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

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Commissioner, I think there is an application to be made.

THE COMMISSIONER: Yes.

MS MCKENZIE: May it please the Commission, McKenzie, initial B, instructed by McGinness and Associates. I seek leave to appear on behalf of Inspector Darren Pobar.

THE COMMISSIONER: Yes, you have leave.

MS MCKENZIE: Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Hodge?

MR HODGE: Commissioner, the first witness is Dr Budowle, who is on the screen.

THE COMMISSIONER: Dr Budowle, good morning. Or good evening?

DR BUDOWLE: Yes. Good evening, good morning. I've adjusted.

<DR BRUCE BUDOWLE, SWORN [9:33am]

THE COMMISSIONER: Yes, Mr Hodge.

<EXAMINATION BY MR HODGE

MR HODGE: Q. Your name is Bruce Budowle?
A. Budowle actually, but that's close enough.

Q. I apologise. I want to just refer you to two of the reports that you have provided to the Commission, and I will just formally identify these. The first is [EXP.0001.0002.0001]. It is titled:

> *Assessment of the Options Paper and Update Paper Prepared by Queensland Health Forensic and Scientific Services.*

Dated 19 September 2022.

A. Yes.

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.

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

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

Q. You received - your bachelors degree, you received in 1975 in biology?
A. That's correct.

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

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

Q. You have a PhD in - you hold several bachelor degrees and a PhD, and you are, without imposing upon your modesty, you are an internationally renowned expert in the field of DNA profiling?
A. That's correct.

Q. That will do.

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

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

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

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

MR HODGE: Yes.

Q. Dr Budowle, you worked for the FBI for a number of years?
A. For 26 years.

Q. That was 26 years commencing in 1983?
A. 1983-2009, yes.

Q. In relation to your work for the FBI, could you just very briefly tell us what the nature of that work was.
A. It was a wide range of things. Initially starting out to develop methods to identify genetic signatures in biological fluids or evidence samples to help associate or eliminate individuals with crime scene evidence. I was also a unit chief over the research unit and I was also the senior scientist. And my final, I guess, station in the Laboratory Division was the senior scientist of the Laboratory Division. So I was involved in development of methods, development of databases, validation of methods, going in to court to support the validity of evidence, testifying, serving on commissions and whatever was necessary to support the effort.

Q. Thank you. Whilst you were working at the FBI, you were also, for a period of time, the vice-president of the International Electrophoresis Society?
A. That's correct.

Q. And you held many adjunct professor positions at various universities or adjunct positions at adjunct universities?
A. That's correct.

Q. And in 2009, when you left the FBI, where did you go to work?
A. I went to the University of North Texas Health Science Center and worked in the Center For Human Identification where I did - it was an academic position in part, so I had the normal activities of an academic: teaching; research; grant, you know, work and such; but I also worked in the Center for Human Identification, which is a recognised criminal justice agency in the state of Texas where we do case work, predominantly with DNA testing and anthropology, for the State and also did missing persons work for the United States overall. And I directed that Center for the last six years before I retired.

Q. Thank you. One of the other things that you did at one stage, I believe, was to work on a review or an audit of a lab in Washington?
A. Yes. Actually twice, back in 2014. So when I left the FBI, the US Attorney's Office still contacted me to

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

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

Q. Thank you. Finally, just one other position you have held which I wanted to identify. From 2016 until I think your term might end this year, you have been a member of the Texas Forensics Science Commission?
A. That's correct. Actually "Member" means we're a Commissioner on the Commission.

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

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

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

THE COMMISSIONER: Yes, thank you.

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

Q. Perhaps if you could just start by explaining, in your view, the appropriateness or otherwise of concentration in a lab?
A. Well, the issue on a basic level is you need a certain amount of DNA to get a quality result, and when you place less DNA into the analysis, that will diminish the quality of the DNA profile. A diminished quality profile, whatever that means in a broad term, doesn't mean it's not interpretable, but it can be more challenging. And there can come a point where the quality of the profile, the quantity of the profile, can be so diminished that it's not interpretable. So trying to get the best and most DNA that's appropriate and optimised for the system would be ideal.

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

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

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

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

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

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

I think one of the points you was making was when you get to the stage of what we refer to as amplification, there is a particular quantity that you're able to use at the amplification stage and, as you understand it, in Queensland, the quantity that is being used is 15 microlitres?
A. Yeah, that's a certain - we will call that a volume, actually, than a quantity. So you don't confuse volumes of DNA with that.

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

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

DNA within that volume for the purposes of the amplification stage?
A. That's correct.

Q. When it comes at a general level to concentration, I understand the point you are making is there's nothing wrong with concentration. Concentration might well be an appropriate step or the most appropriate step in order to try to achieve the optimum amount of DNA within that volume that you are going to use at the amplification stage?
A. Yeah. If feasible with the amount of starting material, yes.

Q. So the quantitation stage is important, because at that stage one of the things you are trying to assess is what is the amount of DNA that you have that is going to then be taken and used at the amplification stage, and as a scientist, you will make a judgment about whether the particular amount to volume is appropriate or inappropriate?
A. That's correct. That's in part what's done. It's also because of the way that the quantitation assay works. It also gives us some insight into the quality of the DNA, whether it could be substantially degraded or relatively intact.

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

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

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

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

If you reduce the liquid without removing any DNA molecules, when you take 15 microlitres of liquid out, you're going to get many more molecules of DNA, because you're fishing in a smaller pond. Is that a fair way of looking at it?
A. Yeah, that's a fair way. And there is a hope that you can become a scientist one day with that analogy.

Q. Well, you can have that metaphor.
A. I might use it later. On a realistic level, that's a good explanation in lay terms to what is being done with concentration.

Q. All right. Thank you. I understand.

MR HODGE: Q. Dr Budowle, there are a few different elements there with what we are dealing with, but one of them is, as you know, in this lab, there is a limit that is set for when routine analysis will be undertaken, and you refer to "routine analysis" in your paper. As I understand it, you mean "routine" being you would just proceed to amplification without concentration as the ordinary course?
A. What I mean by "routine analysis" is one is there is an optimum range, and then there is a lower range where one expects to get reasonably good results, all things being of reasonable quality. Although historically there have been these values set in place, as the technologies have increased in sensitivity of detection, those thresholds are starting to be abandoned more so over the past few years because one can get results with much lower results.

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

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

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

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

Many laboratories set an initial input amount, typically ranging from 0.1 to 0.25 ng of DNA.

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

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

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

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

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

Q. Thank you. I think there are three things that you've said there that I just want to draw out. I will start with the last thing, which is you're talking about mixed profiles versus single profiles. And the point you were making, as I understand it, is just because a limit in the case of the Queensland lab of 132 picograms doesn't necessarily mean that, if there are mixed contributors - in fact, it must mean that if there are mixed contributors, that you don't have 132 picograms of DNA for any single contributor. So if you have set a limit on the basis that, as a matter of routine analysis, you need 132 picograms in order to analyse a single contributor or to identify a profile from a single contributor, then that limit is going to be problematic when applied to mixed profiles?
A. Well, in essence, yes. But just remember, just because you set 132 picograms for a single course, there's no doubt in my mind that if you have less DNA, you might still get interpretable single source profiles with more or less input DNA. So it is not a simple, hard rule that because I put a line in the sand for what I put into the analysis means that that was the bottom of the line for interpreting evidence.

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

The second point that I understand you were making is that these kinds off limits which, in your view, are common across labs, but historically they have arisen from a time when labs were not using probabilistic genotyping, so they weren't using computational analysis in order to identify profiles?
A. Yes, because they wanted to set enough DNA to reduce the chances of the challenging interpretation that would follow because of the limits of the assay at the time.

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

A. That's correct.

Q. And if you were setting a limit for routine analysis, one of the things that a lab operating in accordance with best practice would need to do is to, from time to time, review what that limit was or whether any limit was appropriate have regard to developments in technology?
A. That's correct. And in fact, any time that you would implement a material change to your protocols or your system, you should have done that kind of work anyway. So, routinely, we validate systems.

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

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

Since the beginning of that kind of technology being used, software, computer software, has been developed to take over some of the work of applying a judgment to the significance of various peaks of various heights that might be of doubtful significance. The computer software can, more efficiently and more accurately than a human, determine what should be taken into account and what ought not be taken into account, so that the position today, compared to 20 years ago, is that less DNA is required in order to arrive at an interpretation of a profile; is that right?
A. Generally, I agree with that. The only thing is instead of the software "determining", I like to think the software is "assisting" the analytics --

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

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

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

Q. Thank you. I think then that neatly brings us to, you might remember now probably about 15 minutes ago I said from something you said there were three points I wanted to draw out. I will now come to the last point, which is in this Queensland lab that you have looked at, you have identified that the limit that is used for routine analysis is 132 picograms - just so that everyone can put this in the context of the measurements used, a picogram is 1/1,000 of a nanogram, and so. 0.132 nanograms is the same as 132 picograms?
A. That's correct. Now, as you said, just one correction is when you say 132, that's what the lab is saying is the bare minimum that they are willing to go forward. There can be more DNA, obviously.

Q. Of course, and that's the bare minimum for routine analysis?
A. As I understand it for this laboratory, yes.

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

0.0088 nanograms per microlitre applied to the 15 microlitres that are used in the PCR process?
A. That's correct.

Q. That is, you multiply 15 by 0.0088 and you get 0.132, which is 132 picograms?
A. Correct.

Q. In the material that you reviewed, have you identified the source of that limit within the Queensland lab?
A. I wasn't provided any data - again, there may be, I just was not provided - how they derived at that value. All the documents that I have are focused on something post that time, that decision process, whatever it was, and they just referred to that value as a point in which stochastic effects become more marked and of a concern.

Q. I see. In the material that you have seen so far, and I appreciate your point, which is you haven't seen everything that has been done within the lab, have you seen that limit being revisited over the course of, say, the last four years?
A. It has been. In some ways I think there is a little bit of that, but not really. There has been, in the most recent documents of 2022, some suggestion to assess whether to reduce that number, but further work still needed to be done.

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

THE COMMISSIONER: Units.

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

MR HODGE: Q. The thing about that analogy is, and of course I don't mean any criticism of the Commissioner's analogy, but that involves a direct multiple effect in terms of concentration. When you come to concentrating DNA, do you get that type of direct multiple effect?
A. No. As I said, if you take, for instance, this lab, they start with 100 microlitres and they may concentrate it

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

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

A. Yes.

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

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

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

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

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

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

Q. There seem to be two ideas which you raised. One is you would want to look at, in any evaluation of concentration, not just where you succeeded in extracting a profile but also where you failed?
A. That's correct.

Q. And, for example, you might - if you looked at the cases where you failed to obtain a profile after concentration, you might find that the loss of - for those profiles, for some reason, the loss of DNA was much greater than in respect of the profiles where you succeeded, and that might then raise a question for you about what process you ought to adopt to try to make concentration more effective in relation to those samples where you failed to obtain a profile?
A. That's correct in part. The other is the ones who failed, they may be more similar to each other. Let's just say all the ones that failed were on a blue fabric and all the ones that succeeded were on a red fabric. Now, I'm making that up. It wouldn't really be a real situation. But if that were true, I could then decide going forward that any time I got something on a blue fabric, don't process it because the success rate is failure. There is no success in that, whereas everything that is on the red would have a success. So without looking at the information in total, I can't make the best judgment or

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

Q. In the information that you reviewed, have you seen the Queensland lab undertaking this kind of evaluation of cases where they failed to obtain a profile after concentration?
A. I haven't seen that in a formalised way. I have seen some statements from Reporting analysts who, based on their experience, have made decisions on what to do based on the quantity of DNA, the quality of DNA; other circumstances associated with the evidence. So there is some knowledge, but not a formal study undertaken as we discussed.

Q. And then the other part of what you are talking about is this question of whether or not you should concentrate to full or to 35 microlitres, and as I understood it, you were making the point that you would want to do a comparative analysis of how much DNA loss you would experience, depending whether you are concentrating to full or concentrating to 35 microlitres of solution?
A. Yes. I mean, I would not make a best judgment because there's several factors. One is the potential success or, as we said, the loss of DNA. You know, if I am going for getting the best possible result, I might choose 20 microlitres if I put more DNA per unit volume into the PCR. On the other hand, if it was a sum-zero loss and really didn't make much difference, I might go with 35 microlitres because that would allow me to do two assays instead of one, you know, saving some of the material or extract for a downstream future process or an alternate process, or something for the defence. So there's consequences, and so you want to make the best judgment on which procedure we do. Not that one's right or one is wrong. It's just decisions and processes impact, ultimately, some success in DNA typing.

Q. In your review of the material that you have been briefed with, have you seen that kind of analysis having been undertaken in the Queensland lab to look at the respective effectivenesses of concentrating to full or concentrating to 35 microlitres?
A. Not in the documents provided to me.

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

or to 35 microlitres?
A. I haven't seen any guidelines, again in the documents provided to me.

Q. And just so we understand, is that something that you would expect in accordance with best practice for a lab, to, (a), have undertaken that kind of comparative analysis and, (b), to have some kind of guidelines for the benefit of the scientists within the lab?
A. Yes, we would have guidelines. But we would have some discretion for the analysts because of the, again, the other factors that may be involved with whether to proceed or not. And so there may be some judgment allowed, with documentation and approval and things so that people aren't just, say, on their whim making decisions on how to proceed forward. I am not saying that the analysts have been doing that, you know, but just in general speaking. But I just didn't see anything that would give me - that I saw that gave any guidance for this decision process or the decision to consume or not to consume entirely the sample.

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

Q. And could you just explain to us what, in your view, is unusual about that?
A. Well, typically one wants to obtain the volume, the elution volume. In other words, what we are doing is we are taking DNA out of the sample, which may be a swab, a cotton swab, a piece of tissue, whatever it may be, and putting it into solution and purifying it to a degree so it's, let's say, not "dirty" for the downstream kind of analysis. The larger that volume is, the more you're diluting your sample.

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

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

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

Whereas, if I started by extracting my oranges and putting them into a 50-gallon solution, then already I'm ahead and I may not have to undergo any concentration at all and I won't lose any oranges before putting it into the rest of the process. So what you're saying is the process of extraction and the selection of the volume that holds my DNA sample at the end of the extraction process, which is the beginning, is important for what follows because that may determine whether I have to concentrate and lose some DNA or whether I don't have to concentrate, and so I don't lose any DNA. Is that a fair summary?
A. Yeah. In fact, what you're doing is you are moving the needle to some samples that would have fallen within this range that the laboratory set, rightly or wrongly for the moment, to which some of those will fall above that range without doing anything additional to the sample.

Q. I missed that. That's right. So that if I have 40 oranges in 100 gallons, then we have been talking about 0.0088 nanograms per microlitre, and the larger the volume that I use at the extraction stage, then the less likelihood it is that the concentration will be above my limit?
A. That's right, for those samples with that limited quantity. If you can effect it better at the extraction phase, some of those samples that were in this "insufficient" area, and I put that in quotes, may not be insufficient by the laboratory's criterion just because they were doubled in concentration, and --

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

Q. And so that means that it will have, just by using that method, just by doing that, it will increase the number of samples in the range that they call "insufficient DNA for further processing", and it will increase the number of samples that will fall within the range that they call "no DNA detected"?
A. Right. So some of those "no DNA detected" might rise up into the range and some of those that are in the range are going to rise up above that to be considered as "Go ahead and process".

Q. Yes, thank you.

MR HODGE: Q. And the particular piece of technology that the Queensland lab uses for that extraction, that is the isolation and purification of the DNA samples, that's the DNA IQ system?
A. Yes. It is a good system. There's nothing wrong with the system itself. It's just this volume that they elute to recover DNA in solution.

Q. That system, the DNA IQ system, that's manufactured by a company called Promega Corporation?
A. Yes.

Q. And it is a common system that is used in laboratories around the world?
A. That's correct.

Q. But your experience is that the typical extraction volume used by laboratories using either that technology or a similar extraction technology is to extract a range of 35 to 50 microlitres rather than 100 microlitres?
A. That's correct.

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

Corporation has a technical bulletin where they note that a lower elution volume ensures a higher final concentration of DNA?
A. That's correct.

Q. But really, it is just obvious as a matter of basic mathematics?
A. Yeah. I mean, it's one of those - you don't have to take a lot of thinking to figure that out.

Q. You give an example in your report, which is the DNA IQ system protocols that are used by the Virginia Department of Forensic Science elute DNA in volumes of less than 50 microlitres?
A. Yes. Just as an example, you can go to their website and you can download their protocol if you so desire.

Q. You have looked at why it is that the Queensland lab has this process of eluting to 100 microlitres?
A. Yes. I've looked at their study that they did to validate that part of the process.

Q. As I understand your report, when you looked at that study, initially they tried eluting to 50 microlitres?
A. That's correct.

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

The second thing they did is they changed the volume,

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

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

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

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

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

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

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

Q. That experimental design, which I think you have agreed and described as bad, that is what led to the decision to have a target value of 100 microlitres for the samples that then went to quantitation?
A. I believe it contributed to that. Again, I can't say that what they did was incorrect in their hands for some other reasons we don't understand because I don't have, you know, the quality data in hand. But the fact that it's so inconsistent with everybody else's experience, plus the things that we observed in their study, is a strong indication that this was not a sufficiently done validation study to support the outcome of using 100 microlitres.

Q. So is one of the things that, in your view, a lab in this position ought to do is to go back and re-validate the DNA IQ system to determine an appropriate elution volume?
A. Yes, or to determine why they can't get a more appropriate elution volume.

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

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

That's then changed again, which I'll come to, but I just want to focus on that June change. Do you have a view as to whether or not as a matter of best practice that would have been an appropriate thing for the lab to do?
A. I would put a lot more into the decision process, not just this one flat decision, for another reason. So let's take the lab's position. The lab has said for - again rightly or wrongly - that the success range in this range is low. So if the lab believes that the success rate is low, analysing samples in this range without any additional processing beforehand is contrary to their own beliefs, opinions or findings. It just means I'm consuming sample at a low success rate.

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

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

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

expect to obtain a much lower percentage of samples without concentration, it is not in accordance with your own beliefs as a laboratory to decide to just proceed straight to amplification every time without doing concentration?
A. Yes, that's the first point. Not getting into the actual details of what might be successful or not with other methods, but just based on the laboratory's position that it has advocated for several years.

Q. The second point is that in terms of what you regard as best practice, this idea of having a fixed range where there's no discretion for a scientist as to what they will do in relation to a particular sample, that's not something that you would support as a matter of best practice?
A. No. It's actually success for failure. I mean, it's a process for failure.

Q. Your point is it's very helpful to have - for the lab to undertake experiments and to have guidelines and to have the benefit of those guidelines for the scientists, but the scientists, in your view, ought to still have the discretion about what it is they are doing when, for example, they are at the top of that "insufficient for processing" quantitation range?
A. Yeah. And just as another example, I could have a low quantity sample and have no indications of degradation. I might proceed with that anyway, because it still may yield good results because there's no degradation. So there are a lot of other indicators that I would use as an analyst in making the judgment in how to proceed in this range if that were the correct range to assess the process, and I would allow my analysts to use all the information in making the decision.

Q. Yes. Thank you, Dr Budowle.

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

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

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

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

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

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

The first question is: at a starting point, do you have a view about the appropriateness of presenting something like the Options Paper to Police by a laboratory?
A. The answer is yes and no. I think it's a good starting point for, as one approach, to say, "I've done this work, here's what we found and here are the possible ways that we could use this information to effect a better process," and we want to discuss that with you since you are the ones paying for the service and you are the first line of who we provide this service to." The side where I think there is a little bit of, maybe, a nuance to - not nuance - it is actually a very critical point is there are many other individuals or agencies or sectors of society that are impacted by the decisions made, and it's not just police. The police have a certain goal.

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

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

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

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

Q. In your experience, in your view, it would be appropriate for a laboratory who is considering this kind of decision to consult far wider than just the Police as the client of the lab?
A. That's correct.

Q. And then in terms of the content of the Options Paper, you have read it. Perhaps I might start with a basic question. On reading it, do you have a view as to whether it is neutral in the sense that it does not advocate for or present any particular option as being preferred?
A. I don't think it's neutral. It does present the information in it, but when it comes to the conclusions options, it is very biased to sort of downgrade the success rate of the samples in this range.

Q. Do you have a view about, as a matter of content for presenting to somebody outside of the lab who doesn't have a scientific background, whether the content is appropriate?
A. I don't think it's appropriate in itself, but sometimes you can have a report but during the oral communication all these things could be discussed adequately in a good collaborative relationship to make that work. But you have to ensure that your target audience appreciates the scientific issues, the nuances, the messages, because you are talking to a different audience. When I use scientific terms, I could be speaking French to you, I could be speaking Chinese to you, or whatever it may be, because you're not used to that jargon. So part of the process is to ensure that we understand each other so that you can make an effective decision, if you are the right one to weigh in on what that final decision

should be.

Q. Do you have a view about the methodology that was used and is conveyed within the paper for making an evaluation between the two options, which are effectively processing or not processing samples in this range?
A. It's somewhat difficult given what was done, because the study doesn't describe what is considered useful information, what is valuable information, what is that. And I don't believe, based on what I have seen, that they accessed all the data on what is useful. It focused almost entirely towards driving to database upload information, which is only a small portion of the total of useful DNA profiles in itself. And from the other document, the update paper, it may appear that the lab doesn't know the details of what happens in a case, to effect an interpretation of what's useful DNA.

THE COMMISSIONER: Q. Dr Budowle, as a scientist, bringing all your knowledge and experience to bear, if that document had been presented to you so that you could make a decision whether to, in terms of the document, decide to adopt option 1 or option 2, would you be prepared to make a decision?
A. I would have said, "Go back and do it again. You haven't given me sufficient information and detailed information to effect a decision."

Q. Thank you.

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

Q. But your point is there are other very useful uses of DNA information in the context of the criminal justice system?
A. Yes.

Q. One of those is you might be able to obtain a full profile and be able to match the profile to a reference sample?
A. There is a whole host of different things, if we think about forensic evidence. But just thinking about DNA, I

can give you an example.

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

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

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

Q. Yes. Beyond being able to obtain a profile sufficient for uploading to a database and beyond being able to obtain a full profile that you can compare, a full single profile that you can compare to a reference sample, there are many other uses of DNA where you might not obtain a full profile, you might only obtain a partial profile, but that can be a useful - can be informative anyway in terms of comparing to different samples?
A. Yes, or resolving an alibi, a scenario, or tying things together for reconstruction, a whole host of different applications that one can consider, that I am sure the police would use routinely in their work.

Q. Thank you.

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

THE COMMISSIONER: Thank you. Mr Hunter?

MR HUNTER: We have no questions.

THE COMMISSIONER: Mr Rice?

<EXAMINATION BY MR RICE [10:53am]

MR RICE: Q. Dr Budowle, I want to take up some parts of your reports that connect with the verbal evidence that you have given and just develop it a little bit further. Do you have your report dated 15 September, which is [EXP.0001.0001.0001]?
A. It's in front of me right now on the screen.

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

Q. Correct me if I am wrong, that is the portion of your report in which, or to which we should connect your verbal evidence about the validation study that you saw which had a flaw in it?
A. That's correct.

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

Q. Sure. Do you see the list there?
A. Yes. That would be - you have to go up a little bit. Yes. That would be the one that's on the validation of a manual method for extracting DNA, or --

Q. Okay, because when we --
A. I'm sorry. I think there are two reports that I looked at, but I believe it was the (b).

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

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

Q. The information available to us is that that is in fact not the only validation study that has been conducted by the laboratory to inform a decision to elute at a volume of 100 microlitres. If you would assume for the moment that that's correct, is it the case that you are suggesting in paragraph 14 of your report that such validations as have been done should be revisited, even if only because the elution to 100 microlitres is out of step with common practice?
A. That's part of the reason, and just from the report and what it did, it didn't seem sufficient. Again, I am basing it on what has been provided to me.

Q. Well, the point that I was getting at is you pointed to a flaw in the Phase 1 report in particular, but I am looking to go beyond that. If there are other studies that are not affected by that particular flaw but nonetheless lead to a conclusion that 100 microlitres is the appropriate volume, would you suggest that any and all such studies be revisited because of the benefits of a lower elution volume?
A. Yes, absolutely. I think based on the chemistry it would be concerning to me if 100 seemed to be the appropriate for this kind of - for this particular assay in general, yes.

Q. So your recommendation is not solely based upon the flaw which you identified in the Phase 1 report, which is described in paragraph 14?
A. That's correct, and I think, as I say, most laboratories don't elute to 100 microlitre volume for the reasons of not wanting together dilute a sample.

Q. Thank you. That takes us back then to paragraph 10 on page 6 [EXP.0001.0001.0001 at 0006], Mr Operator. In the meantime, pending those studies that you recommend, the practice at the laboratory is to elute to a volume of 100 microlitres, is it not?
A. Yes. I've seen some that say - just to clarify, I

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

Q. The precise figure is not so important.
A. Okay.

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

Q. Do we take it from what you say in paragraph 10, and what you have said today, that there ought to be a study undertaken to inform the criteria by which one would decide, firstly, whether to micro-concentrate and, secondly, to what volume?
A. That's correct. In addition to other factors that may affect the decision process.

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

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

That's consistent, is it not, with what you are saying in paragraph 10?
A. That's correct.

Q. When you refer to a study, I think you identified at least some of the content of that, that you might need to do some comparative analysis of the results of micro-concentrating to 35 microlitres as compared with the outcomes of concentrating to 15 microlitres?
A. That's correct.

Q. Is that at least part of the kind of study that you have in mind?
A. That would be part of it, yes.

Q. And at the end of the day, from what you say, there ought be developed some documented criteria for the decision-making that comes with the prospect of whether or not to micro-concentrate and initially to what level?
A. Yes. Sort of guidelines that allows the analyst to

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

Q. When you refer to a study so as to arrive at the best outcome for this decision-making process, in this particular laboratory, studies of that kind appear to be done by way of a project, which is part of a change management process. Is that a concept that you're familiar with?
A. There are different processes. As I said, I haven't seen them do it exactly this way, but I think that's just more terminology. Usually labs generate a validation plan, whether you call that a project or not, that sets out how it will be done, it gets assessed and it moves forward. Here they use the word "project." I don't see that as being substantially different than any other practice, just different ways of describing it.

Q. Yes. As part of that process, correct me if I am wrong, you would expect there to be scientific collaboration amongst the qualified scientists at the laboratory --
A. Yes, you want to take a few ones --

Q. -- or at least for the basis of feedback?
A. Go ahead, I'm sorry. Go ahead, you finish. I cut you off.

Q. Or at least there should be feedback from scientists who are stakeholders in the processes of the laboratory?
A. I would go a little further. I would bring them in to help with the design, because the scientists that are doing the work themselves, assessing that, have, you know, a special knowledge and experience that, if I am sitting in an office as a director, I may not see every day. And therefore, I would have them assist in the design study as well.

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

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

current system, as you understand it to be - you use the description "quite siloed"?
A. Yes.

Q. I wonder if you would elaborate on that, that leads you to apply that description?
A. Through documents, discussions with reporting analysts, the police and others, some communications that went back and forth. This lab has broken each of its varied steps into compartments. Someone is taking the evidence, making decisions on what to do with it, extracting it, interpreting the amount of DNA, deciding if it's sufficient or not.

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

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

Q. You say it is "essential". Could you give us then the characteristics of workflow which would satisfy that desired outcome?
A. Well --

Q. How would you arrange it differently to achieve a better result?
A. Again, I did say I'm not sufficiently familiar with the workflow specifically as done, because I haven't had the access to that information; I haven't been to the lab to see it in action, which would be more desirable. But I would have the reporting analyst take ownership of the

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

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

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

Q. I was just wondering to what extent that model or approach was prevalent in laboratories that you know of, either directly or by virtue of your studies?
A. I know of, personally, you know, the laboratories that have done it that way, and a number of labs that I have interacted with, there have been different models, per se, and there have been models that are more like this laboratory of processing in segments. The ones that took ownership tend to have a lower throughput, but they tend to have higher quality in the work. So in my laboratory, you have the reporting analysts - we don't use that term, but

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

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

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

Q. Thanks very much, Doctor.
A. Sure.

THE COMMISSIONER: Mr Hickey?

MR HICKEY: No questions.

THE COMMISSIONER: Mr Gnech?

MR GNECH: No questions.

THE COMMISSIONER: Ms Mckenzie?

MS MCKENZIE: No thank you, Commissioner.

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

MR HODGE: No, thank you.

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

THE WITNESS: You are welcome, sir.

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

<THE WITNESS WAS RELEASED

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

SHORT ADJOURNMENT [11:16am]

THE COMMISSIONER: Yes, Mr Jones?

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

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

<EXAMINATION BY MR JONES

MR JONES: Q. You are Michel Lok?
A. I am.

Q. You are an acting workforce programs manager within the Darling Downs Hospital health service?
A. Yes.

Q. You provided a statement to the Commission of Inquiry which was signed 16 September 2022?
A. Yes.

Q. [WIT.0033.0001.0001]. Is that a copy of your statement, Mr Lock?
A. It appears to be, yes.

Q. Is it true and correct?
A. One correction to be made.

Q. And what is that correction?
A. At paragraph 14 I made an error in my leave arrangements. I was actually on leave from 12 January 2018 through to 8 February 2018 and then again from 21 February 2018 to 20 April 2018.

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

Q. I tender that.

THE COMMISSIONER: That is exhibit 48.

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

MR JONES: Q you started at Queensland Health Forensic Scientific Services on 25 October 2017 as the General Manager Community and Scientific Services?
A. Correct.

Q. You held that position until 4 June 2021?
A. Yes.

Q. And the leave you took, you just clarified?
A. Yes. It was unplanned leave.

Q. You had no prior experience with forensic DNA testing or analysis before stepping into the role as general manager?
A. (No audible response).

Q. As general manager, you reported to the Chief Executive Officer?
A. Correct.

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

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

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

you finished in the role in June 2021?
A. Correct.

Q. Would you tell the Commissioner what the general manager is responsible for within Forensic Scientific Services, please?
A. The general manager's role had several business units which it had oversight of on behalf of Health Support Queensland. Forensic and Scientific Services was one of those business units, and my role there was to oversight the management and operations of the various labs that operated out of Forensic and Scientific Services, to meet and, I guess, guide and develop the executive director as part of my role, and to undertake a review and analysis of issues that may emerge and how they should be tackled, making sure that the business operations of Forensic and Scientific Services aligned with the business objects of Health Support Queensland.

Q. Who was your primary contact within the DNA lab when you were general manager?
A. Paul Csoban, at that period of time.

Q. Was he the director you spoke of?
A. He was the executive director, Forensic and Scientific Services.

Q. That you would guide?
A. Yes.

Q. When you started in the general manager role, you received some briefings from Mr Csoban?
A. I did.

Q. What was discussed during those briefings?
A. There was a general briefing. A new arrival, you would be inducted into the nature of Forensic and Scientific Services operations and activities. And then some discussion around some of the issues that were present at the time that may have required some attention. There were several - several - two or three human resource management cases that were significant at the time, which we discussed. And we also discussed probably two matters relevant to the DNA laboratory, specifically around the resourcing of the laboratory and a large number of outstanding cases and backlogs, if you prefer.

Q. Were any further issues - did Mr Csoban explain to you how backlogs were measured?
A. I received a report, a diagrammic representation of the number of cases which were outstanding and how long they had been outstanding for.

Q. Were any further issues surrounding backlogs raised with you in late 2017 regarding DNA testing?
A. Not specifically.

Q. Were you assured of anything in late 2017 to deal with backlogs? I might remind you to look at your statement at paragraph 15?
A. I don't recall any further conversations other than to bring to my attention that there was a backlog, that some additional resources had been applied to help to try and get through the workload, and that staff were also undertaking overtime to try and clear backlogs, and that I was also given a clear assurance that all the priority cases were being managed in a timely way to meet the court requirements.

Q. When you returned from leave in April 2018, did you continue to meet with Mr Csoban?
A. Yes, I did.

Q. Did you meet with anyone else from the lab?
A. I had conversations with other persons. But particularly Ms Allen was involved in some of those conversations.

Q. Were any issues raised with you then?
A. No. Not in relation to the matters pertaining to the Commission, the report.

Q. Did you meet with Police you when you returned?
A. I met with Police, yes, to discuss some issues around the Forensic Register.

Q. Did you meet with the Queensland Audit Office?
A. I did at a later point, yes.

Q. What was discussed in that meeting?
A. The Queensland Audit Office were undertaking two audits: One of the efficacy and efficiency of the coronial system, the testing undertaken there, and one of the forensic testing done in Forensic and Scientific Services.

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

Q. Thank you. You set about trying to improve that after being --
A. Absolutely.

Q. The financial arrangements in place between the QPS and the laboratory for the testing of crime scene samples was a $3 million per annum budget paid by the Queensland Police Service for as many samples as they could have processed?
A. The Forensic and Scientific Services received $3 million from Police attributable to volume crime. Also received some funding on a fee-for-service basis relating reference samples, testing reference samples. Both of those emerged post the 2005 ministerial task force report. But it also was budget-funded for other activities within the laboratory, as was Forensic and Scientific Services generally.

Q. In your time in the role, there had been no request to increase that $3 million per annum?
A. No - I do recall at some point, and it might have been later in 2018 when we were looking at the resourcing of the laboratories, as to whether we should look at maybe moving to a full fee-for-service basis for all testing and pooling those resources so the relationship between the purchaser and the provider could be clearer. We didn't progress that, but there was some discussion. But I don't think that was until well after the middle of 2018.

Q. Did you try and develop a memorandum of understanding?
A. We did. The MOU was designed to really outline how we could better work together. One of the core roles I had as a general manager was to enhance the stakeholder relationship. So again from about mid-2018 I took a greater role in that. I progressed the drafting of the memorandum of understanding to outline the roles of each

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

Q. But you were not successful before you left in securing that memorandum of understanding?
A. We provided a draft. I think Police were, in principle, agreeable to the head agreement. We then started to move into individual schedules around the specific activities. COVID occurred and caused the redirection of a lot of police resourcing, so the matter took a bit of a back-burner. We had not been able to finalise the MOU by the time I left the organisation.

Q. You are aware that when the lab was considering major changes to processes, it would carry out a project to consider the positives and negatives of the potential change?
A. I'm aware that that occurred, and it would be reasonable to expect --
Q. I'm talking about as a general process?
A. As a general process, you would expect that to occur.

Q. In your time as a general manager you were never told about Project #184?
A. No.

Q. In your time as general manager, were you ever told about an Options Paper that was presented to Police in late January and early February 2018 that related to a change in processing samples with low DNA range, and the change being that those samples would not be processed if within that low DNA quantification?
A. That's correct. I did not know that that report had been --

Q. You hadn't, sorry?
A. No.

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

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

to police in advancing that change in the lab, would you have expected something of that nature to have been brought to the attention of the general manager?
A. Yes, I would.

Q. Had there been feedback from scientists within the lab to the effect that the premise in the paper was flawed, would you have expected that feedback to have been brought to the general manager?
A. I would have expected that would have been included in the paper, if that had been the case.

Q. Had you been briefed about those opinions in the Options Paper, what would you have done?
A. I think it would have required us to take a step back and re-assess the assertions to ensure that we're actually on solid ground with the analysis performed before we took it any further.

Q. Okay. Two things I'd like to ask you is, one: why do you say it should have been brought to your attention? And the second is: if it was, what would you have done to re-assess it?
A. Okay. I say that it should have been brought to the attention of the general manager on the grounds that we had been, during my induction phase, talking about backlogs of work and resourcing. The paper, clearly on read, is around redirecting resourcing to be more efficient and effective. So in that conversation on the one hand to say there is a problem, to then not to have a conversation about the solution of that problem, I find that unusual. And so, I would have expected to have come forward on that basis.

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

Q. You refer to the Police being a key stakeholder. Did you consider the Police the only stakeholder to be affected by such a change?
A. No. I think, again, when you read the paper itself and going onto the second part of your question as to what

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

Q. If it had been brought to your attention and you knew it was going to be presented to Police, would you have consulted further?
A. I may have done. Again, I was relatively new in the organisation. I think at that stage the Acting Chief Executive Officer was also relatively new. But my general propensity was to brief up whenever there was an issue or a risk or something that came up in any of my business units, so that he was aware, because there's nothing worse than your CEO not knowing that something was brewing. He may have full confidence in me to handle the matter or he might choose - he or she - might choose to become involved in the matter directly themselves, or give guidance about what they want done with it.

Q. Were you ever curious about what happens in other laboratories around Australia?
A. Would I be curious?

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

Q. Having read the Options Paper, do you believe that it would have been endorsed by senior executives in Queensland Health at the time?
A. I think it probably would have required further - I think one of its weaknesses is it is not an easy read,

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

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

But they were people who had taken the view that this was a desirable step to take. They had explained the basis for it to the extent that they had done so in the Options Paper itself, and if you asked them about it, they would have explained to you that this was a desirable step to take. But, no doubt, you wouldn't have expected them to explain the science to a degree where you could make your own judgment. So what would you have done - what could you have done, rather, that might have added value to the decision-making around this matter?
A. Commissioner, I think probably a few things come to mind. Again, I wasn't in the situation --

Q. No, no, it's hypothetical.
A. Hypothetically, you could, although you don't necessarily need to - you can't be across the science, but you could look at the data and say, "Does it make reasonable sense? What do these charts mean?" Have a conversation with the scientists to explain that. Sometimes through that process a penny might drop, because you are basically providing an external view or a non-scientific view into what is otherwise a very scientific paper.

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

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

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

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

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

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

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

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

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

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

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

<EXAMINATION BY MR HICKEY

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

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

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

MR HICKEY: Thank you. No further questions.

THE COMMISSIONER: Thank you. Anybody else? No?

MR JONES: No, thank you.

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

<THE WITNESS WAS RELEASED

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

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

THE COMMISSIONER: Thank you. Yes.

<MR MICHAEL WALSH, AFFIRMED [11:56am]

<EXAMINATION BY MR JONES

MR JONES: Q. You are Michael Walsh?
A. Yes.

Q. You are the principal of Powerhouse Partners Pty Ltd?
A. Yes.

Q. You provided a statement to the Commission of Inquiry which was signed on 23 September 2022?
A. Yes.

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

your statement, Mr Walsh?
A. Yes.

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

Q. Are there any changes you wish to make to it?
A. No.

MR JONES: I tender that, Mr Commissioner.

THE COMMISSIONER: Exhibit 49.

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

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

Q. And you finished on 6 September 2019?
A. Yes.

Q. What were your responsibilities as Director-General over those years that you held that position?
A. As part of my statement, I've got the whole position description. But I think in summary the role of the Director-General of Health has both the Director-General, the lead, providing leadership to the department, but also the system manager under the statute, the Hospital and Health Boards Act 2011, and in focusing on the role in the department, fundamentally, the role of a Director-General is to set the strategic direction, make sure that is very clearly understood and communicated, making sure that it's in line with the role and values of the public sector, and supports the policies of the government of the day, then to have the governance, organisational structures, policies, processes, and other arrangements in place to ensure that strategic direction can be achieved, and to provide all of that in a context of a culture that is a performance-based culture that's safe, it is a safe culture, and respectful.

Q. As Director-General, did you have a primary contact within the DNA lab?
A. No.

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

A. No, not in detail.

Q. Did you have any oversight of any of the backlogs within the lab?
A. No.

Q. You recently became aware of the Options Paper?
A. Yes.

Q. While Director-General, the Options Paper had not been brought to your attention?
A. No.

Q. Having now read the Options Paper and appreciating its effect, that is to, to cease a process within the lab, is it something that you would expect to have been brought to your attention?
A. Not necessarily, and the reason why I say that is, depending on the scope of the change that they may bring about and the level of analysis, consultation, and agreement that existed, I would expect that successive managers through the organisation would be exercising judgment in whether they were best placed to make those decisions and whether or not they needed to come to my attention. But, broadly speaking, I would say I wouldn't have expected that sort of thing to get to me.

Q. In terms of those levels, what about the CEO or a position beneath you? Is there a level at which you would expect that to rise?
A. As reflected in my statement, my view is, having read the Options Paper - and this is all in hindsight, and that needs to be understood - I would certainly have expected the Executive Director of Forensic and Scientific Services to be both aware and to have fully understood the Options Paper and its implications. I think their supervisor, the general manager, given that the process involves significant stakeholders such as the Police, the courts, the legal profession, and victims of crime, that the general manager would be aware of the process; not necessarily the scientific content. Beyond that, I would then think - I'm less clear as to whether or not the Chief Executive should know about it; probably not. And I don't think I would or should have known about it.

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

THE COMMISSIONER: Thank you.

MR HODGE: No questions.

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

THE WITNESS: Thank you, Commissioner.

THE COMMISSIONER: You are free to go.

<THE WITNESS WAS RELEASED

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

MS HEDGE: Commissioner, I call Stephen Paul Foxover.

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

<EXAMINATION BY MS HEDGE

MS HEDGE: Q your name is Stephen Paul Foxover?
A. Yes.

Q. And you are currently relieving in the position of Inspector of Biometrics?
A. I am currently senior sergeant at this time, yeah.

Q. You were relieving as at 16 September 2022 when you provided your statement; is that right?
A. Yes, that's correct.

Q. And you provided one statement to the Commission?
A. Yes, I have.

Q. Dated 16 September?
A. Yes, correct.

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

THE COMMISSIONER: Exhibit 50.

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

MS HEDGE: Q. That position - Senior Sergeant, was it now?
A. Yes, correct.

Q. That position, Senior Sergeant, was the position occupied between 2018 and 2022, generally, by David Neville; is that right?
A. That's right.

Q. Were you relieving for him while he was on some period of leave?
A. That's right.

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

04 July 2022 to 11 September 2022.

Was that whole period in the role of Inspector of Biometrics? Was it you that was --
A. I was the Inspector of Biometrics, yes.

Q. We have seen in our hearing so far emails sent by you Inspector Neville during that period. Was he doing some work while he was on leave?
A. Well, that actually wouldn't have been leave. That would have been Inspector Neville assisting with gathering information for the Commission, I'd imagine.

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

Q. -- that dealt with the same subject matter that you were dealing with?
A. Absolutely.

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

Q. How deep is your knowledge of DNA analysis to understand what concentration is and quantitation is?
A. Absolutely, yes. I do. I am not a scientist, but I have been in the section since 2018 and I have become familiar with that, yes.

Q. And so, when you read the memorandum from the Director-General, you understood what the process was - from the acting Director-General, I should say - you understood what the process was that was being implemented?
A. Yes. Well, that we believe was implemented, yes.

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

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

Q. In the first paragraph, it indicates the change of process?
A. Correct.

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

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

A. Yes.

Q. Were you told by Queensland Health how written approval would be obtained from the Queensland Police Service at this time?
A. No.

Q. And were you invited by Queensland Health to collaborate with them on how that process would happen of obtaining approval?
A. No, but we did have existing systems in place for communication between us using the Forensic Register with

case management tasks. That would have been my assumption.

Q. So you assumed that the request for approval would come through the Forensic Register?
A. Yes.

Q. And who did you assume that request would come to?
A. To our DNA liaison in Major Crime Unit would be the normal recipient of that, or the DNA section generally.

Q. And were you content with what you assumed? You were content with that process?
A. Well, yes. For approval from us that would have been fine. That wouldn't have been out of the ordinary.

THE COMMISSIONER: Q. It wouldn't have been what?
A. It wouldn't have been out of the ordinary to receive a request from Queensland Health for guidance on whether or not we should proceed with certain types of testing.

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

THE COMMISSIONER: Q. One question. Who would make the decision then? Who would respond to that request for a decision? The occupier of which position?
A. It could be one of the staff in the DNA liaison and major crime or it could be myself. I would generally liaise with someone like Justin Howes for advice on issues, and I would gain clarification from the investigation teams. We'd have an input from a range of people who knows those things.

Q. You would get information from - you would get information from the lab if you thought that would help, and you would also get information from the investigator if you thought that would help; is that right?
A. Yes. But we are meant to fill that liaison role. That's what we are there to do.

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

Q. Thank you.

MS HEDGE: Q. Although there was, as you say, communication about testing between Queensland Police and Queensland Health, it is the case, isn't it, that prior to this time Queensland Police were never involved in approving exhaustion samples by the lab?
A. No, only probably for very, very high profile jobs it may have come up. Maybe a cold case, where we had very limited samples left and we were looking at doing some additional testing, it may have been raised. But not generally, no.

Q. I see. So there would have been no standard procedure our about that?
A. No.

Q. But there may have been some formal instances of talking to the police about exhaustion of sources?
A. Yes, correct.

Q. Had you been involved in any of them in your time?
A. Yes.

Q. How many would you say over the last 10 years, just as an example? Just an estimate only?
A. Well, I have only been at the DNA unit since 2018, but I would probably say, for me, five, six potentially.

Q. Five or six over five or six years?
A. Yes.

Q. Four or five years, actually?
A. Mmm-hmm.

Q. After that, and if we can go back to your statement to the page ending in 0003, and paragraph 12 [QPS.0148.0001.0001_R at 0003], is it the case that you became aware that the request for approval had been sent through the Forensic Register to scenes of crime officers and investigators?
A. Yes, that's correct.

Q. And that wording there that we see in paragraph 12 is the wording that was put into the Forensic Register?
A. Yep, that's correct.

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

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

Q. And you decided to write to Cathie Allen, the managing scientist?
A. Yes, that's right.

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

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

Q. -- blocked out. That's the barcodes of the samples that were relevant to this?
A. Correct.

Q. All right. If we can go down to the bottom of the page, please, operator, you asked about process. And then you set out in these dot points, is this right, Senior Sergeant, the information that you considered would be necessary for you at the DNA Management Unit to make an informed decision about whether that exhaustion would be approved?
A. That's correct. Because otherwise it was going to be very difficult.

Q. And you set out there:

- The actual QuantTrio results

So that's the quantitation results.
A. Correct.

Q. An indication of whether there had been micro-concentration and volume?
A. Yes.

Q. Volume remaining?
A. Yes.

Q.

A full description of the actual profile already obtained.

A. Yes.

Q.

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

A. Yes.

Q. And:

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

A. Yes, correct.

Q. Would it be fair to say that that's a fair amount of information?
A. Well, I think it's the right amount of information for us to be able to make any decision on whether or not to consume a sample.

Q. Did you take advice to develop this list of dot points?
A. Yeah, I did. I took advice. I did liaise with Inspector Neville about that, yes.

Q. What about with the DNA analysis lab, about what they would think was necessary for you to --
A. No, I didn't liaise with them about that, no.

Q. So Inspector Neville was the only person you spoke to about this?
A. Yes, correct.

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.

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.

Q. -- or any confidential information, but I believe a scientist's name from the laboratory should --
A. This is just an email I sent to the liaison unit, just with an example, because I wanted to look for myself at what had transpired. Yes, it does have the scientist's name at the bottom, yes.

Q. Can you tell us that person's name?
A. It's Emma.

Q. Emma?
A. Mm.

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

Q. Were you satisfied that it met the dot points that you asked for?
A. Yes. And I know that I have seen at least one other which I was very happy with, yes.

Q. From that, don't tell us the decision you actually made, but did you make a decision based on the information you were given?
A. I can't recall. We have made a few decisions on samples. I can't recall exactly what we did with that one.

Q. Have you made a few decisions on exhaustion of samples?
A. Yes, but I don't think - I don't think we have said to exhaust one yet that I can recall.

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

Q. Can we turn to that, please. [QPS.0148.0001.0001_R at 0020]. That's the email there?
A. Yes, correct.

Q. This is not in response to anything you sent to Cathie Allen; this is the start of a new email thread?
A. Exactly, yes. That's right.

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

Requests for rework.

A. Mmm-hmm.

Q. And she identified the importance as high?
A. Yes.

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

We ...

That's FSS?
A. Yes.

Q.

... receiving requests from QPS to conduct further testing, including requests to restart ... after a statement has already been released.

A. Yes.

Q. The situations identified in that paragraph are not exhaustion-of-sample scruples, are they?
A. No, they're not.

Q. These are just business-as-usual things that the Police do?
A. Yes. Well, our review of "DNA insufficient", for example, on an unsolved rape or an ongoing investigation where we think that more testing might be valuable, it might be good probative evidence in that case, they would be resubmitted.

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

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

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

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

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

Q. She asks then for what your process is for requesting reworks; is that correct?
A. Yes.

Q. Did she have any conversation with you around this email or just the email came to you?
A. Just the email came.

Q. There's nothing in there about the turnaround times that might be affected by the exhaustion of sample processes?
A. No.

Q. Have you ever had any conversation with her or anyone else at Queensland Health about how the exhaustion process might affect turnaround times?
A. No.

Q. In this email, there is also no indication of exactly how the turnaround times would be affected; is that right?
A. That's correct.

Q. You did not respond to this email directly; is that correct?
A. That's correct.

Q. But Duncan McCarthy, who was then the acting Superintendent; is that right?
A. Correct.

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

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

that we have been through in this Commission with Inspector Neville; is that right?
A. Correct.

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

> *Regardless of the triage measures adopted, it is expected that requests for further testing will dramatically increase the workload of QHFSS.*

Is that your understanding as well?
A. Yes.

Q.

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

I assume you would agree with that also?
A. Yes.

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

Q. Is that right?
A. That's correct.

Q. That is an indication, is it not, these two emails, that both sides of this equation can affect turnaround times?
A. Yes.

Q. That Ms Gregg is highlighting, perhaps, some influence can influence turnaround times?
A. Yes.

Q. And Mr McCarthy is indicating that he wants to know the measures being put in place by QHFSS to manage those turnaround times?
A. Correct. That's right.

Q. But there's not in any of those emails quantification, even estimation, of what sort of effect --
A. No.

Q. Any of this has on turnaround time?
A. No, there isn't. There's no detail there.

Q. Were you involved in any conversations between Superintendent McCarthy and Ms Gregg around this?
A. No, I wasn't.

Q. Just the emails?
A. Yes, just emails.

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

Q. Who had then returned from leave into that position, The Executive Director of FSS?
A. Yes, correct.

Q. Did you hear any more about that by the time you wrote your statement on 16 September?
A. No, I hadn't heard anything further about that discussion about retesting and turnaround times. No, I haven't.

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

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

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

Q. You continued to act until 11 September; is that right?
A. Yes, that's correct.

Q. So after that date it might be that something would have gone to someone else?
A. Yes, correct.

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

response to go to yourself?
A. Yes. I expect I would have been advised, yes.

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

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

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

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

Q. Of course. But who is the decision-maker?
A. It would be made by a member of the DNA liaison and major crime. There is a sergeant in that section --

Q. Yes.
A. -- who manages those decisions, ultimately.

Q. But they would be speaking with the investigator and so on?
A. Yes, correct. It would be a collaborative decision with whoever we need to speak to. The internal stakeholders, yes.

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

Q. Is that a large proportion of investigators who would be so well versed in DNA analysis to be able to provide that level of advice?
A. It's more about the knowledge of their own case, of how important a particular exhibit is to their case. See, that's what we don't know and that's what Queensland Health don't know. They do.

Q. I understand. So it's not so much their knowledge of what Y-STR is --
A. Yes.

Q. -- or mitochondrial DNA? It is their knowledge of the case and whether they just don't mind that it gets exhausted for some reason?
A. And we would give them guidance. If we know that it is a sample from a female victim, we might suggest that a Y-STR might be desirable. They might not know what it is, but once we explain what it can do for them, they might say, "Yes, we want that".

Q. In your opinion, with this information, is the DNA Management Unit the best person to make the decision about exhaustion?
A. Well, when you say "make the decision", I think it's important that we act as the - once again, I say - the conduit between Queensland Health and the investigators, and if it's a major incident, the investigation team. There's a number of people involved. There are forensic coordinators, forensic managers, trained scenes of crime officers who have been at the scene; investigators who have been at the scene. All of those people would be involved in those decisions depending on the case.

Q. Of course.
A. So we --

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

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

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

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

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

Q. All right. Have you personally talked to a reporting scientist?
A. From time to time, yes.

Q. How many times since you started there in 2018?
A. Oh?

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

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

Q. -- in the example you have given, could you do that?
A. Yeah, absolutely. No problem. I could call Emma, yes.

Q. Call her directly?
A. Mm.

Q. How would you do that?
A. I have an extension number and I would ring it.

Q. All right. So you have access to the internal extension numbers --
A. Yes.

Q. -- of everyone in the QHFSS?
A. I wouldn't say I would like doing that regularly because I don't want to take them away from their work, and that is why I would probably tend to go to Justin, but if I needed to urgently or it was something important, or I have been told to make direct contact, I would.

Q. Do you think that in your opinion would the process be improved by having that discussion or collaboration as a standard when considering exhaustion as opposed to as a - if police request?
A. Yes, yes. I do.

Q. So you think it would be better process to talk to the scientist in every case?
A. Every case of when there is risk of exhaustion of a low quant.

Q. If they are seeking approval for exhaustion, that's right? That's what I'm asking?
A. No, I don't think we would need to speak in every case, no. No. But when it becomes complicated, obviously yes, that is a big advantage. But that initial advice would be sufficient for me to at least have a quick look at it, makes some inquiries at our end and if we needed further information, then we'd definitely make more contact.

Q. Thank you.

MS HEDGE: Thank you, those are my questions.

THE COMMISSIONER: Thank you. Mr Hunter?

MR HUNTER: One question.

<EXAMINATION BY MR HUNTER

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

Q. Are you able to assist as to how long it is expected that that pause will be in effect?
A. It is too early for me to say. I don't know. We're waiting on some more information on that.

Q. Are you aware of any proposals for any arrangements with respect to those samples in the DIFP range in the interim? That is, between now and whenever an ultimate decision is made?
A. No, we - that's - that's something we're working through now.

Q. Do you have a view about the desirability of a lengthy pause when it comes to the testing of samples in that range?
A. No, we certainly don't want a lengthy pause. But I don't have any information at the moment to be able to give you any estimation on how long it is going to take to resolve.

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

THE COMMISSIONER: Mr Rice?

<EXAMINATION BY MR RICE

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

Regardless of the triage measures ...

Perhaps that could be enlarged. This is Acting Superintendent McCarthy's email to Ms Gregg. In it, he flags an expectation, probably his, that requests for further testing will dramatically increase. He doesn't offer any estimate of the numbers expected in that email, does he?
A. No.

Q. Has that been given independently by some means outside of this email?
A. No. That's ongoing as well. There's a lot of data manipulation required to accurately get that, but we do know that it will be - I guess it's been described by the Superintendent as a dramatic increase, but certainly an increase. There will be an increase because we are going

to be retesting some of those examples, and that's an additional workload.

Q. It is just that he seeks advice on strategies --
A. Mmm-hmm.

Q. -- to manage an increase, and the word "dramatically" has been included but no numbers, either then or since, apparently --
A. No.

Q. -- have been indicated to assist in guiding what level of strategy might be required?
A. Yep, that's correct.

Q. Well, almost a month has passed since this email. What are the figures for September?
A. For how many set samples we have sent back for retesting?

Q. Yes.
A. I don't have that with me at the moment, no.

Q. Do you know whether it has, whatever the figure is, meets the description of the dramatic increase?
A. I would say at this point no, and that's because we are effectively triaging those samples to minimise the effect on Queensland Health. I mean, that's - we don't want them to stop testing our new crime.

Q. I understand.
A. So it is a balance for us at the moment, but that could change. And I think that's what the - well, I probably can't comment on what the Acting Superintendent is trying to say there, but I guess he is trying to flag that there is that potential for a dramatic increase, yes.

Q. Well, from what you say, at least in the course of September, given the selective approach you are taking--
A. Yes.

Q. -- that whatever samples are being referred back to FSS might not at this point qualify as a dramatic increase, is that fair to say?
A. Well, that's something. What's dramatic to me may not be dramatic to someone else. I'm not sure whether that --

Q. You can't give us the figures, can you?
A. No, that's right.

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

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

MR RICE: Well, how many requests as flagged?

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

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

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

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

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

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

<EXAMINATION BY MR HICKEY

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

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

victims of crime --
A. Mmm-hmm.

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

My learned friend Ms Hedge this morning has asked you some questions about the information that you required in order to make decisions around exhaustion?
A. Mmm-hmm.

Q. And you have given some evidence about that kind of processes. Am I right, though, in thinking that from the QPS perspective, the considerations are really limited to the investigators' concerns about whether samples are exhausted or not?
A. I wouldn't say investigators concerns. I think we are really thinking - we work on behalf of the victim. I think that is who we are focused on, is finding the perpetrator and giving them some closure. So that's what we focus on. We wouldn't destroy evidence that would prevent us doing that. So that's our imperative, and that would be the investigators' imperative.

Q. I understand. But is there any process, whether formal or informal, by which a proposed change to a testing process is floated, if you like, for consultation with victims of crimes associations, that kind of thing, to gauge whether or not there is some kind of view held by other stakeholders which might differ from that which QPS apprehends is the right one?
A. Yeah, not that I'm aware of. No.

MR HICKEY: Thank you, Commissioner.

THE COMMISSIONER: Mr Gnech?

MR GNECH: No, thank you.

THE COMMISSIONER: Ms Mckenzie?

MS MCKENZIE: No, Commissioner, thank you.

<FURTHER QUESTIONS FROM THE COMMISSIONER

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

requested or required that authorisation from QPS be the condition of exhausting a remaining sample? Did that come from QPS?
A. No, that did not.

Q. Thanks. Anything arising out of that?

MS HEDGE: No.

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

MS HEDGE: I did.

<FURTHER EXAMINATION BY MS HEDGE

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

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

Q. All right. So it is a request of QPS?
A. Mmm-hmm.

Q. And that Mr Drummond simply implemented the request made?
A. Yes, correct.

Q. And that that pause is in place now until advice is given by FSS to QPS as to whether concerns about blanket concentrations to 35 microlitres are valid concerns?
A. Yep, that's my understanding. Yes

Q. Is that right? All right. And so are you aware of whether a request has been made of FSS about how long such advice might take to give?
A. No, I'm not aware of that.

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

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

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

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

Q. What would that mean for the QPS if testing of P1 and P2 samples in that range is paused for a matter of months?
A. Well, that means that those low quant values, they won't be tested, yeah.

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

Q. That's right.
A. Yes, correct.

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

MS HEDGE: Yes, thank you.

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

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

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

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

told by Ms Gregg that she envisaged:

> *... it will be months not days until this proposal is properly evaluated.*

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

> *Is the timeframe below ...*

-- referring to the months, not days --

> *... an indication of when you might get back to us ...*
>
> *Is it possible to get some indication as to whether this has any basis sooner please? We can't really wait months to test some of these examples.*

That was the basis on which I asked that.

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

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

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

MS HEDGE: 2.15, if that's suitable?

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

LUNCHEON ADJOURNMENT [12:45pm]

MS HEDGE: Commissioner, I call Darren John Pobar.

THE COMMISSIONER: Yes.

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

<EXAMINATION BY MS HEDGE

MS HEDGE: Q. Your name is Darren John Pobar?
A. Yes, that's correct.

Q. You are currently an inspector of police; is that right?
A. Yes, that's correct.

Q. And you are currently the forensic manager of the scientific section in the Forensic Services Group?
A. Yes, that's correct.

Q. You have prepared two statements for the Commission. We are focused in particular on the second of those statements.
A. Yes.

Q. Its number is [QPS.0147.0001.0001_R]and it was sworn on 15 September 2022; is that right?
A. Yes, that's correct.

Q. Do you have any corrections to make to that statement?
A. No, we do not.

Q. In paragraph 2 --

THE COMMISSIONER: Exhibit 52.

MS HEDGE: Thank you, Commissioner.

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

MS HEDGE: In paragraph 2, you set out your tertiary qualifications, which include a Bachelor of Applied Science, a Masters of Forensic Science and a Masters of Business Administration?
A. Yes, that's correct.

Q. After working in the Major Crime Unit, you came to start in the forensic services area in approximately 2013; is that correct?
A. I was in forensic services before that, but in 2013 I came back into headquarters as the State Coordinator.

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

A. Yes, that's correct.

Q. That is the position ordinarily held by Bruce McNab; is that right?
A. Yes, that's correct.

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

Q. In paragraph 5, you indicate that on 15 July you met with the Acting Assistant Commissioner Marcus Hill and Inspector David Neville to discuss a concern about DNA analysis?
A. Yes, that's correct.

Q. Do you remember what the concern was, expressed by Inspector Neville in that meeting?
A. Yeah. Well, as a result of the announcement by the government of the change of process, I think it was about the time the Commission was called, and Dave Neville's concern was because there was an announcement of, "everything was going to be processed, all of the insufficient DNA process was going to be stopped", something along those lines, we were concerned about what the new process actually was and what that potential was going to have on turnaround times and backlogs. So if everything was being microconned, or, you know, what exactly was the process and how that was going to affect results from Queensland Health.

Q. So the concern was there was not certainty, is that true, at Police Headquarters about what process was in place at that time?
A. Well, yeah. We were just unsure because my assumption was that the announcement about everything being processed, I was of the assumption that everything would be probably micro-concentrated. I think Dave Neville shared that concern. So if everything was being micro-concentrated, yeah, we would expect that backlogs would extend greatly because of the amount of resources that's required for that step. So we were just trying to ascertain exactly what that was, you know, what the actual process was, at the time when the announcement was made.

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

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

Q. Yes. Was it your understanding that when the decision was made on 6 June 2022, that QPS were not consulted as part of that decision-making process?
A. As far as I'm concerned, yeah, no one in the QPS was consulted. Certainly not in forensic services.

Q. Can I take you to [QPS.0147.0001.0001_R at 0023] as part of your statement. Now, you are not in this email, but you have seen this email because it was sent to Bruce McNab; is that right?
A. Yes, I have seen that email, because I believe Helen Gregg included that email in her reply to me.

Q. Yes. Was this the email, to your understanding, that advised the QPS about the decision made on 6 June 2022?
A. Well, I believe that some advice had been sent to Bruce from Lara Keller from this email, but it could still, to me, even post getting it at a later date, it was still unclear from that email. So that may have led potentially Dave Neville to be uncertain.

Q. When you say that, do you mean it was not clear to you or Inspector Neville from this email whether or not everything was being concentrated?
A. Well, it certainly wasn't clear to me when I made the inquiry email with Helen Gregg.

Q. I see. Let's look at that one. If we turn then to [QPS.0147.0001.0001_R at 0014]. This was the same day that you had the meeting that you described?
A. Yes, that's correct.

Q. It was sent to Helen Gregg; is that correct?
A. Yes.

Q. There is a redaction there, which must be the email address. But do you understanding that was sent to Helen Gregg?
A. Yes.

Q. And you indicate you:

... refer to the attached report ...

Which was the June 2022 Update Paper, if I can put it like that?
A. Yes.

Q. And then in the third paragraph you indicate that on 30 May, to your understanding, the Minister announced that the processing threshold has been removed and all samples were processed as a matter of course. You were seeking clarification on the current process on testing low quant value samples; is that right?
A. Yes, that's correct. I believe that date was actually not correct in the end. I think it perhaps had occurred at the same time as the announcement about the Inquiry. But yeah, that was what I had in the email at the time.

Q. Thank you. You didn't receive an immediate response to that email; is that correct?
A. That's correct.

Q. But on 20 July, you followed up with another email, [QPS.0147.0001.0001_R at 0018].
A. Yes.

Q. A second email, seeking clarification of the current testing process by QHFSS?
A. That's correct.

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

Q. And this is about - I'm sorry?
A. The first one was trying to clarify what the process was originally.

Q. Yes.
A. And with the concern that there was potentially backlogs, yes.

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

... those between .001 and .0088 which

would potentially benefit from concentration.

So an awareness that without concentration you might have less quality results than with concentration?
A. Yes. Well, the second email was prompted by a concern from David Neville that he received some advice - I believe third-hand - through someone at the DNA Unit via someone from Queensland Health that there was some indication that there wasn't - some samples weren't being concentrated. So with the original thought that maybe they all were and then this second, I suppose, information that there may not be some being concentrated. So, you know, which ones were, which ones weren't. So then that - if there wasn't - none were being concentrated, within - you know, particularly I am talking about within the threshold range, then that was a concern because, you know, the original validation from Queensland Health was that those ones in that range, like, should be concentrated, because they're needing concentration to potentially yield a result. So that's where the sort of second email came from.

Q. At this time, when you were sending these emails, did the QPS have a position about what should be concentrated or whatnot in terms of different priority samples?
A. No, not at this stage. It was really trying to get a handle on what was actually exactly happening at the time, and it was sort of - sort of being co-considered with that second report that came out that had sort of an indication of a number of options that were for us to consider down the track. So just trying to find out exactly what was occurring right now, with a view to then looking down the track as what might - you know, what might be those other options that we may need to consider, sort of longer term.

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

Q. In the low quant range?
A. Yes.

Q. By 20 July, you were concerned that maybe none of them were?
A. Potentially.

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

Q. -- what process was in place at the lab?
A. No, did not.

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

THE COMMISSIONER: What page?

MS HEDGE: Page 0020.

THE COMMISSIONER: Thank you.

MS HEDGE: Q. This is the email from Helen Gregg to yourself in response?
A. Yes.

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

> *Prior to the announcement ...*

A. Yes.
Q. Ms Gregg indicated that:

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

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

A. Yes.

Q. After receiving this email, did you understand then what process was in place?
A. Well, from that email, with discussions with Dave, we thought at that point it looked okay in the current climate with they're running everything through but the scientists or Queensland Health are making an assessment of what would need to be concentrated and what wouldn't. So at that stage, it seemed okay.

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

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

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

Q. Did you understand at that time that that would - to assess concentration after a profile is obtained means that the sample has already gone through amplification?
A. Well, I didn't sort of assume that it had gone through. I thought that that would be - staff will assess the concentration of the sample would be a benefit, potentially, as it was going through the quant stage. That is what I thought would be - because I don't - I didn't --

THE COMMISSIONER: Q. You see it says, "upon review of the profile obtained"?
A. Yeah, I did see that. But I didn't think that that was what - whether it meant "profile" or whether it meant "quantification", because I don't - I'm not a DNA expert, but I don't believe you can actually go back and concentrate after you've got a profile. That was why I thought that wouldn't even be possible, but - it may be possible, but I just assumed that they would be looking at it as it's going through.

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

what remains of your sample --
A. Yes.

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

Q. But I think - anyway, it doesn't matter. You weren't clear about what stage was being referred to, at the time that you got this?
A. No. Yeah, that was my - what I just stated before is what I thought would happen.

Q. Do you know what the potential workplace health and safety issues were that were referred to in the paragraph that Ms Hedge took you to?
A. I just thought it was - whether they used the word "workplace" or "workload", I thought it may have been there was going to be an excessive workload. The concentration of samples, if there was a lot of concentration of samples, which is very labour-intensive, and there was a lot of them being done, that it may have been a workload issue.

Q. You are not aware of any danger involved in performing micro-concentration?
A. No, I'm not, Commissioner.

Q. All right.

MS HEDGE: Q. Shortly after that on 24 July, you ceased your acting in the superintendent role; is that right?
A. Yes, that's correct.

Q. So after that email, you said you and Inspector Neville discussed and were content with the position?
A. Yes, that's correct.

Q. With, as you understood it, discretion being exercised at the quantitation stage?
A. That's right.

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

A. That's correct.

Q. Thank you.

MS HEDGE: Those are my questions.

THE COMMISSIONER: Yes. Mr Rice?

MR RICE: No, thank you.

THE COMMISSIONER: Mr Hickey?

MR HICKEY: No, thank you.

THE COMMISSIONER: Mr Gnech?

MR GNECH: No, thank you, Commissioner.

THE COMMISSIONER: Ms McKenzie?

MS MCKENZIE: No, thank you, Commissioner.

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

<THE WITNESS WAS RELEASED

MS HEDGE: Mr Hodge will take the next witness.

MR HODGE: The next witness is Ms Brisotto.

<MS PAULA MICHELLE BRISOTTO, SWORN [2:36pm]

<EXAMINATION BY MR HODGE

THE COMMISSIONER: Yes, Mr Hodge?

MR HODGE: Q. Your name is Paula Michelle Brisotto?
A. Yes, that is correct.

Q. You are a team leader or the team leader for Evidence Recovery and Quality in the Queensland Health Forensic and Scientific Services?
A. Yes, that is correct.

Q. You provided a statement to the Commission?
A. Yes, that is correct.

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

Q. You signed that statement on 9 September 2022? You can see that if we go to page [WIT.0014.0011.0001 at 0034]?
A. 21st day of September.

Q. Sorry, my mistake, 21 September 2022. Are there any corrections you wish to make to that statement?
A. (Witness shakes head).

Q. And the statement is true and correct?
A. Yes.

MR HODGE: I tender that statement, Commissioner.

THE COMMISSIONER: Exhibit 52.

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

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

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

Proposal
restarted by: Justin Howes.

And:

Approved By: [you].

And what is redacted there, presumably, are your signatures on the restart of the proposal?
A. Yes.

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

Were you familiar, at the time you signed this document, with Project #163?
A. I would likely have been. I wasn't actually present when the #163 project was done because I was on maternity leave. But at the time of signing it, I would have went through that.

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

Q. The effectiveness of micro-concentration in relation to --
A. I would imagine so, yes.

Q. Do you recall in relation to the restarting of this project, or the restarting of this proposal, whether you had any discussions with Mr Howes before you approved it?
A. I'm sorry, I don't recall that at all.

Q. But it is likely would you have?
A. Yes. Possibly, yes.

Q. Do you recall, even if you don't remember any specific discussions, what the impetus was for restarting the proposal?
A. No, I can't recall. I'm sorry.

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

Do you recall in the first half of 2017, you knew that within about a year you would have to cease using Profiler Plus for Priority 3 samples?
A. It may have been flagged at that time. I'm not sure when we would have got the first notification that they were ceasing production.

Q. Do you recall whether you held the view that whatever you were going to switch to once you couldn't use Profiler Plus anymore would increase the amount of time required for processing Priority 3 samples?
A. There was a potential that it could if we went back to

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

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

Q. Was it the case that at some point in 2017, you became aware that the plan within the lab was to switch back to using PP21 once you could no longer use Profiler Plus?
A. That was one of the options, yes.

Q. Eventually, it stopped being the option and became the plan?
A. It became the decision, yes.

Q. And were you aware that once that was adopted, it would mean - or once that came into effect, it would mean that, in effect, turnaround times would increase; that is, they would get worse?
A. There was a possibility. I think the discussion at the time was given staff at that time had been used to using profile - PowerPlex 21 for quite some time, the turnaround times might not have been as impacted as they were in 2013.

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

Q. And do you recall whether at any stage you understood there to be a connection between what became Project #184 and the fact that P3 samples were going to start being processed using PP21?
A. I don't remember if there was a connection. I'm sorry.

Q. You have no recollection about that at all?
A. I don't.

Q. I see.

MR HODGE: I will tender that document, Commissioner.

THE COMMISSIONER: Exhibit 53.

EXHIBIT #53 - REQUEST FORM FOR RESTART OF PROJECT #163 OF APRIL 2017

MR HODGE: Q. I will show you another document. This is [FSS.0001.0001.8880]. Do you see this is the Project Proposal for Project #184?
A. Yes.

Q. This was a document that was circulated by email by Cathie Allen. Would you have read it at the time?
A. I believe I would have.

Q. You're not named as one of the two people responsible for the project. Instead, it seems to be Justin Howes and Cathie Allen?
A. Yes.

Q. But even though you weren't going to be responsible for the project, what - in your ordinary role, what involvement would you have in relation to a project?
A. It would have been as one of the reviewers.

Q. Could you just explain to the Commission, for a normal project, what is the role of a reviewer?
A. We - as reviewers as endorsers of the project, we review the project plans, experimental design in the report, and provide feedback to the project team.

Q. Is it the case that ordinarily in the lab at the stage of a Project Proposal, that would be reviewed by each of the reviewers and they would provide feedback?
A. Yes.

Q. And that would be incorporated into the final form of the Project Proposal?
A. Yes. It would be considered and, as required, incorporated.

Q. And then as drafts of the report were prepared, they would be circulated for feedback from the reviewers?
A. Yes.

Q. And the reviewers would provide that feedback, and that would be incorporated in some fashion?
A. Yes.

Q. I just want to pause before we come to the next stage.

Who were the reviewers of any project?
A. It's generally the management team.

Q. Who constituted the management team?
A. The management team at that time would have been Cathie, Justin, myself and the HP5s of each team. I am not sure who was in the specific roles at that time, because there could have been an acting arrangement.

THE COMMISSIONER: Q. But they would be named in the document, Mr Hodge, I think, on page 2 or 3.

MR HODGE: Yes, I do know. And I will come to that in a moment, Commissioner.

Q. If we go to the last page of that Project Proposal, can you see there is a section 6, which is "Results and Data Compilation". Could that just be blown up for us. Just take a moment to read that, if you would.
A. Yes.

Q. As you probably know, as I assume it is the same with all projects, this project plan or Project Proposal identified various experiments that were going to be undertaken?
A. Yes, that is correct.

Q. And then it identifies what assessment criteria will be used in relation to the results from the experiments?
A. Yes, that is correct.

Q. You will see at the end of section 6, it says:

A final report will be produced which will compile all analyses, conclusion and recommendations.

A. Yes, that is correct.

Q. Was that conventionally the case for all projects, that there would be a final report compiled at the end?
A. If it proceeded to implementation and report, yes.

Q. Just explain what you mean by that?
A. Some projects might not go to completion and final report. We might decide during that process that it doesn't go to reporting for a variety of reasons, but they

will be noted in that project.

Q. Who would make the decision that a project would not proceed to final report?
A. It would generally be the project management, but also the - sorry, the project team, plus also the management team would be aware of that.

Q. That is, the project team would come and report back to the management team that they were not proceeding with the project?
A. Yes.

Q. How often does that happen?
A. It would depend on what a Project is looking at. It might be decided that we're stopping it or holding it over, and then we could close it down and proceed with a different project later. So it would be, potentially, part of the experimental plan at start of the testing - when you start testing, that we might decide at that point in time that that's not to proceed.

Q. That what is not to proceed?
A. The project itself, due project report. It doesn't happen very often, but it can happen.

Q. When was the last time it happened?
A. I don't remember exactly, sorry.

THE COMMISSIONER: Q. Can you think of an occasion on which it happened?
A. If we had started to assess a software that we didn't end - decide that we wanted to pursue, we would make a file note against that project explaining the reasons why we weren't proceeding with it and then that would be closed.

Q. You are talking about cases where a proposal to run a project or a project is being run and it's decided to abandon the proposition?
A. Yes.

Q. Thank you.

MR HODGE: Q. In this case, what you would have understood at the time was that this project would involve going through, conducting experiments, and reporting on the final outcomes from those experiments?

A. That's correct.

Q. And what conclusions and recommendations would flow from those experiments?
A. Yes, that's correct.

Q. And so the final report, which would be signed off by the Management Committee, would set out the conclusions and recommendations flowing from the experiments?
A. Yes, that's correct.

Q. If we go to page 2 of that document which is [FSS.0001.0001.0880 at 0882]. This is the Project Proposal still, but as we see in the Document Details, it has the signature sign-off for each of the people that needs to sign off on it. And if we can just have that page on the screen plus the next page [FSS.0001.0001.0880 at 0883], you see three more names over the next page. Is it the case for a Project Proposal, would you need all of the members of the Management Committee to sign off on the Project Proposal?
A. Yes. If they're not endorsing it, we might note why they're not endorsing it. It might be that they're absent.

Q. Thank you.

THE COMMISSIONER: Q. Is there - there is a stand operating procedure that governs projects?
A. Yes, there is.

Q. Do you know if there is a quorum required for approval in the form of document sign-off?
A. I think it does mention a quorum. We generally do have all the management team members sign it, though.

Q. Do you know what the quorum is?
A. I think it's basically just a majority.

Q. I see. Thanks.

MR HODGE: Q. If we then bring up the Project Plan which is - I am sorry, Commissioner, I tender the Project Proposal.

THE COMMISSIONER: Exhibit 54.

EXHIBIT #54 - PROJECT PROPOSAL #184

MR HODGE: Q. If we bring up the Project Plan, which is [FSS.0001.0001.0862]. And, Commissioner, I will just note that this is a document that has already been tendered.

You will see again that this is a project plan. It was also emailed by Cathie Allen along with the Project Proposal. And this is a document that is drafted, it appears, by the person who is going to be carrying out the project or is the lead for the project. Was that done in the case of all projects?
A. Not all projects. It's not required for all projects. But, yes, it would be when it is required.

Q. Thank you. If we go to the second page of that document [FSS.0001.0001.0862 at 0863] and if we blow up the bottom of that page under "Expected Outcome" and the top of the next page. Thank you.

Again, this box setting out "Expected Outcome" of the project, that would be a conventional thing where there was a project plan that would be identified?
A. Yes.

Q. In this case, there's an explanation of what is expected in relation to the data, and then you see in the third paragraph it says:

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

A. Yes.

Q. You, again, would have read this document at the time?
A. Yes.

Q. Tell me if I am right about this: you had, at least in the second half of 2017, understood that what would happen in relation to Project #184 was that a report would be completed in the conventional way that reports were completed within the lab. That report would include recommendations, and those recommendations would then be communicated to QPS?
A. That would have been my understanding.

Q. We know that that was not what occurred.
A. Yes.

MR HODGE: Commissioner, we can take that document down. I don't need to tender it; as I say, it has already been tendered.

Q. Tell me if this is your understanding of what occurred. Justin Howes circulated version 1 of the Project Report towards the end of 2017?
A. Yes, I believe so. Yes.

Q. And he sought feedback on version 1 of the Project Report?
A. Yes.

Q. And received feedback on version 1 of the Project Report?
A. Yes.

Q. And then in January - in December, I think, of 2017, he circulated version 2 of the Project Report?
A. Yes.

Q. Actually, I might have that wrong. I apologise. It was 8 January 2018 he circulated version 2 of the Project Report and sought feedback the next day?
A. I believe so.

Q. Were you aware of what feedback he received?
A. No. I think that went directly to him, unless I was cc'd in any feedback.

Q. Were you aware in the first half of January 2018 that there were members of the Management Committee that had criticisms and disagreements with the content of the Project Report?
A. Unless the feedback came to me, I wouldn't have been aware.

Q. Now, just again rather than answering in the hypothetical, were you aware in the first half of January of 2018 that there were criticisms and disagreements from any other members of the management team in relation to Project #184?
A. Well, I can't recall, I'm sorry.

Q. I see. Just to pause on that. This issue of what happened in relation to Project #184 and the Options Paper, this is a matter toll which you have had to direct a lot of attention not just in the last few months but for most of this year?
A. Yes, that would be correct.

Q. In the course of that time, as you have reflected and gone back and looked at documents, do you say you haven't been able to ascertain, and haven't been able to recall, whether you were aware of criticisms and disagreements from other members of the Management Committee about the contents of Project #184?
A. At the time, no, I can't. None of the documents that I found led me to believe that I was aware at that time.

Q. I see. I will show you another document. I know you have looked at it before. Can we bring up [FSS.0001.0001.0785]. Can we bring up the native version of that. Just pausing for a moment, this is a spreadsheet that you have looked at in the course of preparing your statement?
A. Yes, it is.

Q. This is a spreadsheet that was created by Justin Howes which sets out the feedback that was received?
A. Yes.

Q. As I understand your evidence, it's that you didn't directly input any feedback that's attributed to you into this document?
A. No, I didn't personally enter.

Q. And you believe - well, insofar as you know who has entered it, the only person you are aware who could have entered it is Justin Howes?
A. I believe so.

Q. If we look at row 6, we see the initials "PMB". That's your initials?
A. That is correct.

Q. And the date that is attributed to your feedback is 9 January 2018?
A. That is correct.

Q. And then the feedback is:

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

A. That is correct.

Q. And then his response that he has recorded is, "Agree". But as I understand it, your evidence is you now can't recall, even with the benefit of looking at this spreadsheet, what feedback, if any, you gave to Mr Howes?
A. This - looking at it did not help me recall any feedback that I gave him. Any email communication, I cannot locate any email communication or any feedback on the document that also pertains to that information.

Q. Is it likely, do you think, that you gave him feedback which was, "Best to be Options Paper as QPS should make the decision on this"?
A. It is possible that I provided something like that, but as to the wording that is used in this project, I can't confirm that those were my words, because I don't recall them at all.

Q. I understand. Whether those were your exact words or not, is it likely that what is recorded in the spreadsheet reflects the kind of feedback you gave? Can we keep that up, sorry.
A. It is possible.

THE COMMISSIONER: Q. Well, where would he have got it from otherwise?
A. I'm not sure. I'm not sure if there was a discussion. I don't know. I honestly cannot recall those being my words.

MR HODGE: Q. I will show you another document. This is from Ms Brisotto's witness statement, the doc ID is [WIT.0014.0016.0001]. Just blow up the top but can we block out - redact the email address there.

Do you see this is an email from Justin Howes to you on the morning of 12 January 2018?
A. Yes.

Q. You see it is an email that he sends you from his personal email address rather than from his work address?

A. Yes.

Q. Just let me ask about that. Is that normal, that he would email you from his personal address rather than from his work address?
A. Not normal, but it looks like he was home that day.

Q. You see he says:

Do you mind emailing the v2 of mic report for me to convert to options paper?

A. Yes.

Q. And "mic report", I take it, does that stand for micro-concentration?
A. I would assume so, yes.

Q. And that was the only report you were aware of at the time that was in the stage of version 2?
A. Yes.

Q. Did you email him version 2 of the Project #184 report?
A. Yes, I believe I did.

Q. Do you have a record of that?
A. I believe it was in - it should be in an email.

Q. I see. Have you seen it recently?
A. I may have seen it in searches for information for the Commission.

Q. I see. This is three days after he has recorded your feedback as being "should be an options paper"?
A. Yes.

Q. And tell us, do you remember at the time what it was that you understood was happening in relation to the process?
A. I mean it was four and a half years ago, so I am not exactly sure. I can't remember the details. I am assuming based on this that I was aware that the intent for Justin was to convert it to an options paper. The reasons why, I'm not sure.

Q. Well, just to be clear, it's not just convert it to an

Options Paper. It's to abandon the process of creating a final report?
A. That was the end, I believe, but I'm not sure if I was aware that that was the end at this stage.

THE COMMISSIONER: Q. How could you be unaware?
A. That --

Q. How could you have been aware?
A. That #184 was going to be abandoned?

Q. Yes?
A. I'm not sure where those decisions came from at that point in time. I really don't have a recollection

Q. No, I am asking you how could you have been unaware that the project was going to be abandoned when you were being asked here about converting a report? Surely you're not going to continue with preparation of a report that has been converted? You really have to come to grips with this, Ms Brisotto.
A. Yes, Commissioner.

Q. So?
A. Yes.

Q. How could you have been unaware?
A. Yeah, based on this, that, yes, now appears to be the intention.

MR HODGE: Q. It must be more than that, though?
A. I'm not sure that - I don't know. I honestly can't remember. Based on the email that's in front of me, that appears to be the case, but I still don't remember the detail and the email doesn't trigger my memory, I'm sorry.

Q. Yes, let's work it through. We looked at the Project Proposal and we know that the intention was to have a final report that would contain the recommendations. You remember that?
A. Yes.

Q. And we know that there was a Project Plan that provided that the recommendations would need to be communicated to the Queensland Police Service for their agreement?
A. Yes.

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

respond to issues raised by the QPS in relation to the Options Paper?
A. Yes. We have been responding with a lot of documentation.

Q. And it goes further than that, doesn't it? In 2018, Cathie Allen was forwarding to you emails that she was exchanging with members of the QPS about things that were flowing out of the Options Paper?
A. I believe so, yes.

Q. Do you say, notwithstanding all of that, you simply have no memory of how it was that the Options Paper came to be, or whether it took you by surprise, or whether you understood why it was happening?
A. I don't think it took me by surprise. I think it was how the decision and the reasons for the decision. I don't remember specifically when that was discussed.

Q. Well, doing the best for us that you can now, can you think of a reason why there would be this change to abandon the Project Report process and switch to an Options Paper?
A. My best guess - I guess my opinion is that the recommendations at the end to change the process are not a decision that we would be able to make; that's something that would be for the Queensland Police Service to decide on. How that came to come in the form of an Options Paper, that might have been the end result of a discussion in relation to that.

Q. Just, again, I need to press you on this. What I am asking you to do is to offer us any reason that you can think of for why the process of generating a project report was abandoned and switched to creating an Options Paper.
A. I don't know why. I don't know a reason why, unless the format may have better presented the options to the QPS.

Q. No. It's two things. It's abandoning the project report process and switching to something that was going to be presented to QPS. You understand that, don't you?
A. Yes.

Q. And what I am asking you to do is offer us any explanation that you can think of for why that occurred?
A. I cannot think of a reason or an explanation why that might have occurred, I'm sorry.

Q. Well, one reason could be that somebody - and we will come back to who in a moment - had formed a view that the Project Report would not be signed off on, would not be signed off on sufficiently quickly, having regard to the views of other members of the Management Committee meeting. Do you agree that that is a possible explanation?
A. It is a possibility.

Q. Can you think of any other possibility?
A. I don't - I can't think of another one. Whether that one is the correct one, I'm not sure, because I wouldn't have assumed that it couldn't come to the conclusion of a report being signed off by everyone.

Q. I understand. You're saying maybe it would come to - maybe it would ultimately be signed off as a report?
A. Yes.

Q. But what we are trying to figure out is, and a matter of great concern to this Commission, is why? Why did the lab abandon the process that it had in place and switch to an Options Paper?
A. I cannot recall. I'm sorry. I don't know the reason why. The propositions are possible, but I'm not sure what the actual reason is.

Q. But there's no other explanation you can think of?
A. I can't provide an alternative, no.

Q. It's likely, isn't it, that you must have known what the explanation was at the time?
A. I'm not sure. I may have, but I can't recall that being the reason.

Q. But it's likely, isn't it? You wouldn't have just gone along with Mr Howes, going on a frolic of apparently abandoning the project report process, if you didn't even understand why he was doing it?

MR HICKEY: Commissioner, that's a pejorative question. Framing it as a "frolic" suggests a certain characterisation of what Mr Howes did --

THE COMMISSIONER: No, no, he was putting that she would reject that Mr Howes was on a frolic of his own, not that - Mr Hodge wasn't putting that Mr Howes was on a frolic.

MR HICKEY: That's as I understood the question.

THE COMMISSIONER: It was the other way around, I think, Mr Hickey. Mr Hodge?

MR HODGE: It was the other way around.

Q. You understand if you didn't know what the reason was for why it was happening, then you apparently simply, on an email from Mr Howes' personal email address, sent him a copy of the draft report to convert into an Options Paper, and what I am suggesting to you is you would not have simply gone along with such a frolic without knowing what the explanation is?
A. I would likely have known it at the time. Whether it was the explanation that you have provided, that is what I don't know. Another alternative that I've just thought of is it could be a simplified report to provide to the Queensland Police Service as well.

Q. That's not an explanation, though, is it? And the reason it's not an explanation is because you know that the Project Proposal was that you would come up with a report, with recommendations, and the Project Plan was that then those recommendations would be communicated to Police. So the idea that you would come up with some simplified explanation to give to Police does not explain why you would abandon the project report process.
A. No, it doesn't.

Q. On the question of quorum, I just want to ask you about that. Can we bring up the "Procedure for Change Management", and the document is [FSS.0001.0011.5548]. This is a procedural document you are familiar with?
A. Yes.

Q. If we go to [FSS.0001.0011.5548 at 5552]. And I should just indicate this is the current version, but this is identical to the version, as in relevantly identical, you see in relation to quorums, in relation to 4.4, you see this is about consideration of the Project Proposal?
A. Thank you.

Q. Do you see, starting in the fourth line:

The quorum must include the Managing

Scientists, Team Leaders, Quality and Projects Senior Scientist, Senior Scientist that has Line Management of the staff/project and Senior Scientist/s of areas significantly affected by the project.

And in the preceding sentence, it explains that whilst it is not necessary for all member of the management team to approve every proposal, a quorum of the management team must approve the proposal?
A. Yes.

Q. And then if we go over the page to [FSS.0001.0011.5548 at 5553], and could we just scroll down a little bit further? And do you see - actually, if we can just keep the heading as well, which is:

4.5 Implementation and Final Report ...

And do you see the last sentence of the first paragraph says:

The Line Management/project leader will submit the final report, technical review and implementation plan to the Forensic DNA Analysis Management Team for consideration/acceptance.

A. Yes.

Q. And then you see the next paragraph says:

If the final report is accepted by the Forensic DNA Analysis Management Team it will be e-signed and the project/change management process closed.

A. Yes.

Q. This doesn't seem to refer to a quorum in relation to the final report, only in relation to the Project Proposal?
A. Yes.

Q. But do you say your understanding was that it was only necessary to have a quorum in relation to the final report?

THE COMMISSIONER: You mean a majority?

MR HODGE: Q. Yes.
A. For both the proposal and the final report, yes, I believed it was both.

THE COMMISSIONER: Q. Do you see that in the middle of that page, in the paragraph beginning:

> *If the final report is accepted ...*

The second sentence provides that:

> *If the Management Team requires additions/edits to the final report, it will be returned to the project leader ... with feedback. The final report will need to be edited and resubmitted for consideration by the Management Team.*

So there is a quorum required, which includes the Team Leaders, and if feedback is given, then it must be attended to and the report has to be resubmitted to the Management Team, which no doubt will include the person who gave the feedback. Why would that be there, do you think?
A. Because that would be the process.

Q. I know that's the process, but why is that the process, do you think?
A. If, after the final report has been signed and something is found during a point after the e-sign has been done, so after all the signatures have been put on, something can be edited in there and it would be re-sent out for signing.

Q. But what would be the reason for a rule that, if the Management Team requires additions or edits to the final report, it has to be returned to the Project Leader with feedback and the Final Report has to be edited and resubmitted for consideration? What would be the reason for having a rule like that, do you think?
A. To ensure that there was complete sign-off again on any changes.

Q. There was what?
A. There was sign-off again for any changes.

Q. And what does sign-off signify?
A. It signifies that the Management Team members as the decision-making group endorse it again.

Q. But why would you have a rule like that by which a Management Team member who has required additions or edits is entitled to have the Final Report edited and resubmitted for consideration by the Management Team? Why would you have that rule in place?
A. To allow that option to occur.

Q. Yes.
A. Should --

Q. That's just restating the proposition in other words. Why have that rule? What's the purpose for having that rule?
A. To have it written in the SOP so people were aware that it was a possibility to do that. I'm not sure I understand, sorry.

Q. Can I suggest to you that the reason for having that rule is to ensure that those with expertise in the field, within the lab, who have raised serious considerations that have to be taken into account, have their propositions considered and taken into account, and that before the project goes ahead, they are satisfied so that quality is assured and risks are avoided?
A. Yes, I would agree. Yes.

Q. And would you accept that that must be the reason why, among others, Team Leaders have to be part of the quorum to approve a report?
A. Yes.

Q. And that if you don't comply with that protocol, you are prone to be running into risks, and there is a real risk that you'll lose integrity and quality in the work, the important work, that you are doing?
A. Yes, I agree.

THE COMMISSIONER: Go ahead, Mr Hodge.

MR HODGE: Thank you.

Q. I just want to ask about the quorum. Can we go back to the preceding page [FSS.0001.0011.5548 at 5552], and

scroll down just so Ms Brisotto can see it.

Do you see - I had understood you to say you thought just a majority was required to approve the Project Proposal and the Final Report?
A. In reading this now, it has refreshed my mind, because it is a big document and I couldn't remember the detail. I apologise.

Q. I see. And it's not the case, is it, that a majority is required? In fact, ordinarily it would be at least a majority.
A. At least, yes, with key members included.

Q. Yes, because it would really only be if almost no other area was significantly affected that only a majority of the Management Team would be required to sign off on the document?
A. Yes.

Q. And so, assuming other areas are significantly affected by the project, then it will be significantly more than a majority that is required just to sign off on the proposal?
A. Yes, it is generally all of the Management Team when it is a Project Proposal. If it's a minor change, then it can be a smaller amount, but it still must include the Team Leader and the Quality Manager.

Q. And do you say, notwithstanding that you now accept that more than a majority was required in order to sign off on a Project Proposal, and that this SOP makes no reference to a quorum in relation to final adoption of a report, that nevertheless you think only a majority of the Management Team was required to adopt the report?
A. No. As I said reading this again now, it is a SOP that I haven't read in detail, and I would always refer to the SOP, should I not know the detail at the time. So I would agree with the SOP.

Q. That is, do you agree with this proposition, that it's not a majority that was required? That ordinarily all of the members of the Management Team would have to sign off on a report?
A. That is generally what I accept to be the case.

Q. And so that suggests, doesn't it, that the problem

that had become acutely apparent at the beginning of January 2018 was that all of the Management Team was not willing to sign off on Project #184?
A. I agree. Yes.

Q. And what happened at that point was that Mr Howes and Ms Allen and you cut the other members of the Management Team out of the development of what was going on?
A. I - it appears to be that way. I don't believe I reviewed the Options Paper, but I was included in some emails that I saw.

Q. I will show you a document. This is [WIT.0014.0017.0001]. This is also from Ms Brisotto's witness statement.

THE COMMISSIONER: Which exhibit number, is it, Mr Hodge?

MR HODGE: You will have to give me a moment.

THE COMMISSIONER: That's all right. Just give me the number again? It's all right. I will look at it on the screen. Don't worry.

MR HODGE: Q. Now, "Luke" is Luke Ryan?
A. Yes.

Q. Luke Ryan was supportive of Project #184?
A. I believe so, yes.

Q. You see this is an email that Mr Howes is sending you and Cathie Allen on 19 January 2018?
A. Yes.

Q. He is attaching his finished version of the Options Report?
A. Yes.

Q. Just so we understand it, do you say you were expecting this document, you were surprised to receive it, or you just can't remember?
A. I may have been expecting this document. I didn't review it because I was actually away that day, according to the leave calendar at the time. I am not sure - yes, I'm not sure if it was intended to go to everyone after this particular point in time, but that's not what has occurred.

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.

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

having to microcon, that would also mean that they would have to be spending a lot of time working through those samples?
A. They would, but they had managed it.

Q. Yes, but there was a change that was about to happen, wasn't there?
A. If this project and option were chosen, yes.

Q. No, more than that.
A. Oh, the P3s?

Q. Yes?
A. Going to PP21? Whether the samples are profiled in Profiler Plus or in PowerPlex 21, there would be no issue in the analytical processing of it. It might be the "plate reading", is what we term it, which may take a bit longer, but that process is actually shared amongst all members, all areas of the lab, sorry.

Q. It was the case, wasn't it, that in January of 2018, what you were anticipating was that imminently Profiler Plus would be no longer used and you would switch to PP21 for Priority 3 samples?
A. Yes, that was imminent.

Q. And in fact it happened before the end of January of 2018?
A. I believe - yes, if that's the date. I can't remember the exact date, sorry.

Q. Around about 23 January 2018, or you're not sure?
A. I am not sure. It would be in the minor change register.

Q. Was this, doing the best you can for us - tell us if this prompts a memory for you. Tell us if this what happened: that it became apparent to you and to Justin Howes and to Cathie Allen on about 9 January 2018 that it would not be possible to get sign-off on a final report for Project #184, but you regarded the need to get agreement from the Police to no longer microcon as urgent because of a pending change in relation to PP21?
A. I don't remember that, I'm sorry. It is a possibility. I don't remember.

Q. Tell me if you agree with this: it was unusual for

Justin Howes to require responses on version 2 in less than 24 hours?
A. I'm not sure. There are times when we need urgent responses for a variety of reasons. That is a short timeline, yes.

Q. Can you think of any reason why an urgent response was required for this report?
A. No. Unless something was written in an email in relation to that, I don't think I have that email, though.

Q. Well, one explanation for why an urgent response was needed was because of the impending change to using PP21 for Priority 3 samples?
A. It may have been a possibility, yes.

Q. Can you think of any other explanation?
A. Not off the top of my head, sorry.

Q. What followed from that was that the hope had been that the report could be finalised and a paper could be presented to QPS, and QPS could agree very soon?
A. It is a possibility. I'm not sure what the actual reasons were, why if it aligned with something else.

Q. But you would have known at the time?
A. I possibly would have known at the time.

Q. You just have no memory of it now?
A. I don't remember, no.

THE COMMISSIONER: Q. You were obviously working closely with Mr Howes at the time on this because you had, according to his schedule, suggested that it be an options paper. He sent you an email from his private Yahoo! address talking familiarly about how tired he was and would you send him the document so that he could convert it. So you and Ms Allen were the only two people, it seems, apart from Mr Ryan, who had been asked to review the document, and he had made an urgent plea to staff earlier to give feedback on the draft project report --
A. Mm.

Q. -- which then generated feedback, as at least now you accept you know, and are you putting to me that you don't remember talking to him about why it was urgent, why it was converted to an Options Paper, why he was doing any of

these things? Is that what you're saying to me?
A. I honest - I don't remember the conversations around that time.

Q. I am not asking you if you remember the conversations. Are you saying to me you can't remember being interested in why all this was happening in this way, and you say you now can't remember what the reasons were if you were told?
A. For the urgency, no, I can't remember. I don't want to create memories. I just don't remember.

Q. All right.

MR HODGE: Q. Then if we go to the document which is [WIT.0014.0019.0001]. Thank you. These are the minutes from the Forensic DNA Analysis Management Team Meeting of 1 February 2018 and if we go over to [WIT.0014.0019.0001 at 0002]. Do you see item 5.7?
A. Yes.

Q. Project #184 says:

Options paper drafted by Priority 2 samples - to be provided to QPS for decision.

A. Yes.

Q. And it says:

Options paper drafted for QPS consideration.

A. Yes.

Q. Do you recall whether any explanation was offered at this management committee meeting as to why the process had changed like this?
A. I don't remember if there was further than what was minuted.

Q. I see. If we go over the page to [WIT.0014.0020.0001] --

THE COMMISSIONER: Just before you shift off that page.

MR HODGE: Yes.

THE COMMISSIONER: Q. In item 5.7, the Options Paper appears under the same item heading as a change to priority. Would the transition to using PP21 for Priority 3 samples be part of a discussion about the Options Paper?
A. Unless it's linked in with that, that was potentially going to be one of the processes as well, for "DNA insufficient" not to be microconned.

Q. Or that the change, as Mr Hodge put to you, to how P3 samples were going to be processed, was the cause or one of the causes for putting forward the Options Paper?
A. It might have been, yes.

MR HODGE: Q. I might go to a different document first. Can we go to [WIT.0014.0022.0001]. You will see at the bottom of the page there is an email from Superintendent Frieberg to Cathie Allen on 2 February 2018.
A. Yes.

Q. You will see in the email she says:

As discussed, I am in agreement that:.

And then there are some bullet points?
A. Yes.

Q. And then if we go and blow up the email at the top of the page, you will see Cathie Allen is forwarding that email to you and Justin Howes?
A. Yes.

Q. And she says:

Hi Paula and Justin.

The QPS have agreed with Option 2, so we can proceed with that option.

A. Yes.

Q. You have exhibited this email. Do you remember receiving it at the time?
A. I don't remember receiving it. As I said, it was found during my searches and inclusion in my statement.

Q. It appears, on the face of it, to suggest that she

regarded - that is, Cathie Allen - regarded what was going on in relation to the Options Paper as something that she was keeping between you, Justin, and her?
A. With the outcome of the decision by the QPS, yes, based on the sensitivity.

Q. What was the sensitivity?
A. Confidential.

Q. What was confidential?
A. The decision, I guess. I'm not sure. That's what I'm assuming from reading this.

Q. Why was the decision confidential?
A. Because it hadn't been announced yet. I don't know why, whether it - I don't know why it was considered just for us now. Sometimes Cathie does advise Justin and myself of things before it goes to the Management Team, or to make us aware.

THE COMMISSIONER: Q. What is special about you in that respect?
A. Whether it's in the Team Leader role, so we can have a discussion about how we're disseminating information to the rest of the staff, or that we - Justin and I had an awareness of - I'm not sure. I'm not sure why in this particular instance it went to Justin and myself in the first instance.

Q. You said so that she could have a discussion with you and Mr Howes?
A. No, that was why some things might come to us --

Q. Yes.
A. -- before they go to others.

Q. But this was something that affected more than you and Mr Howes, so why did she want to keep it to you and Mr Howes?
A. I'm not sure why in the first instance it was just to us. Given that, I think it was the day before the Management Team meeting, they were advised that there had been a discussion with the QPS. Was that - is this the same day that the QPS meeting occurred? Sorry, was that down below?

MR HODGE: Q. Yes, it's the same day as the meeting.

Did you know the meeting was going to happen?
A. I may have at the time.

Q. Do you see in Ms Allen's email, she says:

The QPS have agreed with Option 2, so we can proceed with that option.

A. Yes.

Q. If we go down and look at the email at the bottom, you see that Superintendent Frieberg says:

As discussed, I am in agreement that:

And then she sets out those points about there being:

... clear data that it is not an efficient use of time and resources to continue with the 'auto-microcon' process for Priority 2 (Major Crime) samples.

A. Yes.

Q. Looking at that, does that help you identify a reason why Ms Allen might not want to pass that email on to the rest of the Management Team?
A. No, not necessarily. Cathie's - because the email is from Superintendent Frieberg to Cathie and Paul, whether that's not something that's to be forwarded to the rest of the Management Team, I don't know, or whether Cathie was putting more words around it. An email did go to all of Management Team.

THE COMMISSIONER: Q. You were a team leader at the time? That was your position?
A. Yes.

Q. Who were the other team leaders?
A. The other team leaders in Forensic DNA Analysis was Justin Howes, and then other staff at the time would have been the HP5s, which I can try to --

Q. Sorry, who?
A. The senior scientists of each of the sub-teams.

Q. Yes, and who are they?

A. They would have been Allan McNevin, Kirsten Scott, Luke Ryan. I'm trying to think, sorry. Kylie Rika, Amanda Reeves and Sharon Johnstone.

Q. So why you of all - to the exclusion of every other team leader?
A. Justin and I were the team leaders. So we were --

Q. I see.
A. Yeah.

Q. You were in a position above?
A. Yeah.

Q. I understand.

MR HODGE: Q. Just to come back to the email, you see Superintendent Frieberg is saying that she is in agreement with a number of things?
A. Yes.

Q. And you see that Cathie Allen says "the QPS have agreed with Option 2"?
A. Yes.

Q. And it was the case, wasn't it, as you understood it, that Cathie Allen was recommending Option 2 to the QPS?
A. I - my understanding is that there was two options provided.

Q. No, listen to my question. It was the case, wasn't it, that you understood that Cathie Allen was recommending option 2 to the QPS?
A. I didn't believe so. I thought --

Q. Why not?
A. Because I thought it was an Options Paper where of the two options were provided to the Police and they determined that option 2, or they agreed, as per the words here, with Option 2 being the best option.

Q. Yes. Let's think first about the words. The words that Superintendent Frieberg is using is that she is in agreement that Option 2 is the best option. Do you agree?
A. Yes.

Q. And you know that that's because Cathie Allen was

recommending Option 2?
A. It may have been in the discussion. I wasn't at the meeting where the discussion around the Options Paper occurred.

Q. You know that that was what Cathie Allen intended to do.
A. I can't speak to Cathie's intentions.

Q. You know that that was the desired outcome to obtain agreement to Option 2, don't you, Ms Brisotto?
A. I can't say that I know what her intentions are, I'm sorry.

Q. No. You know, because you spoke to Cathie Allen and Justin Howes, that the desired outcome was for the QPS to agree to Option 2?
A. I - I don't know that. I'm sorry.

Q. Because the advantage of Option 2 is that it would reduce workload and that was an urgent thing to address, given the change to using PP21?
A. It was something that had to be considered and a strategy come up with, yes.

Q. You know, don't you, that the desired outcome was for the QPS to agree to option 2?
A. I don't agree that that was what her intention was, no.

Q. No, no. Forget for a moment - I understand I asked you a question about your knowledge of Cathie Allen's intention, but I want you to just focus on this.

You understood that the desired outcome - we'll start just with you. Your desired outcome was that the QPS would agree to Option 2?
A. My desired outcome?

Q. Yes.
A. I don't agree with that. I didn't have a desired outcome.

Q. You had no view as to whether Option 1 or Option 2 was appropriate?
A. No. Either one. That was, from my perspective, still is a QPS decision.

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

Justin Howes discussed which option was preferred?
A. It is a possibility that there was a discussion.

Q. And it's likely, isn't it, that the effect of that discussion was that Option 2 was the desired option?
A. It could be that the Option 2 was the preferred option. I don't know. I don't believe I had a preferred option.

Q. And it's likely, isn't it, that the reason for the urgency was to get Option 2 agreed to in order to reduce the workload before the change to PP or about the time the change was made to using PP21 for Priority 3 samples?
A. I believe that is a possibility, as we've discussed.

Q. What I want to suggest to you is it is apparent from this email, and must have been apparent to you at the time, that Superintendent Frieberg was saying that she agreed with a view put forward by Cathie Allen that Option 2 was preferred?
A. The words could be taken that way, yes.

Q. Can you think of any other way the words could be taken?
A.

As discussed, I am in agreement that:

And that is something that could have been discussed as whoever was in attendance at the meeting as well.

Q. Was it the case that - I'll begin just with you - that because of the controversy within the Management Team about Project #184, that you didn't want the Management Team to know that there had been a recommendation made as to which option to be adopted?
A. I don't believe so.

Q. I want to go back to a document which is [WIT.0014.0020.0001]. You see at the bottom of the page Ms Allen sends an email to you and Justin Howes on 5 February 2018?
A. Yes.

Q. And so, she has emailed you late on the afternoon of 2 February 2018 to tell you that the QPS have agreed to Option 2?

A. Yes.

Q. And then you see she sends you this email saying:

Regarding the Options Paper, my intention was to email management team letting them know that the Options Paper was presented to the QPS and that they have elected Option 2 for us moving forward. And I was going to attach the Options Paper. Do you see any issues with this?

A. Yes.

Q. And you see you respond:

No, I don't, as the information in the options paper was taken from the report they had already read. I also think the options paper shows the information that was presented to the QPS did not offer opinions or recommendations, only options for them to consider. The decision is therefore theirs (so to speak).

A. Yes.

Q. Just doing the best you can for us, perhaps we will pose it first in this way. If the Options Paper, as it had been drafted, had offered opinions or recommendations, would you still have been prepared to circulate it to the Management Team?
A. I don't see why we wouldn't have.

Q. But you make the point that there's no issue with circulating the Options Paper because it shows that the information that was presented to the QPS did not offer opinions or recommendations?
A. Yes.

Q. And so my question is: if the Options Paper had offered opinions or recommendations, would you still have been comfortable circulating it to the Management Team?
A. I think so.

Q. I see. And you see you say you don't see there is any issue with circulating it:

... as the information in the options paper was taken from the report they had already read.

A. Yes.

Q. If the Options Paper had contained information that the members in the Management Team hadn't already read, would it have been an issue to circulate it to them then?
A. I don't know, depending on what the information was. But I think, in reading that, it was taken to mean that it was from information that I already reviewed, so there was no issue. So that was in response to, "Do I see any issues?" No.

Q. You see at the end of your email, you say:

The decision is therefore theirs (so to speak).

What does that mean?
A. I don't know.

Q. You know what it means, don't you?
A. The decision is theirs. "(So to speak)". I don't - I don't know, because I guess my belief is that the decision is theirs.

THE COMMISSIONER: Q. What does "(so to speak)" mean, Ms Brisotto?
A. I don't honestly know why I put that in.

Q. I am not asking you why you put it in. I am asking what it means. It means you are using - one uses that phrase to indicate that what has been said is being said in a figurative way and not in a literal way or to explain what you have just said is not to be understood in a literal sense, isn't it?
A. I don't know if that was my intention.

Q. I am not asking your intention. I am asking you do you agree that that's what --
A. Yes, it could mean that.

Q. -- that expression is used for. Yes?

MR HODGE: Q. And you see Ms Allen's email says that what she is going to let the Management Team know is that the QPS have "elected Option 2 for us moving forward"?
A. Yes.

Q. You will recall that the email I showed you a moment ago from three days earlier showed her describing to you and Justin Howes that the QPS had agreed to Option 2?
A. Yes.

Q. And that the email from Superintendent Frieberg said that she "was in agreement that", and had listed out a number of things?
A. Yes.

Q. Was it the case that you understood that what Cathie Allen was going to not reveal to the Management Team was that the QPS had agreed with the option that she was pressing for?
A. Would I agree with that?

Q. Yes.
A. I - not necessarily, because this could be completely what she meant, that the QPS had elected. Whether that was an intentional use of the word, I'm not sure.

Q. Is it the case that you understood at the time that what was being concealed from the Management Team was that Option 2 had been pushed with QPS?
A. That - I don't - that wasn't my belief. I don't believe that there was intention of concealment.

Q. Do you agree with me that you would have been aware at the time that, had the Management Team become aware that Option 2 had been recommended to the QPS, that that would have been controversial?
A. Controversial for all of the Management Team? I don't believe it would have been controversial. I don't believe that was put forward as a - sorry.

Q. Ms Brisotto --
A. Yes.

Q. -- again, just to come back to my question, was it the case that you understood that at the beginning of February 2018, that if it was revealed to the Management Team that Option 2 had been recommended to QPS, that that would have

been controversial for members of the Management Team?
A. I don't know if - without going back into Project #184 - whether recommendations in #184, which the Management Team had read, put forward as to cease the microcon? Sorry, I don't have that in front of me.

Q. Ms Brisotto, look at your own email --
A. Yes.

Q. -- of 5 February where you say:

I also think the options paper shows the information that was presented to the QPS did not offer opinions or recommendations, only options for them to consider.

A. Yes.

Q. What I am suggesting to you is this: that the reason that you initially thought it would be satisfactory to provide a copy of the Options Paper was because you thought that it did not contain recommendations and you knew that if the Management Team knew that in fact Option 2 had been recommended, that would be controversial?
A. I don't - I don't think so. I - I - I guess I'm reading this to say, you know, in talking about the Options Paper, in talking about that we put the options or Cathie and Paul had put options forward to the Police, the paper showed the same thing: no opinions or recommendations were offered.

Q. Cathie Allen had to say to you that she offered no recommendations to the Police?
A. I believe so.

Q. When?
A. I - I'm not sure. Let me think. That was my belief. That is still my belief.

Q. My question was: did Cathie Allen ever say to you that she had offered no recommendations to the Police?
A. Not that I recall.

Q. I see. You say it was your belief because even though I think you have accepted that Option 2 was the preferred option for the lab, and urgent given the impending change from P3 samples to PP21, that, nevertheless, Option 2

wasn't pressed?
A. I don't believe either option - my belief is that neither option was pressed.

Q. I want to show you another document.

THE COMMISSIONER: Just before you go on. Could we have [WIT.0014.0022.0001] on the screen. And if you could blow up the email at the foot of the page, just the content of the email.

Do you see that Superintendent Frieberg said that she's in agreement?
A. Yes.

Q. Would you accept that if somebody is in agreement, there must be something with which they have agreed?
A. Yes.

Q. And that if there's something for them to agree to and with which they have agreed, there must have been somebody who put forward that thing to agree to?
A. Yes.

Q. So somebody must have put forward something so that Superintendent Frieberg could say, "Well, I agree with you"; "I'm in agreement with you"? You know, what I am putting to you is she doesn't say, "As discussed, I choose Option 2", do you see?
A. Yes.

Q. And if you go to the top of the page, please, operator, and that's the language that Ms Allen uses, "They have agreed with Option 2", not "they have chosen Option 2"?
A. Yes.

Q. Do you see anything of significance in that?
A. With that language used, yes.

Q. Do you see anything of significance in that language?
A.

The QPS have agreed with Option 2 ...

I guess this reads, based on the discussion that was had in the meeting, there was - whatever the outcome of that discussion, there was an agreement that Option 2 was the

one --

Q. "There was agreement" connotes two people?
A. Yep.

Q. That doesn't sound like the result of a discussion in which one person has no view and puts nothing forward to agree but, rather, puts forward two options, does it? Do you agree?
A. Yes. Yes.

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Q. And then if you can also just go to the bottom, if we go back to the email at the bottom of the page, do you see the first bullet point says:

> *There is clear data that it is not an efficient use of time and resources to continue with the 'auto-microcon' process for Priority 2 (Major Crime) samples.*

A. Yes.

Q. Do you agree if that proposition had been passed back to the Management Committee, that would have been highly controversial?
A. I'm not sure. It may have been agreed to by some. I think it was generally agreed.

Q. It is the opposite of the conclusion that was reached on Project #163, isn't it?
A. Which was to not proceed?

Q. To use the auto-microcon?
A. Yes. I if that's - yes, if that's the case.

Q. And Project #184 never completed because it was controversial?
A. I think we agreed that that was a possibility, yes.

Q. And, again, had that particular proposition, what I am suggesting to you, had that particular proposition been passed back to the Management Committee, it would be highly controversial?
A. A decision on Option 2 decision?

Q. No, the view there was no clear data - sorry, the view that:

> *There is clear data that it is not an efficient use of time and resources to continue with the 'auto-microcon' process for Priority 2 (Major Crime) samples.*

A. I'm unsure. It may have caused discussion.

Q. I want to then show you another document which is [FSS.0001.0011.2119]. This is an email that Cathie Allen sends to the Management Team at 11.30 am on 5 February 2018?
A. Yes.

Q. And you see it says:

> *... Paul Csoban and I met with the Superintendent of Forensic Services Group ...*

And she says:

> *We discussed the Options Paper attached, which I provided to the Supt earlier in the week. The Supt has indicated verbally and by email that the QPS' preferred option is Option 2 - no automatic concentration of Priority 1 or Priority 2 samples.*

A. Yes.

Q. And then she attaches a copy of the Options Paper. Do you agree with me what she didn't communicate back to the Management Team was, (a), this idea that the Superintendent had agreed with her?
A. Yes.

Q. And she didn't communicate back any of the dot points that the Superintendent had set out in her email, and she didn't communicate back that the Superintendent apparently understood that there was clear data that continuing with the auto-microcon process was not an efficient use of resources?
A. Yes.

Q. I want to suggest to you, and invite you to offer any response that you wish, that you understood that Cathie Allen was not revealing to members of the Management Committee the nature of her dealings with the QPS?
A. Yeah, because it's not in this email.

Q. I understand it's not in this email. What I am suggesting to you is you understood at the time - so this is the first proposition - that Cathie Allen was not revealing this information to members of the Management Team?
A. Yes.

Q. You understood that it was deliberate?
A. It - yeah, it appears to be.

Q. And she was revealing it to you and Justin Howes?
A. Yes.

Q. I want to then just ask you - I am just mindful of the time. I think, Commissioner, in fairness to Ms Brisotto I might just ask her about one more topic and then I think it might be fairer to continue on Tuesday with her rather than continuing. I am just concerned we won't finish by 5 o'clock. There may be something that Queensland Health wants to think about and speak to Ms Brisotto about.

THE COMMISSIONER: Well --

MR HODGE: Why don't I - I could ask about a particular point I wanted to ask about, which I think will only take a few minutes, and then we could take a short break and I could speak to Queensland Health about it.

THE COMMISSIONER: All right. Do that.

MR HODGE: Q. Ms Brisotto, I just want to ask about one particular issue in relation to ceasing in relation to Priority 2 samples.
A. Mmm-hmm.

Q. You understood as at January of 2018 that Priority 2 samples were samples for serious crimes?
A. Yes.

Q. That is, crimes involving violence to the person, sexual assault, murders, that kind of thing?

A. Yes. Yeah.

Q. And tell me if this is correct. You understood that the Options Paper identified that, for samples in the range of 0.001 to 0.0088, that the success rate that the lab was finding in obtaining a profile after microconning was about 10.6 per cent?
A. Yes.

Q. And then identified that when new intelligence was obtained through NCIDD upload, that it was under 1.5 per cent?
A. Yes, I think so. That was 1.45 or something like that.

Q. But you understood, as a scientist working in the lab, that the obtaining of a profile was not only useful for uploading to NCIDD and obtaining new information, it was also use useful as just one example for comparing to a reference sample?
A. Yes.

Q. And you understood, as a scientist working in the lab, that for Priority 2 cases, it was far more common that the utility of obtaining a profile from a sample was in comparison to a reference sample rather than for use for NCIDD upload?
A. Yes.

Q. In fact, it was highly unusual for a Priority 2 case to be advanced by NCIDD upload?
A. Yes.

Q. The most usual utility of obtaining a profile from a sample in relation to a Priority 2 case was by comparison through a reference sample?
A. Yes.

Q. And that might be a utility because there was a full profile that was able to be compared, but it could also be because it was only a partial profile which could provide some useful information by including or excluding a suspect?
A. Yes.

Q. What I want to suggest to you is you must have understood and known at the time that in relation to

Priority 2 samples, if you were ceasing the process of extracting a profile, the most pertinent thing to consider was not NCIDD upload?
A. It was - yes, I agree.

Q. You knew that?
A. That is what I agree with. Yes, that it is for suitability of comparison.

Q. And you knew, didn't you, that the Options Paper said that the most pertinent value for the client, being QPS, to consider was NCIDD upload?
A. When I reread the paper recently, yes.

Q. But you must have known at the time?
A. I may have.

Q. I want to suggest to you it is simply impossible that you didn't know at the time.
A. As I said, I have no record that I actually reviewed the Options Paper before it went to the Police.

Q. Ms Brisotto, I want you to just focus, though, on my question. It's impossible, isn't it, that you did not look at the Options Paper, and any version of the Options Paper, in January?
A. I - I may have. I don't have a record of that.

Q. We know that you must have because you sent an email, that we looked at a moment ago, on 5 February 2018, when you referred to the contents of the Options Paper and said that it didn't include any recommendations?
A. Yes. At that point. I meant when I - I hadn't reviewed it. I don't have any record that I reviewed it.

Q. No. But we know --
A. I've read it.

Q. -- that on 5 February you sent an email saying it's okay to circulate because it doesn't have any recommendations, or something to that effect?
A. Yes.

Q. And you must have read it?
A. Yes.

Q. And when you read it, you must have seen that it said

that the most pertinent value for the QPS as the client to consider was in relation to NCIDD upload?
A. Yes.

Q. And you knew, you must have known at the time, that that wasn't true?
A. I don't know if that stood out to me at the time. It does certainly stand out to me now.

Q. It must have stood out to you at the time. It is inconceivable, isn't it, that it didn't stand out to you?
A. With the intention of it, I'm - I'm not sure. If - if both were highlighted - 'cause as I read it now, I can see both pieces of information in there.

Q. Now that's - just take a moment and think about this. You know that what the Options Paper says is the most pertinent value for the client to consider is in relation to NCIDD upload?
A. It does say that, yes.

Q. It doesn't say anything about the utility of the samples anywhere in the paper in comparison to reference samples. Do you agree?
A. I don't recall specifically, but if it doesn't and you're telling me it doesn't, then I agree.

Q. It doesn't say anywhere in the paper what you know to be true and knew at the time to be true, which is the utility of obtaining a sample in relation to P2 cases was primarily for comparison to reference samples?
A. I can't say what I knew, what I believed at the time.

Q. Ms Brisotto, you are an experienced forensic scientist?
A. Yes.

Q. You undoubtedly knew at the time that the primary utility of obtaining a profile from a P2 sample was for comparison to a reference sample rather than NCIDD upload?
A. I believe it's both, but yes, I agree.

Q. And you would have known it at the time?
A. Possibly, yes.

THE COMMISSIONER: Q. Well you knew it four years ago, Ms Brisotto. You didn't learn it since four years ago, did

you?
A. No.

THE COMMISSIONER: Shall we adjourn for a few minutes, Mr Hodge?

MR HODGE: Yes.

SHORT ADJOURNMENT [4.13pm]

THE COMMISSIONER: Yes, Mr Hodge?

MR HODGE: Commissioner, I have reflected on it. I won't finish by 5 o'clock. Whilst I understand Ms Brisotto would prefer to press on, I think as a matter of fairness we would adjourn.

THE COMMISSIONER: I am sorry, Ms Brisotto, you will have to come back on Tuesday. There is no way we can finish this afternoon in any reasonable time. Is there anything anybody needs to raise before we adjourn?

9.30 Tuesday? All right. We will adjourn till 9.30 am on Tuesday.

THE HEARING WAS ADJOURNED TO 9.30 AM ON TUESDAY, 4 OCTOBER 2022

B

D

F

G

H

I

J

K

L

M

N

O

P

S

T

U

V

W

Y

Z

µ