71.

14
15 THE COMMISSIONER: So this is a month later and - oh, it
16 doesn't matter. It doesn't matter

17
18 MR JONES: The report is not until June.

19
20 THE COMMISSIONER: Go ahead, Mr Jones. No, no. Go on.

21
22 MR JONES: Q. There is an email from you to your
23 superintendent and now Darren Pobar, who has been joined a
24 little earlier on. But who is Darren Pobar?

25 A. Darren was going to relieve Bruce for a period a week
26 or so after this email. So, as the Acting Superintendent,
27 so I included him on this email for his information.
28 I think you will see that Bruce included Darren --

29
30 Q. In this one earlier?

31 A. -- in the stream on the previous one.

32
33 Q. Yes, sorry. On 7 April 2022 at 16:18, you write back
34 to Bruce and say:

35
36 *That is very concerning. Given this*
37 *response and our worrying observations in*
38 *relation to the efficacy of the current*
39 *testing, I would strongly recommend that we*
40 *advise QHFS that the QPS no-longer assents*
41 *to the removal of the automated*
42 *micro-concentration stage for major crime*
43 *matters.*

44
45 *Have you seen any terms of reference for*
46 *the review?*

47

- 1 A. Yes.
2
3 Q. You go back to him on 10 May:
4
5 *Hi Bruce*
6
7 *Has there been any information provided*
8 *back from [the lab]. Have the QPS been*
9 *provided any information about the terms of*
10 *reference ...*
11
12 A. Yes.
13
14 Q. And he comes back to you the next day and says:
15
16 *No mate not yet*
17
18 A. Yes.
19
20 Q. You then emailed Lara Keller on 30 May 2022.
21 A. Yes.
22
23 Q. Which is exhibit 72, Commissioner.
24 [WIT.0020.0003.0001_R at 0094]. It is to Lara Keller and
25 also to Cathie Allen?
26 A. Yes.
27
28 Q. Would you step us through this email, please?
29 A. I raised that:
30
31 *During previous meeting and email*
32 *discussions I have raised concern about the*
33 *success rates we are seeing when a sample*
34 *is requested to continue being tested after*
35 *having received a result [of] 'insufficient*
36 *DNA' ... Since our last discussions we*
37 *have undertaken further internal analysis*
38 *that I feel you need to be advised of.*
39 *Since January 2021 QPS have requested 393*
40 *samples to continue with testing and found*
41 *that 33% of these samples returned a usable*
42 *profile. The success rate was 66% for*
43 *[those] that pertained to sex offences.*
44
45 And I provided a spreadsheet that gave all that
46 information:
47

1 *The success rate observed for samples*
2 *relating to sex offences is disturbingly*
3 *high and raises the risk that we may be*
4 *missing evidence that could identify an*
5 *offender. The QPS needs to take steps to*
6 *mitigate this ... Based on the results*
7 *being achieved, the QPS is no longer*
8 *comfortable with the automatic*
9 *discontinuation of testing of samples below*
10 *the value of .008 ng/ μ L ... This matter*
11 *needs to be discussed as a matter of*
12 *priority between both agencies to find a*
13 *suitable solution. I believe the next*
14 *meeting has been changed for later in June*
15 *which may be too far away to discuss this*
16 *important matter. I would wondered if*
17 *there was a time you might be available*
18 *sooner please.*

19
20 Q. You have still not received the promised report?

21 A. No.

22

23 Q. That was promised to be delivered on 25 March 2022?

24 A. That's right.

25

26 Q. And it is now 30 May 2022?

27 A. That's right.

28

29 Q. Could exhibit 73, which is [WIT.0020.0003.0001_R at
30 0114], be brought up on the screen, please. That is the
31 report that you ultimately received?

32 A. It is.

33

34 Q. And you received it in June, or it is dated 21 June
35 2022. Did you receive it around that time?

36 A. I think it was at 24 June I may have seen it first.

37

38 Q. Thank you. On 24 June, that same day that you
39 received it, you provided your analysis of it to
40 Superintendent Bruce McNab, didn't you?

41 A. I did.

42

43 Q. Could exhibit 75, which is [WIT. 0020.0003.0001_R at
44 0139], be brought be, please. Can you take us through your
45 analysis there that you emailed to Superintendent McNab on
46 24 June 2022 at 15:11, please?

47 A. I advised:

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I have reviewed the report by Ms Allen [and others].

And that the data that they are now providing accords to some extent with what I had been seeing, which was the 30 per cent.

The important distinction, however, is what is considered successful.

The Queensland Health Report mentions a 25 per cent success rate overall, but it then tried to infer that the success rate really was only 6.3 per cent because they only counted samples that had some type of NCIDD interaction or were able to be loaded to NCIDD as a success. I indicated that that wasn't appropriate because it discounted all of the other profiles that were useful in cases that may not have reached an NCIDD threshold but certainly gave a likelihood ratio in the order of greater than 100 billion, and also profiles that were suitable enough for one-to-one matching, which is usually what occurs in Major Crime matters where you have reference samples and it is a closed set comparison.

So as I result, I said there was an inappropriate - grossly minimising the success by just limiting it to the ones that might have been uploaded or uploadable to NCIDD.

I said there that our own data had indicated that 20 per cent of the samples in our analysis yielded a likelihood ratio greater than 100 billion, which is, as far as we are concerned, as conclusive as you can get. And if that was the measure, then that's a conclusive result; at least, it should be considered that as a concession.

Q. Can I stop you there?

A. Yes.

Q. So now 24 June 2022, you have a good master of the Options Paper and you have mastered or a good understanding of this updated paper?

A. Yes.

Q. And you are seeing that what was once reported as 1.8 or 1.4 per cent is in fact now 6 per cent, roughly?

A. Yes.

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Q. You still say that's an inappropriate measure because it's linking to the database, not how we have discussed how you would otherwise use DNA profiles?

A. So they've discounted all the profiles that wouldn't be uploaded to NCIDD. I thought that was grossly minimising the success.

Q. And you have identified that the 10 per cent is now around the 20?

A. That's right.

Q. That is, usable profiles?

A. No, no, no. When I say - sorry, no, no, no. The 20 per cent was based on our own analysis, and that was purely - we had seen at this point now a 36 per cent success rate. But out of that 36 per cent, 20 per cent, or a 20 per cent component of that, were profiles that had a likelihood ratio of greater than 100 billion. The most conclusive result you could get in DNA testing. So I was just highlighting that.

My main point here, look, is that - look, are now seeing a 25 per cent success rate. They are trying to minimise that down, whittle it down to 6.3 for some reason, similar to what they did in the previous paper. They appear to be doubling down on that, that would be the measure of success. And I was saying that is not an appropriate measure of success.

Q. They are now reporting 25 per cent of the samples yield a profile so for comparison purposes you have written in the first paragraph there?

A. Yes.

Q. And that's a reference to what previously had been identified as about 10 per cent?

A. Yes.

Q. Can I ask you this: knowing what you now know and the position that you hold within the DNA Management Unit, if you were presented with 6.3 per cent and you understood that even to attach to profiles - not even the database, but just profiles - would you suspect the ceasing of auto-microcon?

A. Probably not. Having said that, I wasn't privy to the commentary at the meetings and the discussions around what

1 was stated.

2

3 Q. I understand that. But that is a high percentage,
4 isn't it, for --

5 A. For a major crime, we'd certainly give it a go with
6 that success rate.

7

8 Q. We can take it from that that you certainly wouldn't -
9 I withdraw that. Sorry.

10

11 Then in the next paragraph down, you say:

12

13 *The statement that we do not provide*
14 *case/sample information is incorrect, we*
15 *make a photograph available of the sample*
16 *and substrate and include results of*
17 *presumptive screening tests to assist the*
18 *scientist to make analytical decision.*

19

20 A. Yes.

21

22 Q. And you are talking there about the information that
23 is uploaded to the forensic database?

24

25 A. Yes.

26

27 Q. You identify that the QHFSS presented and put this
28 option on you, that is the QPS, not round the other way?

29 A. That's right. The point was that it was an uninvited
30 approach to the QPS for some reason to accept this Options
31 Paper, and the reason I wanted to say that was that in the
32 paper, it tried to link the Options Paper, the initial
33 Options Paper, to the 2008 initiative where Police took
34 over the screening and subsampling, and they're completely
35 different issues and they shouldn't be linked.

36

37 Q. Then you conclude by saying:

38

39 *Secondly, [the] paper indicates that*
40 *samples are selected for further processing*
41 *based on a collaboration between [the*
42 *Police] and [the lab]?*

43

44 A. Yes.

45

46 Q. And:

47

48 *[The lab] make no assessment of samples*

1 *with a concentration under the .0088 ng/μL*
2 *threshold, they simply automatically*
3 *discontinue the process.*

4

5 A. That's right.

6

7 Q. And you make some recommendations there?

8 A. That's right. The paper actually gave a couple of -
9 well, there were four recommendations, which were quite
10 convoluted and different options, about how you might
11 either continue with the current system of what came out of
12 the original Options Paper, and then there were other
13 options about dropping the threshold and concentrating for
14 different classes of P1, P2, P3.

15

16 I had recommended to Bruce that I didn't like any of
17 those options, and my thoughts were for Volume Crime, we
18 should lower the threshold and continue for those, but for
19 Major Crime, I think that it's more important there is a
20 threshold, and even if it is the current threshold, that it
21 triggered the case scientists to actually make analytical
22 decisions about how to treat the samples to maximise the
23 opportunity for getting a proposal file. Now, whether that
24 be concentration or something else, but not to have a hard
25 bar anywhere that stopped testing.

26

27 THE COMMISSIONER: Q. Inspector Neville, the word
28 "triage" has been used in these documents, and in your
29 email and in your evidence just now, you discussed options
30 to limit the kinds of samples that were going to be tested?

31

32

33 Q. My understanding of the word "triage" is that it is
34 applied when somebody has limited resources so that those
35 resources cannot be applied to every case demand, whether
36 it is treatment in a hospital, medical treatment in a war
37 zone, or a testing of samples in a laboratory?

38

39

40 Q. And because you don't have enough resources to test
41 everything --

42

43

44 Q. -- you choose not to test some things. And the
45 question is what criterion or what criteria do you apply in
46 making that hard decision?

47

48

1
2 Q. Here I haven't seen any evidence in the Options Paper
3 or in this later report or, indeed, anywhere that tells me
4 or could have told you what the resources were and what
5 proportion of those resources were being applied to
6 particular categories of work. So, for example, I don't
7 know whether the samples that fall within the range of
8 quants, 0.001 to 0.0088, is 10 per cent of the work of the
9 lab or 50 per cent or 90 per cent. Do you?

10 A. No, I don't.

11
12 Q. So if it was, let us say, for argument's sake,
13 5 per cent of the work of the lab and you don't do that
14 work, well, you're not saving much in terms of resources,
15 are you?

16 A. I'll agree. But I'll just qualify that.

17

18 Q. Yes.

19 A. These are probably the samples that are going to give
20 the most complex profiles, because there's lower amounts
21 there. And it might take more effort at the back end to
22 interpret them.

23

24 Q. Yes, yes. Granted that they take more work than other
25 samples --

26 A. Yes.

27

28 Q. -- which might not be right if the sample is just
29 below the top level --

30 A. Yes.

31

32 Q. -- as you discovered.

33 A. Yes.

34

35 Q. But granted that is so, if you assume that the number
36 of samples that fall into this category is only 5 per cent
37 of the work that they do, then you have to ask the question
38 what you are saving by not examining them.

39

40 Take the other extreme --

41 A. So you --

42

43 Q. Assume that they are - let me put this to you. Assume
44 it is 90 per cent of the work that they do. Well, in that
45 case that's the work they are doing?

46 A. Yes.

47

1 Q. And you don't cull the work you're doing?

2 A. Yes.

3

4 Q. So a great deal depends upon the percentage of the
5 work that this represents, both in number of samples and,
6 as you have correctly pointed out, in terms of the workload
7 that those samples represent.

8 A. Yes.

9

10 Q. None of that has emerged in any of this so far that
11 I've seen. Have you seen anything attributing - connected
12 with that question?

13 A. No. As I said yesterday, in August 2018, I tried to
14 find out what benefits may have been realised out of this
15 Options Paper and I didn't get a response. I have tried to
16 work out what the capacity of the lab is in terms of
17 possible number of samples per year so that we could
18 modulate for that, and I haven't had a response on that.

19

20 What I do know, and I just thought about that while
21 you were mentioning it, there are 21,000 results that were
22 DIFP since 2018 and roughly we put through about -
23 somewhere to 25,000 to 27,000 samples a year. So that
24 might give a rough guide on how many fall in that category.
25 So in the four years, let's say, there was 100,000 samples
26 that went through the lab. 20,000 were reported as DIFP,
27 so about a fifth of their workload.

28

29 Q. Over that time, have you become aware of a significant
30 improvement in turnaround time and efficiency?

31 A. No. In fact, immediately following the DIFP work
32 flow, turnaround times increased. So they went from around
33 40 days to 55 days.

34

35 Q. Thanks.

36

37 MR JONES: Q. Just over the page at 140 there
38 [WIT.0020.0003.0001_R at 0140], you finish the email with a
39 couple of tables identifying some of the data from
40 "1 January 2021 - 2 June May"?

41 A. Yes.

42

43 Q. Sorry, what is that meant to be? "2 May June to
44 2 June 2022"?

45 A. Yes, that was just some information on success rates.

46

47 Q. Just scroll up a little bit there. Do you see that

1 first line from 1 January 2022 to --
2 A. Yeah, there are a total of 574 samples that were
3 finalised testing and I gave a breakdown of the results
4 achieved.

5
6 Q. Just to clarify, though --

7 A. Yes?

8
9 Q. Is it June to May that you do? See there?

10 A. I don't know, sorry.

11
12 Q. The email has been sent in June.

13 A. I assume it's June.

14
15 THE COMMISSIONER: It is June in the second table.

16
17 MR JONES: Would you go to paragraph 245 of your
18 statement. Commissioner, that is page 47.

19
20 THE COMMISSIONER: Thank you

21
22 MR JONES: Q. [WIT.0020.0001.0001_R at 0047]. And
23 paragraph 245. You have a heading there:

24
25 *Summary of consequences of accepting the*
26 *Options Paper.*

27
28 A. Yes.

29
30 Q. Take us through paragraph 245, please.

31 A. So I am now satisfied that the true success rate is
32 around 30 per cent or more. That, I think, is a - it would
33 be my minimum. I think 30 per cent would be higher. There
34 were approximately 21,000 samples that fell within this
35 concentration range since January 2018, and that 1,410 of
36 those had been requested for further testing and 549 of
37 those then yielded a profile. So that's how I came up with
38 the figure of 30 per cent. So that is conservative,
39 really.

40
41 Q. And there are still 7,000 - or at the time of doing
42 this statement, in August --

43 A. Various --

44
45 Q. There are 7,000 outstanding Major Crime samples?

46 A. That's right, that's right. And I will not know the
47 true success rate or, I guess, the true consequence until

1 all of those have been assessed and tested.

2

3 Q. Above that at paragraph 242, you refer to you in March
4 2022 asking the DNA Management staff to do a review of all
5 sexual assault cases, and we've seen it. You would have
6 heard about that in the emails and the task force?

7 A. Yes.

8

9 Q. As a result, over the page at page 48,
10 [WITR.0020.0001.0001_R at 0048] you discovered two example
11 cases from reworks that your unit asked to be done --

12 A. Yes.

13

14 Q. -- as a consequence of the review you were doing in
15 March?

16 A. Yes.

17

18 Q. The first one is a rape that was investigated by
19 Detective Senior Constable Troy Bond?

20 A. Yes.

21

22 Q. We won't say geographically where he is, but he is a
23 frontline investigator.

24 A. Yes.

25

26 Q. And the case that you refer to there was a rape of a
27 lady who gave an account immediately after being raped?

28 A. Yes.

29

30 Q. She was submitted to SAIK and you explained before
31 that that was a Sexual Assault Investigation Kit?

32 A. Yes.

33

34 Q. And they do high/low vaginal swabs --

35 A. That's right.

36

37 Q. -- as part of that?

38 A. That's right.

39

40 Q. And part of her complaint was that she had been
41 digitally and penile raped, and then the defendant or the
42 accused had ejaculated on her back?

43 A. Yes.

44

45 Q. And part of the accused's story was that they had been
46 inside a room and gone outside to have a drink?

47 A. Yes.

- 1
2 Q. And there was a bottle that was tested for DNA?
3 A. Yes.
4
5 Q. And the purpose of that was to corroborate an account?
6 A. Yes.
7
8 Q. And swabs were taken of the complainant's back?
9 A. Yes.
10
11 Q. That was to corroborate her account?
12 A. Yes.
13
14 Q. And this person had exercised their right to silence
15 and chose not to speak to police, correct?
16 A. I believe so.
17
18 Q. But had given an account to some other people?
19 A. I think they may have made a statement to police that
20 it was consensual.
21
22 Q. You might be confusing that with another one.
23 A. Okay.
24
25 Q. But this - it is difficult not being able to talk
26 about the geographics, but this one is in the north of the
27 state.
28 A. Okay.
29
30 Q. Do you have with you the table or figures of what
31 swabs were sent and returned "DNA insufficient" results?
32 A. I do. So there were nine swabs taken. Six from the
33 victim, from intimate areas, including internal swabs.
34
35 Q. We will break that down. So the vulva was swabbed?
36 A. Yes.
37
38 Q. And her lower back?
39 A. Yes.
40
41 Q. And perineum; is that right, yes?
42
43 Q. Okay. Keep going.
44 A. And then there were three swabs actually taken from
45 the offender's genitals.
46
47 Q. And that was from his penis and shaft?

1 A. Yes.

2

3 Q. Yes.

4 A. They were all tested around 25 November 2021,
5 originally. Some of the examples, particularly from the
6 victim, were at that point spermatozoa positive. So they
7 had examined them under the microscope and seen sperm.

8

9 Q. Do you know whether they were from her back?

10 A. Yes, two from the back that were examined
11 microscopically on 25/11/2021 were found to be
12 micro-positive for sperm. And then on - would it be easier
13 if I went through each sample individually or --

14

15 Q. Whatever is easier for you.

16 A. Let's just do that. From the victim, there was a
17 vulval swab that was found to be micro-positive for sperm
18 on 23 November and then it was tested on 25 November in
19 2021. They reported the result "DNA insufficient." There
20 was a request for retesting in May this year. It came back
21 with a hit to the offender, 100 billion likelihood ratio,
22 over 100 billion.

23

24 The same thing for the perineal SAIK swab from the
25 victim. Again, in November last year it was micro-positive
26 for sperm but then reported as DIFP. Further testing was
27 undertaken in May this year. It came back to the offender
28 with a likelihood ratio of 100 billion.

29

30 The same with the lower back. There were two samples
31 taken from the victim's lower back. Both were sperm
32 positive, both reported in November last year as "DNA
33 insufficient". However, they were further tested actually
34 in March and in February this year, a match to the
35 offender, 100 billion likelihood ratio.

36

37 A couple of other samples taken from the victim's
38 back. They weren't micro-positive for sperm, but they were
39 reported as "DNA insufficient" in November. Further
40 tested - in November, sorry, 2021. Further tested in June
41 this year, a match to the offender, 100 billion likelihood
42 ratio. So there were six samples in total taken from the
43 victim originally reported as "DNA insufficient" and then
44 later tested and reported matching the offender.

45

46 Then there were some samples taken from the offender.
47 There were three samples taken, one from his penis, all

1 reported in November last year as "DNA insufficient", all
2 retested between May and June this year and all came back
3 to matching DNA to the victim, so there is cross-transfer
4 between them both.

5
6 Some of the likelihood ratios were a little bit lower
7 for these, but still in the order of between 10,000 and
8 100,000. There was one, sorry, that was from the shaft of
9 the penis which was only low support for the contribution,
10 but still it couldn't be excluded because there was some
11 DNA there. And from the glans of the penis it was between
12 1 million and 1 billion likelihood ratio. Interestingly
13 there, all samples tested, nine samples tested in November,
14 all between 25 and 29 November, all reported as "DNA
15 insufficient". When further tested, all came back with a
16 profile.

17
18 Q. The SAIK kits for the complainant, the victim, are
19 done by a doctor?

20 A. Yes.

21
22 Q. Using a swab internally?

23 A. Yes.

24
25 Q. And externally?

26 A. Yes.

27
28 Q. And, similarly, a SAIK kit is performed on a defendant
29 to swab the penis?

30 A. Yes. Sometimes.

31
32 Q. Sorry, when you say "sometimes", there's no other way
33 of getting testing?

34 A. Well, only if you can find the offender.

35
36 Q. Sorry, I am talking about the actual performance of
37 it --

38 A. Yes.

39
40 Q. -- is done by a doctor?

41 A. Of course.

42
43 Q. And it is rubbing a swab down the skin of the penis?

44 A. I assume so.

45
46 Q. Right. That accused had told people that there had
47 been sexual interaction between he and the complainant?

1 A. Yes.

2

3 Q. But the DNA was still useful to corroborate the
4 account of the complainant?

5 A. I think the account of the complainant was that she
6 was pushed down and raped from behind, and the fact that
7 the semen was found on her back corroborated the story.

8

9 Q. And it was also used because a bottle was found
10 outside and it had the accused's DNA on it, which gave an
11 explanation for how it made its way outside?

12 A. Okay, I'm not sure about that.

13

14 Q. Okay. Very well. Thank you. You are aware that the
15 investigating officer understood at the time he was
16 investigating this matter that "no DNA detected" meant that
17 there was no DNA detected at all in an example, correct?

18 A. Yes.

19

20 Q. And to his knowledge this term or similar wording has
21 always been used for that type of notification?

22 A. Yes.

23

24 Q. But he was aware that he could contact the DNA
25 Management Unit if he had any questions.

26 A. Yes.

27

28 Q. And you're aware that the wording "DNA insufficient
29 for further processing", he understood that to cover all
30 scenarios where DNA had been located, however, further
31 working of the sample would not likely result in a profile
32 being developed?

33 A. That's what he claims, yes.

34

35 Q. And you're aware that he understood, though, that he
36 could call the DNA Management Unit and seek clarification?

37 A. Yes.

38

39 Q. And that it wasn't as urgent in some cases because
40 there was some acknowledgement of sexual contact between
41 the two --

42 A. Yes.

43

44 Q. -- and your team ordered the retesting before he had
45 an opportunity to?

46 A. Yes.

47

1 Q. Thank you. You have then provided another account or
2 example there. We don't need you to go through that. The
3 officer will come and tell the Commissioner about that.

4
5 At paragraph 248, you speak about the Options Paper
6 indicating that the strategy would improve turnaround
7 times?

8 A. Yes.

9
10 Q. And the Commissioner asked you some questions about
11 that?

12 A. Yes.

13
14 Q. And your answer was that you didn't see an
15 improvement?

16 A. That's right.

17
18 Q. And you have outlined that at paragraph 249 onwards?
19 A. Yes. In fact, it increased.

20
21 Q. You make reference to speaking with, or emailing
22 Cathie Allen about the Options Paper --

23 A. Yes.

24
25 Q. -- about that?

26 A. Yes.

27
28 Q. Have you got your statement of 14 September 2022
29 there? [WIT.0020.0008.0001_R]. Have you got it there,
30 Inspector, or not?

31 A. I have got a draft of it in front of me.

32
33 Q. Perhaps go from the screen. If we could have page 4,
34 which is paragraph 12.

35
36 THE COMMISSIONER: The statement dated what, Mr Jones?
37 8 or 14?

38
39 MR JONES: 14 September 2022.

40
41 THE COMMISSIONER: Thank you. Yes, go ahead.

42
43 MR JONES: Q. You deal with the decision on 6 June 2022
44 from paragraph 12 in your third statement
45 [WIT.0020.0008.0001_R at 0004]?

46 A. Yes.

47

1 Q. Is it correct that you understand no one from
2 Queensland Police Service was consulted about the decision
3 made by The Acting Director-General of Health on 6 June?

4 A. I certainly wasn't. I don't know of anybody that was.

5
6 Q. Do you consider that the Queensland Police Service
7 should have been consulted about the process change?

8 A. They're our samples, so potentially yes.

9
10 Q. The Queensland Police Service was not advised of the
11 process change formally until 21 June 2022?

12 A. Yes.

13
14 Q. Could [WIT.0020.0008.0001_R at 0164] be brought up,
15 please, Mr Woolridge. This is exhibit 200 to your
16 statement of 14 September 2022. I have just given you the
17 wrong page there. My apologies.

18
19 You were notified by an email from Lara Keller?

20 A. Yes. There was an email sent from Lara Keller to
21 Bruce McNab that as of 6 June, I think it was, that all
22 samples would be profiled and they were no longer going to
23 use the "DNA insufficient" regime, and Bruce forwarded that
24 to me.

25
26 Q. What was your understanding about whether the
27 laboratory was concentrating samples in the DIFP range at
28 that time?

29 A. Well, at that point I actually thought they must have
30 been concentrating them because that's their own Options
31 Paper in validation, or lab validation was, as reported in
32 the Options Paper, that for samples below 0.0088 ng/ μ L, it
33 was subject to stochastic or random effect; you couldn't
34 get a reliable profile. So I assume they would have been
35 concentrating them.

36
37 THE COMMISSIONER: Q. In fact, the Options Paper and the
38 whole discussion surrounding this at the time called the
39 process the "auto-microcon" process?

40 A. That's right. So we have assumed that they have gone
41 back to the auto-microcon. And my concern was that if they
42 were doing that for Volume Crime that might have a negative
43 impact on turnaround times and it might grind the lab to a
44 halt. So I just raised that as a concern to Bruce. And I
45 also asked, I think, for a copy of the report at that
46 point. No, no, that's it. So thank you.

47

1 MR JONES: Q. Could we return to the statement of
2 14 September 2022 to page 6 which is [WIT.0020.0008.0001_R
3 at 0006]. See paragraph 18 there, and, Inspector, I will
4 just give you a moment to have a look at that.

5 A. Yes.

6
7 Q. So turnaround times remained the focus of the
8 Queensland Police Service at that point?

9 A. Oh, it's not a focus. It's a concern if, for
10 instance, for Volume Crime, if there was - because the
11 paper indicated that it was going to - it's quite a big -
12 quite a lot of work to do this, these samples. And if all
13 of the Volume Crime samples were going to be
14 micro-concentrated, then it might blowout turnaround times
15 in fact on Major Crime.

16
17 So as a result, I spoke to Darren Pobar at that point
18 who was Acting Superintendent. We met with the Assistant
19 Commissioner Marcus Hill on 15 July just to discuss whether
20 this new strategy might impact on turnaround times. And,
21 as a result of that, Darren sent an email to Helen Gregg, I
22 believe, who was acting as the ED at the time, just asking
23 what was occurring and, if this was going to impact on
24 turnaround times, what was the strategy from Queensland
25 Health to minimise that?

26
27 Q. Over the page to paragraph 19. It was not until
28 20 July 2022 that you understood that they were not
29 micro-concentrating low quantification samples?

30 A. That's right. So around 20 July, I think it was on
31 that date, I was advised by Olivia McIntyre that Allison
32 Lloyd from Health had told her that these samples were
33 going straight through without micro-concentration. And I
34 discussed this with Darren then, given my concern that we
35 are just wasting the sample, if that's the case,
36 potentially, or a component of the sample. So Darren
37 raised that with Helen in an email, asking again or
38 clarifying what is occurring with those samples, are they
39 being micro-concentrated.

40
41 Q. Between 6 June and 20 July, you were not aware of the
42 process being undertaken by the lab?

43 A. No.

44
45 Q. Moving to 17 August 2022.

46 A. Yes.

47

1 Q. On that day, David Rosengren spoke to you?

2 A. Yes.

3

4 Q. Dr Rosengren was seeking your approval or support for
5 a change in process?

6 A. That's right. I got a phone call from a fellow called
7 Matt - well, I didn't get the phone call. My staff alerted
8 me to a phone message from Matt Rigby advising that he
9 wanted to speak to me about the process they were following
10 out there and they wanted to change it. And then we had a
11 phone call then, after that. They called me back and there
12 was a fellow introduced himself as David Rosengren, and we
13 discussed or they were seeking advice from me whether the
14 QPS would either "support" or something like that, along
15 those - words to that effect, a return to the process where
16 all samples were micro-concentrated.

17

18 I raised with them that I had warnings from the
19 Managing Scientist that that might result in the loss or
20 the consumption of the sample and I said, however, I now
21 thought that warning might have been false. And I gave the
22 reasons for that, because there was 35 microlitres and you
23 only needed 15 microlitres.

24

25 Q. You are talking about what you understood had been
26 provided by Ms Allen to you previously?

27 A. Yes. So I had just relayed to them that concern but I
28 had said I am not in a position really to really know; that
29 was my suspicion. And they - I said I would get back to
30 them that day, and later on I said I needed to consult, and
31 I had contacted Matt Rigby and basically said, "Look, this
32 is a decision for Queensland Health," and, you know, we
33 weren't comfortable with shifting the risk to QPS because
34 we don't have the expertise to make that decision.

35

36 Q. You didn't think it appropriate for the QPS to take
37 that advice role and decision making role?

38 A. Well, we're not in a position to know, (a), whether
39 the - if the policy was going to risk the loss of samples,
40 et cetera, or exhaust the samples, and we're not the
41 experts. So I gave some advice, basically, that whatever
42 they did, it needs to be - the decision needs to be in the
43 context that the QPS wants to maximise the opportunity to
44 get a profile from every sample. And if there was some
45 limitation in the technology out at Queensland Health for a
46 particular sample, they knew that they couldn't test it,
47 please give us the opportunity to do the testing somewhere

1 else. Don't exhaust it. And that was really the limit of
2 the advice.

3

4 Q. And otherwise you provided email information,
5 including emphasising the QPS concern about exhausting
6 samples?

7 A. Again, I did say that I qualified that we weren't in a
8 position really to know. That was just a warning that was
9 given to us previously.

10

11 Q. After the decision was made on 19 August, you had
12 concerns with the decision?

13 A. I guess.

14

15 Q. Did you raise those in an email for seeking urgent
16 review? This is exhibit 206 of the statement
17 [WIT.0020.0008.0001_R at 0211]?

18 A. Yes.

19

20 Q. The email was marked as high importance?

21 A. Yes.

22

23 Q. And you sent it to Matt Rigby in the Office of the
24 Director-General?

25 A. Yes.

26

27 Q. Have you received any response from the Office of the
28 Director-General?

29 A. Yes. I was referred to Lara Keller.

30

31 Q. I beg your pardon?

32 A. I was referred to Lara Keller, to deal with it.

33

34 Q. You provided some new emails via your solicitors last
35 night?

36 A. Yes.

37

38 Q. Could [WIT.0020.0009.0001] be brought up, please, and
39 turn to page 12.

40

41 MR JONES: Commissioner, would you like a copy?

42

43 THE COMMISSIONER: I would. Do your colleagues have
44 copies?

45

46 MR JONES: It has been uploaded and shared with the
47 parties, as I understand it.

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THE COMMISSIONER: Thank you.

MR JONES: Q. At page 12, down there there is an email from yourself 8 September 2022 at 8:58am.

THE COMMISSIONER: The pages aren't paginated, so it is the 12th page, is it?

MR JONES: Sorry, for Mr Woolridge the operator it is page 12, I understand. No, it's not. That is 8 September. That's the last email. And up from that is an email from Matthew Rigby of 13 September 2022. [WIT.0020.0009.0001_R at 0012].

A. Yes, yes.

Q. Have a read through that, would you, please.

A. So Matt Rigby had replied, said:

We have carefully considered the issues raised in your email below.

Our primary objective is to undertake DNA testing in a manner that has been appropriately validated ...

We understand that questions have been raised following the decision, on 19 August ...

It seems there are also questions about the circumstances in which QPS should approve testing if the result will risk exhausting [the] sample ...

It might be beneficial for us to arrange a meeting between QPS and key personnel from FSS to discuss these matters. If you agree, can you please contact Lara ...

And I, as a result, contacted Lara Keller to discuss the matter.

Q. I'll just stop you there.

MR JONES: Commissioner, have you managed to find where we are?

1
2 THE COMMISSIONER: Yes, yes. Yes, I've got it.
3
4 MR JONES: Q. Alright. And then up from that --
5 A. Do you need for me to outline what the concern was?
6
7 Q. I beg your pardon?
8 A. Do you need for me to outline what the concern was?
9
10 Q. Yes. Please do.
11 A. The concern was, post the August 19 decision to
12 concentrate everything to a blanket volume of
13 35 microlitres in the process, a scientist had come forward
14 saying that that blanket policy is risking samples at the
15 lower end of the range - so I think she said somewhere
16 lower than 0.0066 or whatever - because those samples, if
17 you concentrated them to 35 microlitres, they are still too
18 dilute to get a profile. So, in essence, if you run it,
19 you have now wasted half of the sample.
20
21 THE COMMISSIONER: Q. What you are being told is that to
22 apply a blanket policy - I'll start again. If you are
23 going to micro-concentrate samples between .001 and
24 .0088 --
25 A. Yes.
26
27 Q. -- if you apply a blanket policy of concentrating the
28 solution down to 35 microlitres --
29 A. Yes.
30
31 Q. -- that won't suit all of the samples across the
32 range?
33 A. Correct. Yes.
34
35 Q. So what has to happen, were you told, was that a
36 scientist has to apply judgment about the degree to which
37 there should be concentration?
38 A. That's right.
39
40 Q. Because what's good for one quant may be entirely
41 unsuitable for another quant?
42 A. That's right.
43
44 Q. Therefore, although it might have been the procedure
45 before 2018 to apply a blanket policy --
46 A. Yes.
47

1 Q. -- you were being told by a scientist from the lab
2 that that was unwise and that scientists should be
3 asked/required to apply judgment to the question depending
4 upon the nature of the sample?

5 A. Correct.

6

7 Q. And so your concern that you wanted to communicate to
8 those who were going to make these decisions, your concern
9 was to ensure that they understood that this was a view
10 from a professional and that they were to take that into
11 account?

12 A. And subsequent to that, I had two other scientists
13 contact my staff seeking permission from the QPS to
14 concentrate to a different volume. So I now had three
15 scientists from the laboratory confirming it may not be
16 appropriate to have a blanket policy.

17

18 THE COMMISSIONER: Yes. Go ahead, Mr Jones?

19

20 MR JONES: Q. You reply on 13 September at 8:18 and make
21 clear that you weren't in a position to provide advice,
22 et cetera?

23 A. Yep.

24

25 Q. And then you receive an email from Ms Keller on
26 13 September 2022 at 1:11?

27 A. Yes.

28

29 Q.

30

31 *I am not available [to speak with you.]*

32

33 And:

34

35 *I understand we have our regular ...*
36 *meeting on Thursday?*

37

38 A. Yes.

39

40 Q. You then respond at 1:14:

41

42 *Thanks for letting me know. If you have*
43 *time for a phone call tomorrow that might*
44 *be helpful. I could make time anytime you*
45 *like.*

46

47 A. Yes.

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Q. And then on 13 September at 13:17 from Lara Keller:

Perfect. How about I call you at 11am tomorrow?

A. That's right.

Q. Then there is an email from you on 14 September 2022 at 12:29?

A. Yes.

Q. Which is after you met with Lara and Helen?

A. Yes. We met and they described to me the difficulty with changing the procedure. They had to have something that was validated, so that's why they reverted back to the 2018 procedure.

Q. And you have asked for that confirmation, or "for clarity could you please confirm"?

A. She wanted confirmation from me that it was okay for them to exhaust samples.

Q. And then you outline the concerns you still have, over the page there, in the dot points?

A. I indicated that I am still left with the concerns that haven't been resolved, that the blanket concentration of examples to 35 microlitres may be risking the loss of evidence.

Q. And then you get an email back on 15 September 2022 at 13:34 from Lara Keller?

A. Yes.

Q.

Good morning David

I trust that our conversation yesterday answered your questions and clarified the process in place since 19 August 2022 (per the attachments).

We look forward to receiving definitive advice from QPS regarding permission to consume remaining sample.

1 *In the meantime, we will collate and*
2 *analyse data (as discussed).*

3
4 So there was another discussion?

5 A. Yes.

6
7 Q. You have then responded to that email?

8 A. I gave a response basically saying I couldn't give
9 this blanket, "You could exhaust all samples", but I said
10 that QPS understands it is a destructive test and that
11 sometimes, you know, it's better to exhaust the sample than
12 waste half of it and not be able to get a profile anyway.

13
14 So I gave permission, yes, if they are comfortable
15 that their testing is likely to yield a result, then go
16 ahead and exhaust the sample if you need to. But if they
17 didn't have the technology to test a particular sample and
18 they knew that, then leave us the opportunity to send it to
19 another laboratory that had the requisite technology.

20
21 Q. You conclude by saying:

22
23 *I look forward to the outcome of the data*
24 *analysis. Given that if the concerns are*
25 *correct, the practice could be risking the*
26 *loss of evidence, would it be possible to*
27 *establish a timeframe around this please?*

28
29 A. Yes.

30
31 Q. And you get a response from Ms Gregg. This has come
32 up on 16 September at 11:57:

33
34 *Lara has passed this on to me. I will be*
35 *able to give you a better indication of*
36 *timeframe by the end of next week.*

37
38 A. Yes.

39
40 Q. Above that, you thank her?

41 A. Yes.

42
43 Q. And then on 20 September 2022, you write another
44 email:

45
46 *Hi Helen and Lara*

47

1 *I appreciate the efforts being undertaken*
2 *to assess the concerns about the potential*
3 *risk of evidence being lost [if there is a*
4 *blanket concentration.]*

5
6 *Out an abundance of caution, I would*
7 *request QHFSS temporarily pause testing P1*
8 *or P2 samples within the range until the*
9 *matter is resolved, please.*

10
11 *This temporary pause of testing of samples*
12 *in the range is contingent on QPS receiving*
13 *advice on the outcome of your data*
14 *analysis.*

15
16 *Could you please confirm by return email*
17 *that such testing has been paused.*

18
19 A. Yes.

20
21 Q. You get confirmation on 20 September 2022 at 8:56 from
22 Lara Keller?

23 A. Yes.

24
25 Q. Well, not confirmation, but asking for you to be very
26 specific about your request, please, and to confirm whether
27 this represents a formal request from the Police:

28
29 *We are presently under the direction of the*
30 *[Queensland Health] A/Director-General as*
31 *per the memo dated 19 August 2022. Any*
32 *proposed change to current practice would*
33 *require consultation and clearance by his*
34 *office before implementation could be*
35 *considered.*

36
37 A. Yes.

38
39 Q. And then you replied to that, 20 September 2022 at
40 9:55:

41
42 *This week a third scientist made a request*
43 *to concentrate to a different volume ...*

44
45 This is what you were referring to before?

46 A. Yes.

47

- 1 Q. And:
2
3 *... was not appropriate for that sample.*
4 *We are in a position now that we have*
5 *multiple experts indicating that the*
6 *concerns raised initially may be valid.*
7
- 8 A. Yes.
9
- 10 Q. And:
11
12 *This is a formal request from QPS made in*
13 *consultation with A/Supt Larissa Miller.*
14 *Please note that it is only a request for a*
15 *temporary pause until Helen can advise as*
16 *to whether there is any risk in the recent*
17 *process adopted.*
18
- 19 A. Yes.
20
- 21 Q. And then you get your response on 21 September 2022 at
22 14:51 from Lara Keller:
23
24 *I have briefed up and will be in*
25 *contact ...*
26
- 27 And there is some strange text there, but "I am able", I
28 think?
- 29 A. Yes. So there is no confirmation there, though, that
30 testing has been paused.
31
- 32 Q. On 21 September 2022 at 2:52 pm:
33
34 *I hope you and your team are being looked*
35 *after at this difficult time.*
36
- 37 A. Yes.
38
- 39 Q. And a response, a further email from you on
40 24 September 2022 at 11:41?
41 A. Yes.
42
- 43 Q.
44 *I am just following up on your email dated*
45 *16th indicating some initial feedback this*
46 *week. I wondered if this could be provided*
47 *soon given the temporary pause. I*

1 *apologise if I missed this.*

2

3 You haven't had a response yet?

4 A. That's right.

5

6 Q. And then you get a response on 26 September 2022 from
7 Ms Gregg:

8

9 *We are making progress, but as with any*
10 *scientific idea, it needs enough of the*
11 *right data with robust analysis. This*
12 *takes time. I envisage it will be months*
13 *not days or weeks until this proposal is*
14 *properly evaluated.*

15

16 A. Yes.

17

18 Q. And then you reply on 26 September 2022 at 12:21?

19

20 A. Yes.

21

22

23 *Thanks for this information. Can you*
24 *confirm that testing of samples in the*
25 *range has been paused and when that might*
26 *have occurred, please.*

27

28 Because at this stage you still don't have any confirmation
29 of it?

30

31 A. That's right.

32

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1 Q.

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10 Q. Have you received a response to that email of
11 26 September 2022 at 12:21?

12 A. Not as of this morning.

13

14 MR JONES: That's the evidence-in-chief. Thank you,
15 Commissioner.

16

17 THE COMMISSIONER: Thank you. Mr Hunter, are you going
18 first?

19

20 MR HUNTER: I think there is a slight change to the order
21 and I will go last before re-examination if that's
22 convenient.

23

24 THE COMMISSIONER: So Mr Rice?

25

26 <EXAMINATION BY MR RICE

27

28 MR RICE: Q. Can I just ask you a few things about
29 turnaround time, Inspector. You explained yesterday that
30 turnaround time is not simply a measure of efficiency of
31 the laboratory, per se, but that it's linked to a higher
32 purpose, is it not? That a faster turnaround time serves
33 the interests of timely detection or timely solving of
34 crime?

35

36

37 Q. You have had fairly extensive contact with a range of
38 people within FSS from Executive Director level perhaps
39 down to the scientists from time to time?

40

41

42

43

44

45

46

47

1 of crime?

2 A. I would agree with that.

3

4 Q. So it's not just a matter of efficiency of delivery in
5 the same way as Australia Post might measure its efficiency
6 by how long it might take to deliver a parcel? There is a
7 higher interest involved in the faster turnaround time, is
8 there not?

9 A. I guess there is; yes.

10

11 Q. I think you have agreed with me already that you
12 understand that the scientists are on the same page as you
13 with that?

14 A. Yes.

15

16 Q. That's as you would expect it to be, wouldn't you?

17 A. Yes.

18

19 Q. And it would be reasonable for the scientists and the
20 police in collaboration to work out ways to achieve the
21 timely turnaround with that higher interest in mind?

22 A. Yes.

23

24 Q. And in fact, in your case when you came into the job,
25 that was one of the, the turnaround time was one of the
26 factors that you very early addressed?

27 A. In June 2018, yes.

28

29 Q. One of the things you noticed from quite early in the
30 piece was that turnaround time for Volume Crime was about
31 10 weeks apparently? 50 days?

32 A. It was quite high, yes.

33

34 Q. So you devised a measure by which to try to reduce
35 that?

36 A. Yes.

37

38 Q. And that involved, in fact, sacrificing the submission
39 of some samples to the laboratory with that interest in
40 mind?

41 A. Well, it limited it in the first instance. So
42 officers could always submit further samples if the initial
43 testing didn't yield results.

44

45 Q. On approval?

46 A. On approval, yes.

47

1 Q. Okay. But the object which you were pursuing was to
2 achieve a more timely turnaround in the interests of
3 resolving crime?

4 A. Yes.

5
6 Q. And you were prepared to sacrifice the submission of
7 samples to achieve that outcome?

8 A. I was prepared to triage. If that ended in - if the
9 consequence was that some of the samples weren't submitted,
10 that may be because there was other evidence. For
11 instance, the initial testing yielded a result or the
12 offender may have been identified by a fingerprint,
13 et cetera. But the --

14

15 Q. Sorry.

16 A. If the officer, I guess, wasn't tenacious enough to
17 request further testing, then that might have been the end
18 result.

19

20 Q. But did you not - I am looking at paragraph 87 of your
21 statement, [WIT.0020.0001.0001_R at 0018], did you not seek
22 approval to actually limit the number of samples that would
23 be submitted, trace samples?

24 A. Yes, I did.

25

26 Q. You call it "triage". I used the word "sacrifice",
27 but we could use another word. You opted to limit, did you
28 not, the number of samples that were submitted with a view
29 to achieving more timely turnaround?

30 A. That might have been the end goal - not the end goal,
31 but the end result, yes.

32

33 Q. Well, you raised it as a significant issue in an
34 Executive Briefing Note?

35 A. Absolutely. I guess I used the word "triage" rather
36 than "sacrifice" because if the initial testing didn't
37 provide evidence, they could submit more samples.

38 Sometimes the testing will yield a profile in the first
39 instance; there's no need to do any further testing. Or,
40 as I said, there may be other evidence that comes - made
41 available. For instance, fingerprints.

42

43 Q. Look, to use that as an example, there is a trade-off,
44 isn't there, between achieving outcomes, as many profiles
45 as you can get, with the time it takes to do it?

46 A. Yes.

47

1 Q. The Options Paper applied not to Volume Crime but
2 rather to Major Crime?

3 A. Yeah.

4

5 Q. In two samples. And I accept that you misunderstood
6 the content of that --

7 A. Yes.

8

9 Q. -- insofar as you thought that only 2 per cent of
10 profiles might be sacrificed by the decision. But even on
11 that basis, you were prepared to forego at least that
12 number of samples in the interests of efficiency, including
13 turnaround time?

14 A. Yes, but bearing in mind that if a sample was
15 important to the investigation, the investigators had the
16 option to initiate the testing or recommence the testing.

17

18 Q. In addition to that, correct me if I am wrong, your
19 evidence is that you thought that the scientists, likewise,
20 were actively pursuing the exercise of a discretion --

21 A. Yes.

22

23 Q. -- in the same way as you would expect your own
24 investigators were doing?

25 A. Yes.

26

27 Q. You satisfied yourself in due course that that
28 discretion was not being as rigorously exercised as you
29 thought? Is that --

30 A. Yes.

31

32 Q. So as to assist you. Okay. And you told us earlier
33 this morning insofar as I think it was Figure 1 - remember
34 the graph from the Options Paper that you drew a circle
35 around the top levels --

36 A. Yes.

37

38 Q. -- to identify that you thought that perhaps the upper
39 levels could reveal 25 per cent worth of samples?

40 A. Yes.

41

42 Q. And you used that discovery or calculation --

43 A. Yes.

44

45 Q. -- to propose that - not a return to the automatic
46 micro-concentration, because you would judge that to be
47 inefficient, correct?

1 A. Yes.

2

3 Q. But rather to simply adjust the threshold downwards to
4 some degree?

5 A. Yes.

6

7 Q. Does all that indicate going forward from this point
8 and arising out of all this experience that you personally
9 and the Queensland Police Service are not in principle
10 opposed to the idea of triaging even major crime samples?

11 A. No, it is done as a matter of routine, I think, for
12 all laboratories.

13

14 Q. I assume that your acceptance of that concept is on
15 the premise of appropriate information being given to you
16 to inform you as a stakeholder as to where that appropriate
17 threshold might lie?

18 A. Yes.

19

20 Q. So, depending on what view the Commission might take,
21 you and Queensland Police are at least open to the idea of
22 the existence of some level of threshold, depending on
23 balancing considerations?

24 A. I think so. I'll qualify that. A threshold that's a
25 hard bar where there is no assessment of the sample and it
26 just stops, that's not acceptable.

27

28 Q. Well --

29 A. But a threshold where there is an assessment of the
30 sample type, the probity of it and making decisions at that
31 point, that would be acceptable.

32

33 Q. Would that be a condition?

34 A. I would think so.

35

36 THE COMMISSIONER: Q. As I understand what you are
37 saying, you wouldn't object in principle to the proposition
38 that the preliminary position for a certain category of
39 samples is that they are not tested, but that the decision
40 not to test can be reviewed by a scientist or by a police
41 officer or by some other qualified person; you would object
42 to a system where a certain category of samples were never
43 going to be tested?

44 A. No, what I am saying is that if there was a threshold
45 and there was decision-making around whether that sample
46 should be tested or not, it needs to be a decision based on
47 the probity of the sample and also the likelihood of the

1 sample actually yielding a result. And those two factors
2 together should be considered, moving forward, whether it
3 be shelved or whether it be tested, rather than just a hard
4 and fast rule, a hard bar, "if it is at this quant, we
5 don't test it."
6

7 MR RICE: Q. The other thing that is desirable going
8 forward, correct me if I am wrong, is that there be full
9 and open exchange of information as between Police and the
10 scientists, because in all of the correspondence that you
11 have been referred to, it is apparent that at times the
12 scientists say, "We don't have enough information", and
13 you, on the other hand, have said a number of times,
14 "Police don't have enough information to make the
15 decision", so ought there not be some mechanism by which to
16 reach a resolution of that instead of one blaming the other
17 that they don't have enough information?

18 A. There is obviously a balance that could be made there.
19 Again, if Police provide a sample to Queensland Health now
20 for testing, we've already prioritised it. So we undertake
21 the sampling and the screen and we make a decision what's
22 going to be submitted because it is of probative value for
23 our case. We provide all of the information that the
24 scientists should be able to look at and make a decision
25 on - analytical decisions - about whether - what to do with
26 the sample, whether it is blood, they can see images of it.
27 They will see whether there is presumptive semen, positive.
28 There is a description of the sample, where it was taken
29 from. In SAIKs, there is additional information provided
30 to them in the kit; the doctor gives some sort of
31 information around what occurred to assist them in sampling
32 those or testing those samples.
33

34 Q. Look, the reality is, as we discovered looking at the
35 correspondence, that at times you have said that Police are
36 not in the best position to make a decision on whether a
37 sample should be processed or reworked?

38 A. That's right.
39

40 Q. And on occasions the scientists have come back to
41 you - Ms Allen, for example - have said that the scientists
42 are not best-placed because they don't know the overall
43 case context. I am simply suggesting to you, will you be
44 amenable going forward to a serious review of the quality
45 of information exchanged between the Queensland Police and
46 the laboratory to achieve the best outcome in the interests
47 of all?

1 A. Absolutely. There's a balance there because you don't
2 want to unnecessarily provide information that might
3 provide some sort of bias from the scientists, but there is
4 certainly a capability for an exchange of testing more case
5 information that might inform that. But I'm still left
6 with the current situation with the information we're
7 giving now, it's not being looked at.

8
9 Q. Well, that's another issue.

10 A. Yes, but what you are suggesting is we provide more
11 information.

12
13 Q. Possibly?

14 A. But --

15
16 Q. Or at least be open to doing so?

17 A. Absolutely, I don't have a problem with that at all.
18 And when I say the scientists are best positioned, what I
19 say is they have access to information around the amount of
20 DNA there and the degradation values, and that will inform
21 them, really, how likely the sample might yield a profile.

22
23 Q. Well, that's the kind of information that you have
24 expressed a number of times that you would like to have,
25 correct?

26 A. Yes, but I'll be honest with you, I don't think we are
27 still best positioned to do it. I think that decision - I
28 would be happy not to get that information, provided the
29 scientists assess that information. I'm only asking for
30 that because at the moment they're not assessing that. It
31 is just a hard bar, and below that quant, they don't test.

32
33 Q. Well, just as to the provision to the Queensland
34 Police of that kind of information about the quantity and
35 quality of DNA, part of your statement is taken up with
36 that in relation to the incident that occurred in 2020 when
37 there was a computer alteration that gave you short-term
38 visibility of that kind of information?

39 A. Yes.

40
41 Q. You recall that incident?

42 A. Yes.

43
44 Q. And the outcome of that was that it was adjudged to
45 be, rightly or wrongly, a breach of NATA accreditation
46 requirements, and hence the computer system reverted to
47 what it was previously?

1 A. Yes.

2

3 THE COMMISSIONER: By the way, Mr Rice, did you have in
4 mind at some stage to substantiate the content of that
5 email? That in fact it would be a breach of NATA?

6

7 MR RICE: No, I didn't.

8

9 THE COMMISSIONER: I wondered whether anyone would,
10 because it is an odd sort of email. Anyway, never mind.
11 Someone else can look at it I

12

13 MR RICE: Q. You have expressed your opinion about that?

14 A. Yes.

15

16 Q. Based on what you understand. And it might be right
17 and you might be wrong?

18 A. It's my opinion, so yes.

19

20 Q. Let's assume for the sake of argument that you are
21 wrong about that and that it was in fact a breach of NATA
22 accreditation requirements. You wouldn't pursue your
23 interest in having that information at the expense of the
24 laboratory's accreditation, would you?

25 A. No.

26

27 Q. Because the accreditation, may I take it, is most
28 important to Queensland Police?

29 A. Yes, absolutely. It's actually a requirement under
30 the legislation that they are accredited.

31

32 Q. And if the laboratory didn't have it for some reason,
33 would you have to go somewhere else?

34 A. Yes.

35

36 Q. Towards the end of your evidence, you were asked about
37 exchanges that you had in the lead-up to a decision by the
38 Acting Director-General on 19 August.

39 A. Yes.

40

41 Q. You told us, I think, that you were approached -
42 perhaps it was the 18th or thereabouts - by Matt Rigby in a
43 phone call?

44 A. Yes.

45

46 Q. You had one - the 17th? Okay. You had one or two
47 phone calls concerning that matter?

- 1 A. Yes.
2
- 3 Q. And you summarised your position, did you not,
4 subsequently in the form of an email?
5 A. I did.
6
- 7 Q. Okay. Perhaps if we could go to that. It's in that
8 bundle that Mr Jones last referred to as recently being
9 obtained. The document, I think, is
10 [WIT.0020.0009.0001_R]. If we go to your summary email of
11 19 August, which is page 15 of that document,
12 [WIT.0020.0009.0001_R at 0015], the last paragraph of that
13 in the first couple of sentences identifies the QPS
14 concern, does it not, about the exhaustion of samples.
15 A. Yes.
16
- 17 Q. And that was consistent with what you had discussed in
18 earlier conversations?
19 A. Yes.
20
- 21 Q. That that was a concern?
22 A. Well, it was a concern. It was a warning given to me
23 by Ms Allen in 2018, I guess fuelled by that.
24
- 25 Q. I understand the background.
26 A. So - and I raised that, that if that was a valid
27 concern, it needed to be considered in the decision.
28
- 29 Q. Okay.
30 A. And then I've said here that the QPS doesn't have the
31 expertise to assess the likelihood of that risk.
32
- 33 Q. Well, the purpose of putting it in there was so that
34 it would be taken into account --
35 A. Oh, absolutely.
36
- 37 Q. -- in whatever decision was being made?
38 A. Absolutely.
39
- 40 Q. Okay. Well, subsequent to that, as you've described,
41 one or more scientists had made contact with your office
42 and expressed some concern --
43 A. Yes.
44
- 45 Q. -- about the return to the pre-2018 position?
46 A. Yes.
47

1 Q. As reflected in the memorandum?

2 A. Yes.

3

4 Q. As a consequence of that, you wrote an email on
5 8 September?

6 A. Yes.

7

8 Q. Could we go to page 12, [WIT.0020.0009.0001_R at
9 0012]. You see the header of your email addressed to
10 Mr Rigby?

11 A. Yes.

12

13 Q. If we go to the next page, which is number 13, in the
14 second-last paragraph of that [WIT.0020.0009.0001_R at
15 0013], you took the position that the Police were prepared
16 to accept the matter of exhaustion of a sample. But you
17 posed a test for that, did you not, that the testing which
18 might result in exhausting the sample should be undertaken
19 where, and only where, the test has:

20

21 *... a high likelihood of yielding a useful*
22 *profile ...*

23

24 So does that not reflect the test which you were looking to
25 be satisfied before proceeding to exhaust a sample?

26 A. Sorry, which paragraph, I'm trying --

27

28 Q. Well, it is the second-last paragraph on page 13. The
29 sentence commencing:

30

31 *If QHFSS is able to reliably undertake a*
32 *test that has a high likelihood of yielding*
33 *a useful profile, the testing should be*
34 *undertaken ...*

35

36 A. That's right, even if it exhausted the extract.

37

38 Q. So it is not simply a matter, is it, from the way this
39 reads, that you would just leave it up to the scientists?
40 You were prepared to leave it up to the scientists on the
41 footing that the scientist would predict and expect a high
42 likelihood of yielding a useful profile.

43 A. Yes.

44

45 Q. Otherwise you didn't want it exhausted; isn't that
46 right?

47 A. Well, that's right, but I did qualify that further on

1 when I sent an email either to Helen or Lara where I said
2 that in our understanding there is no guarantee of getting
3 a result and --
4

5 Q. And you start - sorry, go on.

6 A. And I indicated that there's a risk of - the other
7 risk is trying to preserve sample, but they're diluting it
8 so the sample is basically useless. So there's a balance
9 there.

10
11 And my point is from time to time there are tests that
12 we might procure from other service providers that aren't
13 delivered by Queensland Health. So if they think that
14 their testing they do on a routine basis is not likely to
15 yield a result, and if they think that some other service
16 provider might be able to get a result for us, then give us
17 that opportunity.

18
19 Q. But you have told the Commission in your evidence that
20 on the inquiries that you were making from December 2021
21 onwards, you formed the view that upon reprocessing or
22 actually processing some of these DIFP samples, that a
23 success rate of perhaps 30 per cent might be achieved?

24 A. Yes.

25
26 Q. Well, that's never going to meet a test of high
27 likelihood of yielding a sample, if the success rate is
28 30 per cent. If it was only 30 per cent, you would never
29 do it, isn't that right?

30 A. Oh, I guess if you draw that nexus.

31
32 Q. Well, that doesn't highlight the problem?

33
34 THE COMMISSIONER: Q. But the 30 per cent figure, where
35 it appeared, as I understood it, was in the context that
36 these samples are routinely not being tested. And the
37 proposition is they ought to be tested, because there is a
38 30 per cent chance of success. But what you're raising
39 with Inspector Neville is a test that would exhaust the
40 sample, which is a different thing. Isn't it?

41
42 Before you go on, Mr Rice, is this a convenient time
43 or would you like to finish this topic? Whatever you
44 prefer?

45
46 MR RICE: No, I am happy to have a break. Thank you,
47 Commissioner.

1
2 THE COMMISSIONER: Thank you. We will adjourn then.

3
4 MR HODGE: Sorry, just before you adjourn, can we resume
5 at 2 pm. And we need to interpose Professor Linzi
6 Wilson-Wilde at 2 pm.

7
8 THE COMMISSIONER: Have you discussed this with your
9 colleagues?

10
11 MR HODGE: I think. I'm hoping I emailed all of them last
12 night and told them --

13
14 THE COMMISSIONER: So you are going to call Professor
15 Wilson-Wilde at 2 o'clock, are you?

16
17 MR HODGE: Yes. Ms Hedge will call her.

18
19 THE COMMISSIONER: All right. Well, we will adjourn until
20 2 o'clock then.

21
22 MR HODGE: Thank you.

23
24 **LUNCHEON ADJOURNMENT** [1.06pm].

25
26 THE COMMISSIONER: Yes, Ms Hedge?

27
28 MS HEDGE: I call Dr Linzi Wilson-Wilde. She is to appear
29 via video-link.

30
31 **<PROFESSOR LINZI WILSON-WILDE, (affirmed via
32 video-conference)**

33
34 THE COMMISSIONER: Yes, Ms Hedge.

35
36 **<EXAMINATION BY MS HEDGE**

37
38 MS HEDGE: Q. You are Professor Linzi Wilson-Wilde?

39 A. I am, that's correct.

40
41 Q. You can see and hear me on the screen now.

42 A. I can. Yes, thank you.

43
44 Q. Let us know if there is any difficulty with the link.
45 Can you tell the court your formal qualifications?

46 A. I have a bachelor of science in biological science, a
47 post-graduate diploma in molecular genetics and I have a

1 PhD in molecular genetics as well.

2

3 Q. What is your current position?

4 A. I am currently Director of Forensic Science SA in
5 South Australia.

6

7 Q. How long have you worked in the area of forensic DNA
8 analysis?

9 A. I have worked in forensic science for 25 years, and
10 most of that time has been in DNA analysis to some degree
11 or other. I started my career off in 1996 with Victoria
12 Police as a DNA scientist and I've worked for three
13 jurisdictions performing DNA science, expert advice and
14 opinions and case work.

15

16 Q. Thank you. You have prepared two reports for this
17 Commission. Could I just identify them. Firstly, you
18 prepared a report dated 7 August 2022 relating to an issue
19 of micro-concentration [EXP.0002.0003.0001]?

20 A. That's correct.

21

22 Q. And, secondly, a report dated 20 September 2022
23 relating to the QHFSS Option Paper [EXP.0002.0001.0001]?

24 A. That's correct.

25

26 Q. In addition to the documents that are stated in your
27 reports that you have had reference to, you have also been
28 provided by the Commission with copies of the reports of
29 Dr Bruce Budowle in relation to both of those topics,
30 [EXP.0001.0001.0001] and [EXP.0001.0002.0001]?

31 A. That's correct.

32

33 Q. Thank you. Can I ask you questions first on the
34 second report. That is, the one about the Options Paper.
35 Overall, what did you think of the process of presenting an
36 Options Paper like that to the Police for a decision?

37 A. Options Papers can be used to inform decisions with
38 stakeholders in collaboration. This particular Options
39 Paper, I would consider, is a little bit unusual as far as
40 Options Papers goes. Whilst there's no standard format for
41 an Options Paper, I would have thought that it would
42 provide - it should have provided some further background
43 than what was there.

44

45 Generally speaking, the options presented should be
46 balanced and independent and there should be sufficient
47 data and information for the Police to make a determination

1 based on the options, but each option should have the
2 impact to the options or the risks and benefits of the
3 options, with a recommended preferred option. And so,
4 that's certainly in this paper. So it was an unusual
5 process in what's contained in the paper, but the standard
6 idea of presenting an Options Paper to police to assist in
7 determining various aspects of DNA analysis processes is
8 not unusual.

9
10 Q. You listed a number of things that should be in the
11 paper. At the end you said, "And certainly that's in the
12 Options Paper." Were you referring only to the last point,
13 which was "a preferred option"?

14 A. There is certainly a recommendation that has been
15 proffered and that would be something that would be fairly
16 normal. Most of the remaining points I was making probably
17 aren't in there to the level that I would anticipate or
18 expect.

19
20 Q. What other stakeholders would be expect to be
21 consulted in a process like the Options Paper?

22 A. It's fairly standard protocol to consult the
23 scientific experts within a forensic laboratory within
24 options papers, and also the police in determining the
25 course of action to be taken stemming from the Options
26 Paper. So they're probably the two main groups of
27 stakeholders that would be usual in this sort of thing.

28
29 Q. When you say "the scientists in the laboratory", how
30 many scientists? How far down the chain would you expect
31 there to be consultation?

32 A. Certainly, the management that run that particular
33 area or that discipline and the senior scientists
34 conducting the work would certainly be engaged. Obviously,
35 the more broader engagement you have with the scientists,
36 then if you take a diversity of thought perspective, then
37 the better the resulting product is at the end. The fewer
38 people that you have involved in providing their opinions
39 or their advice in regards to a paper or project, then that
40 would dictate that you wouldn't get as much variation or
41 diversity in the thought that is being put into it. So I
42 think the more that you can engage within the laboratory,
43 then the better the product that you get at the end.

44
45 Q. What is your opinion about including other
46 stakeholders in the criminal justice system? For example,
47 judiciary, defence lawyers, prosecutors?

1 A. To be fair, it's probably not usual for something of
2 this level to consult more broadly outside the laboratory
3 and the police stakeholders for this type of change. So
4 it's dependent on, I guess, where it directly goes to, but
5 we would probably focus on the communication of the results
6 more broadly as opposed to consultation within the
7 development of an options paper.

8
9 Q. Thank you. Can I move then to the data that was
10 presented in the Options Paper. And you have dealt in your
11 report with the relevance of the 1.45 per cent statistic
12 relating to new intelligence, and also the 10.6 per cent
13 success rate. Could you tell us which of them in your
14 opinion, 1.45 per cent or 10.6 per cent, was the more
15 appropriate figure to identify the proportion of samples
16 that would provide information that was useful to Police?

17 A. From my perspective, the 10.6 per cent is probably the
18 more relevant figure as it represents more closer towards
19 the true value of that percentage of samples that would be
20 informative to Police. I consider that the 1.4 per cent is
21 a subset of the 10.6 per cent. So it's only a portion of
22 the potential samples that could be informative to Police.

23
24 Q. And in particular, could you tell us what parts of the
25 10.6 per cent that are not included in the 1.45 per cent
26 would be of - how that piece of information would help the
27 police?

28 A. The 1.4 per cent represents the samples that are
29 uploadable to NCIDD and have a warm or a cold link. So
30 linking to something. There are samples that go on to
31 NCIDD that don't result in a link, but they do sit there as
32 potential - future potential for a future link. But they
33 may also be informative within the case as well.

34
35 In addition to that, there are other examples that
36 would be included in the 10.6 per cent that might not
37 necessarily be put on to NCIDD, such as a victim's profile.
38 That still could be useful for police, you know, depending
39 on where it was located in the crime scene or if it was
40 found at the suspect's house, or something like that. So I
41 think the 10.6 per cent includes that broader level of
42 profiles that you can interpret within the context of the
43 information of the case and then that's what determines
44 whether it's important. And just isolating on a certain
45 percentage of the samples where they're NCIDD-uploadable is
46 very restrictive and therefore not as relevant a figure
47 when it comes to whether Police might find it a useful

1 result or not.

2

3 Q. Thank you. And is one of those types of indications a
4 "warm" link? The actual - where you know who the potential
5 person you are interested in, or the police are interested
6 in? That is another example of things that are in the
7 10.6 per cent and not in the 1.45; is that right?

8 A. Yes, I believe so. The warm links can be useful
9 because they're linked within the case that you know, but
10 that doesn't mean to say that it is a figure that's not
11 relevant. The figure those that are warm links is still
12 important.

13

14 Q. Yes. Can I go then to the definitions of "success"
15 and "failure" set out in the Options Paper, which appear on
16 page 4 of your report.

17 A. Yes.

18

19 Q. Which is [EXP.0002.0001.0001 at 0004]. And in
20 paragraphs 13 and 14 you set out what the definition is in
21 the Options Paper. In paragraph 17 of your report, you say
22 that those definitions may not be optimal or may not be
23 "valid", is the word that you use, because the police may
24 be interested in reviewing results where a partial profile
25 is found. Do you see that?

26 A. Yes, that's correct.

27

28 Q. Looking at those definitions, the partial profiles
29 which are deemed suitable for comparison would come within
30 the definition of "success"; is that right?

31 A. Yeah, it is a little bit ambiguous in terms of the
32 definitions that they have used. "Fail" has "partial,
33 unsuitable for interpretation" and "success" has DNA
34 profiles that were suitable for loading on to NCIDD, the
35 national database.

36

37 If you were to infer that the profiles that are
38 partial that are not suitable for loading on to NCIDD are
39 included in there are "partial - unsuitable for
40 interpretation", then there would be quite a number of
41 samples in that category that would still be useful in
42 terms of an investigation. And I will just outline the
43 minimum number or the generally accepted number of alleles
44 for loading onto the national database is 12, and that is
45 excluding the markers that are found on the X and Y
46 chromosomes.

47

1 So if, for instance, you had a profile that had 10
2 alleles and those were in - sorry, 10 alleles, then you
3 could reasonably expect to be able to make some inference
4 around whether that profile would exclude or include a
5 person connected with the crime. And then depending on the
6 number of alleles that you obtained, you could still do a
7 statistical weighting on that and get an indication of how
8 strong that evidence is.

9
10 Even just two alleles is useful, but if you had - and
11 you could do something with it. But the more loci you have
12 where you have results, the two alleles from a particular
13 loci, it can increase your statistical weighting by a
14 factor of 10. So, for instance, if you had 10 alleles that
15 were from five loci, you could get a statistical weighting
16 in the order of 100,000. That's clearly something that's
17 informative for police. But, as I said, those definitions
18 are very - a little bit ambiguous, and I would consider
19 that even a very small number of alleles would still be
20 useful for police within an investigation, even if they
21 couldn't be put onto NCIDD.

22
23 Q. Thank you. So does that ambiguity mean that
24 potentially there are more profiles, in truth, that should
25 have been defined as "success" rather than "fail"?

26 A. That's correct. And certainly, if that definition
27 holds true that if DNA profiles aren't suitable for NCIDD
28 upload, partial ones, if they're not suitable for NCIDD
29 upload then they are part of the "fail" criteria, there
30 would be quite a number of samples, I would anticipate,
31 that would be included, that would be in addition to that
32 10.6 per cent.

33
34 Q. I see. Does that mean that potentially that
35 10.6 per cent is an under-estimate of the number of samples
36 or the true number of samples that would have provided
37 informative material to the police?

38 A. That's correct. And I think that's borne out by some
39 of the other reports as well that I reviewed, the Valuation
40 Report. And then the previous and earlier report as well,
41 Project #163, had better success rates, although they were
42 after micro-concentrating.

43
44 Q. When you say, "the Evaluation Report", is that the
45 Update Report from June 2022, [FSS.0001.0001.0954_R]?

46 A. Yes:
47

1 *The Evaluation of the Efficacy of a*
2 *Post-Extraction Concentration Step Using*
3 *the Microcon Centrifugal Filter Devices in*
4 *Yielding DNA Profile Intelligence.*
5

6 Q. To another point in the data. Is it your view that
7 the grouping of all data between .001 ng/ μ L and .0088 ng/ μ L
8 was appropriate or not?

9 A. I think there are better ways that the data could have
10 been grouped. I think it has a potential to skew the data,
11 because most of the "fail" samples would sit within that
12 range. And because of that, it will skew it out - skew the
13 data out to not looking as successful. Whereas if they
14 broke that down into smaller brackets, say, for instance,
15 you know, .001 and then .002, going up, then it would
16 show - better reflect the data and perhaps better reflect
17 where that threshold might have actually or could have
18 actually sat a bit lower. And the police, therefore, would
19 have had more information to work out where they were
20 comfortable in that threshold being set.

21
22 Q. That approach of breaking up the data, is that a
23 fairly standard statistical approach?

24 A. I think normalising the data across the range is
25 fairly standard. And I think if you can bracket the data
26 into those smaller brackets, you'll be able to see the
27 distribution of the data a little bit better. I think it
28 would have improved the visibility of where an appropriate
29 threshold is at the lower level and made that determination
30 a little bit more transparent.

31
32 Q. In your view, should that have been done in this
33 report?

34 A. I would recommend that that is the approach that
35 should have been taken.

36
37 Q. In paragraph 10 of your report, [EXP.0002.0001.0001 at
38 0003], you set out some of the concerns that were raised by
39 scientists in Project #184 that you identify were not
40 addressed in the evaluation report or the Options Paper.
41 And I understand your view is that they were valid concerns
42 of the scientists?

43 A. They appeared to me to have merit. So yes, they were
44 valid.

45
46 Q. All right. What does the failure to take into account
47 that feedback say about the procedure inside the lab

1 leading to the Options Paper?
2 A. I would infer that it indicates that there was
3 potentially a purpose to the Options Paper that's more of a
4 managerial - from a managerial perspective than a
5 data-analytics perspective. And so, there was potentially
6 an end goal that was required, which may or may not be
7 understandable, and that this was written to reflect that
8 end desire as opposed to something that's probably a little
9 bit more independent and transparent as far as the data
10 analytics go.

11
12 Q. That inference that you draw, is that related to the
13 feedback but also to the reference paper itself?

14 A. It's both. It's both.

15
16 Q. Right.

17 A. There's no discussion or confrontation around why the
18 feedback wasn't accepted, so that wasn't evident to me, but
19 some of the feedback I thought was very - was very valid
20 and really should have been taken into consideration. So I
21 can see no reason why it wouldn't be. Other than there was
22 an end goal.

23
24 Q. I'm sorry?

25 A. Sorry, other than there was an end goal, was the only
26 reason I could postulate.

27
28 Q. I see. And what about in the Options Paper itself?
29 What about the Options Paper itself led to you drawing the
30 inference that there was an end goal in mind?

31 A. So there was certainly data that was included in the
32 evaluations paper that wasn't included in the Options
33 Paper. And the way that, I guess, the language and the
34 set-out of the Options Paper was quite focused towards that
35 end goal of what appeared to be reducing the number of
36 samples that progressed through the laboratory is - I would
37 envisage is a way to manage resources better.

38
39 Q. You say in your report at paragraphs 16 and 32,
40 [EXP.0002.0001.0001 at 0004 and 0006], that a determination
41 of a threshold is not an unreasonable step, but that to set
42 a threshold, the decision-maker needs to have sufficient
43 information to strike a balance between scientific
44 considerations, criminal justice system considerations and
45 resourcing or managerial considerations; is that right?

46 A. That's correct.

47

1 Q. Okay. What parts of that was dealt with by the
2 Options Paper and what parts of that were not dealt with by
3 the Options Paper?

4 A. So in terms of the Options Paper itself, I think the
5 data that they provided in terms of the effect of the
6 concentration at the varying levels in the graph that they
7 have, which - I will find that figure for you, I apologise,
8 Figure 2 - is useful. So they can see a general spread,
9 but it is still a little bit limited and it is not the full
10 figure that was in the evaluation report. And so --

11

12 Q. Sorry, just before you go on, Professor, I will just
13 get that up on the screen so that we can all look at it.
14 It is [FSS.0001.0001.0891_R at 0898]:

15

16 *Figure 2: Spread of data and categorised*
17 *as 'Success/Fail' for 'Auto-Microcon'*
18 *samples.*

19

20 Is that the figure you are speaking of?

21 A. Right.

22

23 Q. Yes, I am sorry to interrupt. Please go on.

24 A. So this is a useful spread for the police to
25 understand that the lower the concentration result from the
26 quantitation quantification process, you have got a
27 reducing chance of obtaining a result. But it's not the
28 full diagram; it is a portion of it. But I think it's
29 still very useful for police in terms of working that
30 through. However, there were diagrams that existed in the
31 evaluation document that didn't exist in this - didn't make
32 it into this final report. And the one that probably most
33 pertinent for that is Figure 6 in the evaluation report.

34

35 Q. Sorry, I am just obtaining that one. Figure 6.

36 Figure 6 I have as a pie chart, is that right? Or is it
37 the larger bar chart?

38 A. It is the pie chart. It is the:

39

40 *% 'Success'/'Fail' of 'Auto-Microcon'*
41 *Samples*

42

43 So it is a combined data figure.

44

45 Q. I will just read out the number for that one.

46 [FSS.0001.0001.0891_R at 0897]. Thank you. We've got
47 that.

1 A. That's an end figure. So this shows a general process
2 of micro-concentrating samples gives a 21.5 per cent
3 success rate. And so that shows the general success rate
4 for micro-concentration. And that's very similar to a
5 previous result that they had in the previous Project #163,
6 which had a success rate of 18.4 per cent, so they're
7 fairly consistent. And so, it does lend a message that if
8 you concentrate samples, you will get a success rate of
9 somewhere around the 20 per cent mark. But in the Options
10 Paper, they focused on just the auto-concentrated process,
11 which has that lower success rate of 10.6.

12
13 Q. Okay. Thank you. What other considerations did you
14 think were not well dealt with by the Options Paper to
15 allow the police to strike a balance between scientific,
16 managerial, and criminal justice considerations?

17 A. Yeah, I think there's - I think there's quite a number
18 of things which could have been added to the Options Paper
19 that would have provided more clarity for police in making
20 these determinations, such as when you analyse samples from
21 different types of biological materials, the success rate
22 isn't the same, and so where you have samples that are
23 things like blood and semen, you will get a higher success
24 rate than you will from samples that are trace samples from
25 swabs or touched items. So a breakdown of that and maybe a
26 percentage breakdown would have been more useful for police
27 as well.

28
29 I would have probably preferred to see different
30 options, including a "do nothing", and then breaking the
31 picture down for Volume and Serious Crime and looking at
32 the risks and benefits of each of those.

33
34 Q. What sorts of risks and benefits are you talking about
35 here?

36 A. It's not in the Options Paper.

37
38 Q. I understand, but do you mean --

39 A. Yes. Sorry.

40
41 Q. What sort of risks and what sort of benefits would you
42 expect to see there?

43 A. So I would expect to see data around - if you increase
44 the threshold, the risk is you will not identify X number
45 or X percentage of samples, versus if you do, you will lose
46 this. And if that was broken down into the different
47 threshold levels, for instance, then police could see just

1 how many samples are potentially not going to identify if
2 they increase or lower the threshold. So it's the risk of
3 implementing a threshold at a higher level versus a lower
4 level and the benefits. So the benefits might be improved
5 turnaround times or reduced cost or things like that,
6 whereas the rest will be you will potentially not obtain a
7 result you would otherwise have got. So it's really
8 clarifying that as what this means from both of those
9 perspectives to police.

10
11 Q. In terms of the reduction in turnaround times or the
12 amount of cost, would you have expected that to have been
13 quantified?

14 A. It may not have been quantified in terms of days, but
15 increase or decreases is a very usable - you know, that is
16 something that could easily be put in there. I appreciate
17 working out what the actual impact might be a bit hard for
18 some laboratories, so that might be not something they
19 could put in, I'm not sure. I can't respond to that.

20
21 But also, I think, the impetus for this in terms of
22 recognising that if there was an issue in the sense of case
23 numbers increasing, so a need to manage resources was part
24 of the impetus for this, then that would have been good to
25 clearly position that at the beginning of the Options Paper
26 so Police understood why a certain recommendation was being
27 made.

28
29 Q. I see. Just going back to that quantification point,
30 would a laboratory not have, you know, an average time that
31 samples took or an average cost? And, therefore, you could
32 just calculate out if you're not testing this-many-thousand
33 samples, then it removes this percentage of the workload?
34 Therefore, there would be a consequent - some estimate, at
35 least, of the number of days increase or decrease in
36 turnaround times, or the number of hundreds of thousands of
37 dollars that might be saved or not?

38 A. Yes, certainly dollars is relatively easy to do. The
39 turnaround times, maybe a rough estimate could have been
40 provided. It is quite complicated and there can be a
41 multitude of factors that impact the turnaround times for
42 laboratories, such as staff absences and pieces coming in
43 might increase unexpectedly. Potentially, a rough estimate
44 could have been provided, but it would have had to have
45 been clearly stated that it was a very rough figure.

46
47 Q. Thank you. Finally on the Options report, you say in

1 your report at paragraphs 43 to 44 [EXP.0002.0001.0001 at
2 0008] that the threshold should not be a hard barrier for
3 Major Crime cases. Can you tell us in your opinion how
4 should such a threshold work consistently with best
5 practice for forensic DNA?

6 A. Thresholds are often used to limit the number of
7 samples that progress through amplification to analysis and
8 interpretation, and it's usually a means of attempting to
9 streamline processes and balance - as I said before,
10 balance sample numbers versus resources, et cetera. So
11 thresholds for Volume Crime can be, in some laboratories,
12 implemented as a hard barrier.

13
14 But for serious crime, that's generally not the case,
15 and laboratories endeavour to keep analysing samples until
16 they obtain results or exhaust the possibilities. And so,
17 the case type becomes really important, and scientists
18 should be able to look at the type; the circumstances; the
19 sample type, such as whether it is from blood or what type
20 of biological material it is; the quantitation result, and
21 then determine whether samples should proceed with or
22 without a concentration step.

23
24 Q. Thank you. I turn then to your first report, the
25 Concentration report. You explain in that report that
26 concentration condenses the solution so as to increase the
27 concentration of DNA in a sample; is that right?

28 A. Yeah. It focuses on increasing the chance of
29 obtaining DNA profile in samples with low levels of DNA.

30
31 Q. Can we deal with the matter of elution volumes. What
32 does that terminology mean?

33 A. The obstruction process breaks down the cellular
34 material to release DNA into a solution and then washes
35 that broken down cellular material and any chemicals that
36 might inhibit the further downstream DNA analysis process
37 to result in the DNA remaining in a solution, so it's put
38 into just DNA in a solution without any of the extra
39 cellular material.

40
41 The volume that that solution ends up being is called
42 "the elution", or "the extract" is another term for it. So
43 it is the elution volume or the extract volume.

44
45 Q. What is the elution volume in Queensland?

46 A. I understand it is 100 microlitres.

47

1 Q. How does that sit with other labs in Australia or best
2 practice?

3 A. The final elution volume that you utilise is one you
4 end up with after validation, and your validation study can
5 result in varying elution volumes, depending on your
6 processes, your equipment; whether you have automation.
7 There isn't a standard elution volume that's defined. It's
8 usually a range, and that range can be anywhere from 30 to
9 400 microlitres. My laboratory uses a 65 microlitre
10 elution volume.

11
12 Q. All right. You had the chance to read Dr Budowle's
13 report, and could I just take you to his report on this
14 topic of concentration, back to [EXP.0001.0001.0001 at
15 0007], paragraph 14. He makes some criticisms there of the
16 validation study performed by QH - I'm sorry, it must be -
17 yes, thank you, operator. There is some criticisms there
18 of the DNA IQ validation performed by QHFSS about changing
19 aspects of the experiment between testing 50 microlitre
20 elution volume and 100 microlitre elution volume. Do you
21 agree or disagree with his conclusions about whether that
22 should be revisited by the lab?

23 A. I would agree. It's good scientific practice to only
24 change to one variable at a time when testing a process.
25 So if you change two, you wouldn't know which one is having
26 the greater effect or not.

27
28 Q. Now, what does that, the fact that it is a greater
29 elution volume than, say, your lab, what does that mean for
30 the significance of concentration in Queensland?

31 A. So if you have a higher elution volume, for some
32 examples that might be appropriate where that sample exists
33 in high concentration. For instance, if you are extracting
34 DNA from meat blood, you might validate that to have a high
35 concentration so that your final concentration of DNA is
36 not too concentrated for your downstream reactions, because
37 there is a finite range at which it operates optimally.
38 For trace DNA samples, though, that have a lower level of
39 DNA that's likely to be extracted, you might want to end
40 with a lower extraction volume. And I can give you an
41 example if you like?

42
43 Q. Yes. Thank you.

44 A. So if you elute to 100 microlitres and when
45 you quantitate that, that shows there is 1 nanogram of DNA
46 per microlitre, then that 100 microlitre sample will have
47 100 nanograms of DNA. So it is just 1 times 100. And then

1 when you add 15 microlitres, which is fairly standard, to
2 your PCR reaction, you are adding 15 nanograms of DNA.

3
4 If you were to elute to a different volume, say, 13
5 microlitres for a trace sample, which would be generally an
6 understandable or reasonable amount to elute to, you would
7 still have 100 nanograms of DNA, but now it's in
8 30 microlitres. So when you add your 15 microlitres of
9 extract or elution to your PCR, you are now adding 50
10 nanograms of DNA. And so, you are adding far more and,
11 therefore, increasing significantly your chance of getting
12 a DNA profile. That is essentially how it works.

13
14 Q. Yes. So does that mean if the elution volume was
15 smaller in Queensland, there would be less samples that
16 fall within this range of 0.001 to 0.0088 ng/ μ L?

17 A. It is a reasonable expectation that you would have
18 more getting up into that higher volume because you've got
19 more concentrated samples.

20
21 Q. And also if you had a lesser elution volume, you would
22 spend less money and time doing micro-concentration?

23 A. That's correct. The micro-concentration step is known
24 to lose DNA. So when you concentrate a sample, you can
25 lose up to 30 per cent of your DNA. And so, if you elute
26 to a smaller volume, then you don't have that. So you're
27 maximising the DNA you have in a concentrated sample.

28
29 Q. Those are some benefits of the lab trying to validate
30 a lower elution volume, and I appreciate you wouldn't
31 suggest anyone changes it without a full validation --

32 A. That's correct.

33
34 Q. -- performed, but would there be any negatives to
35 attempting to validate a lower elution volume?

36 A. I don't think so. I think it would streamline the
37 process so you're not having to concentrate as often.
38 There would still be instances where that might be a
39 reasonable approach, to do that, but as a routine if you
40 could elute certain sample types that might be validated to
41 the sample type, then that would be a completely reasonable
42 approach and would aid in streamlining your processes.

43
44 Q. Is that something you would recommend to the
45 Queensland lab?

46 A. Absolutely.

47

1 Q. All right. Now, coming back to the present position
2 where the elution volume is 100 microlitres, in your view
3 should there be a blanket rule about which samples are
4 concentrated or should this be a matter of discretion?

5 A. I would advocate for a matter of discretion for the
6 reporting scientists based on case type, biological
7 material that's been extracted, quantitation result, and
8 importance in the case - case information and case context.
9 Absolutely.

10
11 Q. All right. What about the level to which one
12 concentrates? Whether it be in Queensland, as I understand
13 it, sometimes there is concentration to 35 microlitres,
14 sometimes to 15 microlitres. Is that also something that
15 should be a matter of discretion or something that should
16 be a rule?

17 A. That would be reasonable, that the reporting scientist
18 could have a look at the sample type and the quantification
19 value and determine where they might want to elute the
20 sample to after the concentration. That would be
21 reasonable, because if say, for instance, it is a sexual
22 assault case, they might want to have sufficient extract to
23 run a PCR and maybe a Y-chromosome analysis test as well.

24
25 So it's within the context of the case that these
26 decisions should be made, and I think streamlining is very
27 useful but it's not appropriate in all instances where you
28 can have one stock standard process for all cases and all
29 sample types. It's just not - whilst it might be
30 efficient, it's not effective in getting better results for
31 the case, particularly those serious cases.

32
33 Q. When you say it's not appropriate to have such a
34 blanket rule, if I can put it like that, is it your view
35 that that's not best practice in forensic DNA at the
36 moment?

37 A. Hard bar thresholds for serious cases I would not
38 consider to be best practice.

39
40 Q. Thank you. When you wrote your report, there had been
41 a decision made on 6 June 2022 to not concentrate anything
42 between 0.001 and 0.0088 ng/ μ L. And then after you
43 delivered your report, you have been advised by the
44 Commission that another decision has been made on 19 August
45 that all samples in that range will be P2 - I should say P2
46 and P3 - would be concentrated in that range to
47 35 microlitres. So is it fair to extrapolate from your

1 previous answer that both of those decisions, in your view,
2 are not consistent with best practice?
3 A. Without a proper validation and understanding what the
4 implications are and looking at the workflows, I wouldn't
5 consider a knee-jerk reaction as an appropriate pathway.
6 However understandable in the circumstances, it wouldn't be
7 in line with best practice I would consider.

8
9 Q. All right. I'll just ask you - you said "without a
10 validation." Tell me from your previous answers, does it
11 matter whether it's validated or not? Were you not saying
12 earlier that just having any blanket rule is not best
13 practice?

14 A. Yeah. As in any threshold that you have should have
15 some data behind it. So you should understand why you've
16 got a threshold at a certain level and why the rules are
17 and what the implications are, and that's what a validation
18 study will tell you. And so, if you are going to change
19 your processes, there should be some data that supports it,
20 is the point.

21
22 If a previous validation study had that data and you
23 were re-assessing it, then that's fine, but it should be
24 based on a properly thought out decision and a decision
25 process that's documented, and notwithstanding that hard
26 bar thresholds in any way are not useful. And if they're
27 doing it for all - is it all sample types? It's not P3?

28
29 Q. I believe it's P2 and P3. Just one moment. Yes, P2
30 and P3.

31 A. Yes, so there should be some consideration over the
32 sample types. Volume crime, for instance, it is more
33 acceptable to have a hard bar threshold for volume crime so
34 that you don't clog up your resources that you have, and
35 some laboratories for serious crime will progress all of
36 them. I'm not sure whether that delineation is of
37 assistance there.

38
39 Q. Thank you. Yes, thank you.

40
41 MS HEDGE: Those are my questions.

42
43 THE COMMISSIONER: Mr Hunter.

44
45 MR HUNTER: Thank you.

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<EXAMINATION BY MR HUNTER

MR HUNTER: Q. Professor, my name is Jeff Hunter. I act for the Queensland Police Service. Can you see and hear me?

A. I can't see you. I can hear you.

Q. All right. If you can't hear my questions, let me know. Can I just touch on that last issue. That is the amplification of these low quant samples without first micro-concentrating them. You understand, don't you, that this laboratory had found that when it came to what I'll call low quant samples; that is, samples between the range of 0.001 and 0.0088 ng/ μ L, that when they were amplified without micro-concentration, the resulting profiles exhibited marked stochastic effects?

A. Yes.

Q. You understand that as a result of the Options Paper that was presented, that the lab simply stopped testing those samples, the samples in that range?

A. Yes.

Q. And you understand, though, that in June of this year, the laboratory resumed testing of those low quant samples?

A. Correct.

Q. But when it came to P2 and P3 samples, those samples were tested without being first micro-concentrated; that is, they were amplified without first being micro-concentrated?

A. Yes.

Q. This is at a laboratory that has already found that engaging in that process is likely to lead to marked stochastic effects, correct? You understand that?

A. Yes.

Q. Do you agree with me that amplifying profiles in that way, amplifying samples in that way without first micro-concentrating them was likely to achieve, firstly, profiles that were unsuitable for interpretation - yes?

A. Correct.

Q. Sorry, you are nodding.

A. Sorry.

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Q. The transcript will be assisted if you responded verbally. Thank you. And it would also waste 15mls of sample?

A. Well, potentially, yes.

Q. Well, assuming what the result was was an unsuitable profile for interpretation.

A. I haven't seen the breakdown of the success rates for those types of samples. So increased stochastic effects could result in the profile still being readable, albeit more difficult to read, and it's clear that micro-concentration would clean the samples up or produce a better profile, and so that would be an advantageous step to do.

Q. Well, can you think of a sensible reason why a scientist who was aware of the likelihood of these marked stochastic effects in low quant samples would recommend the amplification of such samples without taking that step of micro-concentrating them?

THE COMMISSIONER: That is, can the Professor posit a proper reason to do it?

MR HUNTER: Q. Yes. Thank you.

A. I can postulate it is a reaction to process the samples without investing resources in the concentration step, which is timely and costly. So to process - put the samples through but without realising the full impost of analysing those samples as their validation - previous validation has told them that they should do.

Q. But that would be in circumstances where amplification was not likely to be particularly beneficial because of the high likelihood of these stochastic effects?

A. Dependent on what the impact of those stochastic effects are.

THE COMMISSIONER: Q. I think what Mr Hunter is putting, and correct me if I am wrong, Mr Hunter, but he put those propositions to you earlier, and the implicit conclusion is that in order to get the best chance of getting a usable profile, you would micro-concentrate samples within that range before amplifying them; therefore, the converse is that if you don't take the micro-concentration step, you are not testing the samples to give the best probability of

1 guessing a usable sample, and what is being asked is could
2 there be a proper reason to take that course for samples of
3 that kind? I think what you have put is that, well, if one
4 considers that saving money on the chemicals involved and
5 the time involved in that step is a proper reason, that's a
6 proper reason, but you don't offer any other proper reason?
7 A. That's correct.

8
9 THE COMMISSIONER: Yes. Is that clear?

10
11 MR HUNTER: Thank you, yes.

12
13 Q. Can I move to the topic of change management.

14 A. Yes.

15
16 Q. It's important for the laboratory to have proper
17 procedures for the management of change?

18 A. That's correct.

19
20 Q. That is, that these procedures should document the way
21 in which change is to take place?

22 A. Change in terms of the changes to the scientific
23 processes or methodology, absolutely.

24
25 Q. That's what I mean. Yes, that's what I mean. All
26 right. And it's important that if change is to occur, that
27 there be strict adherence to the procedures that are
28 specified in writing about change management?

29 A. That's correct.

30
31 Q. The views of appropriate experts should be taken into
32 account?

33 A. That's correct.

34
35 Q. And just so I make myself clear, I am talking about
36 what was Project #184, which we have heard became the
37 Options Paper.

38 A. Yes.

39
40 Q. We've heard that in order for any change recommended
41 by the Project #184 to be implemented, it required the
42 sign-off by a quorum of senior scientists at the
43 laboratory.

44 A. Okay.

45
46 Q. Is that a conventional approach to change management
47 as far as you're concerned?

1 A. We have final sign-off by a higher level management.
2 And so, it goes through - I am not aware of any particular
3 guidelines or requirement around a quorum of scientists to
4 sign-off. That is not to say it is not an acceptable
5 approach. It is reasonable. There should be some
6 higher-level management sign-off as well, I would have
7 thought.

8
9 Q. All right. Well, what we have heard is that
10 Project #184 was, because of the attitude of some of the
11 scientists at the laboratory, never going to achieve the
12 level of support that it required to be signed off.

13 A. Okay.

14
15 Q. And so what then occurred was that the project morphed
16 into the Options Paper that was presented to the police,
17 right?

18 A. Okay.

19
20 Q. My question to you is this, then: accepting that this
21 process really enabled the side-stepping of the procedures
22 for change management, what's your comment about that
23 process as a means of effecting a significant change in the
24 processes of a laboratory such as the one with which we're
25 concerned?

26 A. It is concerning in that clearly the data that sits
27 behind it sits in the evaluation in the previous project
28 that you mentioned, and that hasn't got the full support of
29 the scientists. So it is concerning that that then has
30 morphed into an options paper and, effectively, the results
31 of the project have been used for a particular purpose but
32 haven't garnered the support that would be expected. So I
33 would find that concerning.

34
35 Q. Can I ask you now about NATA accreditation and, in
36 particular, ISO:17025.

37 A. Yes.

38
39 Q. There has been evidence there was a point in time at
40 which police had visibility - that is, read-only
41 visibility - of records of the laboratory about the
42 progression of a sample through the laboratory - that is,
43 the stage at which it had reached - but also access to -
44 again read-only - data, but that data was limited to the
45 quant and the degradation value for the sample in question.

46 A. Yes.

47

1 Q. Now, assuming the laboratory was aware that the police
2 had this visibility - and that might be a matter about
3 which there's some dispute - but assuming the laboratory
4 was aware of that, can you see anything objectionable in
5 terms of compliance with ISO:17025 with the police having
6 read-only visibility of that limited set of data?

7 A. I can't recall a clause in ISO:17025 that precludes
8 that, so I wouldn't have any concerns about it. If that's
9 the documented process that that jurisdiction has, that's
10 reasonable.

11

12 Q. Can you see any advantages in Police, particularly
13 scientifically trained police having access to data such as
14 the quant and the degradation value for a particular
15 sample?

16 A. If the scientists have appropriate training and can
17 understand what that means, and maybe the ones that might
18 be advising on whether a sample should be concentrated or
19 progressed through amplification, for making decisions
20 there, then I would suggest that that's reasonable and
21 appropriate.

22

23 Q. You, I take it, would endorse a collaborative approach
24 between the scientists and the investigating police?

25 A. Absolutely.

26

27 Q. And so, the quant and the degradation would be two
28 factors that would be taken into account in determining how
29 to process a particular sample?

30 A. That's correct.

31

32 Q. But also it would be important to know the
33 significance of that particular sample in the overall
34 context of a case?

35 A. Correct. That is really important.

36

37 Q. If there was already other evidence, there might be
38 less concern about the extent to which the sample was
39 micro-concentrated?

40 A. That's correct. If there was other evidence
41 sufficient for police purposes, you may not need to
42 concentrate or progress. If it's all you have, then you'd
43 probably go with whatever you had.

44

45 Q. You were talking earlier about the importance of a
46 partial profile?

47 A. Yes.

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Q. By "partial profile", for present purposes, I am talking about a profile that would fall within the definition of "fail" as specified in the Options Paper.

Am I right that there may well be occasions where the identification of a single allele could be of forensic significance in a case?

A. It is entirely - whilst it is up to the case context and the investigating officer, it is quite - if you had two alleles and they were both at the same locus, then your likelihood ratio would only be about 10, so you may well question what value that would have for a court. But it might be useful to the investigator. Even one allele may be useful. I can't comment on whether it is or isn't. It's up to the investigator to say, if they have one and it includes a suspect, that might give them some information that they can then progress or follow a lead on.

Q. It might also, though, help them to exclude a suspect, might it not, because the suspect might not have that allele?

A. That's correct.

Q. Correct?

A. Correct.

Q. Lastly, in terms of the Options Paper, is your assessment of the Options Paper that it really offered a binary choice to the decision-maker?

A. Yeah, it was exceedingly limited in what it offered, and I think I question whether it was really a choice at all for Police.

Q. Well, that's the next question I was going to ask you. The paper really makes it appear that there was only one choice, you agree?

A. I agree.

Q. And the true position as you now understand it is that it was vastly more nuanced than a choice between those two options?

A. Correct.

MR HUNTER: That's all.

THE COMMISSIONER: Thank you, Mr Hunter. Mr Rice, are you

1 next?

2

3 MR RICE: Yes.

4

5 THE COMMISSIONER: Mr Rice acts for the Health Department,
6 Professor.

7

8 <EXAMINATION BY MR RICE

9

10 MR RICE: Q. Professor, I only want to ask you about a
11 few paragraphs of your paper to do with the Options Paper?

12 A. Could we go to paragraphs 31 and 32,
13 [EXP.0002.0001.0001 at 0006]. Your answers there are
14 directed towards questions framed in terms of the Options
15 Paper, but I wanted to actually elevate it to a slightly
16 higher level than purely that consideration.

17

18 THE COMMISSIONER: Excuse me, Mr Rice. Ms Hedge, could
19 you arrange for that part of the report to be on the screen
20 so that the rest of us can see it?

21

22 MS HEDGE: Yes, it is [EXP.0002.0001.0001 at 0006] in the
23 middle of the page.

24

25 THE COMMISSIONER: Thank you. Go ahead, Mr Rice.

26

27 MR RICE: Thank you.

28

29 Q. If you take paragraph 32, for example, you refer to
30 the fact that a laboratory looking to address the question
31 of thresholds is required to balance a number of things
32 that you set out there. One can readily understand the
33 considerations that you have set out that need to be
34 balanced. What I really wanted to ask you is who should be
35 the one to do the balancing exercise?

36 A. My opinion is that should be a collaborative effort
37 between the laboratory and police.

38

39 Q. You don't see it as involving wider, perhaps political
40 considerations, or considerations affecting the criminal
41 justice system beyond the Queensland Police, for example?

42 A. It does depend on the level of decision-making that is
43 contained within the options that you're considering. If
44 it is a relatively minor change or a new instrument that
45 you are suggesting, there may even be an instance where
46 that consideration is entirely within the laboratory. If
47 it has a broader impact on results to the stakeholders then

1 you might consult more broadly again. If is a whole new
2 system or a whole new DNA analysis process, then you might
3 consider consulting even broader than that to the judiciary
4 or defence.
5

6 It is entirely dependent on the level and the extent
7 to which what you're determining will change the processes.
8 And so, it was just - I was answering it probably in terms
9 of the Options Paper itself and the decision made there,
10 but you are correct that if it was a decision where you
11 were changing your analysis process entirely, such as
12 moving from the current method of STR analysis to whole
13 genome sequencing, for instance, you would want to consult
14 exceedingly broadly with a change of that magnitude.
15

16 Q. Is there any preferred method for undertaking that
17 kind of analysis and collaboration?

18 A. There is not a defined level of change or defined,
19 "You must consult at this level if it's this change." It
20 is a judgment decision that you need to make, and it does
21 go - it is very much influenced by the impact of the change
22 that it will have, and who it will impact.
23

24 Q. It might assist you and the Commission to take your
25 state as an example. Now, we understand that in the case
26 of major crime, there is a threshold applicable in South
27 Australia, and it happens to be 0.01; is that correct?

28 A. That's correct.
29

30 Q. And that happens to be the highest threshold, the
31 highest such threshold, in Australia or New Zealand,
32 correct?

33 A. As a - taken as a pure threshold, it is the highest.
34

35 THE COMMISSIONER: Q. As a what threshold, Professor?

36 A. A pure threshold benchmark, it is the highest. But as
37 an end-to-end process, it's not.
38

39 MR RICE: Q. I well understand that it is matched with a
40 discretion, and I wanted to ask you about that also. But
41 just taking the example of your State, someone has arrived
42 at a decision that 0.01 is a suitable threshold for your
43 laboratory balancing, presumably, the kind of
44 considerations that you have referred to. Am I right?

45 A. Yes.
46

47 Q. Who made that decision in your State?

1 A. That particular decision was made before I arrived.
2 The decisions of threshold are made - we have a Forensic
3 Science Steering Committee meeting where we may inform. I
4 believe that particular threshold, though, wasn't made at
5 that steering committee; it was probably made internally.
6

7 Q. From what you are saying, it's made at the level of
8 the laboratory?

9 A. That one was, I believe. It's my understanding. I
10 can't confirm it, though, because I wasn't here at the
11 time, but it is my understanding.
12

13 Q. Okay. And likely involved some steering committee for
14 whom this issue was part of its agenda, correct?

15 A. With the steering committee has South Australia Police
16 on it and the forensic laboratory personnel on it, and
17 usually we inform them of changes, and sometimes decisions
18 for changes will go to there for consideration.
19

20 Q. Would a threshold of 0.01 be acceptable, if not
21 matched, with a discretion for scientists to individually
22 assess major crime samples?

23 A. Yes. Just noting our elution volume is lower than the
24 Queensland one. So when you take into account the elution
25 volume, our threshold is lower than Queensland's elution
26 threshold, if that makes sense. So I just want to make
27 sure that's clear, and then any decision to concentrate
28 samples or progress them through is made by the reporting
29 scientist. And then there's also circumstances where we
30 have case conferences with police on major cases such as
31 murders and things, where those decisions around samples,
32 what samples are analysed or progressed, would be made in
33 collaboration. So it all depends on the case
34 circumstances.
35

36 Q. Okay. Well, that leads on to the next question or
37 two. If it is the case that the threshold is 0.01 but is
38 matched to a discretion by the scientist to perform some
39 strategy, does that not both allow and require that all
40 samples below that threshold be directed to a scientist for
41 strategic consideration?

42 A. Correct.
43

44 Q. Okay. And is that the system that is in application
45 in South Australia?

46 A. Yes.
47

1 Q. Earlier in the week, for which you weren't present,
2 evidence was led to the effect that there is a
3 sample-by-sample or production line-type processing
4 applicable in Queensland, but is that concept one that you
5 understand?

6 A. It is, yeah. It's an item level analysis.

7
8 Q. From what you say, that is not the method that is in
9 application for the major crime samples in South Australia?

10 A. No. Well, in a sense of the samples come in, they're
11 all analysed, but the results of the samples will all end
12 up with a reporting scientist that will then look at it
13 from a case perspective.

14
15 Q. Yes. So all samples, once they go through the
16 analytical phase, go to a reporting scientist for
17 consideration as to what further, if anything, may need to
18 be done?

19 A. Correct, with the context and the information they
20 have in relation to that case.

21
22 Q. Yes. In the Queensland model, it's basically the
23 sample-by-sample analysis but there are certain exceptions
24 where cases are referred to scientists for more rapid
25 management. That's selective according to certain
26 criteria. Can you tell me this: are all major crime cases
27 in South Australia assigned to a scientist for strategic
28 assessment?

29 A. All major cases are, as far as I'm aware. I don't
30 know of any that aren't.

31
32 Q. Well, let's be clear what we are talking about. In
33 Queensland, there is a description called "Major Crime" and
34 it is by contrast with "Volume Crime", which is the
35 property related crime?

36 A. Right.

37
38 Q. So major crime relates to, essentially, offences
39 against a person. Do you have such a delineation in South
40 Australia?

41 A. No, we don't. We have volume crime and major crime is
42 combined together, and we have two work flows that are
43 "with suspect" and "without suspect".

44
45 Q. If we were to talk about offences against the person,
46 and they happen to be called in Queensland "major crime",
47 are all such cases assigned to a reporting scientist for

1 whole-of-case assessment?

2 A. Yes. We don't run a digital system. We run a
3 hard copy system. So every case has a case file. That
4 case file is handed to someone who must analyse that case
5 and write a statement for court purposes. The statement
6 contains all of the samples that are within that case.

7
8 Q. And obviously, a decision has been made by - or at
9 least the funder of your lab - and I am not sure who is the
10 funder in your case - that is a satisfactory process to
11 which to apply the funds? In other words, it's worthwhile
12 to do it that way, from the funders' point of view?

13 A. We are funded directly from Treasury through the
14 Attorney General's Department. I would advocate the funder
15 probably doesn't know. The Treasury don't know our
16 internal processes, so aren't making a decision that way.

17
18 Q. They might now.

19 A. They might now, yeah. But we are looking to adopt an
20 electronic case management system, but we would - and that
21 means we can get rid of our hard copy case files. But we
22 would still do those considerations within a case context.
23 I mean, that's why we do case conferencing with SA Police.
24 So it's case consideration.

25
26 Q. Is the case allocation approach one that has always
27 been in play in South Australia?

28 A. I can't comment on prior to me arriving as director,
29 but certainly since I've been here, which is, unfortunately
30 only a year and a half, we have cases. And I suppose I
31 should delineate. We might report back a result to police
32 as we can or result report something - might not wait until
33 the whole case is contained, but certainly for all the
34 cases I see we have case files, and those case files are
35 collated and signed off.

36
37 Q. At what point is the case file (indistinct)? Is it
38 after gone through Analytical? Or before that?

39 A. Yes. So we have a team that do the - and that might
40 be where the confusion is coming. We have a team that does
41 the exhibit recovery, which isn't overseen by a reporting
42 officer. And it goes through DNA analysis. So it would be
43 after that process, but they can still review those results
44 as a group and then they can ask for further work to be
45 done wherever they need to within that case context. But
46 at the beginning they don't have it.

47

1 Q. So the case allocation is not contingent, for example,
2 on the scenario where a request is made of a scientist for
3 a statement for court? It occurs well before that scenario
4 might arise?

5 A. Yes. Yeah. Absolutely.
6

7 Q. Has any consideration ever been given to what
8 efficiencies there might be to the alternate
9 sample-by-sample or production line method?

10 A. Not at this stage, because we don't have a LIMS system
11 that could support it. There are certainly some advantages
12 for streamlining that item-level reporting can have, so
13 that can certainly be advantageous at the stream-lining
14 effect, but you would need to have someone who looks at it
15 from a case perspective at some point in the process.
16

17 Q. Is the streamlining sample-by-sample approach, can you
18 tell me this, is it more likely to be applicable and
19 appropriate to high volume laboratories as an efficiency
20 measure?

21 A. Probably those laboratories that use that process are
22 probably more aligned to high throughput processing labs
23 and get a higher throughput, but not all. It's - I know
24 laboratories that have a case approach that are high
25 throughput as well. So it becomes that balance of
26 resources versus systems, and what your system can handle
27 or allow you to adopt.
28

29 Q. Am I right that South Australia by comparison to, say,
30 Victoria or even Queensland, is not a high throughput
31 laboratory?

32 A. No, we don't get anywhere near the samples that
33 yourselves get or New South Wales or Victoria. We are
34 probably a medium-sized lab.
35

36 Q. You were asked about the scientific merit of some
37 decisions that had been made, firstly on 6 June and then 19
38 August?

39 A. Yes.
40

41 Q. Can I confirm with you that your views about those are
42 based only on their scientific merit?

43 A. On the information that I've been provided and an
44 assessment of that information.
45

46 Q. But your approach is to assess the scientific merit,
47 am I right?

1 A. Yeah. Absolutely.

2

3 Q. And, for example, not to take into account a scenario
4 where a policy decision was made in Queensland to abandon
5 the thresholds and establish a Commission of Inquiry? And
6 in that scenario, there was no opportunity for a
7 decision-maker to undertake any validation of some
8 alternate approach beyond the one which had applied prior
9 to the Options Paper' decision? You haven't taken those
10 kind of considerations into account?

11 A. No, I haven't. I haven't taken the political
12 environment into account in that ISO.

13

14 Q. Someone has to, do they not?

15 A. I would agree.

16

17 Q. Okay.

18

19 MR RICE: Thank you.

20

21 THE COMMISSIONER: Who is next? Mr Hickey, do you have
22 any questions?

23

24 MR HICKEY: Yes, I do. I have a few questions, please,
25 Commissioner.

26

27 **<EXAMINATION BY MR HICKEY**

28

29 MR HICKEY: Q. Professor, my name is Hickey. I appear
30 for Catherine Allen and Justin Howes. I have a few
31 questions to ask you arising from the evidence that you
32 gave my learned friends Mr Hunter and Mr Rice about your
33 view that an ideal situation is that there should be
34 collaboration between those in the lab, the scientists, and
35 the police. Do you recall that evidence?

36 A. Correct.

37

38 Q. Could I ask you a little bit about that. In South
39 Australia is it the case that there is a person who is
40 responsible for the forensic department of the South
41 Australian Police with whom you regularly liaise?

42 A. That's correct.

43

44 Q. And is that person a person who holds scientific
45 qualifications?

46 A. Not that I'm aware of.

47

1 Q. All right. I am going to ask you to assume some
2 matters and then at the end of that I am going to ask your
3 opinion about something.

4

5 Can I ask you to assume that there exists a person in
6 that state with whom you deal from time to time.

7 A. Yes.

8

9 Q. And that that particular person holds particular
10 qualifications and has particular expertise, and I am going
11 to tell you what that is.

12 A. Okay.

13

14 Q. The particular qualifications that that person has is
15 a Bachelor of Applied Science in biology and a Masters of
16 Science in Forensic Science. So those are the
17 qualifications.

18

19 And the experience that that person has, relevantly,
20 are these: They have held scientific roles within the
21 Police Service since 1991, they manage the DNA Management
22 Section of the Police - feel free to take notes if it
23 assists.

24 A. I am. Thank you.

25

26 Q. And I will repeat any of this if it helps you. They
27 are a member of the International Standards Organisation
28 ISO. You understand who that is?

29 A. Yes.

30

31 Q. And, indeed, they're a member of the Technical
32 Committee of that organisation which is responsible for
33 putting together and developing standards of delivery of
34 forensic science throughout the world.

35 A. Yes.

36

37 Q. They are a person who sits on the equivalent domestic
38 board in Australia.

39 A. Yes.

40

41 Q. They are a person who has sat on the NATA board for
42 three years and purports to have been a technical advisor
43 for audits.

44 A. What kind of audits?

45

46 Q. So those are the - for audits, NATA audits. Those are
47 the qualifications and the experience that I want you to

1 assume that person you deal with has.

2 A. Yes.

3

4 Q. I want you to assume that you provide that person a
5 copy of the Options Paper. You read the Options Paper?

6 A. Yes.

7

8 Q. Given that suite of qualifications and expertise,
9 would you think such a person should find the Options
10 Paper, having closely read it - I want you to assume
11 that --

12 A. Mm-hmm.

13

14 Q. -- would you expect such a person to find the Options
15 Paper a very difficult read?

16

17 MR HUNTER: I object to the question. The bare recitation
18 of those questions says nothing about the ability of the
19 author to comprehend or otherwise --

20

21 THE COMMISSIONER: Q. That may be right, but - and if
22 that's so, then the question may lead to an answer that
23 doesn't have any great significance for me. But it is a
24 Commission of Inquiry, I can handle it, and you'll tell me
25 what I should do. And the answer may be very helpful, so
26 we better let it in. Go ahead, Professor?

27 A. I don't know whether I am going to be helpful, I'm
28 sorry. I can't comment. None of - I hire graduates with
29 Masters into biology and they still require five years of
30 training in order to learn the DNA analysis processes. A
31 biological science degree is not going to teach you about
32 forensic DNA analysis, and unless they are auditing - are
33 they auditing DNA labs or are they auditing crime scene or
34 management or, I don't know, chemistry? It depends on what
35 they're actually auditing in NATA. That, itself, wouldn't
36 give you that technical detail and nor would any of the
37 other roles. So I can't actually comment on whether they
38 would understand it or not, because I don't know what their
39 expertise is in.

40

41 MR HICKEY: Q. Thank you. Would you describe the
42 document, having read it, as being in the nature of a
43 scientific paper?

44 A. It certainly has some assumed knowledge. It's
45 written - I mean, the language is relatively easy to
46 understand, but there is a lot of assumed knowledge and
47 technical information that underpins a lot of some of the

1 data, that if you had a lot of experience in DNA, that you
2 could infer some information from it. It would - certainly
3 if you understood the processes within the laboratory, you
4 would be able to elicit more information out of the report
5 or infer more from it. I am not sure it's - in terms of
6 where my counterpart would be making a decision and the
7 information that they need to know in order to assist them
8 in making that decision, I'm not convinced the Options
9 report has that to the level it should.

10
11 Q. You make that comment in circumstances where your
12 counterpart does not have scientific qualification?

13 A. Even if that counterpart had a science degree, if they
14 had worked in a DNA laboratory for five years, then I can
15 suggest that they should be able to understand it. But
16 barring them working in a DNA lab and going through the DNA
17 lab training, then I wouldn't agree with that.

18
19 Q. Thank you, Professor.

20
21 MR HICKEY: Thank you, Commissioner.

22
23 THE COMMISSIONER: Thank you, Mr Hickey. Ms Mckenzie, do
24 you have anything?

25
26 MS MCKENZIE: No, thank you, your Honour.

27
28 **<EXAMINATION BY THE COMMISSIONER**

29
30 THE COMMISSIONER: Q. I wanted to ask you a couple of
31 things, Professor. The first is that you were asked about
32 South Australia's using a threshold of a particular kind.
33 Could you explain what that threshold is and how it works
34 in the context in which you use it?

35 A. Our threshold is higher. It is 0.01 ng/ μ L as a
36 threshold. We use it in the context of our elution
37 volume is 65 microlitres, approximately, and so we start
38 with a higher concentration of DNA. And I gave you the
39 example in the initial discussion. So we start with a
40 higher concentrated DNA. So the equivalence of comparing
41 0.0088 and a 0.01, they're not the same when you have a
42 starting volume that one is more concentrated than the
43 other.

44
45 And so, we push those through, we apply the same
46 thresholds to volume and serious crime, they go through our
47 processes, and then the scientists at the other end can

1 determine that if they look at the sample itself and look
2 at the case context and the quantitation results, then they
3 can request that that sample is analysed or progressed to
4 PCR. They can request samples are concentrated, although
5 that is not something that occurs that often, because we
6 start with the 60 microlitre elution volume. We do
7 concentrate some samples, such as reference samples and
8 things like that. They may go in concentrate if they
9 choose to. So it is a discretionary process. And then if
10 it is a very serious case, we'll have a case conference
11 meeting with the police, who may target other samples or
12 existing samples for further analysis or a different type
13 of analysis. So we have everything at the disposal of our
14 scientists.

15

16 Q. So the scientists who perform the chemistry, as I'll
17 call it, act under the rule that if the quant is below 0.1,
18 they will not further test a sample, but then that system
19 is operating under rules which give responsibility for a
20 particular case to a particular scientist at an early
21 stage; that is, at the point where all the results come in,
22 and that scientist will see all the results, including the
23 fact that certain samples have not been tested fully. Am I
24 right so far?

25 A. That's correct. So we have what's called a reporting
26 officer.

27

28 Q. Yes.

29 A. And the reporting officer who will analyse the results
30 that come out and look at it within the case context,
31 et cetera, will make that determination.

32

33 Q. So the system you adopt is that every sample that is
34 not tested for that reason must be considered by a
35 scientist as part of the job of looking at the case as a
36 whole with a view to determining whether or not that sample
37 should be tested; yes?

38 A. That's correct.

39

40 Q. And the information that that scientist has, what's
41 the case information that that scientist has as a matter of
42 course? I am speaking of - anyway, as a matter of course,
43 what case information does she have?

44 A. So the police fill out a form and they put the
45 circumstances of the crime or what's occurred, of the
46 events, and they will also have the original exhibit. So
47 if it's a swab, they will just have a swab. But items of

1 clothing or knives or whatever will be analysed by the
2 Evidence Recovery team. So the scientists can access
3 pictures or even access the item if they need it and can
4 access all the pictures, the description, the test results
5 and the case information.
6

7 So they have all of that information at their disposal
8 and they may decide, for instance, if it is a serious case,
9 "There is a bloodstain on a T-shirt that didn't provide a
10 result but I can see here another stain. Please go back
11 and retest that stain". So there are various options of
12 where they would like to intervene and conduct further
13 analysis.
14

15 Q. And in a case in which the scientist wishes to get
16 further information from the investigating police officer,
17 is that police officer's identity known? Is it part of the
18 record so that that scientist can call that person?
19

20 A. They can do that.
21

22 Q. And does that happen commonly? In any event, do your
23 scientists do that?
24

25 A. Probably not for volume crime as much. But certainly
26 for serious crimes there would be a strong collaborative
27 relationship between the investigators that look after
28 those most serious of cases. So, yes, they could get on
29 the phone if they want to.
30

31 Q. Yes. The other question I have is - I'm aware that -
32 I just want there to be an understanding about the
33 sensitivity of the testing that can be conducted by
34 scientists such as you which might not be required in many
35 cases, but the limit of it is relevant. And I am aware
36 that there was a case in which you set out to see if you
37 could get a profile from a single cell, and you managed to
38 do that?
39

40 A. It was --
41

42 Q. A sperm head on some underwear, I think?
43

44 A. So that was a case sample from when I worked at the
45 AFP doing a case.
46

47 Q. Yes.
48

49 A. We had a sexual assault case. There was a slide done
50 from the swab of the inside of the crotch area of the
51 underpants, and a couple of sperm heads were located, so we
52 knew we had sperm, and those samples progressed through in
53

1 what we call the differential extraction where we separate
2 the female and the male components. And it took 12 goes to
3 get a full profile from the male, adjusting the chemistry
4 to certain degrees. The first result gave only female DNA,
5 so that was the difference between tweaking the chemistry.
6 It is chemistry after all, and if you add a bit more of
7 something, or increase a (indistinct) or - you know, there
8 are varying things and chemicals you can do to adjust the
9 process and it's the end result.

10

11 Q. How long did that take you?

12 A. Three months. And you wouldn't do that in every case.
13 This was a serious enough case that you would actually
14 invest that time and that resource and that cost. I would
15 not have done that for a volume crime case, for instance.
16 A break-and-enter would probably end at the first shot, but
17 this case was quite a serious sexual assault case and was
18 therefore worth the investment.

19

20 Q. And just so it is clear, what was the volume of
21 material that you had? You said that you had two sperm
22 heads on the slide?

23 A. It was --

24

25 Q. From what was seen on the slide?

26 A. I can't recall the exact number that we saw, but the
27 DNA sample itself was taken from another area on the
28 crutch. So I knew I had a couple - I knew I had a very
29 small amount of male DNA available to me, but I knew it was
30 there. That was the significance of it, is that I knew I
31 had male DNA. And if there were a couple of spermatozoa on
32 the slide, there was going to be maybe a few on the crotch
33 that I could go. But I had the underwear that I could go
34 back to and analyse --

35 Q. Yes.

36

37 A. -- and, you know, take a couple of different samples
38 and extract them in a different way and concentrate them
39 down. But being able to go backwards and forwards and to
40 the original item was what meant that I could get a result
41 in the end.

42

43 Q. You were given responsibility for that case, and you
44 commanded the whole field on it so you could do it?

45 A. Yes. Now --

46

47 Q. Yes? Go on. Were you going to say something?

1 A. I didn't do every component of the analysis process --

2

3 Q. No, no.

4 A. -- but I could direct it.

5

6 THE COMMISSIONER: That's right. Anything arising out of
7 anything I have asked? Thank you Professor. Sorry, Ms
8 Hedge?

9

10 MS HEDGE: Sorry, I've just got one short thing. It is
11 not arising out of what your Honour said.

12

13 THE COMMISSIONER: No, go ahead. Yes.

14

15 <FURTHER EXAMINATION BY MS HEDGE

16

17 MS HEDGE: Q. Can you see me again, Professor?

18 A. I am sure I will soon.

19

20 Q. I just have to correct an error that I made in my last
21 question. We were talking about 19 August 2022.

22

23 A. Yes.

24

25 Q. We were talking about which samples would go to
26 automatic concentration. I corrected myself that it was P1
27 and P2 go to automatic concentration after 19 August; P3 to
28 amplification. I don't believe that necessarily changes
29 your answer because you made a distinction between major
30 and volume crime in your answer, but out of fairness, is
31 there anything else you wish to add to that part of your
evidence?

32

33 A. So P1 and P2 I understand are the serious crime cases,
34 so that's reasonable. Whether P3 goes to concentration or
35 amplification first is essentially a management decision
36 because it's a volume crime case. And so, obviously based
37 on the result, you might want to progress with a
38 concentration step to maximise your results, but there may
39 be a management decision that they don't want to invest as
40 much in volume crime and want to leave the resources for
41 the serious crime and therefore choose to go amplification.
42 From my perspective, that's a management decision, based on
43 a study that they know what the impact is.

44

45 Q. And when you say that it's reasonable to do something
46 different for P3 than P1 and 2, that doesn't take away from
47 your earlier comments about having blanket rules rather
than discretion; is that right?

1 A. That's correct. That's correct.

2

3 Q. All right.

4

5 MS HEDGE: Yes, thank you.

6

7 THE COMMISSIONER: Thank you. Do any of you have any
8 questions arising out of what Ms Hedge has just led? No?
9 Thank you.

10

11 Thank you, Professor, thank you very much for your
12 evidence.

13

14 THE WITNESS: Thank you very much.

15

16 MS HEDGE: Commissioner, apparently we need a few minutes
17 to reset the cameras.

18

19 MR HUNTER: Before you adjourn, Commissioner, can I raise
20 a matter. It concerns two statements from
21 Inspector Neville that were uploaded to the public book
22 yesterday. For reasons that aren't presently relevant,
23 those statements were not properly redacted --

24

25 THE COMMISSIONER: I see. Have you contacted anyone?

26

27 MR HUNTER: They have been taken down, but, unfortunately,
28 there was some publication of some sensitive material which
29 has, mercifully, been redacted by the media organisation
30 that published that information.

31

32 THE COMMISSIONER: Yes.

33

34 MR HUNTER: But we seek a non-publication order in respect
35 of those two statements. And they were exhibits 3 and 12
36 on the public exhibit list. They are Inspector Neville's
37 statement of 26 August and 14 September.

38

39 THE COMMISSIONER: The order you want me to make is a
40 non-publication order with respect to the unredacted
41 versions of those statements; is that right?

42

43 MR HUNTER: They were partially redacted already, but not
44 completely.

45

46 THE COMMISSIONER: I just want to describe them correctly,
47 that's all.

1
2 MR HUNTER: It will be the form in which they were in as
3 at this morning. They were taken down this morning, I am
4 told. That is all that I can describe them as.

5
6 THE COMMISSIONER: No, that's all right.

7
8 I direct that the content of the statement of David
9 Harold Neville dated 26 August 2022, which is marked as
10 exhibit 3 in this inquiry, and the statement of David
11 Harold Neville dated 14 September 2022, which is exhibit 12
12 in this inquiry, as in the form in which they were uploaded
13 and published as at today's date, 28 September 2022, in
14 their partially redacted state, not be published.

15
16 Is that satisfactory?

17
18 MR HUNTER: Thank you. Can I indicated for those who are
19 interested in his redacted statement that we understand
20 that a properly redacted version of each will be uploaded
21 tomorrow.

22
23 THE COMMISSIONER: Thanks very much for that. Ms Hedge?

24
25 MS HEDGE: Yes?

26
27 THE COMMISSIONER: What next?

28
29 MS HEDGE: We need a few minutes to change the cameras, as
30 I understand it, for the next witness. Is that correct?

31
32 THE COMMISSIONER: All right. What is the time?

33
34 MS HEDGE: And then we will continue with
35 Inspector Neville.

36
37 THE COMMISSIONER: Let's resume at just after 3.55 pm or
38 thereabouts. We will adjourn for 10 minutes or so.

39
40 <THE WITNESS WAS RELEASED

41
42 SHORT ADJOURNMENT

[3.44pm]

43
44 <DAVID HAROLD NEVILLE, continued

45
46 THE COMMISSIONER: Yes, Mr Hodge.

47

1 MR HODGE: Before the witness starts, can I just hand up
2 to you a document. It is just a list of documents to be
3 tendered from yesterday. Just by doing this, I just want
4 to expedite things going up and being made available.

5
6 THE COMMISSIONER: Yes.

7
8 MR HODGE: That now allocates for the numbers from 22
9 through to 29. I think you have two copies.

10
11 THE COMMISSIONER: I see. It is the same thing. I am
12 missing document 21, though, exhibit 21. The last one on
13 the previous list that you gave me was 20. Anyway, we will
14 sort it out later, don't worry about it.

15
16 MR HODGE: Thank you. Then can I also just ask to tender,
17 and we will get the exhibit numbers sort it out, the two
18 reports from Professor Wilson-Wilde. The first one was
19 dated 20 September 2022 and the doc ID is
20 [EXP.0002.0001.0001], and the second one that was referred
21 to, which is dated 7 August 2022, is [EXP.0002.0003.0001].

22
23 THE COMMISSIONER: We will give them exhibit numbers when
24 we sort out the mess. Yes.

25
26 MR HODGE: We can treat those as tendered?

27
28 THE COMMISSIONER: Yes, yes. You can.

29
30 MR HODGE: Thank you. Mr Rice? Yes?

31
32 **<EXAMINATION BY MR RICE continued**

33
34 MR RICE: Q. Inspector Neville, we were discussing some
35 of emails post 19 August this year, shall we go to that,
36 shall we?

37 A. Sure.

38
39 Q. Mr Operator, the document is [WIT.0020.0009.0001_R at
40 0013] and the page is page 13? Thank you.

41
42 Perhaps before we go to that, you sent this email to
43 Mr Rigby in the context, was it not, that you had had
44 discussions, or your staff had, with perhaps several
45 scientists who had expressed concern that the microcon to
46 full option was not available to them?

47 A. Yes.

- 1
2 Q. Your email was directed to that scenario in
3 particular, was it not?
4 A. Yes. Well, adjusting. Not using a blanket volume.
5
6 Q. Yes.
7 A. And microcon to full would be one of those options.
8
9 Q. So if we go back to what we were talking about, I
10 think before lunch, which is the second-last paragraph -
11 perhaps that could be enlarged - the first sentence of that
12 relates to the prospect that testing might exhaust a
13 sample. Do you see that in the second line?
14 A. Yes.
15
16 Q. The prospect of testing that might exhaust a sample is
17 actually a reference to the microcon to full process in the
18 context in which this issue was raised to you, as we just
19 discussed, correct?
20 A. Yes.
21
22 Q. And it's true, isn't it, that the samples that might
23 be the most obvious candidates for this kind of process are
24 those in the very low quant range?
25 A. I guess so.
26
27 Q. That's the kind of scenario as it was put to you,
28 wasn't it, by these scientists --
29 A. That's what I was told.
30
31 Q. -- that there are quite low quant samples --
32 A. Yes.
33
34 Q. -- that might benefit from this process?
35 A. Yes.
36
37 Q. And this prompted you to write the email in the
38 fashion that you did, correct?
39 A. That's right.
40
41 Q. It is the case, or do you accept that it is the case,
42 that the samples in this low quant range, even with
43 microcon to full, are those which are least likely to
44 develop a usable profile by virtue of their quant?
45 A. It would make sense.
46
47 Q. Well, in that case, can I suggest to you there would

1 be few, if any, such samples that would satisfy the test
2 which you imposed that there be a high likelihood of
3 yielding a useful profile before that measure was
4 undertaken?

5 A. Well, look, the likelihood of getting DNA out of
6 samples, I guess, is never going to be 100 per cent. And
7 what's high is something of debate. Like, for instance,
8 30 per cent could be considered high. But, look, I did try
9 to qualify this later. So I admit in this email that yes,
10 the bar might seem a little bit too high to make a
11 decision.

12

13 Q. Do you agree that these are the samples least likely
14 to yield a profile?

15 A. That's right.

16

17 Q. We are talking about - in reality, we are talking
18 about the possibility of developing a profile as opposed to
19 any kind of likelihood, are we not?

20 A. Well, that's right. But you either test it and you
21 get nothing - sorry, you either test it you get a result or
22 the chance of a result, or you don't test and you get
23 nothing. So generally if your lab has the same capability
24 as any other lab to test it and possibly get a profile,
25 we're happy to exhaust the sample. But if it is some sort
26 of technology that you know that your lab doesn't have, I
27 requested, "Please give us the opportunity to go somewhere
28 else". For instance, you know --

29

30 Q. I think you agree that the prospect of exhausting a
31 sample is a serious one to be properly considered according
32 to proper criteria pertaining to that sample?

33 A. Yes, but it is a destructive test and that's by
34 nature, and you can't get away from that.

35

36 Q. But does not your requirement actually direct to the
37 laboratory a need to undertake some kind of data analysis
38 of the process of Microcon to full to identify what kind of
39 likelihood is in fact involved, whether it involves a high
40 likelihood - however that might be defined - or something
41 else? In other words, there's no data, is there?

42 A. I understand they're obtaining data.

43

44 Q. Okay. Once that's obtained, then that might shed some
45 more light on this issue of likelihood that you have raised
46 and in fact required that it be satisfied?

47 A. Yeah, I just want to again say I qualified that on

1 later emails to the people at the laboratory. Not to
2 Mr Rigby, no, but after further discussions with
3 Lara Keller and Helen Gregg, and they asked for some
4 audited advice, I gave further qualification that we
5 understood that there is no guarantee getting profiles and
6 that there is a balance between trying to preserve the
7 sample sometimes and actually using it to try and get a
8 result.

9
10 Q. I guess what I am really putting to you is that an
11 issue now arises which requires sober assessment in a
12 scientific way --

13 A. Yes.

14
15 Q. -- by extraction of data analysis to determine the
16 nature and extent of the discretion which you would permit
17 to be allowed with respect to Microcon to full?

18 A. Absolutely. This has to be done in a scientific way
19 and backed up by data and validation. And that's why we
20 have asked for a pause on that testing, if you like.

21
22 Q. It might even require a project, such as Project #184,
23 to do the data mining and do the analysis and come up with
24 information to give to you? In proper form, of course. Do
25 you accept that that might be a scenario that is posed by
26 what you have put in this email?

27 A. Possibly.

28
29 Q. Can I suggest to you the conundrum that you have
30 delivered to the laboratory is revealed in the first page
31 of that document, if we can go to that
32 [WIT.0020.0007.0001_R]. This is your latest email of
33 26 September, 12:21. The last line of that says:

34
35 *We can't really wait months to test some of*
36 *these samples.*

37
38 Correct?

39 A. That's right.

40
41 Q. So you accept that it may need a project to evaluate
42 the criteria for Microcon to full in a proper way, but in
43 the meantime you can't wait for months to test the samples
44 that are backing up. That's what you have delivered to the
45 laboratory, isn't it?

46 A. My understanding is that if you're going to have a
47 blanket rule about, "everything is going to be

1 micro-concentrated to a certain volume", then it would
2 require a fair bit of validation. If some of these samples
3 are going to need to be tested, I guess it might be on a
4 case-by-case basis and with consultation with police until
5 that's done. But if there's going to be - if we are going
6 to stick with a blanket volume, it needs to be something
7 that doesn't risk the loss or the ability to get a profile
8 from those at the bottom end.

9
10 Q. Well, from what?

11 A. A profile from those at the lower end of that range.

12
13 THE COMMISSIONER: Mr Rice, I don't want to interrupt you.
14 I don't want to stop you, certainly. What's the concern to
15 which you are directing your cross-examination?

16
17 MR RICE: Well, it's a dilemma that is presented by
18 imposing a test of likelihood or high likelihood that
19 Microcon to full will reveal a result. A scenario which
20 requires assessment and possibly a project to determine the
21 proper criteria --

22
23 THE COMMISSIONER: But as I understand what's happened, it
24 emerged at about the time the Commission was established
25 that the process adopted in 2018 ought not be continued,
26 pending further work, so there was a desire to revert to
27 the previous status quo. That's the first step, wasn't it?
28 Is that right?

29
30 MR RICE: Yes.

31
32 THE COMMISSIONER: And then after that decision was taken,
33 it emerged that what had been established was not the
34 status quo, but the status quo without the concentration
35 step?

36
37 MR RICE: Yes.

38
39 THE COMMISSIONER: So then the next decision that was made
40 was to introduce the concentration step. And all of that
41 was done in good faith and, as you correctly said, in a
42 peculiar context, an urgent and peculiar context. And then
43 it emerged that there was a scientist or scientists within
44 the lab, who were concerned that using a rule for all cases
45 was not the best practice, but that discretion should be
46 exercised. So Inspector Neville put that information
47 forward to the authorities, and there it sits for the

1 moment, but his contention in the correspondence related to
2 a problem that might arise if a blanket rule were adopted
3 and applied, and that, in those circumstances, he was
4 concerned that those making the decision took it upon the
5 footing that there was a degree of certainty of getting a
6 result.

7
8 But history has passed by that problem, because at the
9 moment there is a fixed rule to concentrate to
10 35 microlitres, but the authorities have been given
11 information about what scientists think of that rule, that
12 there is a better way to permit a discretion to be
13 exercised, and no doubt that will be looked at. But I
14 don't know that I am going to be concerned with making a
15 finding about whether Inspector Neville's point, that
16 particular point, is right or wrong, sound or unsound,
17 because it relates to decisions being made in the
18 circumstances that you have identified.

19
20 And so, why does it trouble you? I can see it
21 troubles your client. So why does it trouble your client?

22
23 MR RICE: The situation is really this, that yes, there's
24 a blanket rule, and it may well be that it was desirable to
25 exercise some exception to that. But that gives rise to a
26 scientific problem of identifying properly what the
27 exception would look like and validating - in effect,
28 validating a new process in the alternative.

29
30 THE COMMISSIONER: I think, as I understand it so far from
31 what Professor Wilson-Wilde said and from the reports, if
32 you're going to adopt a process, a fixed process, then you
33 better test it and validate it before you adopt a fixed
34 process.

35
36 MR RICE: Yes.

37
38 THE COMMISSIONER: But if you're going to leave it to the
39 discretion of scientists to decide whether or not to take a
40 step or not, then although there can be fixed criteria to
41 take into account as factors, you could also leave it up to
42 them to decide, as Professor Wilson-Wilde says happens in
43 her lab in relation to this threshold issue.

44
45 MR RICE: But it is really the timing and methodology of
46 achieving that result.

47

1 THE COMMISSIONER: Yes.
2
3 MR RICE: You can't just say today or tomorrow --
4
5 THE COMMISSIONER: I am in the business of making
6 findings.
7
8 MR RICE: Yes.
9
10 THE COMMISSIONER: So there is a finding that you don't
11 want me to make because it would be wrong. What's the
12 finding you don't want me to make?
13
14 MR RICE: No, I am just seeking to draw out --
15
16 THE COMMISSIONER: Yes.
17
18 MR RICE: -- that, on the assumption it is desirable to
19 have some exception to the blanket rule, that needs time
20 and effort to develop.
21
22 THE COMMISSIONER: Yes, I think that's unarguable. Of
23 course that's right.
24
25 MR RICE: That's really the only point I was looking to
26 make. In circumstances where the Inspector has said to the
27 laboratory, "We can't wait months for testing".
28
29 THE COMMISSIONER: Yes.
30
31 MR RICE: So that raises a question, "Well, what do you do
32 pending" --
33
34 THE COMMISSIONER: Wasn't he talking about, on the basis
35 there has been a pause in testing, "We can't wait months to
36 test some of these samples", so you can't just stop
37 testing. But nobody stopped testing, have they? So that
38 assumption is --
39
40 MR RICE: No, but it leads to the scenario where, pending
41 development of an alternate process, if the desire is to
42 continue to process, then it will be on the basis of the
43 19 August memorandum because that is the best available
44 scientific basis at this point in time.
45
46 THE COMMISSIONER: Yes. But he's not saying it isn't, is
47 he? Anyway, you ask him. Go ahead. I just wanted to

1 identify your client's concern about what finding I might
2 make, because if I am not going to make a finding, you
3 don't have a concern.

4
5 MR RICE: No. Well --

6
7 THE COMMISSIONER: But if there is a risk I might make a
8 finding, then you should continue to educate me and elicit
9 the fact.

10
11 MR RICE: No, it is not really a matter of persuading you
12 to make a finding or not, Commissioner.

13
14 THE COMMISSIONER: Yes.

15
16 MR RICE: I was just really alerting to the dilemma that
17 developing an alternative to the memorandum is not as
18 simple as --

19
20 THE COMMISSIONER: No, of course not. Of course not.

21
22 MR RICE: I've got no other point to make.

23
24 THE COMMISSIONER: And if, for example, your client
25 considered that the process advocated in the Options Paper
26 was never to be resumed and the question is raised, "What's
27 to replace it?", then of course you will have an interim
28 measure and that's none of my business because I'm looking
29 at the position to this date, in a sense, and not into the
30 future. There are going to be many interim positions,
31 aren't there, and many studies.

32
33 MR RICE: The only point, Commissioner, is that interim
34 measure --

35
36 THE COMMISSIONER: Yes.

37
38 MR RICE: -- may not be and apparently is not one which
39 will, for that interim period, be entirely satisfactory to
40 the police, but that's just a product of the flow of
41 events.

42
43 THE COMMISSIONER: Of course it is, yes. And no doubt
44 Queensland Health and FSS and Police will work towards
45 arriving at the best possible things that can be done now
46 about the things that will be done in the future. Yes.
47 But some criticisms might be made about the particular

1 proposals that were put forward from time to time since
2 June, so be it, but they were put forward and modified and
3 under the urgent circumstances and pressing circumstances
4 that you rightly identified.

5
6 MR RICE: Insofar as Inspector Neville expresses concerns
7 about the interim procedure --

8
9 THE COMMISSIONER: Yes.

10
11 MR RICE: - it is simply the case, which is really the
12 only point I was seeking to make, they are not capable of
13 immediate resolution, that's all.

14
15 THE COMMISSIONER: No, that's right. I accept that.

16
17 MR RICE: Yes. That's all. Thank you.

18
19 THE COMMISSIONER: Mr Hodge, did you want to say anything
20 about that?

21
22 MR HODGE: I don't want to say anything about that.

23
24 THE COMMISSIONER: All right. Mr Rice, you were on your
25 feet cross-examining Inspector Neville. Did you want to
26 continue?

27
28 MR RICE: No, I had finished.

29
30 THE COMMISSIONER: You had finished?

31
32 MR RICE: Yes, thank you.

33
34 THE COMMISSIONER: Is there anybody else who is going to
35 ask questions? Ms McKenzie?

36
37 MS MCKENZIE: No, thank you, your Honour.

38
39 THE COMMISSIONER: Do you have any re-examination,
40 Mr Jones?

41
42 MR HUNTER: I do have some questions. But I think,
43 Mr Jones, you have some too?

44
45 MR JONES: I don't.

46
47 THE COMMISSIONER: No, I'm sorry, I forgot that you hadn't

1 asked any questions. Go ahead, Mr Hunter.

2

3

<EXAMINATION BY MR HUNTER

4

5 MR HUNTER: Q. Can I just clarify something concerning
6 the way in which samples from murder investigations are
7 classified for the purposes of whether they are P1 or P2.
8 Is it the case that any sample in a murder is P1?

9

A. No.

10

11 Q. And so is that why, whilst in 2018 - November 2018 -
12 when you became aware of this issue with respect to samples
13 in a particular murder that had not been auto-microconned,
14 if I can use that expression, the same issue didn't arise
15 in December 2021 when you got some DIFP results for a
16 murder investigation and the samples in that.

17

A. I believe so.

18

19 Q. That's because those samples were P2.

20

21 A. Yes. P1, there is a limited number that can be put
22 through. P1, it's limited to 15, I think is the physical
23 capability of the instruments used. So, you know, it would
24 only be the very highest priority samples put through. The
25 rest would go through the routine P2 process.

25

26 Q. So it was therefore possible to get a DIFP result
27 in --

28

A. Yes.

29

30 Q. -- despite it being a murder investigation?

31

A. Correct.

32

33 Q. We have heard about the decision that was made in June
34 of this year to amplify the low quant samples without
35 micro-concentration.

36

A. Yes.

37

38 Q. Did the QPS have any involvement in that decision at
39 all?

40

A. I certainly didn't and I didn't hear about anybody
41 else from QPS being consulted.

42

43 Q. In terms of the availability of the forensic record at
44 the laboratory, we know that the reporting scientists have
45 access to the forensic record.

46

A. Yes.

47

- 1 Q. Do the Analytical scientists have access to the
2 forensic record?
- 3 A. Yes.
4
- 5 Q. Do I understand your position to be that whatever
6 model ultimately be adopted at the laboratory, it's an
7 essential part of the process that the Forensic Register be
8 consulted at the analytical stage?
- 9 A. Yes.
10
- 11 Q. Particularly obviously with low quant samples.
12 A. Yes.
13
- 14 Q. And at that point a strategic decision be made about
15 whether they are to be micro-concentrated?
- 16 A. Yes.
17
- 18 Q. And, if so, to what quantity.
19 A. Yes.
20
- 21 Q. Can I ask you about the turnaround time and could I
22 ask, please, that we have displayed a graph that is on page
23 49 of the witness' statement, it is [WIT.0020.0001.0001_R
24 at 0049]. If you can just blow up the graph. Thanks.
25
- 26 This is from paragraph 248.
27 A. Yes.
28
- 29 Q. Of your first statement?
30 A. Yes.
31
- 32 Q. It is a graph that tracks turnaround time in days --
33 A. Yes.
34
- 35 Q. -- from 2016 through until the middle of 2018.
36 A. Yes, for violent crime.
37
- 38 Q. Did you, or anyone else as far as you know, ever apply
39 any pressure to the laboratory about turnaround times?
- 40 A. We've asked for a turnaround time of 10 days as an
41 aspirational target, but I know people before me hadn't
42 raised it at all with the laboratory and in my time, I have
43 raised it, but since then it's still floated between 10 and
44 20 days. There was no negative consequence for the
45 laboratory if it went over the 10 days or whatever. If it
46 got to 10 days, I gave some appreciation. If it got high,
47 we might bring it to their attention but, as I said, there

1 was no material consequence if it didn't meet 10 days and
2 in fact it's been way over 10 days for a long time.
3 There's no impact on the funding that we give to the
4 laboratory or anything like that. As I said it's an
5 aspirational target.

6
7 Q. I misread that graph. I had mistakenly thought that
8 it covered the period immediately prior to the
9 implementation of the --

10 A. It does.

11

12 Q. -- Options Paper? Yes, it does.

13 A. It does.

14

15 Q. We see December 2017.

16 A. Yes. At 40 days.

17

18 Q. It is between 40 to 50 days or thereabouts? Or is
19 that November?

20 A. No, no.

21

22 Q. That's November.

23 A. It's 40 days.

24

25 Q. And immediately after the implementation of the
26 Options Paper in February of the following year, the
27 turnaround time was tracking upwards.

28 A. And it continued to, yes.

29

30 Q. We heard some evidence on Monday, I believe it was, or
31 it might have been yesterday from Ms Rika about her
32 experience as a forensic scientist prior to 2008 when
33 entire items in the main were submitted to --

34 A. Yes.

35

36 Q. -- the laboratory and the scientists took over a case
37 from inception and managed it all the way through.

38 A. Yes.

39

40 Q. Do you have a view about how that process compares
41 with the current one?

42 A. Previously it was problematic because we took large
43 numbers of physical items to the laboratory and they did
44 the screening and presumptive testing and sub-sampling, and
45 that was the bottleneck. And as a result, we introduced a
46 model where, in the field, police would do that - the
47 forensic officers, I should say, would take on that

1 responsibility and that not only immediately addressed the
2 backlogs because the bottleneck was solved, we had 300
3 people doing the sub-sampling and screening rather than a
4 small number at a laboratory.

5
6 But there were a few advantages around that too, in
7 that, for instance, items of clothing and whatever, you
8 could target better to actually tape-lift - if you had the
9 complainant with you and said, "I was grabbed here", so you
10 could actually target areas that would maximise the
11 opportunity to get a DNA from it. But it also allows you
12 to - or actually, it minimises the chance of any
13 contamination, because you are doing it in situ, the only
14 opportunity for contamination is from something in the
15 immediate environment or from the person taking the sample
16 and we had an elimination database to filter that out.

17
18 So it eliminates any chance of inter-case or in
19 sometimes intra-case contamination at the lab where
20 everything is coming to a common bench. So there were a
21 number of advantages around that. Oh, and also if you put
22 items in packaging and it rustles around on the way to the
23 lab, there's a chance of dislodging the material too. So
24 it gives a better opportunity to target. It minimises some
25 of the contamination risks and it definitely sped up the
26 process. So I would be very hesitant to go back to a
27 process where all the samples, as in physical items, were
28 sent back to the lab. I think that would be a retrograde
29 step but it seems to be a flow-on from that, which was not
30 the intent of the QPS but it's become a production line,
31 sort of cookie cutter thing, everything is treated the same
32 way and there doesn't seem to be any overview of the case
33 and I think that is problematic.

34
35 Q. So do you see benefit in there being an approach that
36 encourages communication between the investigators, the
37 scenes of crime officers and scientific officers and the
38 forensic scientists?

39 A. Look, because of the way that we are collecting these
40 items, the scientists are given a sample that is already
41 targeted. So in a lot of case the labs will need to talk
42 to investigators to work out where the target sample. So,
43 we've sort of obviated that. But I do accept some better
44 information-sharing might assist provided it's accessed.
45 Queensland Health and Queensland Police both use now the
46 common Forensic Register and it's divided. So we can't see
47 what's on Queensland Health's side and they can't see

1 what's on the Queensland Police side. There may be some
2 benefit to exchanging some more information around that,
3 particularly some of the information in the examination
4 summaries. I'll be honest with you it is hidden from them,
5 but there is a balance because you don't want to introduce
6 unnecessary cognitive bias where a scientist may be more
7 motivated to call them an allele because they have some
8 emotional response to the information that they know about
9 the case, so it has to be balanced. I do think that there
10 could be an improvement there.

11

12 Q. On the issue of access to information, you talk in
13 your statement about a disagreement you had with Ms Allen
14 about that brief period where police investigating cold
15 cases had access to limited data --

16 A. Yes.

17

18 Q. -- from the laboratory.

19 A. Yes.

20

21 Q. Now, the access that they had was read-only, correct?

22 A. I believe so. If it wasn't, it was certainly
23 auditable, but I believe it was read-only.

24

25 Q. You referred to the relevant ISO standard, it's 17025?

26 A. Yes, ISO 17025.

27

28 Q. Clause 7.11 .3 prescribes that:

29

30 *The laboratory information management*
31 *system(s) shall:*

32

33 *a) be protected from unauthorized access;*

34

35 A. Yes.

36

37 Q.

38 *b) be safeguarded against tampering and*
39 *loss;*

40

41 A. Yes.

42

43 Q.

44 *c) be operated in an environment that*
45 *complies with the provider or laboratory*
46 *specifications or, for non-computerized*
47 *systems, provides conditions which*

1 *safeguard the accuracy of manual recording*
2 *and transcription;*

3
4 A. Right.

5
6 Q.

7 *d) be maintained in a manner that ensues*
8 *the integrity of the data and information;*

9
10 *e) include recording system failures and*
11 *the appropriate immediate and corrective*
12 *actions.*

13
14 A. Yes.

15
16 Q. Now, can you see any way in which a system that
17 enabled the QPS to have visibility of the progress of a
18 sample within the laboratory?

19 A. No, and in fact there's another clause that escapes me
20 the number, but it actually says that the service provider
21 needs to provide the customer the opportunity to view
22 basically the operations, and that could be witnessing
23 examinations and the like, and I would draw the parallel to
24 seeing that information on the Forensic Register is the
25 same.

26
27 Q. And similarly can you see any problem in terms of
28 compliance with that standard if the QPS had visibility of
29 data such as the quant and the degradation value?

30 A. No.

31

32 Q. Obviously this would have to happen with the
33 consent --

34 A. Yes, yes.

35

36 Q. -- of the laboratory?

37 A. So your - it's very customer-centric standard and by
38 agreement with the customer, you can - for instance, I
39 think the main concern was the customer was viewing reports
40 or information that had not been peer reviewed, but by
41 agreement with the customer that is possible. So at least
42 the customer knows it's not peer reviewed.

43

44 THE COMMISSIONER: Q. But the quants are the quants.

45 A. That's right.

46

47 Q. They're not peer reviewed. The interpretations are

1 peer reviewed.

2 A. That's right.

3

4 MR HUNTER: Q. So would it be useful for someone, say,
5 sitting in your position who is being asked to pass on a
6 request for retesting, because that's how it works, isn't
7 it, it comes through your section?

8 A. Someone with the appropriate training and awareness I
9 guess of how to interpret it, it doesn't have to be
10 extensive, yes, it would be helpful.

11

12 Q. And so that would be informative if you were getting a
13 result that was otherwise DIFP, assuming we end up with a
14 system that is analogous to that at least below some
15 cut-off point, that would assist police in making a
16 decision in conjunction with a forensic scientist as to
17 whether or not a sample ought to be further tested.

18 A. Yes, but I agree with Ms Allen in her - she has raised
19 it also that the scientists are better equipped to assess
20 that and if they are assessing that data, I'll be honest
21 with you, there is probably no need for us to do it.

22

23 Q. I suppose the issue, though, is that the scientists
24 won't know the criticality or otherwise of the particular
25 sample and that's an important factor as well, isn't it?

26 A. Well, at the moment if we're provided the sample, I
27 would contend it's important, it has some importance for
28 the case, because we triage before we give them to the
29 laboratory. So if we hand a sample over in a vial, it is
30 important for us.

31

32 Q. I suppose what I mean though is what about a sample
33 that is a low quant sample --

34 A. Okay.

35

36 Q. -- and if it is going to be amplified it needs to be
37 microconned to full so it's going to be exhausted. Now,
38 surely the scientist would need to consult with the police
39 about that process and the desirability of it or the need
40 to do it prior to exhausting the sample?

41 A. It could get quite cumbersome. It's an assessment
42 that, I think, could be made with the context of the case
43 by the scientist. If there's other DNA evidence - and this
44 is just something additional and potentially not, but if
45 there is very limited evidence in the case in terms of DNA,
46 and they are probably not aware of other evidence such as
47 fingerprints, yes, I guess it would be important to consult

1 with the police.

2

3 Q. Lastly, can I ask you about this issue of your
4 awareness of the laboratory's capacity in terms of how many
5 samples can it cope with in a particular time. You told us
6 that you have tried to find that information out.

7 A. Yes.

8

9 Q. Can you explain why you were trying to find that
10 information out?

11 A. Well, I mentioned in my initial evidence that it's a
12 bucket and you can only fill it. You can only do so much.
13 I wanted to work out that and try to moderate what we gave
14 and if we couldn't moderate it, I guess start looking at
15 options to try and increase the size of the bucket, but I
16 haven't been able to get a handle on that.

17

18 Q. Was there at one stage an attempt by Queensland Health
19 to have the QPS enter into a memorandum of understanding
20 regarding the performance of this sort of testing of
21 forensic samples?

22 A. Yes.

23

24 Q. Can you tell us about that?

25 A. Well, most recently - in 2018, after the Queensland
26 Audit Office Report, there was a suggestion - a
27 recommendation, I should say - that some sort of service
28 level agreement or performance criteria should be
29 established for the testing of crime scene samples. We
30 had, as I said, an MOU in place from the reference samples
31 but not for the crime scene samples. So in response to
32 that, Queensland Health did establish an MOU and the Audit
33 Report actually covered all of our aspects of testing. So
34 it covered drug testing and some toxicology - I think every
35 aspect of what they do out there.

36

37 And there was an attempt to have a generic agreement,
38 and they sought police to approve this generic agreement,
39 and then they were going to have schedules attached that
40 would have the cost for the service and some performance
41 criteria around that. We were never given that cost or the
42 performance agreement, and the QPS was not in a position to
43 sign that agreement until we knew the cost. It would be
44 just like buying a car and you negotiate the price
45 afterwards; you wouldn't do it. So we still haven't been
46 given those costs and so we haven't entered into the
47 agreement.

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Q. Thank you.

MR HUNTER: No further questions. Thank you.

THE COMMISSIONER: Mr Jones, do you have anything?

<RE-EXAMINATION BY MR JONES

MR JONES: If I can clarify some of the evidence, because there seems to be a bit of a conflict.

Q. The time when you got access to the quants and degradation values in December 2019, I think it was, around then - does that sound familiar?

A. Yes.

Q. The people that had access to that were a very select few within the DNA Management Unit, weren't they?

A. Yes.

Q. They weren't forensic officers that had access to that information?

A. So it was - I think it was, yeah, a small number. I can't - it wasn't every forensic officer.

Q. No.

A. Yes.

Q. And the access came by the police side. That is, someone who took over from Troy O'Malley was able to adjust it?

A. Yes.

Q. The Forensic Register?

A. Yes.

Q. And it reverted back?

A. Yes.

Q. And at the time you had access and subsequent to having access, there's nobody who has any particular training to read those degradation values --

A. No.

Q. -- or quant values?

A. No.

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MR HUNTER: Commissioner, we have a copy of the relevant portion of the standard and it is [QPS.0013.0433.0001], and we tender that.

THE COMMISSIONER: Thank you. I will make that an exhibit so that we know --

MR HUNTER: That hasn't been disclosed

MR JONES: It is a publicly available document, I believe, but it has not been disclosed to the parties. But it has been requisitioned so it can be disclosed.

THE COMMISSIONER: And would you make sure I get a copy of it so I can put it with Inspector Neville's statements in one place? Thanks. So that's it for today? That's it for today?

MR JONES: Yes, thank you.

THE COMMISSIONER: Thank you, Inspector Neville. I think that concludes your evidence. Thank you for your assistance.

<QUESTIONS BY THE COMMISSIONER

THE COMMISSIONER: Q. Sorry, there was one thing I want to ask you, just to clarify in my mind.

In cases of major crime, do police as a matter of practice only submit up to a certain number of samples for each case? You might take 100 samples, but how many do you submit?

A. So I mentioned this previously. So there is no limit to the total number, but the idea is not to flood the laboratory. So they are prioritised in lots of 25.

Q. Yes.

A. Sometimes multiple lots of 25, or a little bit more might be submitted at once, but the idea is to submit the most probative ones first, the most urgent. As you get the results back, submit more. It might get to a point the ones that are of least priority are not submitted because you have sufficient evidence for the case.

Q. Yes. So selection is made by investigators to have

1 what they regard as the most critical samples tested first?
2 A. That's right. So it is a decision made generally by
3 consultation between the Forensic Coordinator or Forensic
4 Manager, because for these - generally for the bigger major
5 crimes, especially, there is someone appointed to oversee
6 the multi-disciplinary approach between them and the
7 detectives who are investigating.

8
9 THE COMMISSIONER: Yes. I understand. Thank you. We
10 will adjourn to tomorrow to 9.30am.

11
12 <THE WITNESS WAS RELEASED

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14 THE HEARING WAS ADJOURNED TO 9.30 AM ON THURSDAY,
15 29 SEPTEMBER 2022
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