

COMMISSION OF INQUIRY  
INTO FORENSIC DNA TESTING IN QUEENSLAND

Brisbane Magistrates Court  
Level 8/363 George Street, Brisbane

On Friday, 30 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 THE COMMISSIONER: Yes, Mr Hodge.  
2  
3 MR HODGE: Commissioner, I think there is an application  
4 to be made.  
5  
6 THE COMMISSIONER: Yes.  
7  
8 MS MCKENZIE: May it please the Commission, McKenzie,  
9 initial B, instructed by McGinness and Associates. I seek  
10 leave to appear on behalf of Inspector Darren Pobar.  
11  
12 THE COMMISSIONER: Yes, you have leave.  
13  
14 MS MCKENZIE: Thank you, Commissioner.  
15  
16 THE COMMISSIONER: Yes, Mr Hodge?  
17  
18 MR HODGE: Commissioner, the first witness is Dr Budowle,  
19 who is on the screen.  
20  
21 THE COMMISSIONER: Dr Budowle, good morning. Or good  
22 evening?  
23  
24 DR BUDOWLE: Yes. Good evening, good morning. I've  
25 adjusted.  
26  
27 <DR BRUCE BUDOWLE, SWORN [9:33am]  
28  
29 THE COMMISSIONER: Yes, Mr Hodge.  
30  
31 <EXAMINATION BY MR HODGE  
32  
33 MR HODGE: Q. Your name is Bruce Budowle?  
34 A. Budowle actually, but that's close enough.  
35  
36 Q. I apologise. I want to just refer you to two of the  
37 reports that you have provided to the Commission, and I  
38 will just formally identify these. The first is  
39 [EXP.0001.0002.0001]. It is titled:  
40  
41 *Assessment of the Options Paper and Update*  
42 *Paper Prepared by Queensland Health*  
43 *Forensic and Scientific Services.*  
44  
45 Dated 19 September 2022.  
46  
47 A. Yes.

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Q. I hope that has come up on the screen for you, Dr Budowle, but also you probably have a hard copy.

A. Yes, I have a copy, but I can see it on the screen.

Q. Thank you. That is a report that you prepared for the Commission of Inquiry?

A. Yes.

Q. Are the opinions stated in that report opinions that you hold?

A. Yes.

MR HODGE: Commissioner, I'll tender that first report.

THE COMMISSIONER: Exhibit 46.

**EXHIBIT #46 - REPORT BY DR BRUCE BUDOWLE DATED 19/09/2022**

MR HODGE: Q. The second report I want to address your attention to is [EXP.0001.0001.0001], which is titled:

*Review and Assessment of the  
Appropriateness of Not Concentrating low  
quantity DNA samples by Queensland Health  
Forensic and Scientific Services*

Dated 15 September 2022. Again, I think that should be up on the screen for you, Dr Budowle. And do you have a copy with you?

A. Yes, it is.

Q. Are the opinions stated in that report opinions that you hold?

A. Yes.

Q. And I take it there are no corrections that you have to either of these reports?

A. No, not really. There might be a typo I might find every once in a while, but nothing of significance.

Q. Thank you.

MR HODGE: I tender that report, Commissioner.

THE COMMISSIONER: Exhibit 47.

1 EXHIBIT #47 - REPORT BY DR BRUCE BUDOWLE DATED 15/09/2022

2  
3 MR HODGE: Q. Dr Budowle, we will in due course get a  
4 document uploaded and tendered which is your CV, but I  
5 understand there is not one yet that has yet had a doc ID  
6 allocated. So what I will do is just ask you a few  
7 questions to go through your experience.

8 A. Sure.

9  
10 Q. You received - your bachelors degree, you received in  
11 1975 in biology?

12 A. That's correct.

13  
14 Q. And in 1979, you obtained a PhD in genetic from the  
15 Virginia Polytechnic Institute and State University?

16 A. Yes.

17  
18 THE COMMISSIONER: Mr Hodge, why don't we do it this way.

19  
20 Q. You have a PhD in - you hold several bachelor degrees  
21 and a PhD, and you are, without imposing upon your modesty,  
22 you are an internationally renowned expert in the field of  
23 DNA profiling?

24 A. That's correct.

25  
26 Q. That will do.

27  
28 MR HODGE: Thank you. Would you like any of Dr Budowle's  
29 work history?

30  
31 THE COMMISSIONER: I think everybody here accepts that  
32 Dr Budowle --

33  
34 MR HODGE: I think that's right. It might be helpful, I  
35 think, if I'll skip over a number of his qualifications and  
36 things like that, but just to identify the major places  
37 where he's worked.

38  
39 THE COMMISSIONER: Yes, that will be helpful. And the  
40 fact that he had that experience, yes.

41  
42 MR HODGE: Yes.

43  
44 Q. Dr Budowle, you worked for the FBI for a number of  
45 years?

46 A. For 26 years.

1 Q. That was 26 years commencing in 1983?

2 A. 1983-2009, yes.

3  
4 Q. In relation to your work for the FBI, could you just  
5 very briefly tell us what the nature of that work was.

6 A. It was a wide range of things. Initially starting out  
7 to develop methods to identify genetic signatures in  
8 biological fluids or evidence samples to help associate or  
9 eliminate individuals with crime scene evidence. I was  
10 also a unit chief over the research unit and I was also the  
11 senior scientist. And my final, I guess, station in the  
12 Laboratory Division was the senior scientist of the  
13 Laboratory Division. So I was involved in development of  
14 methods, development of databases, validation of methods,  
15 going in to court to support the validity of evidence,  
16 testifying, serving on commissions and whatever was  
17 necessary to support the effort.

18  
19 Q. Thank you. Whilst you were working at the FBI, you  
20 were also, for a period of time, the vice-president of the  
21 International Electrophoresis Society?

22 A. That's correct.

23  
24 Q. And you held many adjunct professor positions at  
25 various universities or adjunct positions at adjunct  
26 universities?

27 A. That's correct.

28  
29 Q. And in 2009, when you left the FBI, where did you go  
30 to work?

31 A. I went to the University of North Texas Health Science  
32 Center and worked in the Center For Human Identification  
33 where I did - it was an academic position in part, so I had  
34 the normal activities of an academic: teaching; research;  
35 grant, you know, work and such; but I also worked in the  
36 Center for Human Identification, which is a recognised  
37 criminal justice agency in the state of Texas where we do  
38 case work, predominantly with DNA testing and anthropology,  
39 for the State and also did missing persons work for the  
40 United States overall. And I directed that Center for the  
41 last six years before I retired.

42  
43 Q. Thank you. One of the other things that you did at  
44 one stage, I believe, was to work on a review or an audit  
45 of a lab in Washington?

46 A. Yes. Actually twice, back in 2014. So when I left  
47 the FBI, the US Attorney's Office still contacted me to

1 help support them on cases where there may have been a  
2 challenge to the scientific evidence. And I was called  
3 into a case in 2014 to look at and, you know, when I  
4 reviewed it, it identified that the lab had improperly  
5 calculated or interpreted the evidence, raised it up to the  
6 US Attorney and so that became one of the first issues with  
7 that particular lab who then, for the DNA Unit, was shut  
8 down until they could, you know, rebuild themselves, in a  
9 sense.

10  
11 Then in more recent years, the last three years, in  
12 fact, there was a different issue that arose in the lab  
13 dealing with firearms evidence. So I was part of the team,  
14 although I'm not a firearms' expert, a part of the team  
15 that went in and audited through the US Attorney and their  
16 Office, the Attorney General's Office, what may have been  
17 their reasons behind the errors that occurred in that  
18 particular case and other practices of the laboratory.

19  
20 Q. Thank you. Finally, just one other position you have  
21 held which I wanted to identify. From 2016 until I think  
22 your term might end this year, you have been a member of  
23 the Texas Forensics Science Commission?

24 A. That's correct. Actually "Member" means we're a  
25 Commissioner on the Commission.

26  
27 Q. Could you just explain what is involved in that  
28 Commission?

29 A. That Commission is in, a lot of ways, an oversight  
30 committee to deal with what may be issues that arise within  
31 the application of forensic sciences. And so, if someone  
32 has an issue or a complaint or identifies an issue or a lab  
33 self-declares a problem, it's sent to the Commission to  
34 assess and determine, you know, whether proper actions were  
35 taken or further action is taken. And the Commission also  
36 has the authority for accreditation in the crime labs  
37 within the State of Texas.

38  
39 Q. Thank you, Dr Budowle. I want to then turn to your  
40 report in relation to concentration. I want to take you  
41 through that and have you explain a number of aspects of  
42 that.

43  
44 MR HODGE: Commissioner, I will note for our purposes this  
45 is [EXP.0001.0001.0001] which is the 15 September 2022  
46 report.

1 THE COMMISSIONER: Yes, thank you.

2  
3 MR HODGE: Q. What you were considering in relation, in  
4 this report, Dr Budowle, was the appropriateness of the  
5 Queensland lab's approach to concentration of samples with  
6 a quantitation range between 0.001 and 0.0088?

7 A. That's correct.

8  
9 Q. Perhaps if you could just start by explaining, in your  
10 view, the appropriateness or otherwise of concentration in  
11 a lab?

12 A. Well, the issue on a basic level is you need a certain  
13 amount of DNA to get a quality result, and when you place  
14 less DNA into the analysis, that will diminish the quality  
15 of the DNA profile. A diminished quality profile, whatever  
16 that means in a broad term, doesn't mean it's not  
17 interpretable, but it can be more challenging. And there  
18 can come a point where the quality of the profile, the  
19 quantity of the profile, can be so diminished that it's not  
20 interpretable. So trying to get the best and most DNA  
21 that's appropriate and optimised for the system would be  
22 ideal.

23  
24 So when we get DNA from evidence, it can be a range  
25 from good quality, good quantity, all the way to poor  
26 quality, poor quantity. So along that spectrum, there's  
27 going to be different expectations of results. We don't  
28 know exactly what the results will be till we actually type  
29 them, but there is some general guidance based on the  
30 amount of DNA.

31  
32 So when we quantify DNA, we fall within certain  
33 ranges, we now have some information to help us do the next  
34 step of the process. So if I quantify the DNA, I see there  
35 is good quantities, I can possibly get the optimum amount  
36 placed in the reaction and move forward. If I have less  
37 DNA, that means unless I do something to the sample, I'm  
38 going to place less of the DNA into the analysis phase.

39  
40 So when I'm in this range of, for now the argument,  
41 0.001 to 0.0088, based on the way the assay is done, there  
42 is only a maximum amount of DNA that can be put into the  
43 reaction. The only way I can increase that amount of DNA  
44 is to do something other to the reaction or something to  
45 the sample. One way is to concentrate the sample, so I  
46 take the amount of DNA I have in some volume, reduce that  
47 volume so that I have more DNA in that unit volume.

1  
2 We talk in terms of microlitres as a volume that's  
3 typically used in DNA analyses. The lab's procedure allows  
4 up to 15 microlitres of DNA. So if I have 0.001 or, let's  
5 say, 0.0088, if I have 15 microlitres of 0.001, I can only  
6 get 0.015 microlitres or 015 DNA into it, or 15 picograms  
7 of DNA. On the other end, I can get up to 132 picograms or  
8 0.132 nanograms of DNA into the reaction. That may be  
9 sufficient on one end, the higher end; it may not, because  
10 there is a lot of nuances about DNA. So if I can double  
11 the amount or triple the amount in that unit volume of  
12 15 microlitres, I am going to get a better result. One  
13 method of that, or a choice method of that, is  
14 concentrating the sample from whatever starting volume you  
15 have to a smaller volume and then being able to place more  
16 into the reaction.

17  
18 The nuances that one has to think about that is every  
19 time we concentrate samples or manipulate samples in a  
20 manner, we tend to loosen DNA. So there is going to be  
21 point of zero gain, depending on where you are in the  
22 process. But generally speaking, trying to get more DNA  
23 into a sample presents us with a better probability of  
24 getting a more interpretable DNA profile at the end of the  
25 analysis.

26  
27 Q. What I might do is I think that is very helpful as an  
28 overview, and I might just take some of those things in  
29 stages.

30  
31 I think one of the points you was making was when you  
32 get to the stage of what we refer to as amplification,  
33 there is a particular quantity that you're able to use at  
34 the amplification stage and, as you understand it, in  
35 Queensland, the quantity that is being used is  
36 15 microlitres?

37 A. Yeah, that's a certain - we will call that a volume,  
38 actually, than a quantity. So you don't confuse volumes of  
39 DNA with that.

40  
41 Q. I apologise.

42 A. But that volume that you are putting in is  
43 15 microlitres for the assay at Queensland Health, yes.

44  
45 Q. And within that volume of solution, there will be a  
46 quantity of DNA, and one of the things that you want to do  
47 as a DNA scientist is try to achieve the optimum amount of



1 DNA within that volume for the purposes of the  
2 amplification stage?

3 A. That's correct.

4  
5 Q. When it comes at a general level to concentration, I  
6 understand the point you are making is there's nothing  
7 wrong with concentration. Concentration might well be an  
8 appropriate step or the most appropriate step in order to  
9 try to achieve the optimum amount of DNA within that  
10 volume that you are going to use at the amplification  
11 stage?

12 A. Yeah. If feasible with the amount of starting  
13 material, yes.

14  
15 Q. So the quantitation stage is important, because at  
16 that stage one of the things you are trying to assess is  
17 what is the amount of DNA that you have that is going to  
18 then be taken and used at the amplification stage, and as a  
19 scientist, you will make a judgment about whether the  
20 particular amount to volume is appropriate or  
21 inappropriate?

22 A. That's correct. That's in part what's done. It's  
23 also because of the way that the quantitation assay works.  
24 It also gives us some insight into the quality of the DNA,  
25 whether it could be substantially degraded or relatively  
26 intact.

27  
28 THE COMMISSIONER: Q. Dr Budowle, could I put this  
29 metaphor to you, and you can tell me if the metaphor is  
30 helpful or unhelpful. Assume you had a 40-gallon drum of  
31 water and in that 40-gallon drum of water, you had  
32 40 oranges floating, and they were suspended throughout the  
33 liquid and you were going to take, let's say, 15 gallons of  
34 that liquid in order to test the oranges that you capture  
35 in that 15 gallons, so you remove 15 gallons and there were  
36 40 oranges there, so you're going to get a proportion of  
37 the oranges that are appropriate to 15 gallons, and let's  
38 say that's five oranges that you capture, but for the  
39 purposes of the analysis that we're conducting, five is an  
40 inadequate number. You want to get more in your 15  
41 gallons.

42  
43 So what you do is you open a small tap at the bottom  
44 of the 40-gallon drum and you let out water until you've  
45 only got 10 gallons left. Now you've got 40 oranges in  
46 30 gallons. Now when you take 15 out, you're going to  
47 probably get 20 oranges rather than the few earlier because

1 the amount of liquid that you're fishing in has been  
2 reduced.

3  
4 And so, in that way you have improved the  
5 concentration and you have improved your chance of getting  
6 the oranges. And so, if we substitute DNA molecules for  
7 oranges, you may have very few DNA molecules floating in  
8 95 microlitres of liquid. You take a pipette and you take  
9 15 microlitres out and you get proportionately very few DNA  
10 molecules.

11  
12 If you reduce the liquid without removing any DNA  
13 molecules, when you take 15 microlitres of liquid out,  
14 you're going to get many more molecules of DNA, because  
15 you're fishing in a smaller pond. Is that a fair way of  
16 looking at it?

17 A. Yeah, that's a fair way. And there is a hope that you  
18 can become a scientist one day with that analogy.

19  
20 Q. Well, you can have that metaphor.

21 A. I might use it later. On a realistic level, that's a  
22 good explanation in lay terms to what is being done with  
23 concentration.

24  
25 Q. All right. Thank you. I understand.

26  
27 MR HODGE: Q. Dr Budowle, there are a few different  
28 elements there with what we are dealing with, but one of  
29 them is, as you know, in this lab, there is a limit that is  
30 set for when routine analysis will be undertaken, and you  
31 refer to "routine analysis" in your paper. As I understand  
32 it, you mean "routine" being you would just proceed to  
33 amplification without concentration as the ordinary course?

34 A. What I mean by "routine analysis" is one is there is  
35 an optimum range, and then there is a lower range where one  
36 expects to get reasonably good results, all things being of  
37 reasonable quality. Although historically there have been  
38 these values set in place, as the technologies have  
39 increased in sensitivity of detection, those thresholds are  
40 starting to be abandoned more so over the past few years  
41 because one can get results with much lower results.

42  
43 Making an interpretation to go forward with a set  
44 amount of DNA is not a bad way to go; it allows for some  
45 uniformity in work. But there are other factors that are  
46 available like, I mentioned, the quality of DNA, the type  
47 of sample it is, if one had visualised sperm as opposed to

1 no sperm, the severity of the case even, are factors that  
2 might say "proceed" below some fixed amount.

3  
4 We tend, in my lab, was the minimum amount of  
5 detectible DNA to move forward and no detectible DNA to be  
6 a point of not going forward with certain assays. So not  
7 having a fixed amount as a way to go in the process.

8  
9 Q. In your paper, [EXP.0001.0001.0001 at 0003], you say:

10  
11 *Many laboratories set an initial input*  
12 *amount, typically ranging from 0.1 to 0.25*  
13 *ng of DNA.*  
14

15 Could you perhaps just explain that to us. When you are  
16 talking about an initial amount, do you mean a limit before  
17 no further step could be taken or do you mean a limit to  
18 distinguish between when you would just proceed with  
19 routine analysis and when you would have to consider other  
20 steps that might be required before continuing with your  
21 analysis?

22 A. Well, that amount of DNA was more for routine analysis  
23 and it had to do with, at the time these things were  
24 initially set up, and I'm talking, you know, 20 years ago  
25 as, let's say, a timeframe, in which at those levels then  
26 we started to worry about not getting good representation  
27 of the sample and possibly having missing parts of the DNA  
28 profile, which complicated the interpretation results at  
29 that time. So most interpretation of DNA results was done  
30 manually, and had a person look at it, decide what was  
31 there, what could be missing, whether you could use it or  
32 not use it, or use portions of it.

33  
34 As time has gone on in the past several years, we have  
35 moved on to other procedures that are now assisted  
36 computationally with a computer or what we may say  
37 "bioinformatically" using probabilistic genotyping, that  
38 allows us to now consider more challenging samples where  
39 there might be missing data and are culminated in a more  
40 sophisticated way. So having a set value at one point  
41 might have made some sense, but it doesn't make sense in  
42 the more, you know, routine work of today.

43  
44 The other thing is a starting amount of DNA. So let's  
45 say we picked a number like the laboratory there did of  
46 132 picograms of DNA. That doesn't mean that each of the  
47 components in a mixed sample that might be wrong would ever

1 appear the 132 picograms. So if I had a 3-person mixture  
2 all equally contributing, the maximum I would have for any  
3 one would be 40-some odd picograms, well below the 132. So  
4 although we put in an amount, what may be presented once we  
5 see the DNA profile, may not be what was intentionally set,  
6 because of the nature of forensic evidence.

7  
8 Q. Thank you. I think there are three things that you've  
9 said there that I just want to draw out. I will start with  
10 the last thing, which is you're talking about mixed  
11 profiles versus single profiles. And the point you were  
12 making, as I understand it, is just because a limit in the  
13 case of the Queensland lab of 132 picograms doesn't  
14 necessarily mean that, if there are mixed contributors - in  
15 fact, it must mean that if there are mixed contributors,  
16 that you don't have 132 picograms of DNA for any single  
17 contributor. So if you have set a limit on the basis that,  
18 as a matter of routine analysis, you need 132 picograms in  
19 order to analyse a single contributor or to identify a  
20 profile from a single contributor, then that limit is going  
21 to be problematic when applied to mixed profiles?

22 A. Well, in essence, yes. But just remember, just  
23 because you set 132 picograms for a single course, there's  
24 no doubt in my mind that if you have less DNA, you might  
25 still get interpretable single source profiles with more or  
26 less input DNA. So it is not a simple, hard rule that  
27 because I put a line in the sand for what I put into the  
28 analysis means that that was the bottom of the line for  
29 interpreting evidence.

30  
31 Q. Yes. I understand. And I will come back to that in a  
32 moment and the meaning of "interpretable profile".

33  
34 The second point that I understand you were making is  
35 that these kinds of limits which, in your view, are common  
36 across labs, but historically they have arisen from a time  
37 when labs were not using probabilistic genotyping, so they  
38 weren't using computational analysis in order to identify  
39 profiles?

40 A. Yes, because they wanted to set enough DNA to reduce  
41 the chances of the challenging interpretation that would  
42 follow because of the limits of the assay at the time.

43  
44 Q. And so, it seems to follow from that that there has  
45 been a substantial technological change over the last  
46 couple of decades in terms of what is available to a lab  
47 for analysing and identifying a profile?

1 A. That's correct.

2  
3 Q. And if you were setting a limit for routine analysis,  
4 one of the things that a lab operating in accordance with  
5 best practice would need to do is to, from time to time,  
6 review what that limit was or whether any limit was  
7 appropriate have regard to developments in technology?

8 A. That's correct. And in fact, any time that you would  
9 implement a material change to your protocols or your  
10 system, you should have done that kind of work anyway. So,  
11 routinely, we validate systems.

12  
13 So if I had a kit - a kit is a collection of chemicals  
14 that allows me to do that amplification that you mentioned,  
15 that amplifies the specific markers of interest. If I  
16 change to a new kit, that's a material change and would  
17 require validation to test again the sensitivity of  
18 detection, the applicability, and ensure that it meets the  
19 expectations or what has been touted by the manufacturers  
20 and others who have since, let's say, applied it or  
21 validated it themselves.

22  
23 THE COMMISSIONER: Q. Could I put to you my  
24 understanding of what you have described, Doctor, so that  
25 you can correct me if I am wrong. There is a minimum  
26 quantity of DNA which results in predictably reliable  
27 results for profiling, and below that quantity of DNA, the  
28 resulting profile can be difficult to interpret because the  
29 peaks that the software produces for analysis will vary in  
30 height and will vary in number, such that judgment, human  
31 judgment, has had to be applied to determine what the  
32 profile meant.

33  
34 Since the beginning of that kind of technology being  
35 used, software, computer software, has been developed to  
36 take over some of the work of applying a judgment to the  
37 significance of various peaks of various heights that might  
38 be of doubtful significance. The computer software can,  
39 more efficiently and more accurately than a human,  
40 determine what should be taken into account and what ought  
41 not be taken into account, so that the position today,  
42 compared to 20 years ago, is that less DNA is required in  
43 order to arrive at an interpretation of a profile; is that  
44 right?

45 A. Generally, I agree with that. The only thing is  
46 instead of the software "determining", I like to think the  
47 software is "assisting" the analytics --

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Q. Yes, I should have said that.

A. -- because the analyst ultimately is responsible and has to ensure that the profile that the analyst views is intuitively consistent with the output of the software, but the software can do far more. So, as you said, we can now evaluate lesser quantity DNA and more complex DNA profiles than were possible years ago.

Q. Yes. And by "more complex", that includes multiple contributors that always increases the difficulty of interpretation?

A. Yes.

Q. But with low quantities of DNA and degraded DNA, that becomes even more difficult? But today, with the available software to assist, the result is that quantities that used to be too low for analysis, for reliable analysis, can now be analysed?

A. That's correct.

Q. And so that being the case, if I am running a lab, I ought to take that into account and perform the necessary studies and validation processes, experiments, really, to determine what I think today is the relevant limit below which I lose reliability; is that right?

A. That's correct.

Q. Yes, thank you.

MR HODGE: Q. And just to pick up on two further points from that, Dr Budowle, one is, in your view, as a matter of best practice, every time you change over a piece of the equipment or the kits that you're using as part of your DNA extraction process and analysis process, you ought to be, if you have a limit, re-validating whether that limit is appropriate?

A. That's just a standard practice, because we need to know what would be the best conditions so that we also understand the limitations. Best conditions to apply, limitations to know what doesn't work so you stay within the boundaries of a reliable system. And so, it is incumbent upon the laboratory to perform those analyses whenever there is a material change in the process.

Q. And the second part of it is in terms of setting this limit for routine analysis, is it also your view that a lab

1 ought to take into consideration whether there is a  
2 difference between what are believed to be single source  
3 samples and what are believed to be mixed source samples?  
4 A. Yeah. I mean, there are a lot of nuances to that.  
5 When labs typically determine that, let's say, a historical  
6 amount of DNA - and although I haven't seen it for this  
7 laboratory, I think it's pretty reasonable that this is  
8 what was probably done is they took single source samples  
9 and diluted them down and ran them to see where the  
10 potential stochastic effects - this variation that the  
11 Commissioner mentioned, of peaks - would become greater or  
12 exacerbated to impact a manual interpretation. That's  
13 always done with single source.  
14

15 When you do mixtures, most labs just do ratios of  
16 mixtures of some quantity to see if they can detect a minor  
17 contributor at some level. Any time you set a value based  
18 on single source but you use it for all samples, you  
19 invariably are going to have, as we said earlier, samples  
20 that are going to be far less than the quantity that was  
21 targeted off the input of, say, 132 picograms, as this  
22 laboratory did. It would be important to know by doing  
23 some studies at those target amounts where the pinch point  
24 is, let's say 132 picograms, before you see what is viable  
25 under your system.  
26

27 Q. Thank you. I think then that neatly brings us to, you  
28 might remember now probably about 15 minutes ago I said  
29 from something you said there were three points I wanted to  
30 draw out. I will now come to the last point, which is in  
31 this Queensland lab that you have looked at, you have  
32 identified that the limit that is used for routine analysis  
33 is 132 picograms - just so that everyone can put this in  
34 the context of the measurements used, a picogram is 1/1,000  
35 of a nanogram, and so. 0.132 nanograms is the same as  
36 132 picograms?

37 A. That's correct. Now, as you said, just one correction  
38 is when you say 132, that's what the lab is saying is the  
39 bare minimum that they are willing to go forward. There  
40 can be more DNA, obviously.  
41

42 Q. Of course, and that's the bare minimum for routine  
43 analysis?

44 A. As I understand it for this laboratory, yes.  
45

46 Q. And the way in which 132 picograms is arrived at as  
47 that limit for routine analysis is that that is actually

1 0.0088 nanograms per microlitre applied to the  
2 15 microlitres that are used in the PCR process?

3 A. That's correct.

4  
5 Q. That is, you multiply 15 by 0.0088 and you get 0.132,  
6 which is 132 picograms?

7 A. Correct.

8  
9 Q. In the material that you reviewed, have you identified  
10 the source of that limit within the Queensland lab?

11 A. I wasn't provided any data - again, there may be, I  
12 just was not provided - how they derived at that value.  
13 All the documents that I have are focused on something post  
14 that time, that decision process, whatever it was, and they  
15 just referred to that value as a point in which stochastic  
16 effects become more marked and of a concern.

17  
18 Q. I see. In the material that you have seen so far, and  
19 I appreciate your point, which is you haven't seen  
20 everything that has been done within the lab, have you seen  
21 that limit being revisited over the course of, say, the  
22 last four years?

23 A. It has been. In some ways I think there is a little  
24 bit of that, but not really. There has been, in the most  
25 recent documents of 2022, some suggestion to assess whether  
26 to reduce that number, but further work still needed to be  
27 done.

28  
29 Q. I see. Then I want to move from there to this issue  
30 of concentration specifically. And to go to the  
31 Commissioner's analogy, in the Commissioner's analogy, when  
32 you remove 10 litres of water, you get 40 oranges in  
33 30 litres of water, so that the consequence is - or is it  
34 gallons?

35  
36 THE COMMISSIONER: Units.

37  
38 THE WITNESS: He used gallons because I'm an American, but  
39 I understand litres, so --

40  
41 MR HODGE: Q. The thing about that analogy is, and of  
42 course I don't mean any criticism of the Commissioner's  
43 analogy, but that involves a direct multiple effect in  
44 terms of concentration. When you come to concentrating  
45 DNA, do you get that type of direct multiple effect?

46 A. No. As I said, if you take, for instance, this lab,  
47 they start with 100 microlitres and they may concentrate it



1 down to 35, so almost a third of the starting material. So  
2 if everything were ideal, one should get a two-fold - a  
3 three-fold increase in the DNA per unit volume. If you  
4 look at the data they produced, the majority of them are in  
5 the two-fold or less. There are some that are higher, but  
6 the majority of them were at two-fold or less, which is a  
7 good indication --

8 Q. Dr Budowle, I might just pause on that just so that we  
9 can bring up what you are talking about. If we bring up on  
10 the screen [EXP.0001.0001.0001 at 0005] and if we blow up  
11 Figure 4 at the bottom of the page?

12 A. Yes.

13  
14 Q. This is the figure and the data you are talking about?

15 A. Yes, this is the figure from their report, their  
16 valuation study. As you can see, these dots are showing  
17 the increase in concentration. Those increases, if they  
18 were around three-fold, they are optimum. But as we know,  
19 there will be loss of DNA. So for the majority of them are  
20 three-fold and far less. So this indicates that whenever  
21 we do concentration, we have to consider also the potential  
22 loss of DNA.

23  
24 Now, what complicates this particular analysis is  
25 these were the samples that they had success, meaning by  
26 their definition that there was something usable, some  
27 usable DNA profile obtained after concentration. What we  
28 don't have here are the missing data of what were the  
29 effects of concentration for those that failed. So one  
30 could hypothesise that the ones that failed did not do as  
31 well as these where there was some loss of DNA. They may  
32 have had substantial loss of DNA, which could have been of  
33 extreme value to the laboratory for triaging samples.  
34 Because let's say there was something characteristic of the  
35 majority of those ones that failed, then instead of getting  
36 this two-fold or less amount, they got a half-fold or  
37 one-fold and really didn't gain any concentration process.  
38 So whenever we do analyses, it's not just what we're  
39 looking for, it's what we don't see becomes critical and of  
40 value in an analysis.

41  
42 Q. I think I understand it. Let me try and draw some of  
43 that out. One of the things that you would expect a DNA  
44 lab to do when evaluating its concentration process is to  
45 look at what the level of DNA loss is when you undertake  
46 concentration, and that would need to be considered across  
47 all of the samples that you concentrate?

1 A. Exactly, and it's complicated here because this  
2 laboratory has two target volumes, what they call "half" or  
3 "standard", and "full". Full concentrates is even more so  
4 than the half. So the half is around 35 microlitres.  
5 Depending on documents, the full is around 20 microlitres,  
6 maybe less, depending on some documents. We don't know if  
7 in any of these procedures there is a greater loss of DNA  
8 with one versus the other. And that could also impact my  
9 decision process on the potential success as well. So I  
10 would have evaluated that.

11  
12 I didn't find any data on concentration effects when  
13 you go to the 20. One might think you get more in general,  
14 but let's just say it doesn't actually work that way. It  
15 may be better to stop at 35. On the other hand, if the  
16 success is much greater at 20, it may be a more practical  
17 and optimum decision to do everything at 20 and take your  
18 best shot with a one-time analysis. And so, without the  
19 other data in place, it's hard to actually make a judgment  
20 of what's the best decision for this part of the process.

21  
22 Q. There seem to be two ideas which you raised. One is  
23 you would want to look at, in any evaluation of  
24 concentration, not just where you succeeded in extracting a  
25 profile but also where you failed?

26 A. That's correct.

27  
28 Q. And, for example, you might - if you looked at the  
29 cases where you failed to obtain a profile after  
30 concentration, you might find that the loss of - for those  
31 profiles, for some reason, the loss of DNA was much greater  
32 than in respect of the profiles where you succeeded, and  
33 that might then raise a question for you about what process  
34 you ought to adopt to try to make concentration more  
35 effective in relation to those samples where you failed to  
36 obtain a profile?

37 A. That's correct in part. The other is the ones who  
38 failed, they may be more similar to each other. Let's just  
39 say all the ones that failed were on a blue fabric and all  
40 the ones that succeeded were on a red fabric. Now, I'm  
41 making that up. It wouldn't really be a real situation.  
42 But if that were true, I could then decide going forward  
43 that any time I got something on a blue fabric, don't  
44 process it because the success rate is failure. There is  
45 no success in that, whereas everything that is on the red  
46 would have a success. So without looking at the  
47 information in total, I can't make the best judgment or

1 triage for proceeding forward to be more effective in the  
2 laboratory.

3  
4 Q. In the information that you reviewed, have you seen  
5 the Queensland lab undertaking this kind of evaluation of  
6 cases where they failed to obtain a profile after  
7 concentration?

8 A. I haven't seen that in a formalised way. I have seen  
9 some statements from Reporting analysts who, based on their  
10 experience, have made decisions on what to do based on the  
11 quantity of DNA, the quality of DNA; other circumstances  
12 associated with the evidence. So there is some knowledge,  
13 but not a formal study undertaken as we discussed.

14  
15 Q. And then the other part of what you are talking about  
16 is this question of whether or not you should concentrate  
17 to full or to 35 microlitres, and as I understood it, you  
18 were making the point that you would want to do a  
19 comparative analysis of how much DNA loss you would  
20 experience, depending whether you are concentrating to full  
21 or concentrating to 35 microlitres of solution?

22 A. Yes. I mean, I would not make a best judgment because  
23 there's several factors. One is the potential success or,  
24 as we said, the loss of DNA. You know, if I am going for  
25 getting the best possible result, I might choose  
26 20 microlitres if I put more DNA per unit volume into the  
27 PCR. On the other hand, if it was a sum-zero loss and  
28 really didn't make much difference, I might go with  
29 35 microlitres because that would allow me to do two assays  
30 instead of one, you know, saving some of the material or  
31 extract for a downstream future process or an alternate  
32 process, or something for the defence. So there's  
33 consequences, and so you want to make the best judgment on  
34 which procedure we do. Not that one's right or one is  
35 wrong. It's just decisions and processes impact,  
36 ultimately, some success in DNA typing.

37  
38 Q. In your review of the material that you have been  
39 briefed with, have you seen that kind of analysis having  
40 been undertaken in the Queensland lab to look at the  
41 respective effectivenesses of concentrating to full or  
42 concentrating to 35 microlitres?

43 A. Not in the documents provided to me.

44  
45 Q. Have you seen guidelines for the benefit of the  
46 scientists within the lab that they would take into account  
47 in making a decision as to whether to concentrate to full

1 or to 35 microlitres?

2 A. I haven't seen any guidelines, again in the documents  
3 provided to me.

4  
5 Q. And just so we understand, is that something that you  
6 would expect in accordance with best practice for a lab,  
7 to, (a), have undertaken that kind of comparative analysis  
8 and, (b), to have some kind of guidelines for the benefit  
9 of the scientists within the lab?

10 A. Yes, we would have guidelines. But we would have some  
11 discretion for the analysts because of the, again, the  
12 other factors that may be involved with whether to proceed  
13 or not. And so there may be some judgment allowed, with  
14 documentation and approval and things so that people aren't  
15 just, say, on their whim making decisions on how to proceed  
16 forward. I am not saying that the analysts have been doing  
17 that, you know, but just in general speaking. But I just  
18 didn't see anything that would give me - that I saw that  
19 gave any guidance for this decision process or the decision  
20 to consume or not to consume entirely the sample.

21  
22 Q. I want to then move to another aspect of this process.  
23 You identified something that's slightly unusual about the  
24 Queensland lab compared with other labs that you have seen,  
25 which is that when the original sample is taken, that the  
26 elution volume is 90 to 100 microlitres?

27 A. That's correct.

28  
29 Q. And could you just explain to us what, in your view,  
30 is unusual about that?

31 A. Well, typically one wants to obtain the volume, the  
32 elution volume. In other words, what we are doing is we  
33 are taking DNA out of the sample, which may be a swab, a  
34 cotton swab, a piece of tissue, whatever it may be, and  
35 putting it into solution and purifying it to a degree so  
36 it's, let's say, not "dirty" for the downstream kind of  
37 analysis. The larger that volume is, the more you're  
38 diluting your sample.

39  
40 So if I put it into 100 microlitres, let's say I had  
41 1 nanogram of DNA to 100 microlitres. That would be  
42 10 picograms per microlitre. If I have that in 50  
43 microlitres and everything was equal in the recovery,  
44 I would have twice that amount DNA or 20 picograms per  
45 microlitre. And as we just discussed, that means if I put  
46 15 microlitres into the assay, I would have 300 picograms  
47 in the smaller volume elution where I would only have

1 150 picograms in the larger volume. So in essence, by  
2 diluting into a larger volume, I've already made it worse  
3 for me to get a chance of getting a good result because  
4 I am using a less concentrated sample.  
5

6 THE COMMISSIONER: Q. Could I just work that into my  
7 metaphor again. We have a crime scene sample, and in the  
8 metaphor it contains oranges, and it contains 40 oranges.  
9 And I have a process for extracting those oranges from the  
10 crime scene sample, and I can do that so that at the end  
11 those oranges are floating in 100 gallons of water or I can  
12 do it so that they're floating in 50 gallons of water. And  
13 if I have them floating in 100 gallons of water, then in  
14 order to achieve the concentration that we discussed  
15 earlier, a more tightly concentrated solution, then I would  
16 have to engage in that concentration process and, as you  
17 said, you lose some oranges doing that.  
18

19 Whereas, if I started by extracting my oranges and  
20 putting them into a 50-gallon solution, then already I'm  
21 ahead and I may not have to undergo any concentration at  
22 all and I won't lose any oranges before putting it into the  
23 rest of the process. So what you're saying is the process  
24 of extraction and the selection of the volume that holds my  
25 DNA sample at the end of the extraction process, which is  
26 the beginning, is important for what follows because that  
27 may determine whether I have to concentrate and lose some  
28 DNA or whether I don't have to concentrate, and so I don't  
29 lose any DNA. Is that a fair summary?

30 A. Yeah. In fact, what you're doing is you are moving  
31 the needle to some samples that would have fallen within  
32 this range that the laboratory set, rightly or wrongly for  
33 the moment, to which some of those will fall above that  
34 range without doing anything additional to the sample.  
35

36 Q. I missed that. That's right. So that if I have 40  
37 oranges in 100 gallons, then we have been talking about  
38 0.0088 nanograms per microlitre, and the larger the  
39 volume that I use at the extraction stage, then the less  
40 likelihood it is that the concentration will be above my  
41 limit?

42 A. That's right, for those samples with that limited  
43 quantity. If you can effect it better at the extraction  
44 phase, some of those samples that were in this  
45 "insufficient" area, and I put that in quotes, may not be  
46 insufficient by the laboratory's criterion just because  
47 they were doubled in concentration, and --

1 Q. Yes, I understand.

2 A. -- of course, other than really high quantity samples  
3 like a tube of blood from an individual who is known, who  
4 is giving a sample, I don't see labs concentrating or  
5 recovering DNA in 100 microlitres. Usually they are  
6 somewhere in the 30 to 50 microlitre range just for these  
7 regions. So this lab, in my opinion - I am not saying  
8 there may not be another lab in the world - stands in a  
9 rare category of going to 100 microlitres for low quality  
10 samples.

11  
12 Q. And so that means that it will have, just by using  
13 that method, just by doing that, it will increase the  
14 number of samples in the range that they call "insufficient  
15 DNA for further processing", and it will increase the  
16 number of samples that will fall within the range that they  
17 call "no DNA detected"?

18 A. Right. So some of those "no DNA detected" might rise  
19 up into the range and some of those that are in the range  
20 are going to rise up above that to be considered as "Go  
21 ahead and process".

22  
23 Q. Yes, thank you.

24  
25 MR HODGE: Q. And the particular piece of technology  
26 that the Queensland lab uses for that extraction, that is  
27 the isolation and purification of the DNA samples, that's  
28 the DNA IQ system?

29 A. Yes. It is a good system. There's nothing wrong with  
30 the system itself. It's just this volume that they elute  
31 to recover DNA in solution.

32  
33 Q. That system, the DNA IQ system, that's manufactured by  
34 a company called Promega Corporation?

35 A. Yes.

36  
37 Q. And it is a common system that is used in laboratories  
38 around the world?

39 A. That's correct.

40  
41 Q. But your experience is that the typical extraction  
42 volume used by laboratories using either that technology or  
43 a similar extraction technology is to extract a range of  
44 35 to 50 microlitres rather than 100 microlitres?

45 A. That's correct.

46  
47 Q. I think in your report you make the point that Promega

1 Corporation has a technical bulletin where they note that a  
2 lower elution volume ensures a higher final concentration  
3 of DNA?

4 A. That's correct.

5  
6 Q. But really, it is just obvious as a matter of basic  
7 mathematics?

8 A. Yeah. I mean, it's one of those - you don't have to  
9 take a lot of thinking to figure that out.

10  
11 Q. You give an example in your report, which is the DNA  
12 IQ system protocols that are used by the Virginia  
13 Department of Forensic Science elute DNA in volumes of less  
14 than 50 microlitres?

15 A. Yes. Just as an example, you can go to their website  
16 and you can download their protocol if you so desire.

17  
18 Q. You have looked at why it is that the Queensland lab  
19 has this process of eluting to 100 microlitres?

20 A. Yes. I've looked at their study that they did to  
21 validate that part of the process.

22  
23 Q. As I understand your report, when you looked at that  
24 study, initially they tried eluting to 50 microlitres?

25 A. That's correct.

26  
27 Q. As you read the study, what was the result they got  
28 when they eluted to 50 microlitres?

29 A. Well, they looked at two different types of samples.  
30 One is what we will call buccal cells, cells from the  
31 saliva or cheek cells, and they looked at blood. So they  
32 had two different samples that they ran, and followed,  
33 essentially, the procedure that is recommended by the  
34 manufacturer and eluted into 50 microlitres. When they did  
35 so, they got what appeared to be reasonable results for the  
36 saliva or mouth cells, we'll call them, but they got low  
37 yield for the blood. So this said to them there's some  
38 issue going on. So they then modified the procedure in  
39 where they took two different things and changed them in  
40 the procedure to effect a potentially better yield. And  
41 they do two things, where one is a chemical that is used  
42 during the DNA IQ part and, just for a lack of easier  
43 discussion, it is called DTT. They moved it into the  
44 initial extraction where you're taking the DNA off the  
45 cloth or the substrate.

46  
47 The second thing they did is they changed the volume,

1 the elution volume, from 50 to 100. Now, as a scientist,  
2 if you change two things at once and you get a new result,  
3 one is you don't know if one of them had an effect, the  
4 other had the effect, or the combination of the two had the  
5 effect. Or one other possibility is that neither of them  
6 had any effect because they did all these things  
7 simultaneously. I would have separated them out if I was  
8 going to make those changes from a standard protocol.

9  
10 When they did that, the next time they did their  
11 analysis, they got much better yield for the blood, but  
12 they had no change in the yield with the mouth cells or the  
13 saliva cells. Those things might be correct, but because  
14 they didn't see any great yield and change in the buccal  
15 cells with good amount of DNA in those, another possibility  
16 is that what they did had nothing to do with the  
17 modifications they made and it may have just been they had  
18 a bad sample preparation when they prepared the blood  
19 samples and analysed. And they only ran it once and then  
20 they went on and changed something and onward, and they may  
21 have just corrected the samples, because I wouldn't have  
22 expected - if it really had a substantial change, they  
23 would have seen a different yield also with the buccal  
24 cells.

25  
26 Now, it may be what they did may be unique to blood,  
27 but it doesn't make sense, per se, for what they did based  
28 on what we know. But there's always a chance that things  
29 can be, you know, modified better. But I would have gone  
30 back, checked my volumes of what I put in to my original  
31 analysis based on the fact I didn't get a better result  
32 with the mouth swab, before I went ahead and made an  
33 effective change, especially a change that's rather  
34 different than the vast majority of labs within Australia,  
35 New Zealand, the US, and so forth. Because I would be  
36 asking myself, "Why am I having such a different result  
37 than everybody else?"

38  
39 And so, I question whether they did a sufficient  
40 amount of evaluation to come to the conclusion that  
41 100 microlitres was better for them to use as the final  
42 volume, especially with the consequence of diluting the  
43 sample.

44  
45 Q. Is it fair to say, in your opinion the approach that  
46 was taken to validating the DNA IQ system was bad  
47 experimental design?



1 A. I would think so for that reason and a couple of other  
2 reasons in there. As a side example, often when we are  
3 doing methods of testing, we do what is called  
4 repeatability and reproducibility.

5  
6 One is the same person, same instrument, does the  
7 analysis again to see if you get the same general answer  
8 within acceptable ranges. The other is that it may be run  
9 by someone else on a different instrument following the  
10 same protocol, again to see if you get them within  
11 acceptable ranges. As they were doing this, they started  
12 changing the procedure before they finished doing the  
13 reproducibility study. Well, if you are changing the  
14 procedure, you didn't do a repeatability study, you didn't  
15 do a reproducibility study. So that to me, again, is not  
16 necessarily that the change may have not been beneficial,  
17 but I would have done all those things first, then do the  
18 repeatability. So they never actually did a  
19 repeatability/reproducibility when they are changing  
20 protocols on the fly. So this, again, reinforces that  
21 there may be some issues with the way the studies were  
22 designed and followed through to fit the categories that  
23 were being tested.

24  
25 Q. That experimental design, which I think you have  
26 agreed and described as bad, that is what led to the  
27 decision to have a target value of 100 microlitres for the  
28 samples that then went to quantitation?

29 A. I believe it contributed to that. Again, I can't say  
30 that what they did was incorrect in their hands for some  
31 other reasons we don't understand because I don't have, you  
32 know, the quality data in hand. But the fact that it's so  
33 inconsistent with everybody else's experience, plus the  
34 things that we observed in their study, is a strong  
35 indication that this was not a sufficiently done  
36 validation study to support the outcome of using  
37 100 microlitres.

38  
39 Q. So is one of the things that, in your view, a lab in  
40 this position ought to do is to go back and re-validate the  
41 DNA IQ system to determine an appropriate elution volume?

42 A. Yes, or to determine why they can't get a more  
43 appropriate elution volume.

44  
45 Q. Thank you. I want to then just ask about some changes  
46 to process that were made this year, and your view about  
47 those. You have been told by the Commission that in June

1 of this year the lab started to again routinely process  
2 samples that fell within 0.001 nanograms per microlitre to  
3 0.0088 nanograms per microlitre, but for those samples, it  
4 would go straight to amplification without first  
5 concentrating.  
6

7 That's then changed again, which I'll come to, but I  
8 just want to focus on that June change. Do you have a view  
9 as to whether or not as a matter of best practice that  
10 would have been an appropriate thing for the lab to do?

11 A. I would put a lot more into the decision process, not  
12 just this one flat decision, for another reason. So let's  
13 take the lab's position. The lab has said for - again  
14 rightly or wrongly - that the success range in this range  
15 is low. So if the lab believes that the success rate is  
16 low, analysing samples in this range without any additional  
17 processing beforehand is contrary to their own beliefs,  
18 opinions or findings. It just means I'm consuming sample  
19 at a low success rate.  
20

21 Now, the success rate may be higher, and we can come  
22 to that later. I am just taking from the lab's position it  
23 took through 2018 up to this phase. So that would be  
24 suggesting that the majority of the samples, in the lab's  
25 opinion, may not be successful and they're just wasting  
26 reagents and time by doing that, where concentration, which  
27 did show some success, would again shift the needle again,  
28 more samples to yield usable data. So just from that  
29 perspective alone, it doesn't make sense to me.  
30

31 Now, having that range and letting an analyst look at  
32 the data and say, "Well, I've got one near the upper range,  
33 maybe I will proceed with an amplification and see what it  
34 tells me, but I've got another one that is critical that I  
35 need to run at the lower end, I need to concentrate this  
36 sample", so if we start using judgment and other criteria  
37 to help support better informed decisions is what, I think,  
38 would have been - oh, not think - it is the position I  
39 would have taken if it were my laboratory.  
40

41 Q. Can I again just break that down into a couple of  
42 propositions. One is your starting point is if you are  
43 going to have a fixed process that you're adopting for this  
44 low quantification range, where your own internal data is  
45 that you achieve, I might say, a low result with  
46 micro-concentration, whether it is 10 per cent or  
47 20 per cent, but a low percentage of obtaining samples, and

1 expect to obtain a much lower percentage of samples without  
2 concentration, it is not in accordance with your own  
3 beliefs as a laboratory to decide to just proceed straight  
4 to amplification every time without doing concentration?

5 A. Yes, that's the first point. Not getting into the  
6 actual details of what might be successful or not with  
7 other methods, but just based on the laboratory's position  
8 that it has advocated for several years.

9  
10 Q. The second point is that in terms of what you regard  
11 as best practice, this idea of having a fixed range where  
12 there's no discretion for a scientist as to what they will  
13 do in relation to a particular sample, that's not something  
14 that you would support as a matter of best practice?

15 A. No. It's actually success for failure. I mean, it's  
16 a process for failure.

17  
18 Q. Your point is it's very helpful to have - for the lab  
19 to undertake experiments and to have guidelines and to have  
20 the benefit of those guidelines for the scientists, but the  
21 scientists, in your view, ought to still have the  
22 discretion about what it is they are doing when, for  
23 example, they are at the top of that "insufficient for  
24 processing" quantitation range?

25 A. Yeah. And just as another example, I could have a low  
26 quantity sample and have no indications of degradation.  
27 I might proceed with that anyway, because it still may  
28 yield good results because there's no degradation. So  
29 there are a lot of other indicators that I would use as an  
30 analyst in making the judgment in how to proceed in this  
31 range if that were the correct range to assess the process,  
32 and I would allow my analysts to use all the information in  
33 making the decision.

34  
35 Q. Yes. Thank you, Dr Budowle.

36  
37 MR HODGE: Commissioner, what I now propose to do, unless  
38 you have any further questions about that report, I just  
39 had a few questions that I wanted to ask Dr Budowle about  
40 his other report, which is about the options.

41  
42 THE COMMISSIONER: Yes. You want to move on to the other  
43 report?

44  
45 MR HODGE: Unless you had some further questions on this  
46 report?

47

1 THE COMMISSIONER: No, no. That is all clear.

2  
3 MR HODGE: Q. Dr Budowle, I want to then move to your  
4 other report, which is, just for the benefit of the  
5 operator, [EXP.0001.0002.0001]. This is about the Options  
6 Paper.

7 A. Okay.

8  
9 Q. You were asked a number of questions by the Commission  
10 in relation to the Options Paper. What I am going to do is  
11 just ask you a few of those things so that it is possible  
12 for members of the public, in particular, to understand  
13 some of the conclusions that you reached.

14  
15 The first question is: at a starting point, do you  
16 have a view about the appropriateness of presenting  
17 something like the Options Paper to Police by a laboratory?

18 A. The answer is yes and no. I think it's a good  
19 starting point for, as one approach, to say, "I've done  
20 this work, here's what we found and here are the possible  
21 ways that we could use this information to effect a better  
22 process," and we want to discuss that with you since you  
23 are the ones paying for the service and you are the first  
24 line of who we provide this service to." The side where I  
25 think there is a little bit of, maybe, a nuance to - not  
26 nuance - it is actually a very critical point is there are  
27 many other individuals or agencies or sectors of society  
28 that are impacted by the decisions made, and it's not just  
29 police. The police have a certain goal.

30  
31 So for instance, just say hypothetically, I have a  
32 sample. I can either completely consume it or I could save  
33 half. The judgment for that may be, by the police, say,  
34 "Consume it all. I want an answer", or, "Consume it in  
35 half because I want to take it and go somewhere else".  
36 Either of those have an impact, but let's say they say,  
37 "consume it all". Once that's done and now we proceed  
38 onward for whatever reasons through now the judicial system  
39 that says we're going to court and the defence says, "I  
40 want to re-analyse some sample, but you consumed it all",  
41 the legal community may have a different perspective on  
42 that.

43  
44 If the decision, as was in the Options Paper, not to  
45 do anything, the victims, the families, victims services,  
46 may have an impact on how that affects a victim-centric  
47 approach to dealing with the people who have been most

1       traumatised by these events. And it's not just the victim;  
2       it is families, communities and such. So there may be  
3       other aspects that I would have gone to as well to discuss  
4       the decision process. The police would have been one of  
5       them, but not the only ones.  
6

7       Q. I think the point you are making is you know, based on  
8       your extensive experience in relation to this kind of work,  
9       that some kinds of decisions or approaches that a lab might  
10      adopt will have consequences, potentially profound  
11      consequences, for those who are involved in the criminal  
12      justice system beyond merely police as a client of the lab?

13     A. That's correct.  
14

15     Q. In your experience, in your view, it would be  
16     appropriate for a laboratory who is considering this kind  
17     of decision to consult far wider than just the Police as  
18     the client of the lab?

19     A. That's correct.  
20

21     Q. And then in terms of the content of the Options Paper,  
22     you have read it. Perhaps I might start with a basic  
23     question. On reading it, do you have a view as to whether  
24     it is neutral in the sense that it does not advocate for or  
25     present any particular option as being preferred?

26     A. I don't think it's neutral. It does present the  
27     information in it, but when it comes to the conclusions  
28     options, it is very biased to sort of downgrade the success  
29     rate of the samples in this range.  
30

31     Q. Do you have a view about, as a matter of content for  
32     presenting to somebody outside of the lab who doesn't have  
33     a scientific background, whether the content is  
34     appropriate?

35     A. I don't think it's appropriate in itself, but  
36     sometimes you can have a report but during the oral  
37     communication all these things could be discussed  
38     adequately in a good collaborative relationship to make  
39     that work. But you have to ensure that your target  
40     audience appreciates the scientific issues, the nuances,  
41     the messages, because you are talking to a different  
42     audience. When I use scientific terms, I could be speaking  
43     French to you, I could be speaking Chinese to you, or  
44     whatever it may be, because you're not used to that jargon.  
45     So part of the process is to ensure that we understand each  
46     other so that you can make an effective decision, if you  
47     are the right one to weigh in on what that final decision

1 should be.

2  
3 Q. Do you have a view about the methodology that was used  
4 and is conveyed within the paper for making an evaluation  
5 between the two options, which are effectively processing  
6 or not processing samples in this range?

7 A. It's somewhat difficult given what was done, because  
8 the study doesn't describe what is considered useful  
9 information, what is valuable information, what is that.  
10 And I don't believe, based on what I have seen, that they  
11 accessed all the data on what is useful. It focused almost  
12 entirely towards driving to database upload information,  
13 which is only a small portion of the total of useful DNA  
14 profiles in itself. And from the other document, the  
15 update paper, it may appear that the lab doesn't know the  
16 details of what happens in a case, to effect an  
17 interpretation of what's useful DNA.

18  
19 THE COMMISSIONER: Q. Dr Budowle, as a scientist,  
20 bringing all your knowledge and experience to bear, if that  
21 document had been presented to you so that you could make a  
22 decision whether to, in terms of the document, decide to  
23 adopt option 1 or option 2, would you be prepared to make a  
24 decision?

25 A. I would have said, "Go back and do it again. You  
26 haven't given me sufficient information and detailed  
27 information to effect a decision."

28  
29 Q. Thank you.

30  
31 MR HODGE: Q. I just want to draw out one other point,  
32 which is what you just said about useful information. I  
33 think what you were identifying was uploading to a database  
34 like the NCIDD, you don't disagree that that is a useful  
35 use of DNA information?

36 A. Absolutely.

37  
38 Q. But your point is there are other very useful uses of  
39 DNA information in the context of the criminal justice  
40 system?

41 A. Yes.

42  
43 Q. One of those is you might be able to obtain a full  
44 profile and be able to match the profile to a reference  
45 sample?

46 A. There is a whole host of different things, if we think  
47 about forensic evidence. But just thinking about DNA, I

1 can give you an example.

2  
3 Let's say you have a violent crime scene and there's  
4 blood on the walls, and you want to reconstruct who may  
5 have been - whose blood may be cast in one place or whose  
6 blood may be cast in another or if the same person's blood  
7 was cast in two different parts of the wall. By typing the  
8 samples, all I need is enough to link those together and  
9 I've got intelligence information for crime scene  
10 reconstruction.

11  
12 Another example may be I've got a number of suspects  
13 and I just want to know of any that I can eliminate, so I  
14 have low-quality profile, still useful but not as good as  
15 uploading to a database, and I run those different suspects  
16 through what I believe is probative evidence. And I can  
17 eliminate a large number of these. That's a tremendous  
18 help to the police in narrowing their investigation. So  
19 there are other values in the process.

20  
21 There are also limited values in DNA that might  
22 associate to an individual, maybe not strong evidence, but  
23 some strength of evidence that could be used to interrogate  
24 the person of interest and help him reconsider the alibi  
25 that he's claimed, and so forth. So there are just a few  
26 examples of how DNA can be used beyond being uploaded into  
27 a database, and I didn't think the lab had taken those  
28 practical things that can be useful into consideration when  
29 it assessed what was considered useful DNA.

30  
31 Q. Yes. Beyond being able to obtain a profile sufficient  
32 for uploading to a database and beyond being able to obtain  
33 a full profile that you can compare, a full single profile  
34 that you can compare to a reference sample, there are many  
35 other uses of DNA where you might not obtain a full  
36 profile, you might only obtain a partial profile, but that  
37 can be a useful - can be informative anyway in terms of  
38 comparing to different samples?

39 A. Yes, or resolving an alibi, a scenario, or tying  
40 things together for reconstruction, a whole host of  
41 different applications that one can consider, that I am  
42 sure the police would use routinely in their work.

43  
44 Q. Thank you.

45  
46 MR HODGE: Commissioner, I don't have any further  
47 questions.

1  
2 THE COMMISSIONER: Thank you. Mr Hunter?

3  
4 MR HUNTER: We have no questions.

5  
6 THE COMMISSIONER: Mr Rice?

7  
8 <EXAMINATION BY MR RICE

[10:53am]

9  
10 MR RICE: Q. Dr Budowle, I want to take up some parts of  
11 your reports that connect with the verbal evidence that you  
12 have given and just develop it a little bit further. Do  
13 you have your report dated 15 September, which is  
14 [EXP.0001.0001.0001]?

15 A. It's in front of me right now on the screen.

16  
17 Q. Okay. Page 7, please, Mr Operator [EXP.0001.0001.0001  
18 at 0007] and I want to direct your attention to  
19 paragraph 14, in particular.

20 A. Sure.

21  
22 Q. Correct me if I am wrong, that is the portion of your  
23 report in which, or to which we should connect your verbal  
24 evidence about the validation study that you saw which had  
25 a flaw in it?

26 A. That's correct.

27  
28 Q. You don't identify the study that you're referring to  
29 by name in that paragraph, but can I suggest - and you can  
30 confirm or otherwise - that it is in fact the study which  
31 is first listed in paragraph 2 on page 2  
32 [EXP.0001.0001.0001 at 0002]?

33 A. If you can move the screen to page 2, I can confirm  
34 that.

35  
36 Q. Sure. Do you see the list there?

37 A. Yes. That would be - you have to go up a little bit.  
38 Yes. That would be the one that's on the validation of a  
39 manual method for extracting DNA, or --

40  
41 Q. Okay, because when we --

42 A. I'm sorry. I think there are two reports that I  
43 looked at, but I believe it was the (b).

44  
45 Q. Well, can I say as we looked at Project #70, the  
46 Phase 1 report, its content appeared to match most closely  
47 what you were describing in paragraph 14.



1 A. Let me pull up that report. If you can give me a  
2 minute so I can verify, because I am doing this off the top  
3 of my head by titles. It will take me a second to find  
4 that. Okay. I will have to dig a little deeper here.  
5 Bear with me for a minute. Here's my report. Hold on a  
6 second here. Yes, you're correct. It is the Phase 1  
7 report.

8  
9 Q. The information available to us is that that is in  
10 fact not the only validation study that has been conducted  
11 by the laboratory to inform a decision to elute at a  
12 volume of 100 microlitres. If you would assume for the  
13 moment that that's correct, is it the case that you are  
14 suggesting in paragraph 14 of your report that such  
15 validations as have been done should be revisited, even if  
16 only because the elution to 100 microlitres is out of step  
17 with common practice?

18 A. That's part of the reason, and just from the report  
19 and what it did, it didn't seem sufficient. Again, I am  
20 basing it on what has been provided to me.

21  
22 Q. Well, the point that I was getting at is you pointed  
23 to a flaw in the Phase 1 report in particular, but I am  
24 looking to go beyond that. If there are other studies that  
25 are not affected by that particular flaw but nonetheless  
26 lead to a conclusion that 100 microlitres is the  
27 appropriate volume, would you suggest that any and all such  
28 studies be revisited because of the benefits of a lower  
29 elution volume?

30 A. Yes, absolutely. I think based on the chemistry it  
31 would be concerning to me if 100 seemed to be the  
32 appropriate for this kind of - for this particular assay in  
33 general, yes.

34  
35 Q. So your recommendation is not solely based upon the  
36 flaw which you identified in the Phase 1 report, which is  
37 described in paragraph 14?

38 A. That's correct, and I think, as I say, most  
39 laboratories don't elute to 100 microlitre volume for the  
40 reasons of not wanting together dilute a sample.

41  
42 Q. Thank you. That takes us back then to paragraph 10 on  
43 page 6 [EXP.0001.0001.0001 at 0006], Mr Operator. In the  
44 meantime, pending those studies that you recommend, the  
45 practice at the laboratory is to elute to a volume of  
46 100 microlitres, is it not?

47 A. Yes. I've seen some that say - just to clarify, I

1 have seen some that say 90 or 95 or 100, but generally the  
2 language has been 100, so I used that volume.

3  
4 Q. The precise figure is not so important.

5 A. Okay.

6  
7 Q. But that can lead to a decision to be made, firstly,  
8 whether to undertake a micro-concentration, and secondly,  
9 to what volume, is that right?

10 A. Yes.

11  
12 Q. Do we take it from what you say in paragraph 10, and  
13 what you have said today, that there ought to be a study  
14 undertaken to inform the criteria by which one would  
15 decide, firstly, whether to micro-concentrate and,  
16 secondly, to what volume?

17 A. That's correct. In addition to other factors that may  
18 affect the decision process.

19  
20 Q. I think this may be taken up in a later paragraph. I  
21 won't take you to it, but later in your report you say -  
22 and this is at paragraph 22 [EXP.0001.0001.0001 at 0010]:

23  
24 *Criteria for discretion by a scientist to*  
25 *select 35 µl or 15 µl microlitres as a*  
26 *final volume should be defined.*

27  
28 That's consistent, is it not, with what you are saying in  
29 paragraph 10?

30 A. That's correct.

31  
32 Q. When you refer to a study, I think you identified at  
33 least some of the content of that, that you might need to  
34 do some comparative analysis of the results of  
35 micro-concentrating to 35 microlitres as compared with the  
36 outcomes of concentrating to 15 microlitres?

37 A. That's correct.

38  
39 Q. Is that at least part of the kind of study that you  
40 have in mind?

41 A. That would be part of it, yes.

42  
43 Q. And at the end of the day, from what you say, there  
44 ought be developed some documented criteria for the  
45 decision-making that comes with the prospect of whether or  
46 not to micro-concentrate and initially to what level?

47 A. Yes. Sort of guidelines that allows the analyst to

1 make the best decision, given the information provided to  
2 him or her.

3  
4 Q. When you refer to a study so as to arrive at the best  
5 outcome for this decision-making process, in this  
6 particular laboratory, studies of that kind appear to be  
7 done by way of a project, which is part of a change  
8 management process. Is that a concept that you're familiar  
9 with?

10 A. There are different processes. As I said, I haven't  
11 seen them do it exactly this way, but I think that's just  
12 more terminology. Usually labs generate a validation plan,  
13 whether you call that a project or not, that sets out how  
14 it will be done, it gets assessed and it moves forward.  
15 Here they use the word "project." I don't see that as  
16 being substantially different than any other practice, just  
17 different ways of describing it.

18  
19 Q. Yes. As part of that process, correct me if I am  
20 wrong, you would expect there to be scientific  
21 collaboration amongst the qualified scientists at the  
22 laboratory --

23 A. Yes, you want to take a few ones --

24  
25 Q. -- or at least for the basis of feedback?

26 A. Go ahead, I'm sorry. Go ahead, you finish. I cut you  
27 off.

28  
29 Q. Or at least there should be feedback from scientists  
30 who are stakeholders in the processes of the laboratory?

31 A. I would go a little further. I would bring them in to  
32 help with the design, because the scientists that are doing  
33 the work themselves, assessing that, have, you know, a  
34 special knowledge and experience that, if I am sitting in  
35 an office as a director, I may not see every day. And  
36 therefore, I would have them assist in the design study as  
37 well.

38  
39 Q. The other matter that I wanted to ask you about is in  
40 your other report of 19 September. Could we go to that.  
41 It is [EXP.0001.0002.0001], Mr Operator, and I want to go  
42 to page 14 [EXP.0001.0002.0001 at 0014] and paragraph 54,  
43 in particular, Dr Budowle.

44 A. Okay.

45  
46 Q. I am interested to ask you about paragraph 54 and, in  
47 particular, the second sentence where you refer to the

1 current system, as you understand it to be - you use the  
2 description "quite siloed"?

3 A. Yes.

4  
5 Q. I wonder if you would elaborate on that, that leads  
6 you to apply that description?

7 A. Through documents, discussions with reporting  
8 analysts, the police and others, some communications that  
9 went back and forth. This lab has broken each of its  
10 varied steps into compartments. Someone is taking the  
11 evidence, making decisions on what to do with it,  
12 extracting it, interpreting the amount of DNA, deciding if  
13 it's sufficient or not.

14  
15 Separate from the Reporting analysts, who only receive  
16 bits of information, so that doesn't allow the Reporting  
17 analyst always to make the best judgment. So the work  
18 process, to me, isn't an effective for the final person who  
19 decides on how to proceed forward with reporting is  
20 informed properly in this - probably as a design for high  
21 throughput and get as many samples out as you can, but it  
22 does have the effect of separating out components.

23  
24 When I saw some of the back and forth on validation  
25 studies and input and such, you saw things that people  
26 weren't even aware of the process being done, the  
27 validation, to implement a procedure in a laboratory. The  
28 findings were surprising to them. That showed a lack of  
29 communication. When we talked to some of the analysts,  
30 they complained about lack of information flow within the  
31 laboratory and from management downward. So based on all  
32 of that together, this didn't seem like a more  
33 collaborative, interactive laboratory, which is, I think,  
34 essential to having a good quality product.

35  
36 Q. You say it is "essential". Could you give us then the  
37 characteristics of workflow which would satisfy that  
38 desired outcome?

39 A. Well --

40  
41 Q. How would you arrange it differently to achieve a  
42 better result?

43 A. Again, I did say I'm not sufficiently familiar with  
44 the workflow specifically as done, because I haven't had  
45 the access to that information; I haven't been to the lab  
46 to see it in action, which would be more desirable. But I  
47 would have the reporting analyst take ownership of the

1 case, decide what examples need to be analysed, hand it off  
2 to the persons who will process the samples. Under their  
3 guidance, they present the results, but the reporting  
4 analyst interprets everything, puts it together in a  
5 report, as opposed to just a sample going through a process  
6 and being handed off without making any decisions, and then  
7 being left with the consequences of that decision by  
8 someone who may not have all the information either. I  
9 would really want somebody who was in charge of the entire  
10 case and making a decision that ties all the aspects  
11 together. That would be at least one of the things I would  
12 improve upon.

13  
14 The other thing I would improve upon is if projects  
15 are being done or changes and policy are being done, I  
16 would ensure that all my people are informed of them as it  
17 goes along, so that they're better prepared, because it may  
18 happen that there are some decisions that could be made  
19 waiting for that process that could be effecting better  
20 results, or they may be in court and they may be asked  
21 questions and they could be better informed of what may be  
22 happening. So I would improve that part of the process as  
23 well. But more details than that in the actual workings,  
24 I would really have to get into the lab and see what  
25 they're doing to give the best structure that I think would  
26 effect good quality results and of course not be so costly  
27 that you couldn't run samples through the laboratory in an  
28 effective throughput.

29  
30 Q. Could you tell me this: The laboratory approach by  
31 which a reporting scientist is assigned to a case rather  
32 than just a list of items to examine one-by-one that may or  
33 may not be connected, I will call it the "case work  
34 approach". Do you follow from that what I am referring to?  
35 A. Okay.

36  
37 Q. I was just wondering to what extent that model or  
38 approach was prevalent in laboratories that you know of,  
39 either directly or by virtue of your studies?

40 A. I know of, personally, you know, the laboratories that  
41 have done it that way, and a number of labs that I have  
42 interacted with, there have been different models, per se,  
43 and there have been models that are more like this  
44 laboratory of processing in segments. The ones that took  
45 ownership tend to have a lower throughput, but they tend to  
46 have higher quality in the work. So in my laboratory, you  
47 have the reporting analysts - we don't use that term, but

1 the equivalent - takes ownership, decides what samples will  
2 be analysed, what the results are, the next step of the  
3 process, and puts it all together. And if there is more  
4 rework to be done, they're informed to do so.

5  
6 There have been labs - there was a lab in the US that  
7 was doing it in this high throughput process and eventually  
8 got plagued with contamination issues and couldn't  
9 follow-through how things were being processed effectively,  
10 and ran into problems. So that did impact the quality. So  
11 based on experience and such, I tend to favour casework  
12 approach. I am not opposed of other, approaches, but  
13 siloing it where there is not communication and links to  
14 different compartments is a formula for failure.

15  
16 Q. Is the casework approach apt to be more expensive  
17 endeavour than the high-throughput sample-by-sample method?  
18 A. The answer could be yes and no. It could be more  
19 expensive on a case-by-case basis because you don't have as  
20 high a throughput, but you could have some hybrids in  
21 there. But if you have a catastrophic failure because you  
22 have a process that's disjointed, you pay a lot more later.  
23 I have reviewed labs that have had these kinds of problems  
24 or other kinds of problems, and then when the failure  
25 occurs and all the cases have to be re-reviewed and the  
26 confidence of the laboratory and of the police using the  
27 laboratory and other government agencies and communities,  
28 those costs are far more dear than the throughput of a  
29 laboratory. So you really have to think of not just the  
30 cost of the laboratory at the moment, but the costs to the  
31 greater community and system, what that impact would be.  
32 For example, here there may be a greater impact about the  
33 lab and the confidence of the lab and the results it had  
34 that could be far more dear than just if it had been just  
35 an increased budget or reduced throughput of the  
36 laboratory.

37  
38 Q. Thanks very much, Doctor.

39 A. Sure.

40  
41 THE COMMISSIONER: Mr Hickey?

42  
43 MR HICKEY: No questions.

44  
45 THE COMMISSIONER: Mr Gnech?

46  
47 MR GNECH: No questions.

1  
2 THE COMMISSIONER: Ms Mckenzie?

3  
4 MS MCKENZIE: No thank you, Commissioner.

5  
6 THE COMMISSIONER: Mr Hodge, do you have any other  
7 questions?

8  
9 MR HODGE: No, thank you.

10  
11 THE COMMISSIONER: Thank you so much, Dr Budowle, for your  
12 assistance.

13  
14 THE WITNESS: You are welcome, sir.

15  
16 THE COMMISSIONER: And you are free to turn off your Zoom.

17  
18 <THE WITNESS WAS RELEASED

19  
20 -- (Loss of Zoom audio: [11:15am-11:16am]) --

21  
22 SHORT ADJOURNMENT [11:16am]

23  
24 THE COMMISSIONER: Yes, Mr Jones?

25  
26 MR JONES: Commissioner, I call Michel Lok, and he will  
27 take an affirmation.

28  
29 <MR MICHEL LOK, AFFIRMED [11:37am]

30  
31 <EXAMINATION BY MR JONES

32  
33 MR JONES: Q. You are Michel Lok?

34 A. I am.

35  
36 Q. You are an acting workforce programs manager within  
37 the Darling Downs Hospital health service?

38 A. Yes.

39  
40 Q. You provided a statement to the Commission of Inquiry  
41 which was signed 16 September 2022?

42 A. Yes.

43  
44 Q. [WIT.0033.0001.0001]. Is that a copy of your  
45 statement, Mr Lock?

46 A. It appears to be, yes.

47

1 Q. Is it true and correct?

2 A. One correction to be made.

3

4 Q. And what is that correction?

5 A. At paragraph 14 I made an error in my leave  
6 arrangements. I was actually on leave from 12 January 2018  
7 through to 8 February 2018 and then again from 21 February  
8 2018 to 20 April 2018.

9

10 Q. Thank you. Otherwise, it is true and correct?

11 A. It is.

12

13 Q. I tender that.

14

15 THE COMMISSIONER: That is exhibit 48.

16

17 **EXHIBIT #48 - STATEMENT OF MICHEL LOK DATED 16/09/2022**

18

19 MR JONES: Q you started at Queensland Health Forensic  
20 Scientific Services on 25 October 2017 as the General  
21 Manager Community and Scientific Services?

22 A. Correct.

23

24 Q. You held that position until 4 June 2021?

25 A. Yes.

26

27 Q. And the leave you took, you just clarified?

28 A. Yes. It was unplanned leave.

29

30 Q. You had no prior experience with forensic DNA testing  
31 or analysis before stepping into the role as general  
32 manager?

33 A. (No audible response).

34

35 Q. As general manager, you reported to the Chief  
36 Executive Officer?

37 A. Correct.

38

39 Q. During your time as general manager, the CEOs -  
40 plural - were Gary Uhlmann and Dr Peter Bristow?

41 A. Correct.

42

43 Q. The CEO position was retitled and it was called Deputy  
44 Director-General Health Support Queensland?

45 A. Correct.

46

47 Q. And at that time you reported to Mr Philip Hood until



1 you finished in the role in June 2021?

2 A. Correct.

3

4 Q. Would you tell the Commissioner what the general  
5 manager is responsible for within Forensic Scientific  
6 Services, please?

7 A. The general manager's role had several business units  
8 which it had oversight of on behalf of Health Support  
9 Queensland. Forensic and Scientific Services was one of  
10 those business units, and my role there was to oversight  
11 the management and operations of the various labs that  
12 operated out of Forensic and Scientific Services, to meet  
13 and, I guess, guide and develop the executive director as  
14 part of my role, and to undertake a review and analysis of  
15 issues that may emerge and how they should be tackled,  
16 making sure that the business operations of Forensic and  
17 Scientific Services aligned with the business objects of  
18 Health Support Queensland.

19

20 Q. Who was your primary contact within the DNA lab when  
21 you were general manager?

22 A. Paul Csoban, at that period of time.

23

24 Q. Was he the director you spoke of?

25 A. He was the executive director, Forensic and Scientific  
26 Services.

27

28 Q. That you would guide?

29 A. Yes.

30

31 Q. When you started in the general manager role, you  
32 received some briefings from Mr Csoban?

33 A. I did.

34

35 Q. What was discussed during those briefings?

36 A. There was a general briefing. A new arrival, you  
37 would be inducted into the nature of Forensic and  
38 Scientific Services operations and activities. And then  
39 some discussion around some of the issues that were present  
40 at the time that may have required some attention. There  
41 were several - several - two or three human resource  
42 management cases that were significant at the time, which  
43 we discussed. And we also discussed probably two matters  
44 relevant to the DNA laboratory, specifically around the  
45 resourcing of the laboratory and a large number of  
46 outstanding cases and backlogs, if you prefer.

47

1 Q. Were any further issues - did Mr Csoban explain to you  
2 how backlogs were measured?

3 A. I received a report, a diagrammatic representation of  
4 the number of cases which were outstanding and how long  
5 they had been outstanding for.

6

7 Q. Were any further issues surrounding backlogs raised  
8 with you in late 2017 regarding DNA testing?

9 A. Not specifically.

10

11 Q. Were you assured of anything in late 2017 to deal with  
12 backlogs? I might remind you to look at your statement at  
13 paragraph 15?

14 A. I don't recall any further conversations other than to  
15 bring to my attention that there was a backlog, that some  
16 additional resources had been applied to help to try and  
17 get through the workload, and that staff were also  
18 undertaking overtime to try and clear backlogs, and that I  
19 was also given a clear assurance that all the priority  
20 cases were being managed in a timely way to meet the court  
21 requirements.

22

23 Q. When you returned from leave in April 2018, did you  
24 continue to meet with Mr Csoban?

25 A. Yes, I did.

26

27 Q. Did you meet with anyone else from the lab?

28 A. I had conversations with other persons. But  
29 particularly Ms Allen was involved in some of those  
30 conversations.

31

32 Q. Were any issues raised with you then?

33 A. No. Not in relation to the matters pertaining to the  
34 Commission, the report.

35

36 Q. Did you meet with Police you when you returned?

37 A. I met with Police, yes, to discuss some issues around  
38 the Forensic Register.

39

40 Q. Did you meet with the Queensland Audit Office?

41 A. I did at a later point, yes.

42

43 Q. What was discussed in that meeting?

44 A. The Queensland Audit Office were undertaking two  
45 audits: One of the efficacy and efficiency of the coronial  
46 system, the testing undertaken there, and one of the  
47 forensic testing done in Forensic and Scientific Services.

1 And the conversations were largely focused around the  
2 arrears, the historical nature of those backlogs, the  
3 workforce and some reductions in workforce over time that  
4 had occurred. And they believed that the coordination  
5 between the courts, the Police and Forensic and Scientific  
6 Services in relation to getting court evidence in a timely  
7 way could be enhanced. There was also a recommendation  
8 that arose out of that around improved governance, which  
9 was the coordination between Queensland Police and  
10 Queensland Health.

11  
12 Q. Thank you. You set about trying to improve that after  
13 being --

14 A. Absolutely.

15  
16 Q. The financial arrangements in place between the QPS  
17 and the laboratory for the testing of crime scene samples  
18 was a \$3 million per annum budget paid by the Queensland  
19 Police Service for as many samples as they could have  
20 processed?

21 A. The Forensic and Scientific Services received  
22 \$3 million from Police attributable to volume crime. Also  
23 received some funding on a fee-for-service basis relating  
24 reference samples, testing reference samples. Both of  
25 those emerged post the 2005 ministerial task force report.  
26 But it also was budget-funded for other activities within  
27 the laboratory, as was Forensic and Scientific Services  
28 generally.

29  
30 Q. In your time in the role, there had been no request to  
31 increase that \$3 million per annum?

32 A. No - I do recall at some point, and it might have been  
33 later in 2018 when we were looking at the resourcing of the  
34 laboratories, as to whether we should look at maybe moving  
35 to a full fee-for-service basis for all testing and pooling  
36 those resources so the relationship between the purchaser  
37 and the provider could be clearer. We didn't progress  
38 that, but there was some discussion. But I don't think  
39 that was until well after the middle of 2018.

40  
41 Q. Did you try and develop a memorandum of understanding?

42 A. We did. The MOU was designed to really outline how we  
43 could better work together. One of the core roles I had as  
44 a general manager was to enhance the stakeholder  
45 relationship. So again from about mid-2018 I took a  
46 greater role in that. I progressed the drafting of the  
47 memorandum of understanding to outline the roles of each

1 party, how we would jointly work together to oversight the  
2 performance of laboratory testing, how we could enhance  
3 scientific collaboration between our workforces, how we  
4 could better coordinate the end results, and clarify those  
5 things which were subject to fee-for-service arrangements.  
6

7 Q. But you were not successful before you left in  
8 securing that memorandum of understanding?

9 A. We provided a draft. I think Police were, in  
10 principle, agreeable to the head agreement. We then  
11 started to move into individual schedules around the  
12 specific activities. COVID occurred and caused the  
13 redirection of a lot of police resourcing, so the matter  
14 took a bit of a back-burner. We had not been able to  
15 finalise the MOU by the time I left the organisation.  
16

17 Q. You are aware that when the lab was considering major  
18 changes to processes, it would carry out a project to  
19 consider the positives and negatives of the potential  
20 change?

21 A. I'm aware that that occurred, and it would be  
22 reasonable to expect --

23 Q. I'm talking about as a general process?

24 A. As a general process, you would expect that to occur.  
25

26 Q. In your time as a general manager you were never told  
27 about Project #184?

28 A. No.  
29

30 Q. In your time as general manager, were you ever told  
31 about an Options Paper that was presented to Police in  
32 late January and early February 2018 that related to a  
33 change in processing samples with low DNA range, and the  
34 change being that those samples would not be processed if  
35 within that low DNA quantification?

36 A. That's correct. I did not know that that report had  
37 been --  
38

39 Q. You hadn't, sorry?

40 A. No.  
41

42 Q. You have since read the Options Paper and you know  
43 what I am referring to --

44 A. Yes.  
45

46 Q. -- when I refer to an Options Paper. Having read the  
47 Options Paper recently, and knowing that it was presented

1 to police in advancing that change in the lab, would you  
2 have expected something of that nature to have been brought  
3 to the attention of the general manager?

4 A. Yes, I would.

5  
6 Q. Had there been feedback from scientists within the lab  
7 to the effect that the premise in the paper was flawed,  
8 would you have expected that feedback to have been brought  
9 to the general manager?

10 A. I would have expected that would have been included in  
11 the paper, if that had been the case.

12  
13 Q. Had you been briefed about those opinions in the  
14 Options Paper, what would you have done?

15 A. I think it would have required us to take a step back  
16 and re-assess the assertions to ensure that we're actually  
17 on solid ground with the analysis performed before we took  
18 it any further.

19  
20 Q. Okay. Two things I'd like to ask you is, one: why do  
21 you say it should have been brought to your attention? And  
22 the second is: if it was, what would you have done to  
23 re-assess it?

24 A. Okay. I say that it should have been brought to the  
25 attention of the general manager on the grounds that we had  
26 been, during my induction phase, talking about backlogs of  
27 work and resourcing. The paper, clearly on read, is around  
28 redirecting resourcing to be more efficient and effective.  
29 So in that conversation on the one hand to say there is a  
30 problem, to then not to have a conversation about the  
31 solution of that problem, I find that unusual. And so, I  
32 would have expected to have come forward on that basis.

33  
34 Secondly, I think the paper was intended to go to  
35 Queensland Police. It was it was a key stakeholder for the  
36 forensics group, and again part of my roles included  
37 stakeholder management. I would have thought that I would  
38 have been informed not only that a paper was going to  
39 Police, but in fact probably invited to attend that meeting  
40 at that early stage of my tenure. So, yes, those are the  
41 grounds I thought it should have come to me.

42  
43 Q. You refer to the Police being a key stakeholder. Did  
44 you consider the Police the only stakeholder to be affected  
45 by such a change?

46 A. No. I think, again, when you read the paper itself  
47 and going onto the second part of your question as to what

1 I would have considered, I think one of the things that it  
2 raises is it puts a change, a proposition to make a change  
3 which may result in some cases not being fully tested and  
4 as a consequence that some evidence not being available to  
5 prosecutors or to - or may impact upon the outcomes that  
6 are affected by the victims of crime. That's a  
7 responsibility which Police carry, largely, and so  
8 therefore I would have thought a much more fulsome  
9 consideration of those matters should have been part of  
10 that paper.

11  
12 Q. If it had been brought to your attention and you knew  
13 it was going to be presented to Police, would you have  
14 consulted further?

15 A. I may have done. Again, I was relatively new in the  
16 organisation. I think at that stage the Acting Chief  
17 Executive Officer was also relatively new. But my general  
18 propensity was to brief up whenever there was an issue or a  
19 risk or something that came up in any of my business units,  
20 so that he was aware, because there's nothing worse than  
21 your CEO not knowing that something was brewing. He may  
22 have full confidence in me to handle the matter or he might  
23 choose - he or she - might choose to become involved in the  
24 matter directly themselves, or give guidance about what  
25 they want done with it.

26  
27 Q. Were you ever curious about what happens in other  
28 laboratories around Australia?

29 A. Would I be curious?

30  
31 Q. Yes.

32 A. Comparison with other laboratories, I think, is an  
33 important - could be a very valuable factor. There is  
34 collaboration that occurs through the ANZPAA NIFS  
35 framework, of which FSS was a member of those  
36 organisations. Therefore, there was active participation  
37 and collaboration with other jurisdictions, working groups,  
38 joint projects. All those things occurred in a scientific  
39 collaborative environment. So, yes, you would be probably  
40 interested to know what other laboratories were doing in  
41 this space.

42  
43 Q. Having read the Options Paper, do you believe that it  
44 would have been endorsed by senior executives in Queensland  
45 Health at the time?

46 A. I think it probably would have required further -  
47 I think one of its weaknesses is it is not an easy read,

1 and as a non-scientific, as was often the case in my  
2 dealings with Forensic and Scientific Services, across all  
3 the laboratories, was papers would come forward, they would  
4 be heavily scientific and not very nuanced to the issues of  
5 how they would be interpreted and read by managers and  
6 executives in either our own agency or others, and so often  
7 the work I did with my small team was to rework some of  
8 that to clarify and to add or to seek further material  
9 being added into papers and so forth. So that was a  
10 regular function that we undertook with material coming out  
11 of FSS.

12  
13 THE COMMISSIONER: Q. I was going to ask you about that,  
14 because you don't have DNA technology experience, nor does  
15 anybody expect that you should have had. So when you get a  
16 document like this, you said that you would expect to be  
17 informed and you expect to go to the meeting. But what  
18 could you contribute? What would you do that could have  
19 added to the discussion, since you would have had to rely  
20 upon what you would be told by those in the lab, including  
21 the Executive Director, perhaps.

22  
23 But they were people who had taken the view that this  
24 was a desirable step to take. They had explained the basis  
25 for it to the extent that they had done so in the Options  
26 Paper itself, and if you asked them about it, they would  
27 have explained to you that this was a desirable step to  
28 take. But, no doubt, you wouldn't have expected them to  
29 explain the science to a degree where you could make your  
30 own judgment. So what would you have done - what could you  
31 have done, rather, that might have added value to the  
32 decision-making around this matter?

33 A. Commissioner, I think probably a few things come to  
34 mind. Again, I wasn't in the situation --

35  
36 Q. No, no, it's hypothetical.

37 A. Hypothetically, you could, although you don't  
38 necessarily need to - you can't be across the science, but  
39 you could look at the data and say, "Does it make  
40 reasonable sense? What do these charts mean?" Have a  
41 conversation with the scientists to explain that.  
42 Sometimes through that process a penny might drop, because  
43 you are basically providing an external view or a  
44 non-scientific view into what is otherwise a very  
45 scientific paper.

46  
47 Secondly, I'd be focusing on the likely impact on the

1 system as a result of making those changes. Some of them  
2 are internal in terms of the efficiency of the laboratory  
3 and so forth, but moreover I would be concerned in this  
4 particular paper around that 1.45 per cent or  
5 1.86 per cent, or whatever the percentage is, and what that  
6 means for the client and other stakeholders, and is that  
7 something we want a proposal on.

8  
9 Q. So you would apply - let me put this to you, and if I  
10 am being too simple, please correct me and inform me.

11  
12 You would apply the skills of a manager in order to  
13 understand at least two things. One is what the  
14 implications of the decision are for the current processes.  
15 And, secondly, you would try to determine who would be  
16 affected by it and then ask yourself the question, "Should  
17 I speak to those people?"

18 A. Absolutely, Commissioner. And consultations is  
19 probably the third leg, is who is seeing this and who  
20 should be seeing this?

21  
22 Q. Yes, yes, I understand. Thank you.

23  
24 MR JONES: Q. Given your answer, then, do you believe  
25 that the Options Paper, having read it, has the necessary  
26 detail to be presented to Police in the form that it was?

27 A. Look, it may have been suitable as a - "We've got this  
28 idea. What do you think?" If there is merit in it, we can  
29 go and do some further work and come back with a more  
30 fulsome report. The report, as it stands, I don't think  
31 has enough detail in terms of it's not clear and it doesn't  
32 have enough assessment of the impact about what that might  
33 mean for Police.

34  
35 MR HODGE: That's the evidence-in-chief.

36  
37 THE COMMISSIONER: Does anybody have any questions for  
38 Mr Lok? Mr Hickey?

39  
40 MR HICKEY: I do. Just a few questions, please,  
41 Commissioner.

42  
43 **<EXAMINATION BY MR HICKEY**

44  
45 MR HICKEY: Q. Mr Lok, you said that the Options Paper  
46 is really something that really ought to have been brought  
47 to your attention, and you explained to the Commission the



1 things that you might have done if in fact that had  
2 occurred and you had been able to participate in the  
3 meetings that happened with QPS. If I understand the  
4 hierarchy that you have explained in the early part of your  
5 evidence, Paul Csoban was the person who immediately  
6 reported to you?

7 A. Correct.

8  
9 Q. If you assume that he was aware of this Options Paper,  
10 and he was aware of those meetings taking place, it's right  
11 to say, isn't it, that he was the one who ought to have  
12 been all of that to your attention?

13 A. Yes.

14  
15 MR HICKEY: Thank you. No further questions.

16  
17 THE COMMISSIONER: Thank you. Anybody else? No?

18  
19 MR JONES: No, thank you.

20  
21 THE COMMISSIONER: Thank you, Mr Lok, for your attendance.  
22 Thank you for your assistance.

23  
24 <THE WITNESS WAS RELEASED

25  
26 THE COMMISSIONER: Mr Jones, do you have another witness?

27  
28 MR JONES: Yes. I call Michael Walsh and he will take an  
29 affirmation.

30  
31 THE COMMISSIONER: Thank you. Yes.

32  
33 <MR MICHAEL WALSH, AFFIRMED

[11:56am]

34  
35 <EXAMINATION BY MR JONES

36  
37 MR JONES: Q. You are Michael Walsh?

38 A. Yes.

39  
40 Q. You are the principal of Powerhouse Partners Pty Ltd?

41 A. Yes.

42  
43 Q. You provided a statement to the Commission of Inquiry  
44 which was signed on 23 September 2022?

45 A. Yes.

46  
47 Q. Mr Operator, [WIT.0042.0001.0001]. Is that a copy of

1 your statement, Mr Walsh?

2 A. Yes.

3

4 Q. Are the contents of that statement true and correct?

5 A. Yes.

6

7 Q. Are there any changes you wish to make to it?

8 A. No.

9

10 MR JONES: I tender that, Mr Commissioner.

11

12 THE COMMISSIONER: Exhibit 49.

13

14 **EXHIBIT #49 - STATEMENT BY MICHEL WALSH DATED 23/09/2022**

15

16 MR JONES: Q. You started as a Director-General of  
17 Queensland Health between - sorry, on 6 July 2015?

18 A. Yes.

19

20 Q. And you finished on 6 September 2019?

21 A. Yes.

22

23 Q. What were your responsibilities as Director-General  
24 over those years that you held that position?

25 A. As part of my statement, I've got the whole position  
26 description. But I think in summary the role of the  
27 Director-General of Health has both the Director-General,  
28 the lead, providing leadership to the department, but also  
29 the system manager under the statute, the Hospital and  
30 Health Boards Act 2011, and in focusing on the role in the  
31 department, fundamentally, the role of a Director-General  
32 is to set the strategic direction, make sure that is very  
33 clearly understood and communicated, making sure that it's  
34 in line with the role and values of the public sector, and  
35 supports the policies of the government of the day, then to  
36 have the governance, organisational structures, policies,  
37 processes, and other arrangements in place to ensure that  
38 strategic direction can be achieved, and to provide all of  
39 that in a context of a culture that is a performance-based  
40 culture that's safe, it is a safe culture, and respectful.

41

42 Q. As Director-General, did you have a primary contact  
43 within the DNA lab?

44 A. No.

45

46 Q. Did you have any understanding of the financial  
47 arrangements and budgets of the lab?

1 A. No, not in detail.

2

3 Q. Did you have any oversight of any of the backlogs  
4 within the lab?

5 A. No.

6

7 Q. You recently became aware of the Options Paper?

8 A. Yes.

9

10 Q. While Director-General, the Options Paper had not been  
11 brought to your attention?

12 A. No.

13

14 Q. Having now read the Options Paper and appreciating its  
15 effect, that is to, to cease a process within the lab, is  
16 it something that you would expect to have been brought to  
17 your attention?

18 A. Not necessarily, and the reason why I say that is,  
19 depending on the scope of the change that they may bring  
20 about and the level of analysis, consultation, and  
21 agreement that existed, I would expect that successive  
22 managers through the organisation would be exercising  
23 judgment in whether they were best placed to make those  
24 decisions and whether or not they needed to come to my  
25 attention. But, broadly speaking, I would say I wouldn't  
26 have expected that sort of thing to get to me.

27

28 Q. In terms of those levels, what about the CEO or a  
29 position beneath you? Is there a level at which you would  
30 expect that to rise?

31 A. As reflected in my statement, my view is, having read  
32 the Options Paper - and this is all in hindsight, and that  
33 needs to be understood - I would certainly have expected  
34 the Executive Director of Forensic and Scientific Services  
35 to be both aware and to have fully understood the Options  
36 Paper and its implications. I think their supervisor, the  
37 general manager, given that the process involves  
38 significant stakeholders such as the Police, the courts,  
39 the legal profession, and victims of crime, that the  
40 general manager would be aware of the process; not  
41 necessarily the scientific content. Beyond that, I would  
42 then think - I'm less clear as to whether or not the Chief  
43 Executive should know about it; probably not. And I don't  
44 think I would or should have known about it.

45

46 MR JONES: That's the evidence-in-chief.

47

1 THE COMMISSIONER: Thank you.

2

3 MR HODGE: No questions.

4

5 THE COMMISSIONER: Mr Hickey, anybody else? Thank you  
6 Mr Walsh. Thank you for your assistance and your  
7 assistance today.

8

9 THE WITNESS: Thank you, Commissioner.

10

11 THE COMMISSIONER: You are free to go.

12

13 <THE WITNESS WAS RELEASED

14

15 MR HODGE: Commissioner, Ms Hedge is going to call the  
16 next witness. It is Inspector Foxover.

17

18 MS HEDGE: Commissioner, I call Stephen Paul Foxover.

19

20 <INSPECTOR STEPHEN PAUL FOXOVER, SWORN [12:03pm]

21

22 <EXAMINATION BY MS HEDGE

23

24 MS HEDGE: Q your name is Stephen Paul Foxover?

25

26 A. Yes.

27

28 Q. And you are currently relieving in the position of  
29 Inspector of Biometrics?

30

31 A. I am currently senior sergeant at this time, yeah.

32

33 Q. You were relieving as at 16 September 2022 when you  
34 provided your statement; is that right?

35

36 A. Yes, that's correct.

37

38 Q. And you provided one statement to the Commission?

39

40 A. Yes, I have.

41

42 Q. Dated 16 September?

43

44 A. Yes, correct.

45

46 Q. Thank you. That is [QPS.0148.0001.0001 \_R]and I  
47 tender that statement.

48

49 THE COMMISSIONER: Exhibit 50.

50

51 EXHIBIT #50 - STATEMENT OF STEPHEN PAUL FOXOVER DATED  
52 16/09/2022

1  
2 MS HEDGE: Q. That position - Senior Sergeant, was it  
3 now?

4 A. Yes, correct.

5  
6 Q. That position, Senior Sergeant, was the position  
7 occupied between 2018 and 2022, generally, by David  
8 Neville; is that right?

9 A. That's right.

10  
11 Q. Were you relieving for him while he was on some period  
12 of leave?

13 A. That's right.

14  
15 Q. In paragraph 5 of your statement, which is on the  
16 first number that I indicated, on the first page, operator,  
17 at the bottom of the page it says that you acted in the  
18 position of inspector. And if we look at 5(d):

19  
20 *04 July 2022 to 11 September 2022.*

21  
22 Was that whole period in the role of Inspector of  
23 Biometrics? Was it you that was --

24 A. I was the Inspector of Biometrics, yes.

25  
26 Q. We have seen in our hearing so far emails sent by you  
27 Inspector Neville during that period. Was he doing some  
28 work while he was on leave?

29 A. Well, that actually wouldn't have been leave. That  
30 would have been Inspector Neville assisting with gathering  
31 information for the Commission, I'd imagine.

32  
33 Q. So you were acting in his position and at sometimes he  
34 might write emails during that period there --

35 A. Yes.

36  
37 Q. -- that dealt with the same subject matter that you  
38 were dealing with?

39 A. Absolutely.

40  
41 Q. Could I turn then to paragraph 11 of your statement  
42 [QPS.0148.0001.0001\_R at 0002]. You say that you had no  
43 involvement in the decision made by the Director-General of  
44 Health on 19 August 2022. You understand that decision was  
45 about automatic micro-concentration of samples within a  
46 certain quantitation range?

47 A. Yes.

1  
2 Q. How deep is your knowledge of DNA analysis to  
3 understand what concentration is and quantitation is?

4 A. Absolutely, yes. I do. I am not a scientist, but I  
5 have been in the section since 2018 and I have become  
6 familiar with that, yes.

7  
8 Q. And so, when you read the memorandum from the  
9 Director-General, you understood what the process was -  
10 from the acting Director-General, I should say - you  
11 understood what the process was that was being implemented?

12 A. Yes. Well, that we believe was implemented, yes.

13  
14 Q. I understand. Could I turn to the email that was sent  
15 to you on that day, 19 August 2022. That appears at  
16 [QPS.0148.0001.0001\_R at 0010].

17  
18 Can you zoom in at the top of the email, please. This  
19 is the email sent to you on 19 August to advise you of that  
20 decision?

21 A. Yes.

22  
23 Q. In the first paragraph, it indicates the change of  
24 process?

25 A. Correct.

26  
27 Q. And then in the second paragraph, it states that:

28  
29 *If further amplification is considered*  
30 *beneficial, and if this process will*  
31 *exhaust the remaining sample volume, then*  
32 *written approval must be obtained from the*  
33 *Queensland Police Service (QPS) prior to*  
34 *that process being initiated.*

35  
36 A. Yes.

37  
38 Q. Were you told by Queensland Health how written  
39 approval would be obtained from the Queensland Police  
40 Service at this time?

41 A. No.

42  
43 Q. And were you invited by Queensland Health to  
44 collaborate with them on how that process would happen of  
45 obtaining approval?

46 A. No, but we did have existing systems in place for  
47 communication between us using the Forensic Register with

1 case management tasks. That would have been my assumption.

2  
3 Q. So you assumed that the request for approval would  
4 come through the Forensic Register?

5 A. Yes.

6  
7 Q. And who did you assume that request would come to?

8 A. To our DNA liaison in Major Crime Unit would be the  
9 normal recipient of that, or the DNA section generally.

10  
11 Q. And were you content with what you assumed? You were  
12 content with that process?

13 A. Well, yes. For approval from us that would have been  
14 fine. That wouldn't have been out of the ordinary.

15  
16 THE COMMISSIONER: Q. It wouldn't have been what?

17 A. It wouldn't have been out of the ordinary to receive a  
18 request from Queensland Health for guidance on whether or  
19 not we should proceed with certain types of testing.

20  
21 MS HEDGE: Q. Yes. All right. Now, is it the case that  
22 on --

23  
24 THE COMMISSIONER: Q. One question. Who would make the  
25 decision then? Who would respond to that request for a  
26 decision? The occupier of which position?

27 A. It could be one of the staff in the DNA liaison and  
28 major crime or it could be myself. I would generally  
29 liaise with someone like Justin Howes for advice on issues,  
30 and I would gain clarification from the investigation  
31 teams. We'd have an input from a range of people who knows  
32 those things.

33  
34 Q. You would get information from - you would get  
35 information from the lab if you thought that would help,  
36 and you would also get information from the investigator if  
37 you thought that would help; is that right?

38 A. Yes. But we are meant to fill that liaison role.  
39 That's what we are there to do.

40  
41 Q. I understand.

42 A. So we would just be a conduit for the information flow  
43 between the two, and try and make the best decision we  
44 could based on that.

45  
46 Q. Thank you.

1 MS HEDGE: Q. Although there was, as you say,  
2 communication about testing between Queensland Police and  
3 Queensland Health, it is the case, isn't it, that prior to  
4 this time Queensland Police were never involved in  
5 approving exhaustion samples by the lab?

6 A. No, only probably for very, very high profile jobs it  
7 may have come up. Maybe a cold case, where we had very  
8 limited samples left and we were looking at doing some  
9 additional testing, it may have been raised. But not  
10 generally, no.

11  
12 Q. I see. So there would have been no standard procedure  
13 our about that?

14 A. No.

15  
16 Q. But there may have been some formal instances of  
17 talking to the police about exhaustion of sources?

18 A. Yes, correct.

19  
20 Q. Had you been involved in any of them in your time?

21 A. Yes.

22  
23 Q. How many would you say over the last 10 years, just as  
24 an example? Just an estimate only?

25 A. Well, I have only been at the DNA unit since 2018, but  
26 I would probably say, for me, five, six potentially.

27  
28 Q. Five or six over five or six years?

29 A. Yes.

30  
31 Q. Four or five years, actually?

32 A. Mmm-hmm.

33  
34 Q. After that, and if we can go back to your statement to  
35 the page ending in 0003, and paragraph 12  
36 [QPS.0148.0001.0001\_R at 0003], is it the case that you  
37 became aware that the request for approval had been sent  
38 through the Forensic Register to scenes of crime officers  
39 and investigators?

40 A. Yes, that's correct.

41  
42 Q. And that wording there that we see in paragraph 12 is  
43 the wording that was put into the Forensic Register?

44 A. Yep, that's correct.

45  
46 Q. Did you become aware of this because the scenes of  
47 crime officer and investigators asked you for assistance?



1 A. I think we had one case of that, and the officers  
2 working in the DNA Liaison and Major Crime Unit were, just  
3 as a matter of their duties, going through sex offences,  
4 I suppose, more serious offences, and stumbled across an  
5 entry in the Forensic Register with that wording and  
6 realised it had been sent to a scenes of crime officer.  
7 And we also had that inquiry from an actual investigator  
8 who received an email, so that alerted me that there was  
9 something unusual about that, because normally those  
10 requests would have come to us.

11  
12 Q. And you decided to write to Cathie Allen, the managing  
13 scientist?

14 A. Yes, that's right.

15  
16 Q. Can we look at that email [QPS.0148.0001.0001\_R at  
17 0017]. If we could just tip into the page before, to see  
18 when that email was sent. Tuesday 30 August 2022?

19 A. Yes, correct.

20  
21 Q. If we scroll down into - you say that you are aware  
22 there have been changes made. You identify the particular  
23 wording. Below that, you identify the barcodes which are  
24 now --

25 A. Yes.

26  
27 Q. -- blocked out. That's the barcodes of the samples  
28 that were relevant to this?

29 A. Correct.

30  
31 Q. All right. If we can go down to the bottom of the  
32 page, please, operator, you asked about process. And then  
33 you set out in these dot points, is this right, Senior  
34 Sergeant, the information that you considered would be  
35 necessary for you at the DNA Management Unit to make an  
36 informed decision about whether that exhaustion would be  
37 approved?

38 A. That's correct. Because otherwise it was going to be  
39 very difficult.

40  
41 Q. And you set out there:

42  
43 - *The actual QuantTrio results*

44  
45 So that's the quantitation results.

46 A. Correct.

47

1 Q. An indication of whether there had been  
2 micro-concentration and volume?

3 A. Yes.

4

5 Q. Volume remaining?

6 A. Yes.

7

8 Q.

9

10 *A full description of the actual profile*  
11 *already obtained.*

12

13 A. Yes.

14

15 Q.

16 *An ... (expert opinion) on the likelihood*  
17 *that further internal testing may provide*  
18 *additional probative information.*

19

20 A. Yes.

21

22 Q. And:

23

24 *A recommendation as to whether the sample*  
25 *may be better tested by an external service*  
26 *provider.*

27

28 A. Yes, correct.

29

30 Q. Would it be fair to say that that's a fair amount of  
31 information?

32 A. Well, I think it's the right amount of information for  
33 us to be able to make any decision on whether or not to  
34 consume a sample.

35

36 Q. Did you take advice to develop this list of dot  
37 points?

38 A. Yeah, I did. I took advice. I did liaise with  
39 Inspector Neville about that, yes.

40

41 Q. What about with the DNA analysis lab, about what they  
42 would think was necessary for you to --

43 A. No, I didn't liaise with them about that, no.

44

45 Q. So Inspector Neville was the only person you spoke to  
46 about this?

47 A. Yes, correct.

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Q. I understand. Did you understand that the last three dot points, did you understand that that would involve a Reporting scientist to give you that information?

A. I wouldn't know what type of scientist but I certainly wanted a scientist in Queensland Health to provide that information, someone qualified to.

Q. I see. And so, that would be true of all of the dot points; that is, you wouldn't know exactly who in the lab who would provide that information?

A. No, no.

Q. And it would be fair to say you won't know how long it would take them to provide that information?

A. No. At that stage I didn't, no.

Q. So you weren't thinking of this from a resources perspective, you were thinking of this as a quality of information perspective?

A. Absolutely.

Q. Thank you. If we turn back to [QPS.0148.0001.0001\_R at 0016]. Sorry, could I just go back to that page again, I am sorry, operator, at the bottom of the page. You also say that you would like those tasks forwarded to the DNA Management Section rather than forensic officers?

A. Correct, absolutely. Because it wouldn't have meant anything to forensic officers or investigators. They wouldn't have understood.

Q. Going back to page 0016 now, at the top of the page is the response from Ms Allen, 31 August 2022.

A. Mmm-hmm.

Q. Ms Allen thanked you for your email and indicated that she had worked with Helen Gregg, Paula Brisotto and Justin Howes to devise a workflow to include the dot points that you indicated?

A. Yes.

Q. So she accepted the piece of information you identified as useful for you to make the decision?

A. Yes.

Q. And she said that she will implement that workflow?

A. Correct.

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Q. Then she just identified where exactly the results or tasks should be sent?

A. That's right. I later clarified the correct -- the work unit that was -- a new work unit we had created specifically to receive those types of requests.

Q. Have you seen a result of that workflow that Ms Allen said she would implement?

A. -- yes, I have.

Q. How many of those have you seen since 31 August?

A. I have - well, definitely I looked at one, and I know that we would have only received a handful so far. It's very early still. I believe there's another one today that I haven't had a chance to look at yet because of that exact reason; I need to start looking at a few to get a bit of a feel for what is going to coming back.

Q. And are you to look at all of them?

A. I would at this stage.

Q. Yes, all right.

A. I know the people in the DNA liaison major crime team would be the ones actually receiving them, but at the moment I want to look at them, yes.

Q. And so you received, say, two or three over the last month that this process has been in place?

A. Correct. But there could be more there. I haven't had time to really go and look for them all. That is something I will be doing.

Q. When did that first one, the first one you saw, approximately, come in?

A. It would have been within a day or two of that email, yeah.

Q. Do you remember who provided the expert opinion that you sought in your dot points?

A. I've actually got a copy of it here if you want me to have a look?

Q. Yes. Please don't identify anything about the case itself --

A. No, I won't.

1 Q. -- or any confidential information, but I believe a  
2 scientist's name from the laboratory should --

3 A. This is just an email I sent to the liaison unit, just  
4 with an example, because I wanted to look for myself at  
5 what had transpired. Yes, it does have the scientist's  
6 name at the bottom, yes.

7

8 Q. Can you tell us that person's name?

9 A. It's Emma.

10

11 Q. Emma?

12 A. Mm.

13

14 Q. Could you just tell us about how long that document  
15 is? Is it one page or a number of pages? Half a page?

16 A. Just one page.

17

18 Q. Were you satisfied that it met the dot points that you  
19 asked for?

20 A. Yes. And I know that I have seen at least one other  
21 which I was very happy with, yes.

22

23 Q. From that, don't tell us the decision you actually  
24 made, but did you make a decision based on the information  
25 you were given?

26 A. I can't recall. We have made a few decisions on  
27 samples. I can't recall exactly what we did with that one.

28

29 Q. Have you made a few decisions on exhaustion of  
30 samples?

31 A. Yes, but I don't think - I don't think we have said to  
32 exhaust one yet that I can recall.

33

34 Q. Thank you. On the next day after the email from  
35 Ms Allen accepting your proposal and implementing that  
36 process, is it right that you received an email from  
37 Ms Gregg, the Quality Manager of FSS?

38 A. Yes, correct.

39

40 Q. Can we turn to that, please. [QPS.0148.0001.0001\_R  
41 at 0020]. That's the email there?

42 A. Yes, correct.

43

44 Q. This is not in response to anything you sent to Cathie  
45 Allen; this is the start of a new email thread?

46 A. Exactly, yes. That's right.

47

1 Q. Ms Gregg started, initiated, and the subject being:

2

3 *Requests for rework.*

4

5 A. Mmm-hmm.

6

7 Q. And she identified the importance as high?

8

9 A. Yes.

10

11 Q. In the first paragraph, she deals with recent changes  
12 and in the second paragraph, she indicates that she is  
13 receiving:

14

15 *We ...*

16

17 That's FSS?

18

19 A. Yes.

20

21 Q.

22

23 *... receiving requests from QPS to  
24 conduct further testing, including requests  
25 to restart ... after a statement has  
26 already been released.*

27

28 A. Yes.

29

30 Q. The situations identified in that paragraph are not  
31 exhaustion-of-sample scruples, are they?

32

33 A. No, they're not.

34

35 Q. These are just business-as-usual things that the

36

37 Police do?

38

39 A. Yes. Well, our review of "DNA insufficient", for  
40 example, on an unsolved rape or an ongoing investigation  
41 where we think that more testing might be valuable, it  
42 might be good probative evidence in that case, they would  
43 be resubmitted.

44

45 Q. Yes. And that's something that's been happening since  
46 2018?

47

48 A. Yes.

49

50 Q. And this year has been happening particularly in  
51 relation to samples identified as DIFP --

52

53 A. Yes.

54

55 Q. -- more often than it has been in the past?

1 A. Yes, we are definitely looking a lot more closely at  
2 those now, yes.

3  
4 Q. Can we go to the next please, operator, at the top of  
5 the page [QPS.0148.0001.0001\_R at 0021], Ms Gregg indicates  
6 there is additional analytical work and statement work, and  
7 has a direct effect on already affected turnaround times.  
8 Is that right?

9 A. Yes, exactly right.

10  
11 Q. She asks then for what your process is for requesting  
12 reworks; is that correct?

13 A. Yes.

14  
15 Q. Did she have any conversation with you around this  
16 email or just the email came to you?

17 A. Just the email came.

18  
19 Q. There's nothing in there about the turnaround times  
20 that might be affected by the exhaustion of sample  
21 processes?

22 A. No.

23  
24 Q. Have you ever had any conversation with her or anyone  
25 else at Queensland Health about how the exhaustion process  
26 might affect turnaround times?

27 A. No.

28  
29 Q. In this email, there is also no indication of exactly  
30 how the turnaround times would be affected; is that right?

31 A. That's correct.

32  
33 Q. You did not respond to this email directly; is that  
34 correct?

35 A. That's correct.

36  
37 Q. But Duncan McCarthy, who was then the acting  
38 Superintendent; is that right?

39 A. Correct.

40  
41 Q. Did respond. If we can go to that email  
42 [QPS.0148.0001.0001\_R at 0019]. At the top of the page,  
43 the response of 2 September 2022?

44 A. Yes.

45  
46 Q. And it relates to that email request for rework.  
47 There are some descriptions then, about some of the history

1 that we have been through in this Commission with Inspector  
2 Neville; is that right?

3 A. Correct.

4  
5 Q. Turning on to the next page, he then responded in  
6 his - he accepts that there are samples that will need  
7 testing, and in the last paragraph, he says:

8  
9 *Regardless of the triage measures adopted,*  
10 *it is expected that requests for further*  
11 *testing will dramatically increase the*  
12 *workload of QHFSS.*

13  
14 Is that your understanding as well?

15 A. Yes.

16  
17 Q.

18 *It is critical to investigation of*  
19 *crime and the safety of the Queensland*  
20 *community that DNA results are provided in*  
21 *a timely manner.*

22  
23 I assume you would agree with that also?

24 A. Yes.

25  
26 Q. He seeks advice from Ms Gregg on the strategies that  
27 QHFSS might adopt to ensure turnaround times are not  
28 adversely affected?

29 A. Yes.

30  
31 Q. Is that right?

32 A. That's correct.

33  
34 Q. That is an indication, is it not, these two emails,  
35 that both sides of this equation can affect turnaround  
36 times?

37 A. Yes.

38  
39 Q. That Ms Gregg is highlighting, perhaps, some influence  
40 can influence turnaround times?

41 A. Yes.

42  
43 Q. And Mr McCarthy is indicating that he wants to know  
44 the measures being put in place by QHFSS to manage those  
45 turnaround times?

46 A. Correct. That's right.

47



1 Q. But there's not in any of those emails quantification,  
2 even estimation, of what sort of effect --

3 A. No.

4

5 Q. Any of this has on turnaround time?

6 A. No, there isn't. There's no detail there.

7

8 Q. Were you involved in any conversations between  
9 Superintendent McCarthy and Ms Gregg around this?

10 A. No, I wasn't.

11

12 Q. Just the emails?

13 A. Yes, just emails.

14

15 Q. If we turn to the page [QPS.48.0001.0001\_R at 0019],  
16 at the top of the page, you were cc'd in this email from  
17 Ms Gregg where she passes this issue to Lara Keller?

18 A. Yes.

19

20 Q. Who had then returned from leave into that position,  
21 The Executive Director of FSS?

22 A. Yes, correct.

23

24 Q. Did you hear any more about that by the time you wrote  
25 your statement on 16 September?

26 A. No, I hadn't heard anything further about that  
27 discussion about retesting and turnaround times. No, I  
28 haven't.

29

30 Q. But, in particular, Superintendent McCarthy's request:

31

32 *... advice from you on the strategies that*  
33 *your organisation might adopt to ensure*  
34 *turnaround times are not adversely*  
35 *impacted.*

36

37 A. No, I haven't seen anything about that.

38

39 Q. You continued to act until 11 September; is that  
40 right?

41 A. Yes, that's correct.

42

43 Q. So after that date it might be that something would  
44 have gone to someone else?

45 A. Yes, correct.

46

47 Q. But up to the 11th, would you have expected any

1 response to go to yourself?

2 A. Yes. I expect I would have been advised, yes.

3

4 Q. Can I just return briefly to the page ending in 0017  
5 and those dot points of what the QPS would need to make up  
6 an informed decision on further testing. Who is it that  
7 you would expect to make the decision?

8 A. Based on this information?

9

10 Q. Yes.

11 A. Well, I would say a member of the DNA Management  
12 Section would, I suppose, advise Queensland Health of what  
13 we would like to happen to that sample, whether or not it's  
14 going to be consumed, whether we give them permission to.

15

16 Q. Yes.

17 A. And that may be a very simple decision. If we spoke  
18 with an investigator and they're familiar with the case,  
19 they know what exhibits they have, they know what type of  
20 evidence they have, they might be very happy to say,  
21 "Please consume it. I'd rather get a full nuclear profile  
22 out of that. There's no point in trying to go overseas for  
23 Y-STR or a mitochondrial test at another lab or anything  
24 complex".

25

26 Q. Yes.

27 A. So that's an easy decision for us. If it is a more  
28 protracted job with an unknown offender, we would be very  
29 reluctant to consume our only crime scene sample. And that  
30 would -- you know, that would require -- probably we would  
31 have a meeting about that, a case conference even, which  
32 wouldn't be unusual for an important matter. So they are  
33 case-by-case, every one of these really.

34

35 Q. Of course. But who is the decision-maker?

36 A. It would be made by a member of the DNA liaison and  
37 major crime. There is a sergeant in that section --

38

39 Q. Yes.

40 A. -- who manages those decisions, ultimately.

41

42 Q. But they would be speaking with the investigator and  
43 so on?

44 A. Yes, correct. It would be a collaborative decision  
45 with whoever we need to speak to. The internal  
46 stakeholders, yes.

47

1 Q. And in your example, the first example you gave of an  
2 investigator who knows the case very well and knows that we  
3 don't need to - I think you described it as "We don't need  
4 to go overseas for Y-STR or mitochondrial DNA".

5 A. Yes.

6  
7 Q. Is that a large proportion of investigators who would  
8 be so well versed in DNA analysis to be able to provide  
9 that level of advice?

10 A. It's more about the knowledge of their own case, of  
11 how important a particular exhibit is to their case. See,  
12 that's what we don't know and that's what Queensland Health  
13 don't know. They do.

14  
15 Q. I understand. So it's not so much their knowledge of  
16 what Y-STR is --

17 A. Yes.

18  
19 Q. -- or mitochondrial DNA? It is their knowledge of the  
20 case and whether they just don't mind that it gets  
21 exhausted for some reason?

22 A. And we would give them guidance. If we know that it  
23 is a sample from a female victim, we might suggest that a  
24 Y-STR might be desirable. They might not know what it is,  
25 but once we explain what it can do for them, they might  
26 say, "Yes, we want that".

27  
28 Q. In your opinion, with this information, is the DNA  
29 Management Unit the best person to make the decision about  
30 exhaustion?

31 A. Well, when you say "make the decision", I think it's  
32 important that we act as the - once again, I say - the  
33 conduit between Queensland Health and the investigators,  
34 and if it's a major incident, the investigation team.  
35 There's a number of people involved. There are forensic  
36 coordinators, forensic managers, trained scenes of crime  
37 officers who have been at the scene; investigators who have  
38 been at the scene. All of those people would be involved  
39 in those decisions depending on the case.

40  
41 Q. Of course.

42 A. So we --

43  
44 THE COMMISSIONER: Q. What you mean is you don't expect  
45 that somebody would dictate a decision. You would expect  
46 that a decision would be reached that would be a consensus?

47 A. Absolutely.

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Q. So if the investigator had a very firm view one way or the other, that would be taken into account, you wouldn't expect there to be any controversy?

A. I would say we would never overrule --

Q. No, quite right.

A. -- an investigator. Ultimately, is their case; they will be the ones putting a brief together for court. We're just assisting.

Q. In relation to decisions of this kind about how to go about testing samples in an investigation, prior to this process being introduced as a result of everything that you have just given evidence about, has there been much occasion in the past to have these kind of collaborative discussions involving a laboratory, the Police DNA Section and the investigator, concerning which samples to test, how to test them, and the implications of testing?

A. Yes.

Q. Yes?

A. That's not new. That's something that's always happened. There's always been communication about it. I've had investigations in forensic testing, yes.

Q. Thank you.

MS HEDGE: Q. Just leading on from the Commissioner's question, who in the laboratory you would speak to in that situation where you are seeking some collaboration?

A. My contact there was generally Justin Howes.

Q. Yes. So would you also at times speak to the actual scientist who might have worked the profile?

A. Yes, that would happen, but I wouldn't generally be involved in that. That would be more the DNA Liaison and Major Crime staffing that unit, would go to case conferences with investigators and potentially with scientists working at the lab, yes.

Q. When you say "potentially" the scientists, are you just not sure whether they do go to those?

A. No, no. They do sometimes, but not all the time. There's meetings we have with both sides. We may meet with the investigation team regularly, but then by the time you go to involve a scientist and Queensland Health it would

1 be - obviously, you would have conducted a review of the  
2 exhibits already and narrowed down the points of interest.  
3 And that is when you would need to talk to a specialist, an  
4 expert.

5  
6 Q. I see. What I am trying to determine is whether you  
7 would then speak to Justin Howes, who is a certain level  
8 within the lab --

9 A. Yes.

10  
11 Q. -- or to someone who had done the actual work?

12 A. Yeah. The liaison team would talk to the people who  
13 have actually done the work, what you might want to call  
14 the reporting scientists, I guess. From my point of view,  
15 if I just needed some guidance initially to provide advice  
16 to someone, initial advice, I would go to Justin. I  
17 consider him an expert, and I'd ask him and he'd tell me.

18  
19 Q. All right. Have you personally talked to a reporting  
20 scientist?

21 A. From time to time, yes.

22  
23 Q. How many times since you started there in 2018?

24 A. Oh?

25  
26 Q. Just roughly?

27 A. I couldn't say. 20, 50. I don't know. It's not  
28 irregular, but like I say I don't get involved in - you  
29 know, I don't sit in on these jobs for weeks and weeks, but  
30 I have staff that do.

31  
32 Q. Understand. Going back to these dot points then and  
33 this decision about exhaustion, if you wanted to speak to  
34 the person who provided you the opinion, for example,  
35 Emma --

36 A. Yes.

37  
38 Q. -- in the example you have given, could you do that?

39 A. Yeah, absolutely. No problem. I could call Emma,  
40 yes.

41  
42 Q. Call her directly?

43 A. Mm.

44  
45 Q. How would you do that?

46 A. I have an extension number and I would ring it.

47

1 Q. All right. So you have access to the internal  
2 extension numbers --

3 A. Yes.

4  
5 Q. -- of everyone in the QHFSS?

6 A. I wouldn't say I would like doing that regularly  
7 because I don't want to take them away from their work, and  
8 that is why I would probably tend to go to Justin, but if I  
9 needed to urgently or it was something important, or I have  
10 been told to make direct contact, I would.

11  
12 Q. Do you think that in your opinion would the process be  
13 improved by having that discussion or collaboration as a  
14 standard when considering exhaustion as opposed to as a -  
15 if police request?

16 A. Yes, yes. I do.

17  
18 Q. So you think it would be better process to talk to the  
19 scientist in every case?

20 A. Every case of when there is risk of exhaustion of a  
21 low quant.

22  
23 Q. If they are seeking approval for exhaustion, that's  
24 right? That's what I'm asking?

25 A. No, I don't think we would need to speak in every  
26 case, no. No. But when it becomes complicated, obviously  
27 yes, that is a big advantage. But that initial advice  
28 would be sufficient for me to at least have a quick look at  
29 it, makes some inquiries at our end and if we needed  
30 further information, then we'd definitely make more  
31 contact.

32  
33 Q. Thank you.

34  
35 MS HEDGE: Thank you, those are my questions.

36  
37 THE COMMISSIONER: Thank you. Mr Hunter?

38  
39 MR HUNTER: One question.

40  
41 **<EXAMINATION BY MR HUNTER**

42  
43 MR HUNTER: Q. Are you aware of a decision apparently  
44 made today by Queensland Health to cease or to pause  
45 testing of examples in what I will call the DIFP range?

46 A. Yes.

47

1 Q. Are you able to assist as to how long it is expected  
2 that that pause will be in effect?

3 A. It is too early for me to say. I don't know. We're  
4 waiting on some more information on that.

5  
6 Q. Are you aware of any proposals for any arrangements  
7 with respect to those samples in the DIFP range in the  
8 interim? That is, between now and whenever an ultimate  
9 decision is made?

10 A. No, we - that's - that's something we're working  
11 through now.

12  
13 Q. Do you have a view about the desirability of a lengthy  
14 pause when it comes to the testing of samples in that  
15 range?

16 A. No, we certainly don't want a lengthy pause. But I  
17 don't have any information at the moment to be able to give  
18 you any estimation on how long it is going to take to  
19 resolve.

20

21 MR HUNTER: Thank you. That is all I have.

22

23 THE COMMISSIONER: Mr Rice?

24

25 <EXAMINATION BY MR RICE

26

27 MR RICE: Q. Can we go to page 20 of that document,  
28 Mr Operator. [QPS.0148.0001.0001\_R at 0020]. Just above  
29 halfway, the paragraph commencing:

30

31 *Regardless of the triage measures ...*

32

33 Perhaps that could be enlarged. This is Acting  
34 Superintendent McCarthy's email to Ms Gregg. In it, he  
35 flags an expectation, probably his, that requests for  
36 further testing will dramatically increase. He doesn't  
37 offer any estimate of the numbers expected in that email,  
38 does he?

39 A. No.

40

41 Q. Has that been given independently by some means  
42 outside of this email?

43 A. No. That's ongoing as well. There's a lot of data  
44 manipulation required to accurately get that, but we do  
45 know that it will be - I guess it's been described by the  
46 Superintendent as a dramatic increase, but certainly an  
47 increase. There will be an increase because we are going

1 to be retesting some of those examples, and that's an  
2 additional workload.  
3  
4 Q. It is just that he seeks advice on strategies --  
5 A. Mmm-hmm.  
6  
7 Q. -- to manage an increase, and the word "dramatically"  
8 has been included but no numbers, either then or since,  
9 apparently --  
10 A. No.  
11  
12 Q. -- have been indicated to assist in guiding what level  
13 of strategy might be required?  
14 A. Yep, that's correct.  
15  
16 Q. Well, almost a month has passed since this email.  
17 What are the figures for September?  
18 A. For how many set samples we have sent back for  
19 retesting?  
20  
21 Q. Yes.  
22 A. I don't have that with me at the moment, no.  
23  
24 Q. Do you know whether it has, whatever the figure is,  
25 meets the description of the dramatic increase?  
26 A. I would say at this point no, and that's because we  
27 are effectively triaging those samples to minimise the  
28 effect on Queensland Health. I mean, that's - we don't  
29 want them to stop testing our new crime.  
30  
31 Q. I understand.  
32 A. So it is a balance for us at the moment, but that  
33 could change. And I think that's what the - well, I  
34 probably can't comment on what the Acting Superintendent is  
35 trying to say there, but I guess he is trying to flag that  
36 there is that potential for a dramatic increase, yes.  
37  
38 Q. Well, from what you say, at least in the course of  
39 September, given the selective approach you are taking--  
40 A. Yes.  
41  
42 Q. -- that whatever samples are being referred back to  
43 FSS might not at this point qualify as a dramatic increase,  
44 is that fair to say?  
45 A. Well, that's something. What's dramatic to me may not  
46 be dramatic to someone else. I'm not sure whether that --  
47



1 Q. You can't give us the figures, can you?

2 A. No, that's right.

3

4 Q. So it makes it very difficult for anyone to give any  
5 content to that description.

6

7 THE COMMISSIONER: The question is how many samples have  
8 been submitted? You client would know that

9

10 MR RICE: Well, how many requests as flagged?

11

12 THE COMMISSIONER: Why can't your client tell you? Why  
13 are you asking him?

14

15 MR RICE: Only to see if he knows, Commissioner. It is  
16 just something that has cropped up.

17

18 THE COMMISSIONER: It is a perfectly fair question. I am  
19 just wondering why you keep asking him when that is a  
20 number we can get from Queensland Health.

21

22 MR RICE: Well, perhaps we can. Thank you.

23

24 THE COMMISSIONER: Does anybody else have any questions  
25 for the Senior Sergeant? Mr Hickey?

26

27 MR HICKEY: Yes, just on one topic, Commissioner.

28

29 **<EXAMINATION BY MR HICKEY**

30

31 MR HICKEY: Q. The Commission has received some evidence  
32 from an international expert around the topic of processes,  
33 changing processes, which might have the result of  
34 exhausting samples from which DNA profiles might be  
35 obtained. And one suggestion he made, or an observation  
36 that he made of the particular regime that has existed here  
37 in Queensland, is that insofar as the lab is concerned, it  
38 is a particularly QPS-centric approach. That is to say,  
39 the decision-making around whether or not the sample should  
40 be exhausted is really directed to the investigation  
41 imperatives of the investigators themselves?

42

A. Mmm-hmm.

43

44 Q. And that his impression was that not much thought had  
45 been given, by the lab in particular, to other stakeholders  
46 who might be affected by changes to procedures. And the  
47 kinds of other stakeholders he identified were people like

1 victims of crime --

2 A. Mmm-hmm.

3

4 Q. -- the legal system generally, the Department of  
5 Public Prosecutions, the courts, those kinds of other  
6 stakeholders.

7

8 My learned friend Ms Hedge this morning has asked you  
9 some questions about the information that you required in  
10 order to make decisions around exhaustion?

11 A. Mmm-hmm.

12

13 Q. And you have given some evidence about that kind of  
14 processes. Am I right, though, in thinking that from the  
15 QPS perspective, the considerations are really limited to  
16 the investigators' concerns about whether samples are  
17 exhausted or not?

18 A. I wouldn't say investigators concerns. I think we are  
19 really thinking - we work on behalf of the victim. I think  
20 that is who we are focused on, is finding the perpetrator  
21 and giving them some closure. So that's what we focus on.  
22 We wouldn't destroy evidence that would prevent us doing  
23 that. So that's our imperative, and that would be the  
24 investigators' imperative.

25

26 Q. I understand. But is there any process, whether  
27 formal or informal, by which a proposed change to a testing  
28 process is floated, if you like, for consultation with  
29 victims of crimes associations, that kind of thing, to  
30 gauge whether or not there is some kind of view held by  
31 other stakeholders which might differ from that which QPS  
32 apprehends is the right one?

33 A. Yeah, not that I'm aware of. No.

34

35 MR HICKEY: Thank you, Commissioner.

36

37 THE COMMISSIONER: Mr Gnech?

38

39 MR GNECH: No, thank you.

40

41 THE COMMISSIONER: Ms Mckenzie?

42

43 MS MCKENZIE: No, Commissioner, thank you.

44

45 <FURTHER QUESTIONS FROM THE COMMISSIONER

46

47 THE COMMISSIONER: Q. Senior Sergeant, can I ask if QPS

1 requested or required that authorisation from QPS be the  
2 condition of exhausting a remaining sample? Did that come  
3 from QPS?

4 A. No, that did not.

5  
6 Q. Thanks. Anything arising out of that?

7  
8 MS HEDGE: No.

9  
10 THE COMMISSIONER: Ms Hedge, did you have anything  
11 further?

12  
13 MS HEDGE: I did.

14  
15 **<FURTHER EXAMINATION BY MS HEDGE**

16  
17 Q. Just in relation to the questions that Mr Hunter asked  
18 you about the change that has been made today, is it your  
19 understanding that that decision was made by the Acting  
20 Director-General Mr Shaun Drummond?

21 A. Yes.

22  
23 Q. Do you understand that that decision was made because  
24 the Queensland Police Service formally requested by email  
25 on 20 September 2022 that the laboratory temporarily pause  
26 testing of P1 and P2 samples that return a concentration  
27 result within the range indicated, the old DIFP range?

28 A. Yes.

29  
30 Q. All right. So it is a request of QPS?

31 A. Mmm-hmm.

32  
33 Q. And that Mr Drummond simply implemented the request  
34 made?

35 A. Yes, correct.

36  
37 Q. And that that pause is in place now until advice is  
38 given by FSS to QPS as to whether concerns about blanket  
39 concentrations to 35 microlitres are valid concerns?

40 A. Yep, that's my understanding. Yes

41  
42 Q. Is that right? All right. And so are you aware of  
43 whether a request has been made of FSS about how long such  
44 advice might take to give?

45 A. No, I'm not aware of that.

46  
47 Q. All right. You haven't seen material provided to

1 Inspector Neville that suggested that it might be months?  
2 A. Not that I recall. Not that I recall the timeframe,  
3 no. If I have, I don't recall that.

4  
5 Q. Sorry, I understand. So you haven't seen any  
6 information given. We have heard some evidence to the  
7 Commission that Inspector Neville was advised that it might  
8 be months.

9 A. Oh, okay.

10  
11 Q. Your understanding is that QPS requested a pause in  
12 testing, to your knowledge not knowing how long it might  
13 be, but Inspector Neville has indicated it might be months;  
14 is that right?

15 A. Yes.

16  
17 Q. What would that mean for the QPS if testing of P1 and  
18 P2 samples in that range is paused for a matter of months?

19 A. Well, that means that those low quant values, they  
20 won't be tested, yeah.

21  
22 Q. Yes, but what about the aims for --  
23 A. We don't get results.

24  
25 Q. That's right.  
26 A. Yes, correct.

27  
28 Q. And what did that mean for the QPS?  
29 A. That's right. Well, I would be very disappointed if  
30 it was months. I'm hoping that will be resolved a lot more  
31 quickly, but I don't have information on that. Yeah, it  
32 would have an effect on us for our results, yes.

33  
34 MS HEDGE: Yes, thank you.

35  
36 THE COMMISSIONER: Thank you. Thank you, Senior Sergeant.  
37 Thank you for your assistance, you are free to go.

38  
39 MR HUNTER: Commissioner, in light of that re-examination,  
40 can I make it clear I was not suggesting that the decision  
41 to pause testing was a unilateral one made by Queensland  
42 Health.

43  
44 THE COMMISSIONER: No, no, I am not - yes.

45  
46 MR HUNTER: And I should make it clear that on  
47 26 September [WIT.0020.0009.0001\_R] Inspector Neville was

1 told by Ms Gregg that she envisaged:  
2

3 *... it will be months not days until this*  
4 *proposal is properly evaluated.*  
5

6 And Inspector Neville, on 26 September, emailed her back  
7 saying:  
8

9 *Is the timeframe below ...*  
10

11 -- referring to the months, not days --  
12

13 *... an indication of when you might get*  
14 *back to us ...*  
15

16 *Is it possible to get some indication as to*  
17 *whether this has any basis sooner please?*  
18 *We can't really wait months to test some of*  
19 *these examples.*  
20

21 That was the basis on which I asked that.  
22

23 THE COMMISSIONER: Yes, thank you. Mr Hodge or Ms Hedge,  
24 one of you, what are we doing now?  
25

26 MS HEDGE: The next witness was the Acting Superintendent  
27 Darren Pobar, but we think he might be longer than  
28 13 minutes. So would it assist to start in --  
29

30 THE COMMISSIONER: It will be convenient to stop now.  
31 What time do you want to resume?  
32

33 MS HEDGE: 2.15, if that's suitable?  
34

35 THE COMMISSIONER: Does 2.15 suit the rest of you? Yes?  
36 We will adjourn until 2.15 then.  
37

38 **LUNCHEON ADJOURNMENT** [12:45pm]  
39

40 MS HEDGE: Commissioner, I call Darren John Pobar.  
41

42 THE COMMISSIONER: Yes.  
43

44 **<A/SUPT DARREN JOHN POBAR, SWORN** [2:19pm]  
45

46 **<EXAMINATION BY MS HEDGE**  
47

1 MS HEDGE: Q. Your name is Darren John Pobar?

2 A. Yes, that's correct.

3

4 Q. You are currently an inspector of police; is that  
5 right?

6 A. Yes, that's correct.

7

8 Q. And you are currently the forensic manager of the  
9 scientific section in the Forensic Services Group?

10 A. Yes, that's correct.

11

12 Q. You have prepared two statements for the Commission.  
13 We are focused in particular on the second of those  
14 statements.

15 A. Yes.

16

17 Q. Its number is [QPS.0147.0001.0001\_R]and it was sworn  
18 on 15 September 2022; is that right?

19 A. Yes, that's correct.

20

21 Q. Do you have any corrections to make to that statement?

22 A. No, we do not.

23

24 Q. In paragraph 2 --

25

26 THE COMMISSIONER: Exhibit 52.

27

28 MS HEDGE: Thank you, Commissioner.

29

30 **EXHIBIT #52 - STATEMENT OF DARREN JOHN POBAR DATED**  
31 **15/09/2022**

32

33 MS HEDGE: In paragraph 2, you set out your tertiary  
34 qualifications, which include a Bachelor of Applied  
35 Science, a Masters of Forensic Science and a Masters of  
36 Business Administration?

37 A. Yes, that's correct.

38

39 Q. After working in the Major Crime Unit, you came to  
40 start in the forensic services area in approximately 2013;  
41 is that correct?

42 A. I was in forensic services before that, but in 2013 I  
43 came back into headquarters as the State Coordinator.

44

45 Q. In paragraph 4, which is on the next page, please,  
46 operator, you relieved as the Acting Superintendent Of the  
47 Forensic Services Group for two period of this year?

1 A. Yes, that's correct.

2

3 Q. That is the position ordinarily held by Bruce McNab;  
4 is that right?

5 A. Yes, that's correct.

6

7 Q. We are particularly interested in that period, the  
8 second period that you acted, from 8 to 24 July 2022.

9 A. Yes.

10

11 Q. In paragraph 5, you indicate that on 15 July you met  
12 with the Acting Assistant Commissioner Marcus Hill and  
13 Inspector David Neville to discuss a concern about DNA  
14 analysis?

15 A. Yes, that's correct.

16

17 Q. Do you remember what the concern was, expressed by  
18 Inspector Neville in that meeting?

19 A. Yeah. Well, as a result of the announcement by the  
20 government of the change of process, I think it was about  
21 the time the Commission was called, and Dave Neville's  
22 concern was because there was an announcement of,  
23 "everything was going to be processed, all of the  
24 insufficient DNA process was going to be stopped",  
25 something along those lines, we were concerned about what  
26 the new process actually was and what that potential was  
27 going to have on turnaround times and backlogs. So if  
28 everything was being microconned, or, you know, what  
29 exactly was the process and how that was going to affect  
30 results from Queensland Health.

31

32 Q. So the concern was there was not certainty, is that  
33 true, at Police Headquarters about what process was in  
34 place at that time?

35 A. Well, yeah. We were just unsure because my assumption  
36 was that the announcement about everything being processed,  
37 I was of the assumption that everything would be probably  
38 micro-concentrated. I think Dave Neville shared that  
39 concern. So if everything was being micro-concentrated,  
40 yeah, we would expect that backlogs would extend greatly  
41 because of the amount of resources that's required for that  
42 step. So we were just trying to ascertain exactly what  
43 that was, you know, what the actual process was, at the  
44 time when the announcement was made.

45

46 Q. When you say "everything", do you mean P1, P2 and P3  
47 samples?

1 A. We didn't really know, because I think - well, my  
2 understanding really only came from the media at the time  
3 and Dave Neville indicating that there was - they have  
4 announced that everything is - like, everything is being  
5 processed, so exactly what did that mean? And if it was  
6 everything, then that could be significant.

7  
8 Q. Yes. Was it your understanding that when the decision  
9 was made on 6 June 2022, that QPS were not consulted as  
10 part of that decision-making process?

11 A. As far as I'm concerned, yeah, no one in the QPS was  
12 consulted. Certainly not in forensic services.

13  
14 Q. Can I take you to [ QPS.0147.0001.0001\_R at 0023] as  
15 part of your statement. Now, you are not in this email,  
16 but you have seen this email because it was sent to Bruce  
17 McNab; is that right?

18 A. Yes, I have seen that email, because I believe Helen  
19 Gregg included that email in her reply to me.

20  
21 Q. Yes. Was this the email, to your understanding, that  
22 advised the QPS about the decision made on 6 June 2022?

23 A. Well, I believe that some advice had been sent to  
24 Bruce from Lara Keller from this email, but it could still,  
25 to me, even post getting it at a later date, it was still  
26 unclear from that email. So that may have led potentially  
27 Dave Neville to be uncertain.

28  
29 Q. When you say that, do you mean it was not clear to you  
30 or Inspector Neville from this email whether or not  
31 everything was being concentrated?

32 A. Well, it certainly wasn't clear to me when I made the  
33 inquiry email with Helen Gregg.

34  
35 Q. I see. Let's look at that one. If we turn then to  
36 [QPS.0147.0001.0001\_R at 0014]. This was the same day that  
37 you had the meeting that you described?

38 A. Yes, that's correct.

39  
40 Q. It was sent to Helen Gregg; is that correct?

41 A. Yes.

42  
43 Q. There is a redaction there, which must be the email  
44 address. But do you understand that was sent to Helen  
45 Gregg?

46 A. Yes.

47



1 Q. And you indicate you:

2  
3 ... refer to the attached report ...

4  
5 Which was the June 2022 Update Paper, if I can put it like  
6 that?

7 A. Yes.

8  
9 Q. And then in the third paragraph you indicate that on  
10 30 May, to your understanding, the Minister announced that  
11 the processing threshold has been removed and all samples  
12 were processed as a matter of course. You were seeking  
13 clarification on the current process on testing low quant  
14 value samples; is that right?

15 A. Yes, that's correct. I believe that date was actually  
16 not correct in the end. I think it perhaps had occurred at  
17 the same time as the announcement about the Inquiry. But  
18 yeah, that was what I had in the email at the time.

19  
20 Q. Thank you. You didn't receive an immediate response  
21 to that email; is that correct?

22 A. That's correct.

23  
24 Q. But on 20 July, you followed up with another email,  
25 [QPS.0147.0001.0001\_R at 0018].

26 A. Yes.

27  
28 Q. A second email, seeking clarification of the current  
29 testing process by QHFSS?

30 A. That's correct.

31  
32 Q. This email has a slightly different focus, doesn't it?  
33 The first one was about backlogs and turnaround times?

34 A. Well, it was --

35  
36 Q. And this is about - I'm sorry?

37 A. The first one was trying to clarify what the process  
38 was originally.

39  
40 Q. Yes.

41 A. And with the concern that there was potentially  
42 backlogs, yes.

43  
44 Q. Yes. But this one has also the focus of quality of  
45 results; that is, that in the last line you say:

46  
47 ... those between .001 and .0088 which

1                   *would potentially benefit from*  
2                   *concentration.*

3  
4       So an awareness that without concentration you might have  
5       less quality results than with concentration?

6       A.   Yes. Well, the second email was prompted by a concern  
7       from David Neville that he received some advice - I believe  
8       third-hand - through someone at the DNA Unit via someone  
9       from Queensland Health that there was some indication that  
10      there wasn't - some samples weren't being concentrated. So  
11      with the original thought that maybe they all were and then  
12      this second, I suppose, information that there may not be  
13      some being concentrated. So, you know, which ones were,  
14      which ones weren't. So then that - if there wasn't - none  
15      were being concentrated, within - you know, particularly  
16      I am talking about within the threshold range, then that  
17      was a concern because, you know, the original validation  
18      from Queensland Health was that those ones in that range,  
19      like, should be concentrated, because they're needing  
20      concentration to potentially yield a result. So that's  
21      where the sort of second email came from.

22  
23      Q.   At this time, when you were sending these emails, did  
24      the QPS have a position about what should be concentrated  
25      or whatnot in terms of different priority samples?

26      A.   No, not at this stage. It was really trying to get a  
27      handle on what was actually exactly happening at the time,  
28      and it was sort of - sort of being co-considered with that  
29      second report that came out that had sort of an indication  
30      of a number of options that were for us to consider down  
31      the track. So just trying to find out exactly what was  
32      occurring right now, with a view to then looking down the  
33      track as what might - you know, what might be those other  
34      options that we may need to consider, sort of longer term.

35  
36      Q.   So on the day you wrote this email - sorry, just to  
37      summarise. On 15 July, you believed everything was being  
38      concentrated, all the priorities?

39      A.   Yes.

40  
41      Q.   In the low quant range?

42      A.   Yes.

43  
44      Q.   By 20 July, you were concerned that maybe none of them  
45      were?

46      A.   Potentially.

47

1 Q. And so at that stage you just, effectively, didn't  
2 know --

3 A. Didn't know.

4  
5 Q. -- what process was in place at the lab?

6 A. No, did not.

7  
8 Q. Ms Gregg responded to you on that same date, 20 July,  
9 I will just bring that on the screen; it ends in 0020,  
10 Operator. Two pages on. [QPS.0147.0001.0001\_R at 0020].

11  
12 THE COMMISSIONER: What page?

13  
14 MS HEDGE: Page 0020.

15  
16 THE COMMISSIONER: Thank you.

17  
18 MS HEDGE: Q. This is the email from Helen Gregg to  
19 yourself in response?

20 A. Yes.

21  
22 Q. In the first page or paragraph it is about the Options  
23 Paper, the second about the follow-up paper. But if we  
24 look at the third paragraph, starting with:

25  
26 *Prior to the announcement ...*

27  
28 A. Yes.

29 Q. Ms Gregg indicated that:

30  
31 *... the DG requested options for processing*  
32 *that did not include the 'DNA insufficient'*  
33 *process. Options were provided and the*  
34 *Premier announced that Cabinet had decided*  
35 *the DNA insufficient process was no longer*  
36 *being used, and all samples were being*  
37 *processed. From this, we take it that the*  
38 *Premier and Cabinet did not appear to*  
39 *choose the option that included*  
40 *concentration of samples within a*  
41 *particular range, given potential workplace*  
42 *health and safety issues.*

43  
44 And in the next paragraph it is indicated that Lara  
45 advised - Lara Keller, that would be - advised  
46 Superintendent McNab, and that is where the email that we  
47 went to earlier was attached?

1 A. Yes.

2

3 Q. After receiving this email, did you understand then  
4 what process was in place?

5 A. Well, from that email, with discussions with Dave, we  
6 thought at that point it looked okay in the current climate  
7 with they're running everything through but the scientists  
8 or Queensland Health are making an assessment of what would  
9 need to be concentrated and what wouldn't. So at that  
10 stage, it seemed okay.

11

12 Q. And that came out of the next paragraph, did it not:

13

14 *Samples are processing through DNA*  
15 *profiling and upon review of the profile*  
16 *obtained, staff will assess if*  
17 *concentration of the samples would be of*  
18 *benefit, within the context of the case.*

19

20 A. That's right. We just thought that they had - they're  
21 making sure everything is run, and an assessment is being  
22 made what would need to be concentrated to maximise the  
23 benefit.

24

25 Q. Did you understand at that time that that would - to  
26 assess concentration after a profile is obtained means that  
27 the sample has already gone through amplification?

28 A. Well, I didn't sort of assume that it had gone  
29 through. I thought that that would be - staff will assess  
30 the concentration of the sample would be a benefit,  
31 potentially, as it was going through the quant stage. That  
32 is what I thought would be - because I don't - I didn't --

33

34 THE COMMISSIONER: Q. You see it says, "upon review of  
35 the profile obtained"?

36 A. Yeah, I did see that. But I didn't think that that  
37 was what - whether it meant "profile" or whether it meant  
38 "quantification", because I don't - I'm not a DNA expert,  
39 but I don't believe you can actually go back and  
40 concentrate after you've got a profile. That was why I  
41 thought that wouldn't even be possible, but - it may be  
42 possible, but I just assumed that they would be looking at  
43 it as it's going through.

44

45 Q. Well, you can. If you've got a sample of  
46 95 microlitres and you take 15 of them to process and you  
47 get a profile that's unsatisfactory, you can go back to

1 what remains of your sample --

2 A. Yes.

3

4 Q. -- and then concentrate that sample and then put it  
5 through the process again, but the problem is you have used  
6 up one-third of the DNA that you used to have. So what you  
7 are concentrating doesn't have as much DNA as it would have  
8 had if you had concentrated in the first place?

9 A. Yes.

10

11 Q. But I think - anyway, it doesn't matter. You weren't  
12 clear about what stage was being referred to, at the time  
13 that you got this?

14 A. No. Yeah, that was my - what I just stated before is  
15 what I thought would happen.

16

17 Q. Do you know what the potential workplace health and  
18 safety issues were that were referred to in the  
19 paragraph that Ms Hedge took you to?

20 A. I just thought it was - whether they used the word  
21 "workplace" or "workload", I thought it may have been there  
22 was going to be an excessive workload. The concentration  
23 of samples, if there was a lot of concentration of samples,  
24 which is very labour-intensive, and there was a lot of them  
25 being done, that it may have been a workload issue.

26

27 Q. You are not aware of any danger involved in performing  
28 micro-concentration?

29 A. No, I'm not, Commissioner.

30

31 Q. All right.

32

33 MS HEDGE: Q. Shortly after that on 24 July, you ceased  
34 your acting in the superintendent role; is that right?

35 A. Yes, that's correct.

36

37 Q. So after that email, you said you and  
38 Inspector Neville discussed and were content with the  
39 position?

40 A. Yes, that's correct.

41

42 Q. With, as you understood it, discretion being exercised  
43 at the quantitation stage?

44 A. That's right.

45

46 Q. And you said you didn't take any further action before  
47 the end of your active period?

1 A. That's correct.

2

3 Q. Thank you.

4

5 MS HEDGE: Those are my questions.

6

7 THE COMMISSIONER: Yes. Mr Rice?

8

9 MR RICE: No, thank you.

10

11 THE COMMISSIONER: Mr Hickey?

12

13 MR HICKEY: No, thank you.

14

15 THE COMMISSIONER: Mr Gnech?

16

17 MR GNECH: No, thank you, Commissioner.

18

19 THE COMMISSIONER: Ms McKenzie?

20

21 MS MCKENZIE: No, thank you, Commissioner.

22

23 THE COMMISSIONER: Thank you. Thank you very much for your  
24 assistance.

25

26 <THE WITNESS WAS RELEASED

27

28 MS HEDGE: Mr Hodge will take the next witness.

29

30 MR HODGE: The next witness is Ms Brisotto.

31

32 <MS PAULA MICHELLE BRISOTTO, SWORN

[2:36pm]

33

34 <EXAMINATION BY MR HODGE

35

36 THE COMMISSIONER: Yes, Mr Hodge?

37

38 MR HODGE: Q. Your name is Paula Michelle Brisotto?

39

A. Yes, that is correct.

40

41 Q. You are a team leader or the team leader for Evidence  
42 Recovery and Quality in the Queensland Health Forensic and  
43 Scientific Services?

44

A. Yes, that is correct.

45

46 Q. You provided a statement to the Commission?

47

A. Yes, that is correct.

1  
2 Q. I will bring that up. That is [WIT.0014.0011.0001].  
3 That's the statement you have given, Ms Brisotto?

4 A. Yes.

5  
6 Q. You signed that statement on 9 September 2022? You  
7 can see that if we go to page [WIT.0014.0011.0001 at 0034]?

8 A. 21st day of September.

9  
10 Q. Sorry, my mistake, 21 September 2022. Are there any  
11 corrections you wish to make to that statement?

12 A. (Witness shakes head).

13  
14 Q. And the statement is true and correct?

15 A. Yes.

16  
17 MR HODGE: I tender that statement, Commissioner.

18  
19 THE COMMISSIONER: Exhibit 52.

20  
21 **EXHIBIT #52 - STATEMENT OF PAULA MICHELLE BRISOTTO DATED**  
22 **21/09/2022**

23  
24 MR HODGE: Q. Ms Brisotto, I want to ask you some  
25 questions about the development of what became the Options  
26 Paper. I will start by showing you a document. This is  
27 [FSS.0001.0051.5305\_R]. I will just identify what this is.  
28 This is an initial request for a project, and you will see  
29 at the top, the project or the proposal number it is given  
30 is 163 and the date is 1 April 2015?

31 A. Yes.

32  
33 Q. If we then scroll down to the bottom of the page, we  
34 see at the bottom of the page there is a bar that  
35 presumably has been added later in 2017, where it says:

36  
37 *Proposal*  
38 *restarted by: Justin Howes.*

39  
40 And:

41  
42 *Approved By: [you].*

43  
44 And what is redacted there, presumably, are your signatures  
45 on the restart of the proposal?

46 A. Yes.

1 Q. And we see the date on which it was proposed to be  
2 restarted by Mr Howes or signed by him as 24 April 2017,  
3 and the date you have signed it is 27 April 2017?  
4

5 Were you familiar, at the time you signed this  
6 document, with Project #163?

7 A. I would likely have been. I wasn't actually present  
8 when the #163 project was done because I was on maternity  
9 leave. But at the time of signing it, I would have went  
10 through that.  
11

12 Q. And so you knew about what Project #163 had been  
13 concerned with by the time you came to sign this?

14 A. Yes.  
15

16 Q. The effectiveness of micro-concentration in relation  
17 to --

18 A. I would imagine so, yes.  
19

20 Q. Do you recall in relation to the restarting of this  
21 project, or the restarting of this proposal, whether you  
22 had any discussions with Mr Howes before you approved it?

23 A. I'm sorry, I don't recall that at all.  
24

25 Q. But it is likely would you have?

26 A. Yes. Possibly, yes.  
27

28 Q. Do you recall, even if you don't remember any specific  
29 discussions, what the impetus was for restarting the  
30 proposal?

31 A. No, I can't recall. I'm sorry.  
32

33 Q. Do you recall in the first half of 2017 that it was  
34 known within the lab - actually, I withdraw that.  
35

36 Do you recall in the first half of 2017, you knew that  
37 within about a year you would have to cease using  
38 Profiler Plus for Priority 3 samples?

39 A. It may have been flagged at that time. I'm not sure  
40 when we would have got the first notification that they  
41 were ceasing production.  
42

43 Q. Do you recall whether you held the view that whatever  
44 you were going to switch to once you couldn't use  
45 Profiler Plus anymore would increase the amount of time  
46 required for processing Priority 3 samples?

47 A. There was a potential that it could if we went back to



1 PP21, I believe, which was the decision made to revert back  
2 in 2013, I believe.

3  
4 Q. That is, in 2013 you had stopped using PP21 for  
5 Priority 3 samples?

6 A. Yes.

7  
8 Q. Was it the case that at some point in 2017, you became  
9 aware that the plan within the lab was to switch back to  
10 using PP21 once you could no longer use Profiler Plus?

11 A. That was one of the options, yes.

12  
13 Q. Eventually, it stopped being the option and became the  
14 plan?

15 A. It became the decision, yes.

16  
17 Q. And were you aware that once that was adopted, it  
18 would mean - or once that came into effect, it would mean  
19 that, in effect, turnaround times would increase; that is,  
20 they would get worse?

21 A. There was a possibility. I think the discussion at  
22 the time was given staff at that time had been used to  
23 using profile - PowerPlex 21 for quite some time, the  
24 turnaround times might not have been as impacted as they  
25 were in 2013.

26  
27 Q. I see. But it was expected that it would cause extra  
28 time to be required for processing P3 samples; is that  
29 right?

30 A. Yes.

31  
32 Q. And do you recall whether at any stage you understood  
33 there to be a connection between what became Project #184  
34 and the fact that P3 samples were going to start being  
35 processed using PP21?

36 A. I don't remember if there was a connection. I'm  
37 sorry.

38  
39 Q. You have no recollection about that at all?

40 A. I don't.

41  
42 Q. I see.

43  
44 MR HODGE: I will tender that document, Commissioner.

45  
46 THE COMMISSIONER: Exhibit 53.

47

1 EXHIBIT #53 - REQUEST FORM FOR RESTART OF PROJECT #163 OF  
2 APRIL 2017  
3

4 MR HODGE: Q. I will show you another document. This is  
5 [FSS.0001.0001.8880]. Do you see this is the Project  
6 Proposal for Project #184?

7 A. Yes.  
8

9 Q. This was a document that was circulated by email by  
10 Cathie Allen. Would you have read it at the time?

11 A. I believe I would have.  
12

13 Q. You're not named as one of the two people responsible  
14 for the project. Instead, it seems to be Justin Howes and  
15 Cathie Allen?

16 A. Yes.  
17

18 Q. But even though you weren't going to be responsible  
19 for the project, what - in your ordinary role, what  
20 involvement would you have in relation to a project?

21 A. It would have been as one of the reviewers.  
22

23 Q. Could you just explain to the Commission, for a normal  
24 project, what is the role of a reviewer?

25 A. We - as reviewers as endorsers of the project, we  
26 review the project plans, experimental design in the  
27 report, and provide feedback to the project team.  
28

29 Q. Is it the case that ordinarily in the lab at the stage  
30 of a Project Proposal, that would be reviewed by each of  
31 the reviewers and they would provide feedback?

32 A. Yes.  
33

34 Q. And that would be incorporated into the final form of  
35 the Project Proposal?

36 A. Yes. It would be considered and, as required,  
37 incorporated.  
38

39 Q. And then as drafts of the report were prepared, they  
40 would be circulated for feedback from the reviewers?

41 A. Yes.  
42

43 Q. And the reviewers would provide that feedback, and  
44 that would be incorporated in some fashion?

45 A. Yes.  
46

47 Q. I just want to pause before we come to the next stage.

1 Who were the reviewers of any project?

2 A. It's generally the management team.

3  
4 Q. Who constituted the management team?

5 A. The management team at that time would have been  
6 Cathie, Justin, myself and the HP5s of each team. I am not  
7 sure who was in the specific roles at that time, because  
8 there could have been an acting arrangement.

9  
10 THE COMMISSIONER: Q. But they would be named in the  
11 document, Mr Hodge, I think, on page 2 or 3.

12  
13 MR HODGE: Yes, I do know. And I will come to that in a  
14 moment, Commissioner.

15  
16 Q. If we go to the last page of that Project Proposal,  
17 can you see there is a section 6, which is "Results and  
18 Data Compilation". Could that just be blown up for us.  
19 Just take a moment to read that, if you would.

20 A. Yes.

21  
22 Q. As you probably know, as I assume it is the same with  
23 all projects, this project plan or Project Proposal  
24 identified various experiments that were going to be  
25 undertaken?

26 A. Yes, that is correct.

27  
28 Q. And then it identifies what assessment criteria will  
29 be used in relation to the results from the experiments?

30 A. Yes, that is correct.

31  
32 Q. You will see at the end of section 6, it says:

33  
34 *A final report will be produced which will*  
35 *compile all analyses, conclusion and*  
36 *recommendations.*

37  
38 A. Yes, that is correct.

39  
40 Q. Was that conventionally the case for all projects,  
41 that there would be a final report compiled at the end?

42 A. If it proceeded to implementation and report, yes.

43  
44 Q. Just explain what you mean by that?

45 A. Some projects might not go to completion and final  
46 report. We might decide during that process that it  
47 doesn't go to reporting for a variety of reasons, but they

1 will be noted in that project.

2

3 Q. Who would make the decision that a project would not  
4 proceed to final report?

5 A. It would generally be the project management, but also  
6 the - sorry, the project team, plus also the management  
7 team would be aware of that.

8

9 Q. That is, the project team would come and report back  
10 to the management team that they were not proceeding with  
11 the project?

12 A. Yes.

13

14 Q. How often does that happen?

15 A. It would depend on what a Project is looking at. It  
16 might be decided that we're stopping it or holding it over,  
17 and then we could close it down and proceed with a  
18 different project later. So it would be, potentially, part  
19 of the experimental plan at start of the testing - when you  
20 start testing, that we might decide at that point in time  
21 that that's not to proceed.

22

23 Q. That what is not to proceed?

24 A. The project itself, due project report. It doesn't  
25 happen very often, but it can happen.

26

27 Q. When was the last time it happened?

28 A. I don't remember exactly, sorry.

29

30 THE COMMISSIONER: Q. Can you think of an occasion on  
31 which it happened?

32 A. If we had started to assess a software that we didn't  
33 end - decide that we wanted to pursue, we would make a file  
34 note against that project explaining the reasons why we  
35 weren't proceeding with it and then that would be closed.

36

37 Q. You are talking about cases where a proposal to run a  
38 project or a project is being run and it's decided to  
39 abandon the proposition?

40 A. Yes.

41

42 Q. Thank you.

43

44 MR HODGE: Q. In this case, what you would have  
45 understood at the time was that this project would involve  
46 going through, conducting experiments, and reporting on the  
47 final outcomes from those experiments?

1 A. That's correct.

2  
3 Q. And what conclusions and recommendations would flow  
4 from those experiments?

5 A. Yes, that's correct.

6  
7 Q. And so the final report, which would be signed off by  
8 the Management Committee, would set out the conclusions and  
9 recommendations flowing from the experiments?

10 A. Yes, that's correct.

11  
12 Q. If we go to page 2 of that document which is  
13 [FSS.0001.0001.0880 at 0882]. This is the Project Proposal  
14 still, but as we see in the Document Details, it has the  
15 signature sign-off for each of the people that needs to  
16 sign off on it. And if we can just have that page on the  
17 screen plus the next page [FSS.0001.0001.0880 at 0883], you  
18 see three more names over the next page. Is it the case  
19 for a Project Proposal, would you need all of the members  
20 of the Management Committee to sign off on the Project  
21 Proposal?

22 A. Yes. If they're not endorsing it, we might note why  
23 they're not endorsing it. It might be that they're absent.

24  
25 Q. Thank you.

26  
27 THE COMMISSIONER: Q. Is there - there is a stand  
28 operating procedure that governs projects?

29 A. Yes, there is.

30  
31 Q. Do you know if there is a quorum required for approval  
32 in the form of document sign-off?

33 A. I think it does mention a quorum. We generally do  
34 have all the management team members sign it, though.

35  
36 Q. Do you know what the quorum is?

37 A. I think it's basically just a majority.

38  
39 Q. I see. Thanks.

40  
41 MR HODGE: Q. If we then bring up the Project Plan which  
42 is - I am sorry, Commissioner, I tender the Project  
43 Proposal.

44  
45 THE COMMISSIONER: Exhibit 54.

46  
47 **EXHIBIT #54 - PROJECT PROPOSAL #184**

1  
2 MR HODGE: Q. If we bring up the Project Plan, which is  
3 [FSS.0001.0001.0862]. And, Commissioner, I will just note  
4 that this is a document that has already been tendered.  
5

6 You will see again that this is a project plan. It  
7 was also emailed by Cathie Allen along with the Project  
8 Proposal. And this is a document that is drafted, it  
9 appears, by the person who is going to be carrying out the  
10 project or is the lead for the project. Was that done in  
11 the case of all projects?

12 A. Not all projects. It's not required for all projects.  
13 But, yes, it would be when it is required.  
14

15 Q. Thank you. If we go to the second page of that  
16 document [FSS.0001.0001.0862 at 0863] and if we blow up the  
17 bottom of that page under "Expected Outcome" and the top of  
18 the next page. Thank you.  
19

20 Again, this box setting out "Expected Outcome" of the  
21 project, that would be a conventional thing where there was  
22 a project plan that would be identified?

23 A. Yes.  
24

25 Q. In this case, there's an explanation of what is  
26 expected in relation to the data, and then you see in the  
27 third paragraph it says:  
28

29 *It is an expectation that any*  
30 *recommendations are communicated with QPS*  
31 *in order to agree on possible new workflow*  
32 *strategies.*  
33

34 A. Yes.  
35

36 Q. You, again, would have read this document at the time?

37 A. Yes.  
38

39 Q. Tell me if I am right about this: you had, at least in  
40 the second half of 2017, understood that what would happen  
41 in relation to Project #184 was that a report would be  
42 completed in the conventional way that reports were  
43 completed within the lab. That report would include  
44 recommendations, and those recommendations would then be  
45 communicated to QPS?

46 A. That would have been my understanding.  
47

1 Q. We know that that was not what occurred.

2 A. Yes.

3

4 MR HODGE: Commissioner, we can take that document down.  
5 I don't need to tender it; as I say, it has already been  
6 tendered.

7

8 Q. Tell me if this is your understanding of what  
9 occurred. Justin Howes circulated version 1 of the Project  
10 Report towards the end of 2017?

11 A. Yes, I believe so. Yes.

12

13 Q. And he sought feedback on version 1 of the Project  
14 Report?

15 A. Yes.

16

17 Q. And received feedback on version 1 of the Project  
18 Report?

19 A. Yes.

20

21 Q. And then in January - in December, I think, of 2017,  
22 he circulated version 2 of the Project Report?

23 A. Yes.

24

25 Q. Actually, I might have that wrong. I apologise. It  
26 was 8 January 2018 he circulated version 2 of the Project  
27 Report and sought feedback the next day?

28 A. I believe so.

29

30 Q. Were you aware of what feedback he received?

31 A. No. I think that went directly to him, unless I was  
32 cc'd in any feedback.

33

34 Q. Were you aware in the first half of January 2018 that  
35 there were members of the Management Committee that had  
36 criticisms and disagreements with the content of the  
37 Project Report?

38 A. Unless the feedback came to me, I wouldn't have been  
39 aware.

40

41 Q. Now, just again rather than answering in the  
42 hypothetical, were you aware in the first half of January  
43 of 2018 that there were criticisms and disagreements from  
44 any other members of the management team in relation to  
45 Project #184?

46 A. Well, I can't recall, I'm sorry.

47

1 Q. I see. Just to pause on that. This issue of what  
2 happened in relation to Project #184 and the Options Paper,  
3 this is a matter toll which you have had to direct a lot of  
4 attention not just in the last few months but for most of  
5 this year?

6 A. Yes, that would be correct.

7  
8 Q. In the course of that time, as you have reflected and  
9 gone back and looked at documents, do you say you haven't  
10 been able to ascertain, and haven't been able to recall,  
11 whether you were aware of criticisms and disagreements from  
12 other members of the Management Committee about the  
13 contents of Project #184?

14 A. At the time, no, I can't. None of the documents that  
15 I found led me to believe that I was aware at that time.

16  
17 Q. I see. I will show you another document. I know you  
18 have looked at it before. Can we bring up  
19 [FSS.0001.0001.0785]. Can we bring up the native version  
20 of that. Just pausing for a moment, this is a spreadsheet  
21 that you have looked at in the course of preparing your  
22 statement?

23 A. Yes, it is.

24  
25 Q. This is a spreadsheet that was created by Justin Howes  
26 which sets out the feedback that was received?

27 A. Yes.

28  
29 Q. As I understand your evidence, it's that you didn't  
30 directly input any feedback that's attributed to you into  
31 this document?

32 A. No, I didn't personally enter.

33  
34 Q. And you believe - well, insofar as you know who has  
35 entered it, the only person you are aware who could have  
36 entered it is Justin Howes?

37 A. I believe so.

38  
39 Q. If we look at row 6, we see the initials "PMB".  
40 That's your initials?

41 A. That is correct.

42  
43 Q. And the date that is attributed to your feedback is  
44 9 January 2018?

45 A. That is correct.

46  
47 Q. And then the feedback is:



1  
2 *Doesn't apply to P3 with PP21. Best to be*  
3 *option paper as QPS should make the*  
4 *decision on this.*

5  
6 A. That is correct.

7  
8 Q. And then his response that he has recorded is,  
9 "Agree". But as I understand it, your evidence is you now  
10 can't recall, even with the benefit of looking at this  
11 spreadsheet, what feedback, if any, you gave to Mr Howes?

12 A. This - looking at it did not help me recall any  
13 feedback that I gave him. Any email communication,  
14 I cannot locate any email communication or any feedback on  
15 the document that also pertains to that information.

16  
17 Q. Is it likely, do you think, that you gave him feedback  
18 which was, "Best to be Options Paper as QPS should make the  
19 decision on this"?

20 A. It is possible that I provided something like that,  
21 but as to the wording that is used in this project, I can't  
22 confirm that those were my words, because I don't recall  
23 them at all.

24  
25 Q. I understand. Whether those were your exact words or  
26 not, is it likely that what is recorded in the spreadsheet  
27 reflects the kind of feedback you gave? Can we keep that  
28 up, sorry.

29 A. It is possible.

30  
31 THE COMMISSIONER: Q. Well, where would he have got it  
32 from otherwise?

33 A. I'm not sure. I'm not sure if there was a discussion.  
34 I don't know. I honestly cannot recall those being my  
35 words.

36  
37 MR HODGE: Q. I will show you another document. This is  
38 from Ms Brisotto's witness statement, the doc ID is  
39 [WIT.0014.0016.0001]. Just blow up the top but can we  
40 block out - redact the email address there.

41  
42 Do you see this is an email from Justin Howes to you  
43 on the morning of 12 January 2018?

44 A. Yes.

45  
46 Q. You see it is an email that he sends you from his  
47 personal email address rather than from his work address?

1 A. Yes.

2

3 Q. Just let me ask about that. Is that normal, that he  
4 would email you from his personal address rather than from  
5 his work address?

6 A. Not normal, but it looks like he was home that day.

7

8 Q. You see he says:

9

10 *Do you mind emailing the v2 of mic report*  
11 *for me to convert to options paper?*

12

13 A. Yes.

14

15 Q. And "mic report", I take it, does that stand for  
16 micro-concentration?

17 A. I would assume so, yes.

18

19 Q. And that was the only report you were aware of at the  
20 time that was in the stage of version 2?

21 A. Yes.

22

23 Q. Did you email him version 2 of the Project #184  
24 report?

25 A. Yes, I believe I did.

26

27 Q. Do you have a record of that?

28 A. I believe it was in - it should be in an email.

29

30 Q. I see. Have you seen it recently?

31 A. I may have seen it in searches for information for the  
32 Commission.

33

34 Q. I see. This is three days after he has recorded your  
35 feedback as being "should be an options paper"?

36 A. Yes.

37

38 Q. And tell us, do you remember at the time what it was  
39 that you understood was happening in relation to the  
40 process?

41 A. I mean it was four and a half years ago, so I am not  
42 exactly sure. I can't remember the details. I am assuming  
43 based on this that I was aware that the intent for Justin  
44 was to convert it to an options paper. The reasons why,  
45 I'm not sure.

46

47 Q. Well, just to be clear, it's not just convert it to an

1 Options Paper. It's to abandon the process of creating a  
2 final report?

3 A. That was the end, I believe, but I'm not sure if I was  
4 aware that that was the end at this stage.

5  
6 THE COMMISSIONER: Q. How could you be unaware?

7 A. That --

8  
9 Q. How could you have been aware?

10 A. That #184 was going to be abandoned?

11  
12 Q. Yes?

13 A. I'm not sure where those decisions came from at that  
14 point in time. I really don't have a recollection

15  
16 Q. No, I am asking you how could you have been unaware  
17 that the project was going to be abandoned when you were  
18 being asked here about converting a report? Surely you're  
19 not going to continue with preparation of a report that has  
20 been converted? You really have to come to grips with  
21 this, Ms Brisotto.

22 A. Yes, Commissioner.

23  
24 Q. So?

25 A. Yes.

26  
27 Q. How could you have been unaware?

28 A. Yeah, based on this, that, yes, now appears to be the  
29 intention.

30  
31 MR HODGE: Q. It must be more than that, though?

32 A. I'm not sure that - I don't know. I honestly can't  
33 remember. Based on the email that's in front of me, that  
34 appears to be the case, but I still don't remember the  
35 detail and the email doesn't trigger my memory, I'm sorry.

36  
37 Q. Yes, let's work it through. We looked at the Project  
38 Proposal and we know that the intention was to have a final  
39 report that would contain the recommendations. You  
40 remember that?

41 A. Yes.

42  
43 Q. And we know that there was a Project Plan that  
44 provided that the recommendations would need to be  
45 communicated to the Queensland Police Service for their  
46 agreement?

47 A. Yes.

1  
2  
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Q. And it must follow, I think you'd agree, that if the original intention was that you would only get to the point of communicating with the Queensland Police Service after you had finalised a report based on experiments and come up with recommendations based on those experiments --

A. Yes.

Q. -- that if at this point you are suddenly switching to creating an options paper, that that means that the project, in the form that it had been envisaged, would no longer continue?

A. That seems to make sense, yes.

Q. And you must have realised that at the time?

A. That makes sense as well.

Q. Because you would never have seen anything like this before, would you?

A. Converting to an options paper?

Q. No, you would never have seen anything like this, which is that that before a project had been completed in accordance with a proposal that it was abandoned and switched to creating an Options Paper for Police?

A. I don't believe we've done that before, no.

Q. No. This was the only time it had been done, as far as you were aware?

A. I believe so, yes.

Q. It must have struck you as highly unusual?

A. I don't know what it struck me like at the time, I'm sorry.

Q. You simply have no memory of that?

A. I don't. It was a long time ago.

Q. I understand. But, again, this is not something that I am springing on you now. You have been reflecting on this, presumably, for all of this year or most of this year?

A. In the preparation of the statement, I was.

Q. Sorry, it's not just that, is it? It's that since at least March of this year, you have been involved in discussions with Cathie Allen and Justin Howes about how to

1 respond to issues raised by the QPS in relation to the  
2 Options Paper?

3 A. Yes. We have been responding with a lot of  
4 documentation.

5  
6 Q. And it goes further than that, doesn't it? In 2018,  
7 Cathie Allen was forwarding to you emails that she was  
8 exchanging with members of the QPS about things that were  
9 flowing out of the Options Paper?

10 A. I believe so, yes.

11  
12 Q. Do you say, notwithstanding all of that, you simply  
13 have no memory of how it was that the Options Paper came to  
14 be, or whether it took you by surprise, or whether you  
15 understood why it was happening?

16 A. I don't think it took me by surprise. I think it was  
17 how the decision and the reasons for the decision. I don't  
18 remember specifically when that was discussed.

19  
20 Q. Well, doing the best for us that you can now, can you  
21 think of a reason why there would be this change to abandon  
22 the Project Report process and switch to an Options Paper?

23 A. My best guess - I guess my opinion is that the  
24 recommendations at the end to change the process are not a  
25 decision that we would be able to make; that's something  
26 that would be for the Queensland Police Service to decide  
27 on. How that came to come in the form of an Options Paper,  
28 that might have been the end result of a discussion in  
29 relation to that.

30  
31 Q. Just, again, I need to press you on this. What I am  
32 asking you to do is to offer us any reason that you can  
33 think of for why the process of generating a project report  
34 was abandoned and switched to creating an Options Paper.

35 A. I don't know why. I don't know a reason why, unless  
36 the format may have better presented the options to the  
37 QPS.

38  
39 Q. No. It's two things. It's abandoning the project  
40 report process and switching to something that was going to  
41 be presented to QPS. You understand that, don't you?

42 A. Yes.

43  
44 Q. And what I am asking you to do is offer us any  
45 explanation that you can think of for why that occurred?

46 A. I cannot think of a reason or an explanation why that  
47 might have occurred, I'm sorry.

1  
2 Q. Well, one reason could be that somebody - and we will  
3 come back to who in a moment - had formed a view that the  
4 Project Report would not be signed off on, would not be  
5 signed off on sufficiently quickly, having regard to the  
6 views of other members of the Management Committee meeting.  
7 Do you agree that that is a possible explanation?

8 A. It is a possibility.

9  
10 Q. Can you think of any other possibility?

11 A. I don't - I can't think of another one. Whether that  
12 one is the correct one, I'm not sure, because I wouldn't  
13 have assumed that it couldn't come to the conclusion of a  
14 report being signed off by everyone.

15  
16 Q. I understand. You're saying maybe it would come to -  
17 maybe it would ultimately be signed off as a report?

18 A. Yes.

19  
20 Q. But what we are trying to figure out is, and a matter  
21 of great concern to this Commission, is why? Why did the  
22 lab abandon the process that it had in place and switch to  
23 an Options Paper?

24 A. I cannot recall. I'm sorry. I don't know the reason  
25 why. The propositions are possible, but I'm not sure what  
26 the actual reason is.

27  
28 Q. But there's no other explanation you can think of?

29 A. I can't provide an alternative, no.

30  
31 Q. It's likely, isn't it, that you must have known what  
32 the explanation was at the time?

33 A. I'm not sure. I may have, but I can't recall that  
34 being the reason.

35  
36 Q. But it's likely, isn't it? You wouldn't have just  
37 gone along with Mr Howes, going on a frolic of apparently  
38 abandoning the project report process, if you didn't even  
39 understand why he was doing it?

40  
41 MR HICKEY: Commissioner, that's a pejorative question.  
42 Framing it as a "frolic" suggests a certain  
43 characterisation of what Mr Howes did --

44  
45 THE COMMISSIONER: No, no, he was putting that she would  
46 reject that Mr Howes was on a frolic of his own, not that -  
47 Mr Hodge wasn't putting that Mr Howes was on a frolic.

1  
2 MR HICKEY: That's as I understood the question.

3  
4 THE COMMISSIONER: It was the other way around, I think,  
5 Mr Hickey. Mr Hodge?

6  
7 MR HODGE: It was the other way around.

8  
9 Q. You understand if you didn't know what the reason was  
10 for why it was happening, then you apparently simply, on an  
11 email from Mr Howes' personal email address, sent him a  
12 copy of the draft report to convert into an Options Paper,  
13 and what I am suggesting to you is you would not have  
14 simply gone along with such a frolic without knowing what  
15 the explanation is?

16 A. I would likely have known it at the time. Whether it  
17 was the explanation that you have provided, that is what I  
18 don't know. Another alternative that I've just thought of  
19 is it could be a simplified report to provide to the  
20 Queensland Police Service as well.

21  
22 Q. That's not an explanation, though, is it? And the  
23 reason it's not an explanation is because you know that the  
24 Project Proposal was that you would come up with a report,  
25 with recommendations, and the Project Plan was that then  
26 those recommendations would be communicated to Police. So  
27 the idea that you would come up with some simplified  
28 explanation to give to Police does not explain why you  
29 would abandon the project report process.

30 A. No, it doesn't.

31  
32 Q. On the question of quorum, I just want to ask you  
33 about that. Can we bring up the "Procedure for Change  
34 Management", and the document is [FSS.0001.0011.5548].  
35 This is a procedural document you are familiar with?

36 A. Yes.

37  
38 Q. If we go to [FSS.0001.0011.5548 at 5552]. And I  
39 should just indicate this is the current version, but this  
40 is identical to the version, as in relevantly identical,  
41 you see in relation to quorums, in relation to 4.4, you see  
42 this is about consideration of the Project Proposal?

43 A. Thank you.

44  
45 Q. Do you see, starting in the fourth line:

46  
47 *The quorum must include the Managing*

1           *Scientists, Team Leaders, Quality and*  
2           *Projects Senior Scientist, Senior Scientist*  
3           *that has Line Management of the*  
4           *staff/project and Senior Scientist/s of*  
5           *areas significantly affected by the*  
6           *project.*

7  
8           And in the preceding sentence, it explains that whilst it  
9           is not necessary for all member of the management team to  
10          approve every proposal, a quorum of the management team  
11          must approve the proposal?

12       A.    Yes.

13  
14       Q.    And then if we go over the page to [FSS.0001.0011.5548  
15           at 5553], and could we just scroll down a little bit  
16           further? And do you see - actually, if we can just keep  
17           the heading as well, which is:

18  
19           *4.5 Implementation and Final Report ...*

20  
21       And do you see the last sentence of the first  
22       paragraph says:

23  
24           *The Line Management/project leader will*  
25           *submit the final report, technical review*  
26           *and implementation plan to the Forensic DNA*  
27           *Analysis Management Team for*  
28           *consideration/acceptance.*

29  
30       A.    Yes.

31  
32       Q.    And then you see the next paragraph says:

33  
34           *If the final report is accepted by the*  
35           *Forensic DNA Analysis Management Team it*  
36           *will be e-signed and the project/change*  
37           *management process closed.*

38  
39       A.    Yes.

40  
41       Q.    This doesn't seem to refer to a quorum in relation to  
42           the final report, only in relation to the Project Proposal?

43       A.    Yes.

44  
45       Q.    But do you say your understanding was that it was only  
46           necessary to have a quorum in relation to the final report?

47



1 THE COMMISSIONER: You mean a majority?

2  
3 MR HODGE: Q. Yes.

4 A. For both the proposal and the final report, yes, I  
5 believed it was both.

6  
7 THE COMMISSIONER: Q. Do you see that in the middle of  
8 that page, in the paragraph beginning:

9  
10 *If the final report is accepted ...*

11  
12 The second sentence provides that:

13  
14 *If the Management Team requires*  
15 *additions/edits to the final report, it*  
16 *will be returned to the project leader ...*  
17 *with feedback. The final report will need*  
18 *to be edited and resubmitted for*  
19 *consideration by the Management Team.*

20  
21 So there is a quorum required, which includes the Team  
22 Leaders, and if feedback is given, then it must be attended  
23 to and the report has to be resubmitted to the Management  
24 Team, which no doubt will include the person who gave the  
25 feedback. Why would that be there, do you think?

26 A. Because that would be the process.

27  
28 Q. I know that's the process, but why is that the  
29 process, do you think?

30 A. If, after the final report has been signed and  
31 something is found during a point after the e-sign has been  
32 done, so after all the signatures have been put on,  
33 something can be edited in there and it would be re-sent  
34 out for signing.

35  
36 Q. But what would be the reason for a rule that, if the  
37 Management Team requires additions or edits to the final  
38 report, it has to be returned to the Project Leader with  
39 feedback and the Final Report has to be edited and  
40 resubmitted for consideration? What would be the reason  
41 for having a rule like that, do you think?

42 A. To ensure that there was complete sign-off again on  
43 any changes.

44  
45 Q. There was what?

46 A. There was sign-off again for any changes.

47

1 Q. And what does sign-off signify?

2 A. It signifies that the Management Team members as the  
3 decision-making group endorse it again.

4

5 Q. But why would you have a rule like that by which a  
6 Management Team member who has required additions or edits  
7 is entitled to have the Final Report edited and resubmitted  
8 for consideration by the Management Team? Why would you  
9 have that rule in place?

10 A. To allow that option to occur.

11

12 Q. Yes.

13 A. Should --

14

15 Q. That's just restating the proposition in other words.  
16 Why have that rule? What's the purpose for having that  
17 rule?

18 A. To have it written in the SOP so people were aware  
19 that it was a possibility to do that. I'm not sure I  
20 understand, sorry.

21

22 Q. Can I suggest to you that the reason for having that  
23 rule is to ensure that those with expertise in the field,  
24 within the lab, who have raised serious considerations that  
25 have to be taken into account, have their propositions  
26 considered and taken into account, and that before the  
27 project goes ahead, they are satisfied so that quality is  
28 assured and risks are avoided?

29 A. Yes, I would agree. Yes.

30

31 Q. And would you accept that that must be the reason why,  
32 among others, Team Leaders have to be part of the quorum to  
33 approve a report?

34 A. Yes.

35

36 Q. And that if you don't comply with that protocol, you  
37 are prone to be running into risks, and there is a real  
38 risk that you'll lose integrity and quality in the work,  
39 the important work, that you are doing?

40 A. Yes, I agree.

41

42 THE COMMISSIONER: Go ahead, Mr Hodge.

43

44 MR HODGE: Thank you.

45

46 Q. I just want to ask about the quorum. Can we go back  
47 to the preceding page [FSS.0001.0011.5548 at 5552], and

1 scroll down just so Ms Brisotto can see it.

2  
3 Do you see - I had understood you to say you thought  
4 just a majority was required to approve the Project  
5 Proposal and the Final Report?

6 A. In reading this now, it has refreshed my mind, because  
7 it is a big document and I couldn't remember the detail. I  
8 apologise.

9  
10 Q. I see. And it's not the case, is it, that a majority  
11 is required? In fact, ordinarily it would be at least a  
12 majority.

13 A. At least, yes, with key members included.

14  
15 Q. Yes, because it would really only be if almost no  
16 other area was significantly affected that only a majority  
17 of the Management Team would be required to sign off on the  
18 document?

19 A. Yes.

20  
21 Q. And so, assuming other areas are significantly  
22 affected by the project, then it will be significantly more  
23 than a majority that is required just to sign off on the  
24 proposal?

25 A. Yes, it is generally all of the Management Team when  
26 it is a Project Proposal. If it's a minor change, then it  
27 can be a smaller amount, but it still must include the Team  
28 Leader and the Quality Manager.

29  
30 Q. And do you say, notwithstanding that you now accept  
31 that more than a majority was required in order to sign off  
32 on a Project Proposal, and that this SOP makes no reference  
33 to a quorum in relation to final adoption of a report, that  
34 nevertheless you think only a majority of the Management  
35 Team was required to adopt the report?

36 A. No. As I said reading this again now, it is a SOP  
37 that I haven't read in detail, and I would always refer to  
38 the SOP, should I not know the detail at the time. So I  
39 would agree with the SOP.

40  
41 Q. That is, do you agree with this proposition, that it's  
42 not a majority that was required? That ordinarily all of  
43 the members of the Management Team would have to sign off  
44 on a report?

45 A. That is generally what I accept to be the case.

46  
47 Q. And so that suggests, doesn't it, that the problem

1 that had become acutely apparent at the beginning  
2 of January 2018 was that all of the Management Team was not  
3 willing to sign off on Project #184?

4 A. I agree. Yes.

5  
6 Q. And what happened at that point was that Mr Howes and  
7 Ms Allen and you cut the other members of the Management  
8 Team out of the development of what was going on?

9 A. I - it appears to be that way. I don't believe I  
10 reviewed the Options Paper, but I was included in some  
11 emails that I saw.

12  
13 Q. I will show you a document. This is  
14 [WIT.0014.0017.0001]. This is also from Ms Brisotto's  
15 witness statement.

16  
17 THE COMMISSIONER: Which exhibit number, is it, Mr Hodge?

18  
19 MR HODGE: You will have to give me a moment.

20  
21 THE COMMISSIONER: That's all right. Just give me the  
22 number again? It's all right. I will look at it on the  
23 screen. Don't worry.

24  
25 MR HODGE: Q. Now, "Luke" is Luke Ryan?

26 A. Yes.

27  
28 Q. Luke Ryan was supportive of Project #184?

29 A. I believe so, yes.

30  
31 Q. You see this is an email that Mr Howes is sending you  
32 and Cathie Allen on 19 January 2018?

33 A. Yes.

34  
35 Q. He is attaching his finished version of the Options  
36 Report?

37 A. Yes.

38  
39 Q. Just so we understand it, do you say you were  
40 expecting this document, you were surprised to receive it,  
41 or you just can't remember?

42 A. I may have been expecting this document. I didn't  
43 review it because I was actually away that day, according  
44 to the leave calendar at the time. I am not sure - yes,  
45 I'm not sure if it was intended to go to everyone after  
46 this particular point in time, but that's not what has  
47 occurred.

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Q. When you say that, you know that's not the case, isn't it? You have absolutely no reason to think that it was intended that the Options Paper would go to everyone?

A. Umm. I don't know.

Q. No, no, no. It's more than that, isn't it? When you said that then, when you said you don't know if it was intended that it would go to everyone, you simply know that that is not true. You know that it was not intended that it would go to everyone?

A. I don't know that, no.

Q. Was there anything that occurred in the first half of January of 2018 that you can recall that suggested to you that it was likely that the Options Paper would be recirculated back to the Management Committee?

A. No, I can't remember anything.

Q. And everything that you have seen strongly and, in fact, without any exception, shows that there was no intention to circulate it back to the Management Team?

A. Not from the emails that I've been able to locate, no.

Q. And what the emails show is that there had been a departure from the course of developing Project #184 and the only explanation, I am suggesting to you, that you can think of for that is because the intention was to cut the rest of the Management Team out?

A. As I said before, I don't have an alternate.

Q. And it was the case, wasn't it, that one of the primary beneficiaries of what was being put forward by the Options Paper was you and your section?

A. Because of the ceasing of microconning?

Q. Yes.

A. It is something that would benefit them, but they weren't the only beneficiaries of that proposal.

Q. Who else would be?

A. The reporting scientist in the review of those results as well.

Q. That is, there would be fewer results for them to review?

A. It would - yes.

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Q. Let me just ask about timeliness of turnarounds within the lab. Was there any issue with the timeliness of the reporting scientists turning around their review of results?

A. That is generally where a larger bottleneck of work exists.

Q. Do you say - I am sorry, I just want to understand this. Do you say that the bottleneck was with the reporting scientists rather than within your section?

A. Generally, it is where a larger bottleneck exists, yes.

Q. I just want to understand that, though. In terms of the times and the lag, you say - think back to 2018, was there a lag with reporting scientists reviewing results?

A. I'm not sure what the turnaround times were at that stage, but generally with the workflow through the Evidence Recovery and Analytical Section, there is not too much of a delay in processing through. And once the results are available to review, they do populate on work lists, which can be where they sit for a while.

Q. I see. Just so I understand, you are saying you think there is a benefit to, effectively, the other side of the lab?

A. I think there was benefits for both. There was, obviously, benefits for reducing the microconning process, which is a very manual process.

Q. That's carried out in your section?

A. That is carried out in the Analytical section, yes.

Q. Do you agree with me it was your section that was the direct beneficiary of ceasing microconning?

A. They were, yes, for the workplace health and safety issues.

Q. When you say the workplace health and safety issues, you mean because it was an intensely manual process?

A. It is a very intensely manual process, and we have, or we do have some RSI issues that we manage by rotating staff through.

Q. And also in terms of the timeliness of your side of the lab going through and doing their work, if they were

1 having to microcon, that would also mean that they would  
2 have to be spending a lot of time working through those  
3 samples?

4 A. They would, but they had managed it.

5  
6 Q. Yes, but there was a change that was about to happen,  
7 wasn't there?

8 A. If this project and option were chosen, yes.

9  
10 Q. No, more than that.

11 A. Oh, the P3s?

12  
13 Q. Yes?

14 A. Going to PP21? Whether the samples are profiled in  
15 Profiler Plus or in PowerPlex 21, there would be no issue  
16 in the analytical processing of it. It might be the "plate  
17 reading", is what we term it, which may take a bit longer,  
18 but that process is actually shared amongst all members,  
19 all areas of the lab, sorry.

20  
21 Q. It was the case, wasn't it, that in January of 2018,  
22 what you were anticipating was that imminently  
23 Profiler Plus would be no longer used and you would switch  
24 to PP21 for Priority 3 samples?

25 A. Yes, that was imminent.

26  
27 Q. And in fact it happened before the end of January of  
28 2018?

29 A. I believe - yes, if that's the date. I can't remember  
30 the exact date, sorry.

31  
32 Q. Around about 23 January 2018, or you're not sure?

33 A. I am not sure. It would be in the minor change  
34 register.

35  
36 Q. Was this, doing the best you can for us - tell us if  
37 this prompts a memory for you. Tell us if this what  
38 happened: that it became apparent to you and to  
39 Justin Howes and to Cathie Allen on about 9 January 2018  
40 that it would not be possible to get sign-off on a final  
41 report for Project #184, but you regarded the need to get  
42 agreement from the Police to no longer microcon as urgent  
43 because of a pending change in relation to PP21?

44 A. I don't remember that, I'm sorry. It is a  
45 possibility. I don't remember.

46  
47 Q. Tell me if you agree with this: it was unusual for

1 Justin Howes to require responses on version 2 in less than  
2 24 hours?

3 A. I'm not sure. There are times when we need urgent  
4 responses for a variety of reasons. That is a short  
5 timeline, yes.  
6

7 Q. Can you think of any reason why an urgent response was  
8 required for this report?

9 A. No. Unless something was written in an email in  
10 relation to that, I don't think I have that email, though.  
11

12 Q. Well, one explanation for why an urgent response was  
13 needed was because of the impending change to using PP21  
14 for Priority 3 samples?

15 A. It may have been a possibility, yes.  
16

17 Q. Can you think of any other explanation?

18 A. Not off the top of my head, sorry.  
19

20 Q. What followed from that was that the hope had been  
21 that the report could be finalised and a paper could be  
22 presented to QPS, and QPS could agree very soon?

23 A. It is a possibility. I'm not sure what the actual  
24 reasons were, why if it aligned with something else.  
25

26 Q. But you would have known at the time?

27 A. I possibly would have known at the time.  
28

29 Q. You just have no memory of it now?

30 A. I don't remember, no.  
31

32 THE COMMISSIONER: Q. You were obviously working closely  
33 with Mr Howes at the time on this because you had,  
34 according to his schedule, suggested that it be an options  
35 paper. He sent you an email from his private Yahoo!  
36 address talking familiarly about how tired he was and would  
37 you send him the document so that he could convert it. So  
38 you and Ms Allen were the only two people, it seems, apart  
39 from Mr Ryan, who had been asked to review the document,  
40 and he had made an urgent plea to staff earlier to give  
41 feedback on the draft project report --

42 A. Mm.  
43

44 Q. -- which then generated feedback, as at least now you  
45 accept you know, and are you putting to me that you don't  
46 remember talking to him about why it was urgent, why it was  
47 converted to an Options Paper, why he was doing any of



1 these things? Is that what you're saying to me?

2 A. I honest - I don't remember the conversations around  
3 that time.

4

5 Q. I am not asking you if you remember the conversations.  
6 Are you saying to me you can't remember being interested in  
7 why all this was happening in this way, and you say you now  
8 can't remember what the reasons were if you were told?

9 A. For the urgency, no, I can't remember. I don't want  
10 to create memories. I just don't remember.

11

12 Q. All right.

13

14 MR HODGE: Q. Then if we go to the document which is  
15 [WIT.0014.0019.0001]. Thank you. These are the minutes  
16 from the Forensic DNA Analysis Management Team Meeting of  
17 1 February 2018 and if we go over to [WIT.0014.0019.0001 at  
18 0002]. Do you see item 5.7?

19 A. Yes.

20

21 Q. Project #184 says:

22

23 *Options paper drafted by Priority 2*  
24 *samples - to be provided to QPS for*  
25 *decision.*

26

27 A. Yes.

28

29 Q. And it says:

30

31 *Options paper drafted for QPS*  
32 *consideration.*

33

34 A. Yes.

35

36 Q. Do you recall whether any explanation was offered at  
37 this management committee meeting as to why the process had  
38 changed like this?

39 A. I don't remember if there was further than what was  
40 minuted.

41

42 Q. I see. If we go over the page to  
43 [WIT.0014.0020.0001] --

44

45 THE COMMISSIONER: Just before you shift off that page.

46

47 MR HODGE: Yes.

1  
2 THE COMMISSIONER: Q. In item 5.7, the Options Paper  
3 appears under the same item heading as a change to  
4 priority. Would the transition to using PP21 for Priority  
5 3 samples be part of a discussion about the Options Paper?  
6 A. Unless it's linked in with that, that was potentially  
7 going to be one of the processes as well, for "DNA  
8 insufficient" not to be microconned.

9  
10 Q. Or that the change, as Mr Hodge put to you, to how P3  
11 samples were going to be processed, was the cause or one of  
12 the causes for putting forward the Options Paper?

13 A. It might have been, yes.

14  
15 MR HODGE: Q. I might go to a different document first.  
16 Can we go to [WIT.0014.0022.0001]. You will see at the  
17 bottom of the page there is an email from Superintendent  
18 Frieberg to Cathie Allen on 2 February 2018.

19 A. Yes.

20  
21 Q. You will see in the email she says:

22  
23 *As discussed, I am in agreement that:.*

24  
25 And then there are some bullet points?

26 A. Yes.

27  
28 Q. And then if we go and blow up the email at the top of  
29 the page, you will see Cathie Allen is forwarding that  
30 email to you and Justin Howes?

31 A. Yes.

32  
33 Q. And she says:

34  
35 *Hi Paula and Justin.*

36  
37 *The QPS have agreed with Option 2, so we*  
38 *can proceed with that option.*

39  
40 A. Yes.

41  
42 Q. You have exhibited this email. Do you remember  
43 receiving it at the time?

44 A. I don't remember receiving it. As I said, it was  
45 found during my searches and inclusion in my statement.

46  
47 Q. It appears, on the face of it, to suggest that she

1       regarded - that is, Cathie Allen - regarded what was going  
2       on in relation to the Options Paper as something that she  
3       was keeping between you, Justin, and her?

4       A.     With the outcome of the decision by the QPS, yes,  
5       based on the sensitivity.

6  
7       Q.     What was the sensitivity?

8       A.     Confidential.

9  
10      Q.     What was confidential?

11     A.     The decision, I guess. I'm not sure. That's what I'm  
12     assuming from reading this.

13  
14     Q.     Why was the decision confidential?

15     A.     Because it hadn't been announced yet. I don't know  
16     why, whether it - I don't know why it was considered just  
17     for us now. Sometimes Cathie does advise Justin and myself  
18     of things before it goes to the Management Team, or to make  
19     us aware.

20  
21     THE COMMISSIONER:   Q.     What is special about you in that  
22     respect?

23     A.     Whether it's in the Team Leader role, so we can have a  
24     discussion about how we're disseminating information to the  
25     rest of the staff, or that we - Justin and I had an  
26     awareness of - I'm not sure. I'm not sure why in this  
27     particular instance it went to Justin and myself in the  
28     first instance.

29  
30     Q.     You said so that she could have a discussion with you  
31     and Mr Howes?

32     A.     No, that was why some things might come to us --

33  
34     Q.     Yes.

35     A.     -- before they go to others.

36  
37     Q.     But this was something that affected more than you and  
38     Mr Howes, so why did she want to keep it to you and  
39     Mr Howes?

40     A.     I'm not sure why in the first instance it was just to  
41     us. Given that, I think it was the day before the  
42     Management Team meeting, they were advised that there had  
43     been a discussion with the QPS. Was that - is this the  
44     same day that the QPS meeting occurred? Sorry, was that  
45     down below?

46  
47     MR HODGE:   Q.     Yes, it's the same day as the meeting.

1 Did you know the meeting was going to happen?

2 A. I may have at the time.

3

4 Q. Do you see in Ms Allen's email, she says:

5

6 *The QPS have agreed with Option 2, so we*  
7 *can proceed with that option.*

8

9 A. Yes.

10

11 Q. If we go down and look at the email at the bottom, you  
12 see that Superintendent Frieberg says:

13

14 *As discussed, I am in agreement that:*

15

16 And then she sets out those points about there being:

17

18 *... clear data that it is not an efficient*  
19 *use of time and resources to continue with*  
20 *the 'auto-microcon' process for Priority 2*  
21 *(Major Crime) samples.*

22

23 A. Yes.

24

25 Q. Looking at that, does that help you identify a reason  
26 why Ms Allen might not want to pass that email on to the  
27 rest of the Management Team?

28 A. No, not necessarily. Cathie's - because the email is  
29 from Superintendent Frieberg to Cathie and Paul, whether  
30 that's not something that's to be forwarded to the rest of  
31 the Management Team, I don't know, or whether Cathie was  
32 putting more words around it. An email did go to all of  
33 Management Team.

34

35 THE COMMISSIONER: Q. You were a team leader at the  
36 time? That was your position?

37 A. Yes.

38

39 Q. Who were the other team leaders?

40 A. The other team leaders in Forensic DNA Analysis was  
41 Justin Howes, and then other staff at the time would have  
42 been the HP5s, which I can try to --

43

44 Q. Sorry, who?

45 A. The senior scientists of each of the sub-teams.

46

47 Q. Yes, and who are they?

1 A. They would have been Allan McNevin, Kirsten Scott,  
2 Luke Ryan. I'm trying to think, sorry. Kylie Rika, Amanda  
3 Reeves and Sharon Johnstone.

4

5 Q. So why you of all - to the exclusion of every other  
6 team leader?

7 A. Justin and I were the team leaders. So we were --

8

9 Q. I see.

10 A. Yeah.

11

12 Q. You were in a position above?

13 A. Yeah.

14

15 Q. I understand.

16

17 MR HODGE: Q. Just to come back to the email, you see  
18 Superintendent Frieberg is saying that she is in agreement  
19 with a number of things?

20 A. Yes.

21

22 Q. And you see that Cathie Allen says "the QPS have  
23 agreed with Option 2"?

24 A. Yes.

25

26 Q. And it was the case, wasn't it, as you understood it,  
27 that Cathie Allen was recommending Option 2 to the QPS?

28 A. I - my understanding is that there was two options  
29 provided.

30

31 Q. No, listen to my question. It was the case, wasn't  
32 it, that you understood that Cathie Allen was recommending  
33 option 2 to the QPS?

34 A. I didn't believe so. I thought --

35

36 Q. Why not?

37 A. Because I thought it was an Options Paper where of the  
38 two options were provided to the Police and they determined  
39 that option 2, or they agreed, as per the words here, with  
40 Option 2 being the best option.

41

42 Q. Yes. Let's think first about the words. The words  
43 that Superintendent Frieberg is using is that she is in  
44 agreement that Option 2 is the best option. Do you agree?

45 A. Yes.

46

47 Q. And you know that that's because Cathie Allen was

1 recommending Option 2?

2 A. It may have been in the discussion. I wasn't at the  
3 meeting where the discussion around the Options Paper  
4 occurred.

5  
6 Q. You know that that was what Cathie Allen intended to  
7 do.

8 A. I can't speak to Cathie's intentions.

9  
10 Q. You know that that was the desired outcome to obtain  
11 agreement to Option 2, don't you, Ms Brisotto?

12 A. I can't say that I know what her intentions are, I'm  
13 sorry.

14  
15 Q. No. You know, because you spoke to Cathie Allen and  
16 Justin Howes, that the desired outcome was for the QPS to  
17 agree to Option 2?

18 A. I - I don't know that. I'm sorry.

19  
20 Q. Because the advantage of Option 2 is that it would  
21 reduce workload and that was an urgent thing to address,  
22 given the change to using PP21?

23 A. It was something that had to be considered and a  
24 strategy come up with, yes.

25  
26 Q. You know, don't you, that the desired outcome was for  
27 the QPS to agree to option 2?

28 A. I don't agree that that was what her intention was,  
29 no.

30  
31 Q. No, no. Forget for a moment - I understand I asked  
32 you a question about your knowledge of Cathie Allen's  
33 intention, but I want you to just focus on this.

34  
35 You understood that the desired outcome - we'll start  
36 just with you. Your desired outcome was that the QPS would  
37 agree to Option 2?

38 A. My desired outcome?

39  
40 Q. Yes.

41 A. I don't agree with that. I didn't have a desired  
42 outcome.

43  
44 Q. You had no view as to whether Option 1 or Option 2 was  
45 appropriate?

46 A. No. Either one. That was, from my perspective, still  
47 is a QPS decision.

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Q. No. I think you must understand what my question means. I understand that the decision, you are framing is one for the QPS, but the outcome that you desired was that Option 2 would be agreed to?

A. I didn't think I had a desire one way or the other.

Q. You didn't think about which one you would prefer?

A. No.

Q. You honestly say you didn't turn your mind to it?

A. Whether one way or the other, this is a decision, and I've always agreed --

Q. Please, Ms Brisotto --

A. Yes?

Q. -- please. Just focus on my question. Do you agree with the proposition that I am putting to you that the outcome that you desired was for Option 2 to be adopted?

A. No, I don't agree that that was my desired outcome.

Q. And do you say you didn't turn your mind to whether you preferred Option 1 or Option 2?

A. I don't - I don't believe I would have chosen an option.

Q. I am not sure whether you're directly answering my question or not. Do you say that you didn't turn your mind to whether you would prefer Option 1 or Option 2 to be adopted?

A. I don't think I turned my mind to make that decision of what I would prefer.

Q. Do you say that you didn't discuss with Ms Allen or Mr Howes which of the two options would be preferred?

A. I don't - I don't know if we discussed it as a group, to be honest. I don't know if Justin or Cathie had their own opinion which option they would prefer. I don't --

Q. Just stopping on that. Do you say that there was no discussion that you had with Cathie Allen and Justin Howes as to which option they preferred? Or just that you don't remember?

A. I don't remember.

Q. It's likely, isn't it, that you and Cathie Allen and

1 Justin Howes discussed which option was preferred?  
2 A. It is a possibility that there was a discussion.

3  
4 Q. And it's likely, isn't it, that the effect of that  
5 discussion was that Option 2 was the desired option?

6 A. It could be that the Option 2 was the preferred  
7 option. I don't know. I don't believe I had a preferred  
8 option.

9  
10 Q. And it's likely, isn't it, that the reason for the  
11 urgency was to get Option 2 agreed to in order to reduce  
12 the workload before the change to PP or about the time the  
13 change was made to using PP21 for Priority 3 samples?

14 A. I believe that is a possibility, as we've discussed.

15  
16 Q. What I want to suggest to you is it is apparent from  
17 this email, and must have been apparent to you at the time,  
18 that Superintendent Frieberg was saying that she agreed  
19 with a view put forward by Cathie Allen that Option 2 was  
20 preferred?

21 A. The words could be taken that way, yes.

22  
23 Q. Can you think of any other way the words could be  
24 taken?

25 A.

26  
27 *As discussed, I am in agreement that:*

28  
29 And that is something that could have been discussed as  
30 whoever was in attendance at the meeting as well.

31  
32 Q. Was it the case that - I'll begin just with you - that  
33 because of the controversy within the Management Team about  
34 Project #184, that you didn't want the Management Team to  
35 know that there had been a recommendation made as to which  
36 option to be adopted?

37 A. I don't believe so.

38  
39 Q. I want to go back to a document which is  
40 [WIT.0014.0020.0001]. You see at the bottom of the page  
41 Ms Allen sends an email to you and Justin Howes on  
42 5 February 2018?

43 A. Yes.

44  
45 Q. And so, she has emailed you late on the afternoon of  
46 2 February 2018 to tell you that the QPS have agreed to  
47 Option 2?



1 A. Yes.

2

3 Q. And then you see she sends you this email saying:

4

5 *Regarding the Options Paper, my intention*  
6 *was to email management team letting them*  
7 *know that the Options Paper was presented*  
8 *to the QPS and that they have elected*  
9 *Option 2 for us moving forward. And I was*  
10 *going to attach the Options Paper. Do you*  
11 *see any issues with this?*

12

13 A. Yes.

14

15 Q. And you see you respond:

16

17 *No, I don't, as the information in the*  
18 *options paper was taken from the report*  
19 *they had already read. I also think the*  
20 *options paper shows the information that*  
21 *was presented to the QPS did not offer*  
22 *opinions or recommendations, only options*  
23 *for them to consider. The decision is*  
24 *therefore theirs (so to speak).*

25

26 A. Yes.

27

28 Q. Just doing the best you can for us, perhaps we will  
29 pose it first in this way. If the Options Paper, as it had  
30 been drafted, had offered opinions or recommendations,  
31 would you still have been prepared to circulate it to the  
32 Management Team?

33 A. I don't see why we wouldn't have.

34

35 Q. But you make the point that there's no issue with  
36 circulating the Options Paper because it shows that the  
37 information that was presented to the QPS did not offer  
38 opinions or recommendations?

39 A. Yes.

40

41 Q. And so my question is: if the Options Paper had  
42 offered opinions or recommendations, would you still have  
43 been comfortable circulating it to the Management Team?

44 A. I think so.

45

46 Q. I see. And you see you say you don't see there is any  
47 issue with circulating it:

1  
2       ... as the information in the options paper  
3       was taken from the report they had already  
4       read.

5  
6       A.    Yes.

7  
8       Q.    If the Options Paper had contained information that  
9       the members in the Management Team hadn't already read,  
10       would it have been an issue to circulate it to them then?

11       A.    I don't know, depending on what the information was.  
12       But I think, in reading that, it was taken to mean that it  
13       was from information that I already reviewed, so there was  
14       no issue. So that was in response to, "Do I see any  
15       issues?" No.

16  
17       Q.    You see at the end of your email, you say:

18  
19       *The decision is therefore theirs (so to*  
20       *speak).*

21  
22       What does that mean?

23       A.    I don't know.

24  
25       Q.    You know what it means, don't you?

26       A.    The decision is theirs. "(So to speak)". I don't -  
27       I don't know, because I guess my belief is that the  
28       decision is theirs.

29  
30       THE COMMISSIONER:   Q.    What does "(so to speak)" mean,  
31       Ms Brisotto?

32       A.    I don't honestly know why I put that in.

33  
34       Q.    I am not asking you why you put it in. I am asking  
35       what it means. It means you are using - one uses that  
36       phrase to indicate that what has been said is being said in  
37       a figurative way and not in a literal way or to explain  
38       what you have just said is not to be understood in a  
39       literal sense, isn't it?

40       A.    I don't know if that was my intention.

41  
42       Q.    I am not asking your intention. I am asking you do  
43       you agree that that's what --

44       A.    Yes, it could mean that.

45  
46       Q.    -- that expression is used for. Yes?

47

1 MR HODGE: Q. And you see Ms Allen's email says that  
2 what she is going to let the Management Team know is that  
3 the QPS have "elected Option 2 for us moving forward"?

4 A. Yes.

5  
6 Q. You will recall that the email I showed you a moment  
7 ago from three days earlier showed her describing to you  
8 and Justin Howes that the QPS had agreed to Option 2?

9 A. Yes.

10  
11 Q. And that the email from Superintendent Frieberg said  
12 that she "was in agreement that", and had listed out a  
13 number of things?

14 A. Yes.

15  
16 Q. Was it the case that you understood that what Cathie  
17 Allen was going to not reveal to the Management Team was  
18 that the QPS had agreed with the option that she was  
19 pressing for?

20 A. Would I agree with that?

21  
22 Q. Yes.

23 A. I - not necessarily, because this could be completely  
24 what she meant, that the QPS had elected. Whether that was  
25 an intentional use of the word, I'm not sure.

26  
27 Q. Is it the case that you understood at the time that  
28 what was being concealed from the Management Team was that  
29 Option 2 had been pushed with QPS?

30 A. That - I don't - that wasn't my belief. I don't  
31 believe that there was intention of concealment.

32  
33 Q. Do you agree with me that you would have been aware at  
34 the time that, had the Management Team become aware that  
35 Option 2 had been recommended to the QPS, that that would  
36 have been controversial?

37 A. Controversial for all of the Management Team? I don't  
38 believe it would have been controversial. I don't believe  
39 that was put forward as a - sorry.

40  
41 Q. Ms Brisotto --

42 A. Yes.

43  
44 Q. -- again, just to come back to my question, was it the  
45 case that you understood that at the beginning of February  
46 2018, that if it was revealed to the Management Team that  
47 Option 2 had been recommended to QPS, that that would have

1       been controversial for members of the Management Team?

2       A.    I don't know if - without going back into  
3       Project #184 - whether recommendations in #184, which the  
4       Management Team had read, put forward as to cease the  
5       microcon? Sorry, I don't have that in front of me.

6  
7       Q.    Ms Brisotto, look at your own email --

8       A.    Yes.

9  
10      Q.    -- of 5 February where you say:

11  
12           *I also think the options paper shows the*  
13           *information that was presented to the QPS*  
14           *did not offer opinions or recommendations,*  
15           *only options for them to consider.*

16  
17      A.    Yes.

18  
19      Q.    What I am suggesting to you is this: that the reason  
20      that you initially thought it would be satisfactory to  
21      provide a copy of the Options Paper was because you thought  
22      that it did not contain recommendations and you knew that  
23      if the Management Team knew that in fact Option 2 had been  
24      recommended, that would be controversial?

25      A.    I don't - I don't think so. I - I - I guess I'm  
26      reading this to say, you know, in talking about the Options  
27      Paper, in talking about that we put the options or Cathie  
28      and Paul had put options forward to the Police, the paper  
29      showed the same thing: no opinions or recommendations were  
30      offered.

31  
32      Q.    Cathie Allen had to say to you that she offered no  
33      recommendations to the Police?

34      A.    I believe so.

35  
36      Q.    When?

37      A.    I - I'm not sure. Let me think. That was my belief.  
38      That is still my belief.

39  
40      Q.    My question was: did Cathie Allen ever say to you that  
41      she had offered no recommendations to the Police?

42      A.    Not that I recall.

43  
44      Q.    I see. You say it was your belief because even though  
45      I think you have accepted that Option 2 was the preferred  
46      option for the lab, and urgent given the impending change  
47      from P3 samples to PP21, that, nevertheless, Option 2

1 wasn't pressed?

2 A. I don't believe either option - my belief is that  
3 neither option was pressed.

4

5 Q. I want to show you another document.

6

7 THE COMMISSIONER: Just before you go on. Could we have  
8 [WIT.0014.0022.0001] on the screen. And if you could blow  
9 up the email at the foot of the page, just the content of  
10 the email.

11

12 Do you see that Superintendent Frieberg said that  
13 she's in agreement?

14 A. Yes.

15

16 Q. Would you accept that if somebody is in agreement,  
17 there must be something with which they have agreed?

18 A. Yes.

19

20 Q. And that if there's something for them to agree to and  
21 with which they have agreed, there must have been somebody  
22 who put forward that thing to agree to?

23 A. Yes.

24

25 Q. So somebody must have put forward something so that  
26 Superintendent Frieberg could say, "Well, I agree with  
27 you"; "I'm in agreement with you"? You know, what I am  
28 putting to you is she doesn't say, "As discussed, I choose  
29 Option 2", do you see?

30 A. Yes.

31

32 Q. And if you go to the top of the page, please,  
33 operator, and that's the language that Ms Allen uses, "They  
34 have agreed with Option 2", not "they have chosen  
35 Option 2"?

36 A. Yes.

37

38 Q. Do you see anything of significance in that?

39 A. With that language used, yes.

40

41 Q. Do you see anything of significance in that language?

42 A.

43

*The QPS have agreed with Option 2 ...*

44

45 I guess this reads, based on the discussion that was had in  
46 the meeting, there was - whatever the outcome of that  
47 discussion, there was an agreement that Option 2 was the

1 one --

2

3 Q. "There was agreement" connotes two people?

4 A. Yep.

5

6 Q. That doesn't sound like the result of a discussion in  
7 which one person has no view and puts nothing forward to  
8 agree but, rather, puts forward two options, does it? Do  
9 you agree?

10 A. Yes. Yes.

11

12 THE COMMISSIONER: Yes, Mr Hodge.

13

14 MR HODGE: Q. And then if you can also just go to the  
15 bottom, if we go back to the email at the bottom of the  
16 page, do you see the first bullet point says:

17

18 *There is clear data that it is not an*  
19 *efficient use of time and resources to*  
20 *continue with the 'auto-microcon' process*  
21 *for Priority 2 (Major Crime) samples.*

22

23 A. Yes.

24

25 Q. Do you agree if that proposition had been passed back  
26 to the Management Committee, that would have been highly  
27 controversial?

28 A. I'm not sure. It may have been agreed to by some.  
29 I think it was generally agreed.

30

31 Q. It is the opposite of the conclusion that was reached  
32 on Project #163, isn't it?

33 A. Which was to not proceed?

34

35 Q. To use the auto-microcon?

36 A. Yes. I if that's - yes, if that's the case.

37

38 Q. And Project #184 never completed because it was  
39 controversial?

40 A. I think we agreed that that was a possibility, yes.

41

42 Q. And, again, had that particular proposition, what I am  
43 suggesting to you, had that particular proposition been  
44 passed back to the Management Committee, it would be highly  
45 controversial?

46 A. A decision on Option 2 decision?

47

1 Q. No, the view there was no clear data - sorry, the view  
2 that:

3  
4 *There is clear data that it is not an*  
5 *efficient use of time and resources to*  
6 *continue with the 'auto-microcon' process*  
7 *for Priority 2 (Major Crime) samples.*

8  
9 A. I'm unsure. It may have caused discussion.

10  
11 Q. I want to then show you another document which is  
12 [FSS.0001.0011.2119]. This is an email that Cathie Allen  
13 sends to the Management Team at 11.30 am on 5 February  
14 2018?

15 A. Yes.

16  
17 Q. And you see it says:

18  
19 *... Paul Csoban and I met with the*  
20 *Superintendent of Forensic Services*  
21 *Group ...*

22  
23 And she says:

24  
25 *We discussed the Options Paper attached,*  
26 *which I provided to the Supt earlier in the*  
27 *week. The Supt has indicated verbally and*  
28 *by email that the QPS' preferred option is*  
29 *Option 2 - no automatic concentration of*  
30 *Priority 1 or Priority 2 samples.*

31  
32 A. Yes.

33  
34 Q. And then she attaches a copy of the Options Paper. Do  
35 you agree with me what she didn't communicate back to the  
36 Management Team was, (a), this idea that the Superintendent  
37 had agreed with her?

38 A. Yes.

39  
40 Q. And she didn't communicate back any of the dot points  
41 that the Superintendent had set out in her email, and she  
42 didn't communicate back that the Superintendent apparently  
43 understood that there was clear data that continuing with  
44 the auto-microcon process was not an efficient use of  
45 resources?

46 A. Yes.

47

1 Q. I want to suggest to you, and invite you to offer any  
2 response that you wish, that you understood that Cathie  
3 Allen was not revealing to members of the Management  
4 Committee the nature of her dealings with the QPS?

5 A. Yeah, because it's not in this email.  
6

7 Q. I understand it's not in this email. What I am  
8 suggesting to you is you understood at the time - so this  
9 is the first proposition - that Cathie Allen was not  
10 revealing this information to members of the Management  
11 Team?

12 A. Yes.  
13

14 Q. You understood that it was deliberate?

15 A. It - yeah, it appears to be.  
16

17 Q. And she was revealing it to you and Justin Howes?

18 A. Yes.  
19

20 Q. I want to then just ask you - I am just mindful of the  
21 time. I think, Commissioner, in fairness to Ms Brisotto I  
22 might just ask her about one more topic and then I think it  
23 might be fairer to continue on Tuesday with her rather than  
24 continuing. I am just concerned we won't finish by  
25 5 o'clock. There may be something that Queensland Health  
26 wants to think about and speak to Ms Brisotto about.  
27

28 THE COMMISSIONER: Well --  
29

30 MR HODGE: Why don't I - I could ask about a particular  
31 point I wanted to ask about, which I think will only take a  
32 few minutes, and then we could take a short break and I  
33 could speak to Queensland Health about it.  
34

35 THE COMMISSIONER: All right. Do that.  
36

37 MR HODGE: Q. Ms Brisotto, I just want to ask about one  
38 particular issue in relation to ceasing in relation to  
39 Priority 2 samples.

40 A. Mmm-hmm.  
41

42 Q. You understood as at January of 2018 that Priority 2  
43 samples were samples for serious crimes?

44 A. Yes.  
45

46 Q. That is, crimes involving violence to the person,  
47 sexual assault, murders, that kind of thing?



1 A. Yes. Yeah.

2

3 Q. And tell me if this is correct. You understood that  
4 the Options Paper identified that, for samples in the range  
5 of 0.001 to 0.0088, that the success rate that the lab was  
6 finding in obtaining a profile after microconning was about  
7 10.6 per cent?

8 A. Yes.

9

10 Q. And then identified that when new intelligence was  
11 obtained through NCIDD upload, that it was under  
12 1.5 per cent?

13 A. Yes, I think so. That was 1.45 or something like  
14 that.

15

16 Q. But you understood, as a scientist working in the lab,  
17 that the obtaining of a profile was not only useful for  
18 uploading to NCIDD and obtaining new information, it was  
19 also use useful as just one example for comparing to a  
20 reference sample?

21 A. Yes.

22

23 Q. And you understood, as a scientist working in the lab,  
24 that for Priority 2 cases, it was far more common that the  
25 utility of obtaining a profile from a sample was in  
26 comparison to a reference sample rather than for use for  
27 NCIDD upload?

28 A. Yes.

29

30 Q. In fact, it was highly unusual for a Priority 2 case  
31 to be advanced by NCIDD upload?

32 A. Yes.

33

34 Q. The most usual utility of obtaining a profile from a  
35 sample in relation to a Priority 2 case was by comparison  
36 through a reference sample?

37 A. Yes.

38

39 Q. And that might be a utility because there was a full  
40 profile that was able to be compared, but it could also be  
41 because it was only a partial profile which could provide  
42 some useful information by including or excluding a  
43 suspect?

44 A. Yes.

45

46 Q. What I want to suggest to you is you must have  
47 understood and known at the time that in relation to

1 Priority 2 samples, if you were ceasing the process of  
2 extracting a profile, the most pertinent thing to consider  
3 was not NCIDD upload?

4 A. It was - yes, I agree.

5  
6 Q. You knew that?

7 A. That is what I agree with. Yes, that it is for  
8 suitability of comparison.

9  
10 Q. And you knew, didn't you, that the Options Paper said  
11 that the most pertinent value for the client, being QPS, to  
12 consider was NCIDD upload?

13 A. When I reread the paper recently, yes.

14  
15 Q. But you must have known at the time?

16 A. I may have.

17  
18 Q. I want to suggest to you it is simply impossible that  
19 you didn't know at the time.

20 A. As I said, I have no record that I actually reviewed  
21 the Options Paper before it went to the Police.

22  
23 Q. Ms Brisotto, I want you to just focus, though, on my  
24 question. It's impossible, isn't it, that you did not look  
25 at the Options Paper, and any version of the Options Paper,  
26 in January?

27 A. I - I may have. I don't have a record of that.

28  
29 Q. We know that you must have because you sent an email,  
30 that we looked at a moment ago, on 5 February 2018, when  
31 you referred to the contents of the Options Paper and said  
32 that it didn't include any recommendations?

33 A. Yes. At that point. I meant when I - I hadn't  
34 reviewed it. I don't have any record that I reviewed it.

35  
36 Q. No. But we know --

37 A. I've read it.

38  
39 Q. -- that on 5 February you sent an email saying it's  
40 okay to circulate because it doesn't have any  
41 recommendations, or something to that effect?

42 A. Yes.

43  
44 Q. And you must have read it?

45 A. Yes.

46  
47 Q. And when you read it, you must have seen that it said

1 that the most pertinent value for the QPS as the client to  
2 consider was in relation to NCIDD upload?

3 A. Yes.

4

5 Q. And you knew, you must have known at the time, that  
6 that wasn't true?

7 A. I don't know if that stood out to me at the time. It  
8 does certainly stand out to me now.

9

10 Q. It must have stood out to you at the time. It is  
11 inconceivable, isn't it, that it didn't stand out to you?

12 A. With the intention of it, I'm - I'm not sure. If - if  
13 both were highlighted - 'cause as I read it now, I can see  
14 both pieces of information in there.

15

16 Q. Now that's - just take a moment and think about this.  
17 You know that what the Options Paper says is the most  
18 pertinent value for the client to consider is in relation  
19 to NCIDD upload?

20 A. It does say that, yes.

21

22 Q. It doesn't say anything about the utility of the  
23 samples anywhere in the paper in comparison to reference  
24 samples. Do you agree?

25 A. I don't recall specifically, but if it doesn't and  
26 you're telling me it doesn't, then I agree.

27

28 Q. It doesn't say anywhere in the paper what you know to  
29 be true and knew at the time to be true, which is the  
30 utility of obtaining a sample in relation to P2 cases was  
31 primarily for comparison to reference samples?

32 A. I can't say what I knew, what I believed at the time.

33

34 Q. Ms Brisotto, you are an experienced forensic  
35 scientist?

36 A. Yes.

37

38 Q. You undoubtedly knew at the time that the primary  
39 utility of obtaining a profile from a P2 sample was for  
40 comparison to a reference sample rather than NCIDD upload?

41 A. I believe it's both, but yes, I agree.

42

43 Q. And you would have known it at the time?

44 A. Possibly, yes.

45

46 THE COMMISSIONER: Q. Well you knew it four years ago,  
47 Ms Brisotto. You didn't learn it since four years ago, did

1 you?

2 A. No.

3

4 THE COMMISSIONER: Shall we adjourn for a few minutes,  
5 Mr Hodge?

6

7 MR HODGE: Yes.

8

9 **SHORT ADJOURNMENT**

**[4.13pm]**

10

11 THE COMMISSIONER: Yes, Mr Hodge?

12

13 MR HODGE: Commissioner, I have reflected on it. I won't  
14 finish by 5 o'clock. Whilst I understand Ms Brisotto would  
15 prefer to press on, I think as a matter of fairness we  
16 would adjourn.

17

18 THE COMMISSIONER: I am sorry, Ms Brisotto, you will have  
19 to come back on Tuesday. There is no way we can finish  
20 this afternoon in any reasonable time. Is there anything  
21 anybody needs to raise before we adjourn?

22

23 9.30 Tuesday? All right. We will adjourn till  
24 9.30 am on Tuesday.

25

26 **THE HEARING WAS ADJOURNED TO 9.30 AM ON TUESDAY, 4 OCTOBER**  
27 **2022**

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