

**2022 Special Commission of Inquiry
into LGBTIQ hate crimes**

**Before: The Commissioner,
The Honourable Justice John Sackar**

**At Level 2, 121 Macquarie Street,
Sydney, New South Wales**

On Thursday, 6 July 2023 at 10.00am

(Day 74)

Mr James Emmett SC	(Senior Counsel Assisting)
Ms Rebecca McEwen	(Counsel Assisting)
Ms Kate Lockery	(Principal Solicitor)
Ms Aleksandra Jez	(Solicitor)
Ms Penelope Smith	(Solicitor)
Mr Michael Tanazefi	(Solicitor)

Also Present:

**Mr Mark Tedeschi KC with Mr Anders Mykkeltvedt for the
NSW Police**

1 THE COMMISSIONER: Yes.
2
3 MR EMMETT: Commissioner, I'm about to call the next
4 police witness, Detective Superintendent Daniel Doherty.
5 Before I do that, can I indicate that there is a prospect
6 we may not finish with the two police witnesses - that is,
7 Mr Doherty and Detective Chief Inspector Laidlaw - by 4pm
8 today. In that event, it will be my application that we
9 resume tomorrow to finish Mr Laidlaw if we haven't finished
10 with him today.
11
12 THE COMMISSIONER: All right. What time do you expect
13 tomorrow?
14
15 MR EMMETT: Midday, if that's convenient.
16
17 THE COMMISSIONER: Yes, I've got a documentary tender in
18 the morning. I will say not before 12, with any witness
19 who is not finished.
20
21 MR TEDESCHI: It might be Mr Mykkeltvedt who appears on
22 behalf of the police tomorrow.
23
24 THE COMMISSIONER: That's perfectly fine. As everyone
25 appreciates, current timing is such that I just need to
26 finish it. But if Mr Mykkeltvedt is able to do that,
27 that's perfectly fine. Thank you, Mr Tedeschi.
28
29 MR EMMETT: May it please. I call Detective
30 Superintendent Daniel Doherty.
31
32 <DANIEL DOHERTY, sworn: [10.04am]
33
34 <EXAMINATION BY MR EMMETT:
35
36 MR EMMETT: Q. Could you tell the Commission your full
37 name, please?
38 A. Daniel Doherty.
39
40 Q. And your occupation?
41 A. Detective Superintendent, Commander of the Homicide
42 Squad, State Crime Command, NSW Police Force.
43
44 Q. You have made a statement for the purpose of this
45 Special Commission dated 18 April 2023?
46 A. Yes, I have.
47

1 Q. The contents of that statement are true and correct in
2 every particular?
3 A. Yes.
4
5 MR EMMETT: Commissioner, that's behind tab 1 in volume 1
6 of the tender bundle.
7
8 THE COMMISSIONER: Thank you. Yes, I have that,
9 thank you.
10
11 MR EMMETT: Q. Superintendent, you have been Commander
12 of the Homicide Squad since 2019; is that right?
13 A. Yeah, it was December 2019.
14
15 Q. December 2019?
16 A. Yep.
17
18 Q. You have been a sworn officer since 1985?
19 A. That's right.
20
21 Q. And at paragraph 12 of your statement, you've set out
22 your qualifications and training?
23 A. That's right.
24
25 Q. Commencing at paragraph 14 of the statement, you give
26 a history of the Homicide Squad within the NSW Police
27 Force?
28 A. That's correct.
29
30 Q. When did the Homicide Squad - when was the Homicide
31 Squad first established?
32 A. About 1972 there was actually a Special Crime Squad
33 established, which was under the Criminal Investigation
34 Branch. Before that, it was the general duties detectives
35 that would undertake homicide investigations under the
36 Criminal Investigation Branch. The Special Crime Squad was
37 formed in '72, and in 1976 that branch changed its name to
38 the actual Homicide Squad and undertook investigation of
39 homicides, suspicious deaths, unidentified remains and also
40 suspicious disappearances.
41
42 Q. Thank you. At paragraph 17 of your statement you
43 outline some examples of the changes and improvements in
44 the way investigations and suspicious deaths have been
45 conducted since the formation of that dedicated Homicide
46 Squad or group, under whatever name, dedicated to homicide
47 investigations?

1 A. Yes. There's been a number of them.
2
3 Q. They include the move from analogue to digital, in
4 terms of digital devices?
5 A. That's right. So there was a number of advances and
6 enhancements through communication, analogue devices, to
7 mobile devices, through enhancements to computers, emails,
8 the way we communicate in relation to how we store data,
9 how we - in relation to how we can track data.
10
11 Q. Are those developments primarily since the 2000s -
12 that is, in the last two decades?
13 A. Yes - primarily. Primarily.
14
15 Q. You also identify the development of equipment like
16 cameras and video recording?
17 A. Again, just enhancements around the way we - police
18 would have been able to record, whether it be surveillance,
19 offenders, identify suspects, crime scenes, trace forensic
20 evidence, CCTV, enhancements around how we record even -
21 not only crime scenes but witness statements, suspect
22 statements. So that's all changed with equipment
23 enhancements.
24
25 Q. When you say enhancements in the preparation of
26 witness statements, what kind of enhancements do you mean?
27 A. Well, you know, before, a lot of paper-based witness
28 statements in the past. Now we have body-worn video.
29 There's digitised ability to use computers in relation to
30 communication with witnesses. There's portals, community
31 portals. There's lots of information now we can receive
32 electronically.
33
34 Q. And also you have identified increased research into
35 psychology, criminology and victimology?
36 A. Yes, that's been developed over the years and that's
37 continued to develop over the years.
38
39 Q. One matter you single out is advances in DNA
40 technology?
41 A. Yes. Well, DNA technology changed a lot of the way
42 how we would investigate not only homicide but all crime
43 types, and that was mainly with the introduction around the
44 mid to late '90s, but with the (Forensic Procedures) Act
45 2000, that changed - had a flow-on effect, giving us the
46 ability or giving police the ability to take DNA from not
47 only suspects, from volunteers; in relation to that, the

1 way we manage exhibits, and storing exhibits, because of
2 the DNA enhancements, and the ability to test those items,
3 which then had a flow-on effect in relation to obviously
4 cold cases but all crime types, and it's been used along
5 all crime types but specifically to homicides.
6

7 Q. You mentioned the changes in the legislation.

8 A. Yes.

9
10 Q. The (Forensic Procedures) Act. That improved your
11 ability to gather DNA; is that right?

12 A. Well, it's given us the powers to gather the DNA not
13 only from suspects and volunteers, but also it changed the
14 way police managed and stored exhibits and retained them,
15 which then enabled us to have the ability to have trace
16 elements available for retesting.
17

18 Q. What were those changes to the way exhibits were
19 stored and made available?

20 A. Well, it's a point now where going back in - many
21 decades ago, you know, there was points where, I suppose,
22 the - having an exhibit that may be fingerprinted and blood
23 tested, there was no foresight in relation to what would
24 have happened down the track in relation to the advances in
25 DNA technology. So whilst an item may have been
26 photographed and swabbed or - and fingerprinted, it should
27 have been retained, but I suppose back in the day they
28 weren't looking at what could have happened in the future
29 where DNA and forensic process enhancement came along and
30 would have given us the ability then to test for DNA.
31

32 Q. When you say there was no foresight in relation to the
33 assistance that DNA might provide, do you include the 1990s
34 in that period, or was there foresight, to your knowledge,
35 in that period?

36 A. Well, look, again, in terms of exhibit management, you
37 know, for all serious crime, exhibit management was
38 important and those items should have been retained. It's
39 a point where the advances in DNA, from my memory and
40 recollection, was more in the UK and was coming through
41 from the mid '90s to the late '90s, not so much the
42 early '90s. I have a memory of Commissioner Peter Ryan,
43 who had come from the UK, had come into the NSW Police
44 Force and had brought over staff from the UK to look at the
45 advances in DNA and how we would then introduce that into
46 New South Wales. But it really wasn't in place until we
47 had a database put together and had the (Forensic

1 Procedures) Act in 2000, and that was implemented in
2 January 2001.

3
4 Q. DNA technology was being used forensically in the UK
5 in the late '80s, wasn't it?

6 A. It was, but it wasn't widely used in the NSW Police
7 Force. Again, there may have been exceptions to the rule
8 where certain investigations may have travelled to the UK
9 to get DNA tested. I haven't got those examples in front
10 of me, but that was more the rarity. But it wasn't common
11 knowledge and common use until later on.

12
13 Q. You mentioned Commissioner Ryan bringing staff from
14 the UK --

15 A. Yeah.

16
17 Q. -- and starting or raising the value of DNA. Do you
18 remember when that was?

19 A. From my recollection, it was an interesting time in
20 the NSW Police Force; it was around the Royal Commission,
21 which was the mid '90s, so - and I also - so it was around
22 that mid '90s area.

23
24 Q. So to your knowledge, was there any foresight of the
25 benefits of DNA in the early '90s in the NSW Police Force?

26 A. Again, it's - I think it's something where it may have
27 been an advancement that people may have known about, but
28 it wasn't a common practice or - and wasn't really
29 available for us in New South Wales at the time in the
30 early '90s.

31
32 Q. And whether available or not, are you aware of whether
33 officers were educated about its future potential and about
34 the prospect of its becoming available at some point?

35 A. I think it was more starting to come into that way, and
36 again it wasn't until the mid '90s onwards that it started
37 to become more - people were more aware, police were more
38 aware, investigators were more aware, and it was then -
39 because any investigative tool or any forensic tool that's
40 going to help us solve a matter, especially any violent
41 matter such as a homicide, that would have been obviously
42 explored, but at the time I think that wasn't - didn't gain
43 impetus until some time in the '90s, and my recollection
44 was more the mid '90s.

45
46 Q. And your recollection is that was driven by
47 Commissioner Ryan?

1 A. Well, I just remember him bringing over the UK
2 specialists and it was starting to gain impetus during that
3 time.

4
5 THE COMMISSIONER: Q. Can I just interrupt. Leaving
6 aside the UK, there were similar developments occurring in
7 the US, though, weren't there, that were being used in
8 trials in the United States?

9 A. Yes, Commissioner, but I just - my recollection was
10 that we - I do remember investigators having contact with
11 the UK authorities and travelling to the UK.

12
13 THE COMMISSIONER: All right, okay. Thank you.

14
15 MR EMMETT: Q. In paragraphs 20 to 24 of your statement
16 you give evidence about the Homicide Squad or the Special
17 Crime Squad as it was in 1972 to 1987?

18 A. Yep. Well, the Special Crime Squad - from '72, did
19 you say?

20
21 Q. I may have said '82. I meant to say '72.

22 A. Okay. In terms of the - '72 was the Special Crime
23 Squad; '76 was the Homicide Squad and the CIB. Then from
24 1987, if we're jumping to 1987, to 1997, there was another
25 variation where the CIB devolved, the specialist forces and
26 staff in the CIB were broken into regions. 1987 the
27 Homicide Squad was regionalised into the four regions,
28 which are south, north, south-west and north west, and that
29 was from '87 to '97.

30
31 Q. You give evidence at paragraph 30 about the - you
32 mentioned regionalisation. You give evidence about the
33 report of the working party reviewing the effect of
34 regionalisation on the investigation of homicides --

35 A. Yep.

36
37 Q. -- from February 1990?

38 A. Yep.

39
40 Q. What was the impact of that report?

41 A. Well, regionalisation continued, that was from '87 to
42 '97. So it's a point where I think there was original -
43 from my memory as well, and from reading the documents,
44 there was some resistance to the actual regionalisation to
45 start off with, '87, but the report was whether the actual
46 regionalisation was going to also be effective between that
47 time, and there was a review in relation to the

1 effectiveness of the four regions working in isolation and
2 whether the actual resolution of homicides in particular
3 was being undertaken. But it was agreed that at the time
4 it was effective for that period, from the review, but the
5 ultimate decision came in '97 to devolve the regions and go
6 back to a centralised model.

7

8 Q. I want to come to that centralisation in a moment.
9 Can I first ask the report, that is, the 1990 report, to be
10 brought up on the screen. I can take you to a paper
11 version of it if you would be assisted, but it's about to
12 come up on the screen in front of you, if that's easier for
13 you?

14 A. Yep.

15

16 Q. That's the report you were referring to?

17 A. Yes, it is.

18

19 Q. Could I ask that pages 5 to 6, that is, using the last
20 four digits of the document number, point 0839, and could
21 I ask the operator to scroll down to the bottom of that
22 page. There are comments there about the high level of
23 expertise of detectives performing duties in other fields
24 and identifying special expertise that's important for the
25 investigation of homicides?

26 A. Yes.

27

28 Q. Can I ask you to review - each of those, to your
29 knowledge, were recognised, and there are more on the
30 second page, but if we can stay with just where the screen
31 is for now, each of those were recognised as important
32 qualities for a Homicide detective in 1990?

33 A. Yes, certainly.

34

35 Q. And to your knowledge, the same goes for the 1970s and
36 1980s?

37 A. Yes. I think those attributes were conceptualised
38 back then. I think there was - back, from my reading and
39 also from my own experience from the '80s, that there was
40 a certain attribute that a detective should have but also
41 to be in the field of homicide investigation.

42

43 Q. Could I ask the operator to scroll down to look at the
44 balance of the list, and would you say the same about
45 everything else on that list?

46 A. Yes. I would, yes.

47

1 Q. It identifies that some of these attributes - this is
2 the second sentence of the paragraph underneath the
3 quotes - may be sheer anathema to detectives engaged in
4 other fields of investigation. Is that your experience?

5 A. Yeah, I think it's referring to the training,
6 on-the-job training is important. I think back in the day
7 this is referring to, certainly in the '70s and '80s and
8 come to the '90s, that a specialist - a person wasn't
9 regarded as a specialist in that field until - or
10 a detective in a squad wasn't considered a specialist until
11 a certain tenure had been undertaken. And until that time,
12 it was - required experience and on-the-job training of
13 doing that. That was just from a specialist point of view.
14 So to be a drug specialist or a homicide or robbery
15 specialist, it was a number of years and then you could
16 call - would be then categorised as a specialist.
17

18 So in terms of the field, you know, in terms of the
19 training, they were considered general duties detectives,
20 I suppose, but they were still - had achieved the rank of
21 designation, and then in terms of their expertise, they
22 still had undertaken their detectives training. However,
23 I think that's more referring to it being a specialist
24 homicide investigator was important, and back - there was
25 a reference towards an amount of years that would be
26 undertaken in that field until you were classified as
27 a specialist.
28

29 Q. To your knowledge, in addition to the number of years'
30 training, was there a process by which, to become
31 a Homicide detective, those skills may be assessed, and if
32 a detective for whom some of these skills were, to use the
33 language, sheer anathema, those detectives may end up in
34 a different area?

35 A. It's the point where - I suppose the Homicide Squad
36 was always regarded quite highly, highly regarded, and it
37 was always a lot of competition to get into that specialist
38 field. In terms of - I suppose that meant they were trying
39 to recruit people that were actually quite highly regarded
40 in the expertise of being a detective. It was quite often,
41 from my memory, that those who finished in the top
42 percentage of a detectives course would be recruited into
43 the Homicide Squad, and I've known that for many people
44 that I've met and worked with. So I suppose in terms of
45 that, it was trying to get the right person for the job
46 that's going to be very difficult to work in, it's very
47 challenging working, and they wanted to try to get

1 a certain person and expertise.

2

3 Q. To your knowledge, was there a process by which
4 Homicide detectives were selected by reference to the
5 skills like the ones identified there and perhaps pointed
6 in different directions if some of those skills were sheer
7 anathema?

8 A. I think in terms of the way the selection was done -
9 because again it was built on your ability to have
10 demonstrated the fact that you have had experience in
11 homicide investigation or major crime investigation, but in
12 terms of their selection process, it was, from my
13 recollection, designation and also the fact that you
14 demonstrated the ability to investigate major crime,
15 particularly homicide. The way that is - that's a working
16 party recommendation. Having, I suppose, worked in a Major
17 Crime Squad as well, there was a very - a lot of
18 competition to get in there, there was a lot of selection
19 process to get into that field. So --

20

21 Q. You have identified, I think, two things that are
22 relevant to that selection process, being, on the one hand,
23 experience?

24 A. Yes.

25

26 Q. And, on the other hand, how well they did in the
27 course?

28 A. Yes.

29

30 Q. Was there a process by which skills such as the ones
31 listed by the working party were also used as part of the
32 selection of Homicide detectives?

33 A. Yes, I think so, because you had to show and
34 demonstrate that you did have patience, a certain attitude;
35 you still had a lot of experience and ability in that area
36 of how to respond, manage a major investigation.

37

38 Q. How were those skills independently assessed, to your
39 knowledge?

40 A. Well, again, you're talking back - this is in the '80s
41 are you talking about now, and the '90s?

42

43 Q. Well, at least the '90s. This report was dated 1990.

44 A. So to get into the - it was by application, which you
45 had to demonstrate through written application to go into
46 the Major Crime Squad, and then there was a selection panel
47 through - a panel, there was actually an interview panel

1 where your knowledge and base set and certain scenarios
2 were put to you.

3

4 Q. And did the panel assess people by reference to these
5 skills?

6 A. They put different scenarios to - again, certain
7 people may have been applying for a certain area, but if
8 you were definitely applying for a Homicide Squad position,
9 yes, those scenarios would have been put to you.

10

11 Q. Did the panel assess by reference to these skills?

12 A. Well, again, I've never sat on a panel, so I don't
13 know in relation to selecting someone, but I was on a panel
14 as an interviewee.

15

16 THE COMMISSIONER: Q. Either then or now, is
17 psychometric testing used at all?

18 A. Psychometric testing is used currently, yes,
19 Commissioner.

20

21 MR EMMETT: Q. Are you able to assist the Commissioner
22 one way or another with whether the panel in the '90s
23 assessed people by reference to the criteria such as the
24 skills that we've just looked at?

25 A. Well, I can't talk about how they assessed that person
26 from all those areas. It was basically on their
27 demonstration of their knowledge and their skill set. And
28 how they would have individually subjectively picked that
29 person, I can't comment on.

30

31 Q. In 1997 you explain that there was a move towards
32 centralisation?

33 A. Yes, '97 to - there was a move to - where the regions
34 were devolved and to Crime Agencies, and that was from '97
35 to 2002. The Homicide Squad became the Homicide and
36 Violent Serial Crime Agency, so not only were they
37 investigating homicides, suspicious deaths and missing
38 persons who disappeared in suspicious circumstances, but
39 also serial sexual assaults as well.

40

41 Q. What were the reasons for that centralisation?

42 A. Again, that was a decision that's made through -
43 I believe through different working groups and reviews.
44 I believe Commissioner Ryan was the Commissioner at the
45 time. There was a - we'd just had a - I suppose, during
46 that time, there was a Royal Commission as well that had
47 happened through that time, but also - and there was

1 a decision made that centralisation would have been the
2 best way moving forward, to centralise a body of
3 investigators because of a number of reasons: to have one
4 point of contact, increase information sharing,
5 communication; to have a specialist body that was
6 answerable to certain crime types.

7
8 Q. Then in paragraphs 33 and following you give evidence
9 about the establishment of the State Crime Command?

10 A. So 2002, the State Crime Command was established. The
11 Homicide Squad then was renamed and - to its - basically to
12 what its performance is - what its current charter is now,
13 except for the Unsolved Homicide Team. There was the
14 on-call investigators, they were still responsible for
15 leading and responding and managing homicides, suspicious
16 deaths, certain critical incidents as well, and certain
17 coronial matters.

18
19 Q. At paragraph 38 you describe the 11 teams of the
20 Homicide Squad?

21 A. Yes. So six on-call teams 24/7 that on call can
22 respond to homicide or suspicious deaths and certain
23 critical incidents and certain coronial matters, and also
24 on call for suspicious missing person disappearances.
25 There's also teams of the Unsolved Homicide Team now as
26 well, which I can go through that as well if you want. But
27 from 2004, the Unsolved Homicide Team became evolved and
28 then there was a review team. In 2008 there was
29 investigative teams added to that, to its current state of
30 what it is now, reviewing, monitoring and investigating
31 unsolved homicide. So in total, we've got a mixture of
32 on-call Homicide teams and Unsolved Homicide Team.

33
34 Q. There are - at present there is one team known as
35 the - in the Unsolved Homicide Team, there's one team known
36 as the review team and four teams known as - or four
37 investigative teams?

38 A. Yes, that's the - basically it's a review team, and
39 the other four teams are the investigation teams, but there
40 is a mixture of the work they do. But that's basically -
41 essentially that's what their work is.

42
43 Q. Superintendent, you may be aware that the Commissioner
44 anticipates hearing from Detective Chief Inspector Laidlaw
45 later today?

46 A. Yes.
47

1 Q. If we have questions about the operation of the
2 Unsolved Homicide Team and, in particular, the reviews and
3 screening and triage, would Mr Laidlaw be the right person
4 to ask those questions?

5 A. Yes, he would, yes.
6

7 Q. In part B of your statement, commencing at
8 paragraph 39, you describe the roles and responsibilities
9 of the Homicide Squad?

10 A. Yes, as I said before, it's evolved over time, but
11 mostly it is still responding and leading and managing
12 response to homicides, suspicious deaths, you know,
13 unidentified remains, missing persons in suspicious
14 circumstances, certain coronial matters and critical
15 incidents.
16

17 Q. At paragraph 45 you refer to the benefits, some of
18 which you told the Commissioner about a moment ago, of
19 centralising the Homicide Squad?

20 A. Yeah, that's right. It's a point where, again, there
21 were a lot of business units and squads working in
22 different regions, nearly in silos, independently of each
23 other. Centralisation enabled a primary responsibility for
24 the investigation of suspicious deaths and missing persons
25 under suspicious circumstances. It also assisted with
26 communication, free flow of information. It gave one point
27 of contact not only for the police in the field but also
28 for external agencies. It unified or uniformed - gave
29 a uniform response to our response in relation to
30 homicides, suspicious deaths and also for training and
31 development.
32

33 Q. You refer to the Standard Operating Procedures from
34 2003, which included mandatory notification of all level 1
35 offences, including homicides, to the State Crime Command?

36 A. Yes, that's right.
37

38 Q. To your knowledge, was that the first time mandatory
39 notification was introduced?

40 A. To my knowledge, but I know that it was general
41 practice in terms of the other - well, just from my own
42 experience, if there was a homicide or suspicious death,
43 there was a notification to Homicide Squad or whatever the
44 variation of that was over the years. I think it was just
45 formalised into - when State Crime came on board, from
46 a documentation point of view or a systems point of view to
47 make it a mandatory notification, and there was a referral

1 process put in place, which was more formalised. Before,
2 if there was a homicide in the early '90s or - just from
3 personal experience, there would be a phone call, the
4 on-call Homicide would still be contacted and they would
5 attend and would be notified.
6

7 Q. So if there was what appeared to be a homicide or if
8 there was a suspicious missing person report --

9 A. Yes.

10
11 Q. -- then your experience was that that would be
12 reported to the Homicide?

13 A. Yes, and there was a requirement to do so. I think
14 it's just a formalisation in terms of process from State
15 Crime Command. There was a referral notice to make it
16 mandatory. But it was always a practice that Homicide
17 would always be notified and - that's been changed over the
18 years, obviously, which we can talk about, but the process
19 has changed where - that type of response had changed and
20 formalised.
21

22 Q. But you say there was always a practice by which
23 homicides - apparent homicides and suspicious deaths or
24 suspicious missing persons were notified to Homicide --

25 A. That's right. That was their charter and that was
26 their role. And as I said, that was from - they would have
27 to be notified and whether that would be during business
28 hours or on call. So from my experience, from, you know,
29 the mid '90s up until, you know - and through those -
30 sorry, the mid '80s and through the '90s, there was
31 a referral process, but it was an on-call notification,
32 Homicide would be notified.
33

34 Q. To your knowledge, although it wasn't written down as
35 mandatory, proper police practice required that
36 notification?

37 A. Yes, and I think it was just formalised in relation to
38 the business charter of State Crime Command.
39

40 Q. And to your knowledge, was that the case also in the
41 1970s and 1980s?

42 A. Yes, so - well, part of the charter was - for Homicide
43 was the investigation of homicides and suspicious deaths,
44 so, yes, the CIB, back in that time, were notified.
45

46 Q. You give evidence at paragraphs 52 and following about
47 the current protocol for homicide and suspicious deaths.

1 You may have a version that is blacked out. I want you to
2 be careful. I only want you to speak to what is there on
3 the document in front of you.
4 A. Oh, okay.
5
6 Q. Oh, I'm terribly sorry, you have an --
7 A. I can't see anything blacked out.
8
9 Q. No, I think in fairness, Superintendent, certain
10 non-publication orders have been made over some of this
11 material.
12 A. Okay.
13
14 Q. It's not marked in your document.
15 A. Okay. From the history of --
16
17 Q. I won't ask you to speak to it. The Commissioner will
18 receive the evidence. He has received it in writing,
19 anyway. I don't want to invite you to address matters that
20 may be the subject of a non-publication order.
21 A. Okay.
22
23 Q. Do you understand?
24 A. Yes.
25
26 Q. At paragraph 62 of your statement you refer to and
27 summarise the current version of what you have described as
28 the business charter?
29 A. Yes.
30
31 Q. Again, Superintendent, there is no need to summarise
32 what is written there, but that reflects current practice?
33 A. Yes, it does.
34
35 Q. At paragraph 63 and following you give evidence about
36 the relationship with the police area command - that is, as
37 I understand it, the relationship between the Homicide
38 Squad and a police area command?
39 A. Yes.
40
41 Q. At paragraph 64 you say there has always been
42 a correlation between the roles and responsibilities. What
43 do you mean by the correlation?
44 A. Well, in terms of there's been a consistent - in my
45 experience, the roles of - when a suspicious death or
46 homicide occur, it's owned by the local area, to commence
47 with, and the response is initially made by the local PAC,

1 or PD in this case now. The roles are that the detectives
2 would be called out, they would assess, interpret the crime
3 scene, assist, make a decision in relation to if it's
4 a suspicious death, and then from there the on-call process
5 to Homicide would take place.
6

7 It's - their roles would still continue on in
8 investigating, in their crime scene interpretation,
9 preservation, their canvassing, their searching, their
10 organising specialist resources, the search for evidence,
11 speaking to witnesses, speaking to sources, speaking to
12 possibly suspects even at the time. So their role
13 investigating a homicide or suspicious death is ongoing and
14 it continues on. They're not waiting for Homicide to turn
15 up. They're on notification to it. Homicide will still be
16 in contact with them and would assist possibly in that,
17 depending on the situation, but then the leadership and
18 managing of that homicide would then take place.
19

20 The roles and responsibilities are then depending on
21 circumstances. So, for example - and it happens, this is
22 on a frequent basis, if it's a - you know, a - I shouldn't
23 say straightforward type of crime, but if it's
24 a straightforward homicide where, you know, an offender's
25 basically arrested at the scene, there's direct evidence in
26 relation to it, they would continue on with that
27 investigation and make the arrest and do the interview,
28 but Homicide would still turn up and make that inquiry,
29 even though they've already had an accepted responsibility
30 for that investigation.
31

32 So that's - there's a correlation in terms of the work
33 we do, in terms of either we're leading it or assisting,
34 where we've got complete involvement either way, and
35 whether that's through at the time and post the actual
36 incident, we have involvement.
37

38 So I suppose "correlation" is probably not the right
39 word. It's probably more of a collaboration in the work
40 that they - and being a PAC investigator for many years and
41 being in Homicide as well, there is - the work in terms of
42 resolving the matter and doing the necessary steps,
43 investigative steps, they work together.
44

45 Q. Tell me, just as a matter of terminology, you refer to
46 the patrol or PAC, the police area command. What's the
47 difference between a patrol and a police area command?

1 A. I think that's old terminology. They used to be
2 patrols back in the day, back in the late '80s, and then it
3 became police area command later on - or local area command
4 and then it became a police area command, and now we've got
5 police districts which are regionalised in the country
6 areas.

7
8 Q. In the next part of your statement, at paragraphs 70
9 to 85, you give evidence about the relationship between the
10 Homicide Squad generally and the Unsolved Homicide Team?

11 A. Yes.

12
13 Q. For the most part, am I right, if we have questions
14 about that, the appropriate person to ask would be
15 Detective Chief Inspector Laidlaw?

16 A. He can - yeah, for sure. He can go into the processes
17 of the Unsolved Homicide Team. Ultimately it's the same
18 squad and they're part of the team of the Homicide Squad
19 but do a specific role in relation to unsolved homicide
20 investigations.

21
22 Q. Can I ask you to look at one document, though. I'm
23 going to ask that you be provided with a memorandum or
24 report prepared by Mr Lehmann on 5 August 2016. The
25 reference is [NPL.0100.0018.0001]. It looks like it starts
26 on page 2 of the document. We'll come back to the
27 structure in a moment, but I think the beginning of the
28 document is the second page behind the tab. If you turn to
29 the last page, you will see the author and the date.

30 A. Yes.

31
32 Q. Can I ask, have you seen this document before?

33 A. I don't think I've got it in my - any of the
34 references in my statement.

35
36 Q. No, it's not referred to in your statement, but my
37 question was, have you seen this document before?

38 A. Not that I know of, no. I may have, but I can't -
39 I don't recollect seeing it.

40
41 Q. Well, you will have noticed it's dated August 2016, so
42 it was before you assumed your role --

43 A. Yep.

44
45 Q. -- as Commander of the Homicide Squad?

46 A. Yes.

47

1 Q. Can I take you to the second page of the document,
2 that is, what appears to be the first page of the report,
3 that begins "Issue". Were you aware of concerns being
4 expressed in 2016 about the locating, identification and
5 reconciliation of exhibits in relation to unsolved homicide
6 cases?

7 A. In 2016?

8

9 Q. Yes.

10 A. Well, I wasn't the Commander back in 2016, but
11 obviously it's been - so I can't really comment on
12 something that I wasn't the Commander for, but --

13

14 THE COMMISSIONER: Q. Is the short point you weren't
15 aware of it?

16 A. No.

17

18 THE COMMISSIONER: Thank you.

19

20 MR EMMETT: Q. When you became Commander of the Homicide
21 Squad in 2019, December 2019, were you made aware of it
22 then?

23 A. I'm aware of - in relation to the ongoing issues of
24 recalling or tracking down exhibits and records and also,
25 back in 2016, trying to centralise and find exhibits for
26 the Metropolitan Exhibit and Property Centre. So it was
27 a point where there was a lot of challenges around that
28 area and trying to track down exhibits and records, and
29 it's been an ongoing issue for some time, but I know there
30 was an impetus in 2016. I wasn't sure it was an absolute
31 project, but I know that there was ongoing issues around
32 that time.

33

34 Q. When you became Commander of the Homicide Squad in
35 December 2019, were you made aware of issues concerning the
36 location, identification and reconciliation of exhibits
37 relating to unsolved homicides?

38 A. Yes, I was.

39

40 Q. And when you became Commander of the Homicide Squad,
41 were you made aware of the matter described as "Problem-1"?

42 A. Yes, well, that's been an ongoing issue.

43

44 THE COMMISSIONER: Q. Sorry, just to interrupt. How did
45 you become aware of it and who made you aware of it?

46 A. It's been a - when I first went there, Commissioner,
47 talking to the inspectors at the Unsolved Homicide Team at

1 the time, one of the issues raised was the challenges and
2 difficulties around tracking down exhibits and documents.

3
4 Q. All right. Well, can I put it to you this way: when
5 you assumed the role in December 2019, is it fair for me to
6 conclude that the problems with documents of the kind that
7 are here were notorious within Unsolved Homicide?

8 A. It was an issue that was raised and it was --

9
10 Q. Well, no, not only about issues raised. I'm asking -
11 you said it was - I think you used a term, I think I recall
12 you talking about something like "well known". Are you
13 telling me that the problems concerning these documents or
14 documents generally in Unsolved Homicide were well known
15 and notorious within Unsolved Homicide?

16 A. It was well known, yes.

17
18 THE COMMISSIONER: Thank you.

19
20 MR EMMETT: Q. Now, the first problem refers to
21 "frustrating and difficult task, as many exhibits are
22 destroyed, lost or misplaced"?

23 A. Yes.

24
25 Q. You became aware of that by December 2019?

26 A. Yes. Yes.

27
28 Q. Was it also well known that there were similar
29 problems in relation to obtaining documentary records, such
30 as investigative files or notebooks, in relation to
31 particular unsolved homicide cases?

32 A. Yes.

33
34 Q. That was also notorious in the Homicide Squad - I'm
35 sorry, in the Unsolved Homicide Team?

36 A. It was an issue raised and it was by the Unsolved
37 Homicide Team.

38
39 Q. It was well known as a problem at least by December
40 2019?

41 A. Yes.

42
43 Q. A problem that is identified - as part of that
44 problem, there's a reference to a lack of proper care and
45 diligence when it came to exhibit retention due in part to
46 no foresight or little appreciation of the value of
47 forensic science in future investigations. Was that well

1 known?

2 A. That was - again, it's been commonly known from what
3 I just explained before, from decades ago, when exhibits
4 and the forensic value of those exhibits weren't known and
5 they were either - which is frustrating for the work of the
6 Unsolved Homicide Team, and those exhibits or records were
7 either misplaced, destroyed or can't be found.

8

9 Q. Is it also true that - well, you will see "Problem-2",
10 which is described, is that even when exhibits are located,
11 there are problems because of improper labelling or
12 non-labelling, that they are improperly secured, that they
13 are mixed with other exhibits from separate cases and that
14 they are not readily identifiable as pertaining to
15 a particular case because of the above?

16 A. Yes.

17

18 Q. You were made aware of that problem in December 2019?
19 A. Yes, it was - and again, yes.

20

21 Q. Again, it was well known at that time?

22 A. Yes, it was well known.

23

24 Q. And it was well known that that concerned - that
25 problem extended to documentary records in relation to
26 investigation - in relation to unsolved homicides?

27 A. Yes, but we're talking about certain cases. We're not
28 talking about every case. We're talking about certain
29 cases, but, yes, it was known.

30

31 Q. When you say you were talking about certain cases, was
32 it well known that you didn't know how many cases were
33 affected by this problem?

34 A. It was - again, it was - once it was brought to the
35 notice of the Unsolved Homicide Team, it was documented and
36 raised, because one of the frustrations in relation to when
37 you're evaluating an unsolved homicide investigation and
38 whether - through a review committee, what was a theme that
39 unfortunately would come up of some of these matters was
40 the unavailability of any evidence, forensic evidence --

41

42 THE COMMISSIONER: Q. So the raising of these problems
43 was ad hoc, was it? They were encountered from time to
44 time as cases were sought to be reviewed or reinvestigated?

45 A. That's right.

46

47 THE COMMISSIONER: Thank you.

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MR EMMETT: Q. Was it well known that these problems may have existed in relation to a large number of unsolved homicides?

A. I wouldn't say a large number. Again, it's been raised in certain times, and that's where it's frustrating because it's on matters that were being reviewed or being considered for evaluation and we find that if it's a matter from a certain era, matters have been - can't be found or - and/or they've been misplaced or been destroyed. So I wouldn't say large numbers, no, but --

Q. Was it well known that these problems arose in a number of cases and nobody knew how many cases the problems arose in?

A. I think that now with - in relation to the work of the Unsolved Homicide Team and with the tracking file and the documentation and the referencing that they have, they'd be a small number of cases, but in comparison to all the matters that have happened since, say, 1970, how many matters have actually been displaced. So there's - through the reviews process, through the triage process and through the reinvestigations, certain matters and records can't be found, and that's true. But part of the work of the Unsolved Homicide Team is to monitor and track these matters, and that's a process that we're trying to improve through digitisation and through our record management, so we can actually have a better, clearer picture of the actual extent of the problem.

Q. What's the basis on which you tell the Commissioner that the number of cases that suffer from this problem is a small number rather than an unknown number?

A. Well, it is an unknown number, but I would - from my experience since I've been there, it's not - I can't put a large number on or I can't even put a numerical number on it, but it comes up time to time on certain matters. And, again, these are all important matters. I'm not trying to diminish that. It's a point where we understand that these matters can't progress because - or may not be able to progress because of the lack of records or available forensic material, and that's as frustrating for us as it is, I'm sure, for the community as well.

Q. Might be a small number of cases that are affected by these problems, might be a large number of cases; you just don't know?

1 A. It's not a common issue that we're having to talk
2 about all the time. It's a point where - but it does come
3 up in discussions, but I haven't got a numerical figure to
4 give you. However, that's part of the work of the Unsolved
5 Homicide Team, to be able to record and document these
6 cases where it's happened, so we can have it on the
7 tracking file which will then hopefully be transposed into
8 a new electronic format and we will be able to have
9 a complete picture of how many people - sorry, how many
10 cases that the actual misplacement or destruction of any of
11 these items have - and be able to document it. But I can't
12 give you a number, unfortunately.

13

14 Q. Are you able to assist the Commissioner, from your own
15 knowledge, with whether, when you started in December 2019,
16 the number of cases affected by this problem was thought to
17 be a small number or a large number or nobody knew?

18

19 THE COMMISSIONER: Q. What's the truth?

20 A. Well, it's an unknown number, but the times it's
21 actually been - the issue's come up, it hasn't been an
22 incredibly large number. I just --

23

24 Q. Has anyone brought to your attention the difficulties
25 encountered by this Inquiry in acquiring documents of the
26 kind we are now discussing, or not?

27 A. In terms of --

28

29 Q. I would ask you to - would you mind doing me the
30 courtesy of answering that question: has anyone brought to
31 your attention the difficulties this Inquiry has recently
32 encountered in identifying documents in relation to
33 unsolved homicide cases?

34 A. Yes, Commissioner, of course.

35

36 THE COMMISSIONER: Thank you.

37

38 MR EMMETT: Q. The third problem that's identified
39 relates to the way in which exhibits are secured,
40 particularly biological material, creating work health and
41 safety issues in relation to biohazard?

42 A. Yes.

43

44 Q. That was a concern that was well known, was it, in
45 December 2019, when you became Commander of the Homicide
46 Squad?

47 A. Yeah, again, I think there was some progress around

1 that matter, from my recollection. However, that's where
2 the project came through in 2016 in terms of storing of
3 those materials and that was brought to the attention
4 through FE&TS, who own the Metropolitan Exhibit and
5 Property Centre, in relation to the storage of that
6 material.

7
8 Q. And turning over to Problem-4, was it well known, when
9 you became Commander of the Homicide Squad in December
10 2019, that many briefs of evidence, files and physical
11 evidence exhibits, had not been archived or stored in the
12 proper manner?

13 A. Yes.

14
15 Q. And that some had been left on shelves at various
16 locations in police premises?

17 A. Yes, yes.

18
19 Q. And that some, in some cases, had been left in
20 non-police premises with no records to indicate their
21 movement or whereabouts?

22 A. Yes, and that's been very frustrating and it's been
23 difficult to manage.

24
25 Q. And that was well known in December 2019?

26 A. Well again, because there was a project put in -
27 obviously there was work done in 2016 in relation to this
28 and there was a number of actions taken to try to rectify
29 this, but it's still an ongoing issue, because as you've -
30 it's been well documented, the mislabeling of records or of
31 exhibits was always an issue and has been a continued issue
32 and a frustration for us.

33
34 Q. Problem-5, was it also well known that some exhibits
35 were not located on the first search, even though the Force
36 was able to tell that the exhibit may have existed?

37 A. Yes.

38
39 Q. Now, you mentioned a moment ago work done following
40 this report?

41 A. Yes.

42
43 Q. May I take it, you don't know whether or not it was
44 following this report because you hadn't seen this report
45 before?

46 A. No, but I know there was some work done around that
47 time in relation to the issues that were raised because -

1 because of the briefing I got from the Unsolved Homicide
2 Team.

3

4 THE COMMISSIONER: Q. Are you aware of any report within
5 the NSW Police which updates this report or this document?

6 A. I haven't got that in front of me, no, Commissioner.

7

8 Q. What do you mean, you haven't got it in front of you?

9 A. Well, I haven't got any recollection or documentation
10 of that, no.

11

12 Q. Well, when you say - okay, so the answer is you're not
13 aware of any updating report, updating this report of
14 Detective Chief Inspector Lehmann?

15 A. No, but if there was a project --

16

17 Q. Is this the first time you have seen this document,
18 the one you're been asked about now?

19 A. I've seen this document, yes, but I'm aware of the
20 issues, Commissioner, but I haven't seen any updated
21 document.

22

23 Q. Just let me ask you the questions, if I may, for
24 a moment. Were you aware of this document before you got
25 into the witness box today?

26 A. No, but I was aware of the issues, as I've stated, but
27 I'm not aware of that actual report.

28

29 Q. Has anyone brought this document - apart from
30 Mr Emmett, has anyone brought this document to your
31 attention prior to you sitting in the witness box today?

32 A. No. No.

33

34 THE COMMISSIONER: Thank you.

35

36 MR EMMETT: Q. Can I ask you to turn to page 4 using the
37 small numbers in the top of the page. About halfway down
38 the page, it begins "Reconciliation Plan".

39 A. Yes.

40

41 Q. Have you been made aware - I appreciate you haven't
42 seen this document before.

43 A. Mmm-hmm.

44

45 Q. When you became Homicide Squad Commander, were you
46 informed about a reconciliation plan?

47 A. I became aware that, as I said before, in relation to

1 the centralisation of exhibits to [REDACTED], which is the
2 Metropolitan Exhibit and Property Centre, and that was an
3 ongoing project or action that was taking place from about
4 2016 onwards.

5
6 THE COMMISSIONER: Q. Would you have a go at answering
7 the question now, please. Were you aware, when you took
8 over, of what was described in this document as
9 a "Reconciliation Plan"?

10 A. Well, I was aware of a project that members of the
11 Unsolved Homicide Team took action --

12
13 Q. And you're assuming it's the same thing, are you?

14 A. Well, I know that it was the - it's essentially the
15 same thing, Commissioner, because it was in relation to
16 what's in the reconciliation plan where they were
17 establishing where the actual exhibits were to try to
18 centralise them to the MEPC at [REDACTED].

19
20 THE COMMISSIONER: Thank you. Yes, Mr Emmett.

21
22 MR EMMETT: Q. When you commenced your role as Commander
23 of the Homicide Squad in December 2019, what was the state
24 of that project, if I can use a neutral term? You may not
25 have been aware of it as a reconciliation plan. Where had
26 that project reached?

27 A. My understanding, from the briefings I've got, there
28 were still some ongoing issues trying to track down
29 exhibits from various locations, to get them to [REDACTED],
30 to the MEPC. A bulk of that work had been done, but again
31 it was about then identifying and labelling those matters
32 at the MEPC, so --

33
34 Q. Are you aware - I'm sorry, I didn't mean to talk over
35 you.

36 A. So it was basically - it was getting to the end.
37 However, there were still issues around trying to locate
38 exhibit items, documents.

39
40 Q. How did you know it was getting to the end?

41 A. Because through the briefing I obtained in relation
42 to - so early 2020, there was a lot of exhibits had been
43 moved to the MEPC. At that time, I had meetings with
44 FE&TS, who owned the MEPC, which is the Forensic Evidence &
45 Technical Services Command, in relation to their ongoing
46 management of that.

1 THE COMMISSIONER: Q. Now, let me ask you about the term
2 "getting to the end". Did it come to your attention that
3 that term, as you now use it, meant in some cases that
4 given all the effort that had been taken, the persons in
5 Unsolved Homicide were still - or had reached a conclusion
6 that not all relevant documents or exhibits in relation to
7 an unsolved case may have been found?

8 A. No, that's right, they hadn't.

9

10 Q. Pardon?

11 A. You are right, Commissioner, that's right.

12

13 Q. Correct. So "getting to the end" meant, in some
14 cases, materials had been found --

15 A. Yes.

16

17 Q. -- in part or in whole; but in some cases,
18 notwithstanding the efforts that had been undertaken, you
19 were or someone within the Unsolved Homicide Team was
20 satisfied that you didn't have all of the relevant
21 holdings, paper and exhibits included?

22 A. That's right, Commissioner.

23

24 THE COMMISSIONER: Thank you.

25

26 MR EMMETT: Commissioner, would you pardon me for
27 a moment? There's a matter I need to take instructions on.

28

29 THE COMMISSIONER: Do you want me to take a break?

30

31 MR EMMETT: There is a matter it may be appropriate to
32 raise first.

33

34 THE COMMISSIONER: All right.

35

36 MR EMMETT: Commissioner, it's just this, and I make no
37 criticism in relation to this, but a location was referred
38 to in evidence a moment ago that's the subject of
39 a non-publication order and I just want to make that clear.

40

41 THE COMMISSIONER: All right. Well, thank you for raising
42 it.

43

44 Mr Tedeschi, what I will do is simply ensure that the
45 transcript does not record that. It has unfortunately gone
46 into live stream now, but there's nothing I can do about it
47 retrospectively. But when the transcript comes through,

1 I will ask Mr Emmett's side to ensure that we tell you what
2 it is. It had escaped my attention and it had escaped
3 everyone's attention.

4
5 MR TEDESCHI: I understand there is a delay between the
6 publication --

7
8 THE COMMISSIONER: I will make whatever order anyone wants
9 me to make to preserve the agreed confidentiality. I'm
10 happy to go off the bench for a moment or two to enable
11 that to occur, because I don't want accidents to happen
12 where anything is placed in jeopardy unintentionally. So
13 if you want me to do anything, I will do it.

14
15 MR TEDESCHI: I understand you could, at the request of
16 Counsel Assisting, stop the broadcast.

17
18 MR EMMETT: I think steps are being taken - they may have
19 already been taken to do that for the time being. We will
20 sort it out.

21
22 THE COMMISSIONER: All right. Then if that's done, I will
23 direct that the broadcast be stopped so as to preserve the
24 confidentiality. I will make an order that the
25 non-publication order bind everyone currently in the
26 hearing room.

27
28 MR EMMETT: May it please.

29
30 THE COMMISSIONER: Thank you.

31
32 MR EMMETT: Just while the broadcast is paused and can
33 I ask that - confirm that the camera is not running.
34 Superintendent, as I say, I know this sometimes happens,
35 for your benefit, it was the reference to [REDACTED] which
36 is --

37
38 THE WITNESS: I've just realised that, so I apologise.

39
40 MR EMMETT: As I say, sometimes it happens. We can take
41 those steps.

42
43 Commissioner I'm content to resume or to take the
44 break now, whatever is more convenient to you.

45
46 THE COMMISSIONER: We will break now and we will resume in
47 20 minutes or so.

1
2 MR EMMETT: May it please.

3
4 THE COMMISSIONER: Thank you.

5
6 **SHORT ADJOURNMENT**

7
8 THE COMMISSIONER: Yes, Mr Emmett.

9
10 MR EMMETT: Thank you, Commissioner.

11
12 Q. Superintendent, you referred to the project that you
13 said you were aware of going on when you started as
14 Commander of the Homicide Squad. You referred it to coming
15 to an end. Has that project come to an end?

16 A. Well, it was probably a bad use of words saying the
17 project, but in terms of the - this is what it's been
18 determined in the report, but the actions, items ensuing
19 from trying to reconcile exhibits and taking them to
20 a central location was a process that was getting to the
21 end when I - the beginning of 2020.

22
23 Q. You mean - so the process that was coming to an end
24 was the process of bringing exhibits to a central location?

25 A. Yeah, that's right.

26
27 Q. Are you aware of any report or written document
28 setting out that project having come to an end?

29 A. No.

30
31 Q. When you say you're not, is it possible such
32 a document may exist but you don't know about it, or would
33 such a report have come to you as Commander of the Homicide
34 Squad?

35 A. It may exist, but I haven't seen it and I'm not aware
36 of it.

37
38 Q. Would you expect a report like that to come to you if
39 the project had been completed?

40 A. Yes, and that would be even if it was generated
41 through the owners of the Metropolitan Exhibits & Property
42 Centre - we would be part of that.

43
44 THE COMMISSIONER: Q. So, as of today, you personally -
45 no criticism, but you personally - would not be aware of
46 how many unsolved homicide cases have had the exhibits
47 located and sent somewhere and how many have not, and in

1 those where the exhibits have been sent, you would have no
2 idea whether all of the exhibits that were retrieved at the
3 time the crime scene was first approached are there or not?

4 A. No; that's right.

5
6 MR EMMETT: Q. And could I just understand, you have
7 referred to exhibits being brought to a central location.
8 That wouldn't address all or even most of the problems
9 identified as problems 1 to 5, would it?

10 A. No, it wouldn't.

11
12 Q. Are you aware of those problems - the other aspect of
13 those problems 1 to 5 having been addressed?

14 A. Well, it's been an ongoing issue and it's been raised
15 in relation to - and again it's well documented - in
16 relation to record management and the issues around that.
17 I know that there's been some reviews of - from record
18 services in relation to their record management, and I know
19 there's reviews in relation to exhibits, and that's been an
20 ongoing issue.

21
22 Q. The problems 1 to 5 were well known as problems within
23 the UHT, the Unsolved Homicide Team, when you started in
24 December 2019?

25 A. Yes. Well, they brought it to my attention, yes.

26
27 Q. And it's well known that there are still problems
28 within the Unsolved Homicide Team?

29 A. In terms of those issues that have been raised, yes.

30
31 THE COMMISSIONER: Q. And there's still a significant,
32 may I suggest to you, degree of uncertainty across the
33 board in relation to the holdings of unsolved homicide
34 cases?

35 A. Yes, that's right.

36
37 MR EMMETT: Q. And are you able to assist the
38 Commissioner with whether those problems arise in a small
39 number, an unknown number - a small number, a large number
40 or an unknown number of cases, as at today?

41 A. Well, I'd have to say an unknown number.

42
43 Q. Can I turn back to your statement. You can put that
44 document to one side, thank you. Feel free to close that
45 other folder.

46 A. Yes. Thank you.

47

1 Q. At paragraphs 89 and following you give evidence about
2 the relationship between the Homicide Squad and the
3 Engagement and Hate Crime Unit and its predecessors?

4 A. Yes.

5

6 Q. Could you assist the Commissioner, what is the
7 Engagement and Hate Crime Unit?

8 A. The Engagement and Hate Crime Unit is a unit that's
9 based under the Counter Terrorism and Special Tactics
10 Command. They were established post the previous one,
11 which was the Bias Crime Unit, which also had some
12 involvement with, and in relation to - their function is
13 not an investigative function, it's more of an intelligence
14 function and support function and assists with - assisting
15 the field and specialist units with training and
16 development around bias crime, in relation to prejudice or
17 bias of persons that - due to a person's identity or their
18 perceived difference, and they provide information that may
19 assist in relation to a victim, a location of interest, for
20 example, a group of people, that may assist an
21 investigation. But they provide ongoing training through
22 the State as well and in relation to bias crime, the
23 legislation, what to look for in relation to bias crime, in
24 relation to victims, how to treat the situation and the
25 victim.

26

27 Q. Who makes the decision when the Homicide - when
28 somebody from the Homicide Squad consults with somebody
29 from the EHC Unit --

30 A. Yes.

31

32 Q. -- who makes the decision to consult?

33 A. Well, again, it's through an investigation and it
34 happens through the intelligence side of our house, who
35 contact all holdings that would be relevant to assist with
36 the investigation. It would be through our intel section
37 of Homicide, through the intel section, which is basically
38 the Engagement and Hate Crime Unit at CT and ST Command.

39

40 Q. So does a detective investigating a potential homicide
41 make a judgment as to whether or not to consult with the
42 EHC Unit?

43 A. Yes, they would, if the circumstances prevail and that
44 was - under those circumstances, yes, they would.

45

46 Q. And what factors would inform that judgment?

47 A. Depending on the crime, the actual type of

1 investigation. We've had a number of investigations where
2 we've had members of - of possible bias crime who have been
3 part of the LGBTIQ community, who have been murdered, and
4 we need to build a profile in relation to victimology,
5 locations, possible associates, those sort of things. So
6 it's an - that would be - it's a tool, an investigative
7 tool as much as an intelligence tool, but the intelligence
8 side of the house is supporting the investigation.
9

10 Q. Do detectives receive guidance about how to make that
11 judgment or when it's appropriate?

12 A. Well, there's training that's been ongoing across the
13 NSW Police Force for some time in relation to bias crime.
14 Even before this unit, Bias Crime Units gave presentations.
15 So there's ongoing training that police have received
16 across the State in relation to bias crime, how to report
17 it, what to look for and how to manage it - the
18 investigation, I should say.
19

20 Q. Does that include guidance about when it's appropriate
21 to consult the EHC Unit?

22 A. Yeah, well, part of the training is that - that their
23 unit is communicated and disseminated across New South
24 Wales and this is - that they're the leaders in relation to
25 providing that information and that assistance. So it's
26 communicated across New South Wales if there's any issues
27 in relation to perceived bias crime that they're available
28 and ready to assist. I know they do. You know, I've been
29 in contact with the commander over there, they are very
30 busy with their engagement with the field and other
31 specialist units and their training.
32

33 Q. You say they're very busy. Is it your observation
34 that they are adequately staffed?

35 A. I can't really comment on their resources, but I know
36 that they're an important intelligence tool for us and
37 they're providing a lot of training and awareness to
38 NSW Police Force.
39

40 Q. Are you able to assist the Commissioner with how
41 frequently Homicide detectives consult with the EHC Unit?

42 A. I can't give you a number, but I know that when
43 there's - when the need arises, and we have had occasions
44 where we've had victims that were part of the LGBTIQ
45 community, and when that happens, they can be consulted
46 through an intelligence-based process.
47

1 Q. When you say it has happened, do you mean a couple of
2 times a year, dozens of times a year?

3 A. Whenever we've had that - the circumstances arise.
4 I can think of matters since I have been at Homicide where
5 we've resolved four matters where would be a perception of
6 bias crime or it could be part of that, in recent times, so
7 since probably 2020.

8

9 Q. Does the EHCU or some other body also provide
10 detectives with guidance about how to deal with victims or
11 other members of a minority community?

12 A. Yes, and it's about how we should treat that situation
13 in relation to - there's other training that's provided by
14 the NSW Police Force in relation to that. There's a hate
15 crime awareness training that's online. There is also
16 face-to-face mandatory training about victim care, and part
17 of that is about bias for certain parts of the community,
18 and that has been established and ongoing over many years,
19 but only as recently as the last training period, those
20 modules were in place.

21

22 Q. Thank you, Superintendent. Could I turn next - and
23 this is from paragraphs 96 and following in your
24 statement - to the relationship between the Homicide Squad
25 and the long-term Missing Persons Unit - I shouldn't call
26 it that - the Missing Persons Registry, as it's now known.

27 A. What page, sorry?

28

29 Q. It's page 27 of your statement. If you're going from
30 the numbers, it's .0027 in the top right-hand corner.

31 A. Yes. Yes, well, there's been a long-term - well,
32 there's no - as you just raised, there's no such thing as
33 a long-term Missing Persons Unit. There's been variations
34 of a Missing Persons Unit/Registry for some time. It was
35 established back in - I think in the late '40s, there was
36 people working in relation to missing persons. I know from
37 the documents I've read, there was a relationship with the
38 CIB and the Missing Persons Unit, especially around
39 unidentified remains and how to deal with missing persons
40 under suspicious circumstances. But Homicide would take
41 carriage of the matter or at least be notified and have
42 consultation on matters in relation to a person that would
43 be missing under suspicious circumstances back then.

44

45 The local area commands, or, sorry, the police area
46 commands and the police districts own the investigation up
47 to a certain point for a missing person. And, you know, up

1 until 2019, there was basically a Missing Persons Unit that
2 would just be a guidance in relation to how we would manage
3 that through local area commands or police area commands.
4

5 But from 2019 there was a whole review process, a very
6 thorough review process done. 2019, the Missing Persons
7 Registry evolved. It really did become, I think, a really
8 valuable unit within the State Crime Command. They give
9 complete oversight on missing persons. They work closely
10 with Homicide Squad. The same missing - sorry, the same
11 intelligence manager that we have at the Homicide Squad
12 manages the intelligence side of the Missing Persons
13 Registry. There is a lot of crossover between the Missing
14 Persons Registry and the Unsolved Homicide Team but also
15 Homicide Squad on-call activities. So there's a lot of
16 crossover, exchange of information.
17

18 The SOPs that were developed in 2019 by the Missing
19 Persons Registry are commendable. They really do --
20

21 THE COMMISSIONER: Q. Can I just interrupt you. I'm
22 terribly sorry to do so, and I'm sure you're trying to
23 assist. May I ask you this: have you or anyone that you
24 know of encountered similar documentary problems with the
25 Missing Persons files and holdings, or has anyone done an
26 audit of the holdings of Missing Persons to find out the
27 complete or incomplete nature of any of those documents?
28

29 A. I'm unaware of that, Commissioner.
30

31 THE COMMISSIONER: Thank you.
32

33 MR EMMETT: Q. In paragraph 102 you refer to - this is
34 the second sentence in the paragraph - internal police
35 records suggesting that a close liaison was maintained
36 between the Missing Persons Unit and the original Homicide
37 Squad.
38

39 A. Mmm.

40 Q. What are those internal police records?

41 A. I believe there was a record from '81 in relation to
42 just the SOPs around unidentified remains by the Missing
43 Persons Registry working with the Homicide Squad.
44

45 Q. I think you gave the Commissioner evidence earlier
46 that to your knowledge, proper police practice at the time,
47 including in the '70s and '80s, required, if there was
48 a person who was missing in suspicious circumstances,

1 notification to the Homicide detectives?

2 A. Yes, that's right, and that was part of their charter
3 as well.

4

5 Q. Can I ask you some questions about a matter that the
6 Commissioner has received evidence about. You may not know
7 about this matter. It's a matter of Mr Baumann, who
8 disappeared in 1983. You may not know - you may not have
9 heard of his case before.

10 A. Sort of - I don't have a thorough knowledge of it, no.

11

12 THE COMMISSIONER: Q. Does that mean you have some?

13 A. Sorry, Commissioner.

14

15 Q. When you said you don't have a thorough knowledge,
16 does that mean you have some of the Baumann case?

17 A. Oh, I - well, I've heard of a Baumann case, but I just
18 don't know if it's the same one we're talking about.

19

20 MR EMMETT: Q. Why don't I try to jog your memory.
21 His Honour is looking at a case in which a Mr Baumann
22 disappeared in late 1983.

23 A. Right.

24

25 Q. I want you to assume the Commissioner has evidence
26 that he disappeared and the police were notified by at
27 least two people, one being his landlady and the other
28 being a human resources person from within the ABC, where
29 Mr Baumann worked.

30

31 I want you to assume that the evidence indicates that
32 the police attended Mr Baumann's unit, and the evidence of
33 at least the landlady, although this evidence wasn't
34 gathered until 10 years later, was that the unit was in
35 disarray, that there was a burnt cushion in the shower and
36 that someone had written "AIDS" on a mirror.

37

38 As I say, the police were notified by two persons.
39 We're unable to find any further files from 1983 or
40 thereabouts to understand what happened. We do know that
41 he was in a sexual relationship with another man at the
42 time and that appears to have been readily ascertainable to
43 the police. We don't know if the police learned about it,
44 but the other man apparently contacted the human resources
45 person from the ABC when he first went missing. It's not
46 clear whether the police made inquiries to learn that.

47

1 On the facts as I have described them, there would be
2 every reason to treat this as a suspicious disappearance,
3 wouldn't there?
4

5 MR TEDESCHI: I object.
6

7 THE COMMISSIONER: Why?
8

9 MR TEDESCHI: Commissioner, with respect, it's not fair to
10 ask somebody in the position of this witness to make
11 comment about a case that he hasn't had any opportunity --
12

13 THE COMMISSIONER: He has been asked to make assumptions,
14 though, Mr Tedeschi, and witnesses are constantly asked to
15 make assumptions. He is entitled to say, as an experienced
16 Homicide detective, "I don't have enough assumptions", or,
17 "On that basis, I can" or "I can't". I don't think it's
18 unfair. You can always comment that ultimately there
19 wasn't a sufficient basis to put to him, but I will allow
20 it. Thank you.
21

22 MR EMMETT: Q. So, Superintendent, I want you to assume
23 that that's the evidence before the Commissioner and also
24 that he left - he appeared to have left valuable belongings
25 behind.

26 A. Mmm.
27

28 Q. In those circumstances, the Commissioner needs to ask
29 himself whether there could be any possible reason not to
30 treat this as a suspicious disappearance. Can you offer
31 one?

32 A. Again, it's hard to comment without knowing the whole
33 matter, details of the matter. However, in terms of if it
34 was reported 10 years later, obviously at the time, the
35 evidence, if that was brought to the attention of police
36 and those - the crime - or the scene as you explained was
37 known to police at the time, yes, I could see where that
38 could be seen. But 10 years later, I suppose we'd have to
39 look at now then, knowing the fullness of time and all the
40 details, make an --
41

42 Q. I'm sorry, maybe you misunderstood me. A statement
43 was taken 10 years later.

44 A. Oh, okay.
45

46 Q. The two people I referred to, the landlady and the
47 person from the ABC, reported it at the time. I want you

1 to make that assumption. On that assumption, could there
2 be any reason why the police would not treat this as
3 a suspicious disappearance?

4 A. Again, I'd like to know all the - the full
5 circumstances and details except for a synopsis like that
6 to make example, but it does, you know, again, with
7 further - it would warrant further investigation. In that
8 time, I'm not sure what was actually done or what
9 investigations were undertaken.

10
11 Q. If the Commissioner concludes that the circumstances
12 at the time, that is, in late 1983 --

13 A. Mmm-hmm.

14
15 Q. -- were obviously suspicious or even if the
16 Commissioner concludes that they were suspicious --

17 A. Yeah, yeah.

18
19 Q. -- then police practice at that time required the
20 Homicide detectives to be notified?

21 A. Well, they should have been, yes, if there was
22 a suspicious - if they believed it was a suspicious death
23 and circumstances, they would have been contacted.

24
25 The detectives - as I've probably mentioned before
26 with missing persons, local detectives always oversight
27 a missing persons case and it belongs to the local area
28 where it occurs. But if there is any suspicion in relation
29 to possibly the person could have died or suspicion around
30 the circumstances of his disappearance, there should have
31 been a notification, yes.

32
33 Q. And if the Commissioner concludes that the
34 circumstances were suspicious as they appeared in October
35 1983, the Commissioner can conclude that there was
36 a failure of the police processes at that time?

37 A. Well, again, without knowing the full circumstances
38 and details; however, there should have been some further
39 investigation and notification.

40
41 Q. Now, at paragraph 104 you explain changes that in 2002
42 the Missing Persons Unit became part of the Operational
43 Information Agency?

44 A. Yes, that's right.

45
46 Q. You explain its current operation at paragraphs 107
47 and following.

1 A. That's correct, sir. From 2019, Missing Persons
2 Registry has come under the command of State Crime Command
3 and that's why we've continued to have that good
4 relationship with Homicide Squad and Missing Persons
5 Registry.
6

7 Q. At paragraph 113 you make what you describe as
8 a general comment that the Missing Persons Registry has
9 significantly improved the response to and investigation of
10 all missing persons.

11 A. Yes.
12

13 Q. In what way?

14 A. In terms of - it basically assists in a step-by-step
15 way, for all police across New South Wales, how to properly
16 record and investigate a missing person. There's around
17 10,000 people go missing every year, so there's a lot of
18 people go missing. Not all of them stay missing, granted,
19 but there's a lot of processes in place now, and a lot of
20 them come from coronial inquests, where the need to record
21 and properly investigate a missing person are undertaken
22 and there are safeguards in place through the formation of
23 the Missing Persons Registry that they can oversight and
24 provide guidance in that area.
25

26 THE COMMISSIONER: Q. Can I just understand that answer
27 you gave a moment ago. Do you say that, what, 10,000
28 people on average are reported missing each year?

29 A. That's what I've been told, Commissioner. They're
30 only short term, most of them. A lot of people will just
31 go missing for various reasons, but that is a lot of people
32 that go missing.
33

34 Q. Sure. But of the 10,000 roughly that you have been
35 told about, presumably a significant number - I don't know,
36 you might not know - are located within some time after
37 they are reported missing?

38 A. Yes, that's right, and part of that, Commissioner, is
39 with the SOPs that are very detailed. It points out not
40 only the practices and best practices in place to do to
41 recover them and locate them but also what the processes
42 are if those persons aren't located over certain times.
43

44 Q. Thank you, but the Missing Persons Register that I've
45 been told about I presume are those that haven't been
46 located?

47 A. There's only a small number each year now --

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Q. I understand that, but my understanding is it's roughly about 700. Is that your understanding or not?

A. Is that the total at the moment? I'm not aware.

Q. Well, I don't know. I have some information it may be the total between 1970 and 2010. I just don't know.

A. Yeah, I think it's only a small number per year, Commissioner.

THE COMMISSIONER: All right, thank you.

MR EMMETT: Q. Superintendent, I'm going to ask you some questions now - in part C of your statement, from paragraph 114, page 31, onwards, you deal with the qualification and experience of Homicide Squad officers.

A. Yes.

Q. Can I ask you some general questions about the training and qualification for Homicide detectives. One thing that is important in Homicide detectives is accuracy and precision of record keeping?

A. It is. There's a number of attributes that are required, but that's one of them, yes.

Q. Another is keeping an open mind to different hypotheses, including being vigilant to set aside personal beliefs or biases about particular groups of people?

A. Yes.

Q. And treating family members of deceased persons, witnesses and persons of interest with respect?

A. Yes.

Q. It's sometimes said that it's important for investigators to have what's called professional curiosity. Do you agree with that?

A. Yes.

Q. Strive to avoid blinkered views?

A. Yes.

Q. And tunnel vision?

A. Yes.

Q. Police may have tentative case theories, but it's very important that those case theories remain tentative?

- 1 A. That's right.
2
- 3 Q. If they make assumptions about how someone died or
4 what kind of person was responsible, that may lead to
5 important lines of inquiry being ignored?
6 A. That's right, yeah.
7
- 8 Q. That's also one reason, is it, why it's important to
9 maintain objectivity?
10 A. That's right.
11
- 12 Q. And to avoid rigid thinking?
13 A. Yes.
14
- 15 Q. And to avoid thinking exclusively along particular
16 lines?
17 A. That's right.
18
- 19 Q. There's a risk which investigators ought to be - need
20 to be vigilant about, is there, as to confirmation bias or
21 a tendency to fit facts to a case theory instead of
22 recognising that some evidence may point towards
23 a different theory?
24 A. Yes.
25
- 26 Q. And it's important that investigators be vigilant in
27 relation to conscious or unconscious bias against members
28 of a particular community?
29 A. Yes.
30
- 31 Q. Again, those matters can affect the quality of
32 investigations?
33 A. Yes.
34
- 35 Q. Could I ask if you would agree or disagree with the
36 following questions in relation to cultural awareness and
37 sensitivity and how they can assist homicide
38 investigations?
39 A. Yes.
40
- 41 Q. I'm going to ask you about the LGBTIQ community, but
42 what I say may well go for other diverse minority
43 communities as well.
44 A. Yes.
45
- 46 Q. Would you agree that one of the reasons why it is
47 important is that a climate of trust and confidence between

1 police and members of the community will tend to facilitate
2 the flow of information towards police from members of that
3 community?

4 A. Yes, for every community and from every area.

5
6 Q. And likewise, and again this goes for many communities
7 or every community, knowledge about a community may assist
8 investigators to make more informed judgments about what
9 might be fruitful lines of inquiry in an investigation that
10 might involve members of that community?

11 A. Yes.

12
13 Q. Next, investigators with broader horizons will tend to
14 be more professionally curious and perceive lines of
15 inquiry that a narrow-minded investigator might overlook?

16 A. I think it's a point where, yes, I think you need to
17 have an open mind and be innovative.

18
19 Q. And while this is not universal and I'm sure this
20 doesn't affect all investigators, but are you aware of an
21 impulse or a tendency that investigators need to be
22 vigilant about to work - that investigators or officers may
23 work harder or be more thorough if it's a sympathetic
24 victim that they're inquiring into?

25 A. Just from my own experience, you know, again, it's
26 human nature when certain victims - and I think that's well
27 known, if it's a young boy or girl gets murdered or - and
28 there's a lot more media interest or public interest,
29 there's always going to be a lot more reaction and
30 sympathetic reaction. But in terms of an investigation,
31 you have to remain completely mindful of the fact you have
32 to be objective.

33
34 And I've seen that many a time, not only with the
35 LGBTIQ community where we've had many instances where we've
36 dealt with victims who have been murdered from that
37 community and resolved those matters but also, conversely,
38 where from other - where sympathy might be difficult to
39 achieve from a community's perspective, for example, we've
40 had victims from - who are alleged paedophiles, alleged
41 terrorists, alleged murderers, alleged major crime figures,
42 and we still treat that person as a human being. We do our
43 best to be empathetic with the family. We actually are
44 empathetic with the family. We treat that and work
45 tirelessly in those matters as in any other matter.

46
47 So I think it's a point where whilst it's a challenge

1 in certain areas not to be influenced by an outburst of
2 emotion through some high-profile public issue, an
3 investigator has to maintain objectivity, and I think, from
4 those examples, we have to be objective in our approach.

5
6 Q. How do you train and educate the detectives to try to
7 facilitate that or ensure that?

8 A. Well, some of that's from just internally and through
9 our own training, but also a lot of that objectivity and
10 the open-mindedness in the way we deal with that is on the
11 homicide course, but also in terms of general training that
12 NSW Police Force receive, and it's about being objective
13 and treating every person on their own merit. That comes
14 through from a lot of training that we've had over the
15 years through the NSW Police Force.

16
17 Q. Is that a matter in respect of which the training has
18 improved over the years?

19 A. I think so, yes.

20
21 Q. To your observation or experience, having joined the
22 Force I think in the '90s, or was it the late '80s that you
23 joined --

24 A. '85.

25
26 Q. -- have you observed improvements in the quality and
27 kind of training in relation to those matters during that
28 time?

29 A. Yes, yes, I have.

30
31 Q. Would it be fair to say that awareness of the matters
32 we've been talking about was less prevalent in the '80s?

33 A. Look, I didn't - I've never witnessed it or seen it,
34 but again I can't comment on other people's views at that
35 time.

36
37 Q. You have never witnessed it or seen it?

38 A. Not in my experience, anyway, from being in the Police
39 Force since 1985.

40
41 Q. Can I ask you to turn to paragraph 115.

42 A. Yes.

43
44 Q. You refer there to detectives needing to possess
45 demonstrated experience in major crimes investigations.
46 What kind of experience is necessary?

47 A. It's quite broad. They come from different areas.

1 It's preferable, if they're applying for the Homicide
2 Squad, that they have examples in relation to where they've
3 actively participated and been involved in a homicide
4 investigation, and also what we find invariably is they've
5 been part of strike forces that Homicide have been involved
6 in. That's - you know, at any one time in the Homicide
7 Squad, we can't do our work without the police area
8 commands and the police districts, and we may have up to 80
9 to 90 people from those commands assisting us on strike
10 forces, so we do manage to - are able to assess the ability
11 of those people. However, they demonstrate through an
12 application a major crime, and we look at the complexity of
13 that through their application before they get to the level
14 of being interviewed by our HR panel.
15

16 Q. At paragraph 116 you say that many detectives possess
17 a broad range of qualifications, including tertiary degrees
18 or diplomas. What is the value of a detective having
19 a tertiary degree or diploma? What does that add to the
20 detectives?

21 A. Oh, it adds the fact they have more broad-mindedness
22 in terms of their abilities and what skill set they have.
23 We have staff in the Homicide Squad from a complete broad,
24 diverse background. They are all experienced detectives;
25 however, they bring different academic qualifications.
26 We've had investigators who have had law degrees, science
27 degrees, cyber security degrees, masters in counter
28 terrorism. It brings the fact that they have
29 a decision-making skill set, a thinking and logistic -
30 sorry, a skill set in relation to their thinking and their
31 deep thinking. And I think it's good to have people with
32 a tertiary background, as many as you can, because I think
33 that it's been encouraged from - I'd say from the '90s that
34 police undertake - especially detectives, undertake
35 tertiary qualifications in an effort to increase their
36 skill set and their learning, and again, as you said, it's
37 a curious mind, to be innovative.
38

39 Q. What was the encouragement that was provided from the
40 late '90s to detectives to undertake tertiary education?

41 A. There was opportunity through Charles Sturt University
42 to undertake a myriad of courses, and that's across the
43 board. So it mainly was just - it started off with
44 Bachelor of Policing Investigations. There was a number of
45 them, a number of courses, but that was a common one for
46 the detectives to do. And there was really a - it gave you
47 a framework of then undertaking further tertiary education.

- 1
2 Q. You have completed that Bachelor of Policing, haven't
3 you?
4 A. Yes, and it was through that '90s period. I suppose
5 it was a result of, again, I suppose, Commissioner Ryan
6 introduced the fact that police have to have their skill
7 set upgraded. To be a profession, we need to have certain
8 qualifications. I think from there, education, training of
9 recruits increased their tertiary level and it became more
10 tertiary qualified.
11
12 THE COMMISSIONER: Q. Tertiary education, though, is not
13 mandatory for entrance to the Homicide Squad, is it?
14 A. No, Commissioner, but invariably most of them have,
15 yes. But it's not a mandatory requirement.
16
17 MR EMMETT: Q. To your knowledge, did the officers
18 receive support from the Force to undertake tertiary
19 education?
20 A. Yes, they did, yes.
21
22 Q. What was that support?
23 A. Well, it was the - through the financial support,
24 really, to undertake a degree through Charles Sturt
25 University or some other qualification, so it was actually
26 sponsored through NSW Police Force.
27
28 THE COMMISSIONER: Q. So does that mean that every
29 Homicide detective or putative detective doing tertiary
30 qualifications was financially supported by the NSW Police
31 Force?
32 A. No, Commissioner, sorry. In terms of the actual
33 initial - in the '90s, through - when the Charles Sturt
34 University became involved as part of a - it was like
35 a scholarship, I suppose, through - NSW Police Force would
36 support officers to undertake tertiary education and it was
37 funded by the police.
38
39 Q. Yes, I know that, but apart from scholarships, I take
40 it it was not the fact that every police officer seeking to
41 do tertiary education was given financial support?
42 A. No, that's right.
43
44 Q. And so does it follow that those who didn't had to pay
45 for it themselves or take up what might have been in more
46 recent times described as some HECS debt?
47 A. That's right, depending on the course you were doing.

1 So if some person wants to do a science degree or some type
2 of psychology degree, it may not be covered.

3

4 MR EMMETT: Q. How long has the - are you aware of how
5 long the Bachelor of Policing has been available at Charles
6 Sturt?

7 A. It was - I just remember the mid '90s, it became
8 available.

9

10 Q. Are you aware of officers who have undertaken it on
11 their own steam or undertaken a HECS debt to do so rather
12 than on a scholarship?

13 A. I know - I know staff that have undertaken
14 qualifications before they joined the police but also
15 undertaken them during that time and have done on their
16 own - they've been supported in terms of their ability to
17 go and do it, but they haven't given funding, so they just
18 would do it off their own steam.

19

20 Q. You referred a moment ago to the diversity within the
21 Homicide Squad today, and that diversity - you identified
22 benefits to that diversity. Was that diversity there -
23 that is, diversity of backgrounds - 20 years ago?

24 A. Well, I'm only commenting on what I know now as
25 a Commander of the Homicide Squad.

26

27 Q. From your knowledge.

28 A. So I think we have a very diverse background now. But
29 from 20 years ago, it's like - and even 30 years ago,
30 obviously the further back you go, it's not as diverse, but
31 as the years went by, the whole NSW Police Force changed
32 the face of diversity. It's been - for the last even - you
33 know, year by year there's different cultural backgrounds,
34 people from different backgrounds, cultural backgrounds,
35 and different communities that join.

36

37 Q. So to your knowledge, it was less diverse 20 years ago
38 and less diverse again 30 years ago?

39 A. Yes.

40

41 Q. Can I ask you to turn to paragraph 124. I should just
42 confirm: paragraphs 122 and 123 deal with, to the extent
43 that you are able to, the education or training of Homicide
44 detectives from 1970 to 1996?

45 A. Yeah, well, from my own experience and from what I've
46 read, the basic requirement for - it had to be a detective
47 level to go into Homicide, normally demonstrate the ability

1 to undertake major investigations. But in terms of any
2 other tertiary education, it wasn't a requirement. It was
3 just the fact that they were designated would demonstrate
4 their ability to undertake major investigations.

5
6 And then there was a - there's been a change over
7 those years towards different courses. There was an
8 investigators course that was then initiated. There was
9 another name for it at some stage; it was like the
10 pre-investigator course. But basically if you were
11 a budding detective, you would undertake the investigators
12 course and that would give you a solid background prior to
13 going and undertaking the detectives course. There was
14 a lot of training in that area. Once you've completed the
15 detectives course, from that period, it was a matter of
16 application to the homicide course, as I said before -
17 sorry, the Homicide Squad.

18
19 From the '70s, it was - I'm unaware if there was any
20 panel or any sort of interview process, but certainly
21 through from '87 to '96 there was an interview process, EOI
22 by application and then an interview process.

23
24 Q. And the Homicide Investigators Course was then
25 introduced in 1996?

26 A. Yeah, there was a review conducted, and it was
27 initiated in '96, that the homicide course would be
28 a valuable course for all police to undertake in - that
29 were detectives and possibly to be involved in homicides.
30 As I said before, local police are the ones that conduct
31 the investigation initially, so to upgrade the skill set
32 for all police, homicide course was initiated.

33
34 Q. You refer to an accreditation process that was
35 finalised in mid 2008 in relation to the course?

36 A. Yeah, so from about late 2005, I think 2008, there
37 was a - there was a bit of a hiatus until they worked out
38 an academic status in relation to it and that was -
39 accreditation, I should say, and that was gained in 2008.

40
41 Q. The Homicide Investigators Course, you have described
42 some features of it in paragraph 127. Does the course have
43 a component dealing with bias crimes?

44 A. They deal with what I've said before in relation to
45 objectivity and open mindedness. There's scenarios now
46 based in the homicide course that promote the participant
47 to actively have an open mind about the scenarios that are

1 presented to them. They actually have to attend a crime
2 scene, interpret it, go through the whole process in
3 relation to it, and there's a couple of scenarios that are
4 presented. So there's - that was only just rewritten in
5 December 2020. But in terms of particular - about bias
6 crime, I can't think of a component in the homicide course
7 in relation to that, because there's other training already
8 that's available to all police officers in relation to
9 that.

10
11 Q. Does the course deal expressly with combating or being
12 vigilant in relation to conscious or unconscious bias?

13 A. Well, yes, because the scenarios are based on the fact
14 that you are to keep an open mind in relation to the
15 scenarios that present themselves and it really does
16 challenge the participants to keep an open mind and they
17 are actually assessed on that ability to be objective and
18 keep an open mind.

19
20 Q. Does the course contain content about dealing with
21 victims or witnesses from minority or marginalised
22 communities?

23 A. The course involves a lot of work around victimology,
24 and part of that victimology obviously would be who the
25 victim is and what their background is. That's -
26 necessarily part of investigation for victimology is you
27 look at all aspects of their life and their - and from
28 there, you may be able to obtain a motive, look at their
29 associates, things like that, so that victimology would
30 come under that category.

31
32 Q. Well, victimology doesn't - does the course on
33 victimology contain content about dealing with victims or
34 witnesses from minority or marginalised communities?

35 A. I don't think specifically it talks about it, but it
36 talks about all walks of life and keeping an open mind on
37 the victim and what their background is. So it doesn't
38 specifically go in and categorise each person and where
39 they come from.

40
41 Q. And then there are other formal training courses that
42 are available but not mandatory to Homicide detectives; is
43 that right?

44 A. Yes, and there's courses that again - we promote the
45 fact that self-learning should happen. There's a lot of
46 training in relation to technology that we support,
47 because, as we know, technology is a very important part of

1 our work and so there's some technical training that we
2 also do.

3

4 Q. How is the self-learning supervised or --

5 A. No, these are internal courses that we're talking
6 about. But any self-learning, if someone is going to
7 undertake a tertiary education, well, that's just in their
8 own time and they undertake it in their own time.

9

10 Q. What about internal courses, what kinds of courses are
11 available, optional but not mandatory, to Homicide
12 detectives?

13 A. Well, you're talking about just ones that are
14 optional. There's lots of courses online and there's
15 obviously heaps of workshops and courses that police can
16 undertake. Quite often there's a lot of cross-training
17 that staff have undertaken, so the arson course, to give -
18 to increase their skill set around arson. There's courses
19 around, as I've said, technology.

20

21 Q. Are officers given guidance as to what kinds of
22 courses would assist their professional development?

23 A. Yes, especially around the - well, that's right, and
24 there's obviously - there's a myriad of courses that can be
25 undertaken. It's whether it's relevant to the command, but
26 it's also about their own professional development.
27 There's promotional and leadership courses, there's courses
28 to assist them not only from the work they're doing but
29 also their own personal development.

30

31 Q. And are there mandatory courses that Homicide
32 detectives need to do regularly or from time to time?

33 A. Yeah, and that's set by Education and Training Command
34 each year, and as I said before, there is a strong focus on
35 victim, victim care. The last training day, the last
36 training course, that was a face-to-face presentation that
37 everyone had to conduct. There's an online module in
38 relation to it as well, to the victim care and support.
39 That's - it's a very big focus for Homicide investigators
40 anyway, but there is mandatory training in relation to
41 that.

42

43 Q. And how is an individual officer's participation in
44 those courses managed or enforced?

45 A. Well, it's - there's a compliance, 100 per cent of
46 people. It is a 100 per cent compliance. If it's
47 mandatory, it's mandatory. So it's done - it's enforced

1 through Education and Training, but as a commander we
2 ensure that all the staff undertake that training.

3
4 Q. If the training is an online course, what does that
5 mean? Do you sit there and satisfy yourself that they have
6 watched the video or --

7 A. No. Whilst there is some self-learning in relation to
8 that, there's components on that module, that it has to be
9 completed and it's recognised and recorded online and it
10 actually generates a record on our SAP system, which is our
11 personnel system, and it's recorded and documented, and
12 that's downloaded by management just to make sure what the
13 percentage of those - of the staff have undertaken that
14 training.

15
16 Q. At the top of page 35, you refer to the induction
17 package for Homicide Squad dated January 2020?

18 A. Yes.

19
20 Q. That induction package doesn't refer at all to the
21 EHC Unit, so far as we can see?

22 A. No, it doesn't, no. Again, it's basically - what it
23 is, it's an induction package into the Homicide Squad in
24 a broad sense, and again it talks broadly about Victims
25 Charter and a victim's rights and how it's very important,
26 the type of work we do, and, you know, basically it's just
27 an overview of the history of the Squad and what - an
28 induction to, you know, some administrative things around
29 the Squad.

30
31 Q. So a detective joining the Homicide Squad will learn
32 about the EHC Unit, what, by word of mouth?

33 A. There's training - they'd already be aware of it even
34 prior to joining the Homicide Squad. It's communicated
35 through the whole NSW Police Force.

36
37 Q. And how would they learn about the particular
38 relationship between the Homicide Squad and the EHC Unit?

39 A. Well, because, really, they'd be aware of it already.
40 However, when circumstances arise during those certain
41 investigations, that would be part of the - they're
42 experienced investigators that work on those teams, they're
43 all run by - these teams are run by detective inspectors
44 with a lot of experience and detective sergeants with a lot
45 of experience, who have utilised all investigative
46 practices and intelligence strategies, so that would be
47 part of their training within their own team. But, saying

1 that, in terms of State Crime Command, you know, there's
2 training from various groups that come in, externally and
3 internally, to assist us with training, and I know there's
4 another training day for supervisors in August and the
5 Engagement and Hate Crime Unit are presenting at that
6 training day.

7
8 Q. If a detective joins the Homicide Squad, how would
9 a manager or someone satisfy themselves that the new
10 Homicide detective understands the relationship between the
11 Homicide Squad and the EHC Unit?

12 A. Well, you know, it's a point where there's a lot of
13 investigative capabilities and intelligence capabilities
14 that they are expected to know, and again that would be
15 through an internal process through their teams.

16
17 Q. You refer in section E to specific training in
18 relation to the investigation of potential LGBTIQ hate
19 crime deaths?

20 A. Mmm.

21
22 Q. You refer there to the Hate Crime Awareness Course.

23 A. Yes.

24
25 Q. The Commissioner has received evidence that it is not
26 a mandatory course because the process for having a course
27 made mandatory is a lengthy one. Are you able to agree or
28 disagree with that evidence?

29 A. Well, I know it's an online course and I have seen it,
30 but I'm not sure if it's mandatory because Education and
31 Training run the mandatory training. I know in relation to
32 the face-to-face presentations in relation to bias and
33 subconscious bias and victim support, that was mandatory.

34
35 Q. So when in paragraph 136 you refer to mandatory
36 training in relation to hate crimes, do you mean by that
37 you don't know whether the Hate Crime Awareness Course is
38 mandatory?

39 A. Well, hate crimes in terms of the presentation from
40 the subconscious and bias training for presentation, but
41 not in relation to the online modules, no, I'm not aware if
42 they were mandatory.

43
44 Q. So when we read paragraphs 136 and 137 together, we
45 should in fact understand - we should in fact proceed on
46 the basis that you don't know, or you didn't know, whether
47 that training, that is, the training you describe in

1 paragraph 137, was mandatory?

2 A. One part of that training face to face was mandatory,
3 and the other one online may have been optional.

4

5 Q. You have only referred to an online module in your
6 statement.

7 A. Well, it was actually - the victim - in relation to
8 the victim care one, it was actually a mandatory
9 face-to-face presentation. That was in the last training
10 period.

11

12 Q. Is that part of your statement correct?

13 A. Well, no, it's - that's incorrect, then. It's the -
14 the online referred to the hate crime awareness, and the
15 other training was in relation to victim care and the
16 response through bias or subconscious bias.

17

18 Q. The online module, how long does it take?

19 A. They're not very - you know, they're not completely
20 protracted. There's different modules and there's
21 self-learning modes through it. I wouldn't be able to tell
22 you how long it took, but they're short training modules
23 that --

24

25 THE COMMISSIONER: Q. When you say you're not sure, is
26 it an hour, two hours, half a day?

27 A. It would be under an hour.

28

29 THE COMMISSIONER: Thank you.

30

31 MR EMMETT: Q. Have you done that training course
32 yourself?

33 A. Yes, on the online, yes.

34

35 Q. When did you do it?

36 A. Oh, some time ago in relation to it. I can't remember
37 when. The last --

38

39 Q. A year, three years?

40 A. The last few years, I've undertaken that.

41

42 Q. Less than four years but more than one year ago, is
43 that --

44 A. I think so, yes.

45

46 Q. While you were Commander of the Homicide Squad?

47 A. Because of the amount of training and the different

1 types of training every year that's made available,
2 especially online and that, there's a system called PETE
3 system and a lot of it pops up as mandatory and some of it
4 pops up as optional. You know, so I've done training
5 online for some time, but it may have been whilst Commander
6 of the Homicide Squad, yes.

7
8 Q. If somebody undertakes that course, is there any
9 process by which a supervisor tries to understand or tries
10 to ensure that the person has digested or understood the
11 content of the online course?

12 A. Well, to get through the self-learning, sometimes with
13 these trainings there's little questions that are asked
14 through it to reinforce what you've learnt, and to complete
15 it you have to answer them, and then it generates
16 a completion on the SAP system.

17
18 Q. Does this module include such questions?

19 A. I believe so.

20
21 Q. If you don't know, say so.

22 A. I know they were scenario based. I just don't know if
23 there was questions in that, that's all.

24
25 Q. Does a supervisor take any step to satisfy themselves
26 that the person has understood and digested the content of
27 that course?

28 A. Well, if it's an optional - if it's optional and
29 they've completed it, you know, they've completed it and
30 there's a record of it. That would be like any course that
31 anyone's undertaken - how do you know that person's
32 digested any course? But in terms of - most of the courses
33 that have online self-learning in it have questions along
34 the way that understand a scenario.

35
36 Q. The answer to my question is "No"?

37 A. Well, there's no - there's no - if it's not mandatory,
38 then a supervisor wouldn't be expected to make sure there
39 was some compliance with it.

40
41 Q. Now, you refer in paragraph 139 to a mandatory course
42 in relation to victim support?

43 A. Yeah.

44
45 Q. Is part of that module focused on dealing with members
46 of the LGBTIQ community?

47 A. It's in relation to bias and - sorry, subconscious

1 bias in relation to vulnerable communities and certain
2 communities. I can't recall if it was actually targeted
3 towards LGBTIQ community. However, it was in relation to
4 having victim care in relation to - and not having a bias
5 or subconscious bias in relation to a diverse community
6 group.

7
8 Q. Are you aware of any other course that educates or
9 provides education as to cultural awareness in respect of
10 the LGBTIQ community?

11 A. There's a lot of cultural awareness in relation to -
12 and again this is not my specialty, expertise, but in
13 relation to - there is a Gay and Lesbian Liaison Officer
14 Course. There's a lot of situational awareness in relation
15 to that they would do internally presenting in certain
16 commands, and they're an active liaison officer for certain
17 commands in the city metropolitan area especially. So they
18 would do their own internal training of staff. However -
19 and they've undertaken that course.

20
21 Q. So there's a course for the liaison officers?

22 A. Yes, and they would then also assist local area
23 commands, or police area commands, I should say, in
24 relation to their own internal training.

25
26 Q. That's a matter for the individual liaison officer and
27 the individual command?

28 A. Well, it would be a matter for the commander or the
29 regional - in that area, you know. During recent Pride
30 week, there was a lot of situational and
31 sensitivity information that was disseminated across
32 NSW Police and there was a lot of information that was
33 actually communicated across the board, and it was all
34 about cultural and sensitive awareness, and that was
35 broadcast right across New South Wales.

36
37 Q. How is the support provided by liaison officers
38 overseen or supervised to ensure it's consistent?

39 A. I wouldn't be able to answer that, because that -
40 there's a different portfolio holder or sponsor in relation
41 to LGBTIQ community. I know that they have their own
42 training days and workshops. However, I can't - I wouldn't
43 be able to answer that question accurately.

44
45 Q. And to your knowledge, there's not an online - is
46 there or is there not an online mandatory LGBTIQ awareness
47 and inclusion training module?

1 A. Mandatory?
2
3 Q. Yes.
4 A. No, not as far as I'm aware.
5
6 Q. To your knowledge?
7 A. To my knowledge, sorry, yes.
8
9 Q. I didn't mean to speak over you. Finish your answer?
10 A. No, not to my knowledge.
11
12 Q. And to your knowledge, is there an optional LGBTIQ
13 awareness and inclusion training module?
14 A. There may well be, but I'm not aware of it.
15
16 Q. Are you aware of any module other than the training
17 that liaison officers in particular receive?
18 A. Look, there may well be, but I'm not able to answer
19 it.
20
21 Q. You certainly haven't undertaken a module of that kind
22 yourself?
23 A. No.
24
25 MR EMMETT: Thank you, Superintendent. Commissioner,
26 those are our questions.
27
28 THE COMMISSIONER: Yes, Mr Tedeschi.
29
30 MR TEDESCHI: Commissioner, I would like to have an
31 opportunity to confer with Superintendent Doherty, if
32 I may. Can I suggest perhaps we take the luncheon
33 adjournment now?
34
35 THE COMMISSIONER: Yes, that's convenient. For various
36 reasons, I can't resume until 2 o'clock. Would that be
37 inconvenient for you?
38
39 MR TEDESCHI: No.
40
41 THE COMMISSIONER: All right.
42
43 MR TEDESCHI: Pardon me. It is 12.30 now. Are you saying
44 that you would prefer to resume at 2 o'clock?
45
46 THE COMMISSIONER: Well, yes. Alternatively - I would.
47 It's not just preference. There are other things that

1 I have to do usually during breaks in relation to other
2 matters that we're looking at. So it would be convenient
3 for me to resume at 2, but if you need - I'm in your hands.
4 I'm trying to accommodate you, Mr Tedeschi.

5
6 MR TEDESCHI: Could I have 10 minutes now to ascertain how
7 much time I need with the Superintendent? It might be that
8 I can do it in 10 minutes. It might be that I need longer.

9
10 THE COMMISSIONER: Yes, that's fine. I'm trying to
11 accommodate you, as I've said. So I will go off the bench.
12 Why don't you let me know when you have been able to make
13 an assessment.

14
15 MR TEDESCHI: Thank you.

16
17 **SHORT ADJOURNMENT**

18
19 MR TEDESCHI: Yes, thank you, Commissioner, I'm ready to
20 proceed.

21
22 THE COMMISSIONER: Thank you.

23
24 **<EXAMINATION BY MR TEDESCHI:**

25
26 MR TEDESCHI: Q. Superintendent, you were asked a number
27 of questions about this document from 2016 that was
28 produced by Chief Inspector Lehmann?

29 A. Yes.

30
31 Q. Does it appear from the document that he makes
32 a number of recommendations for trying to alleviate, to the
33 extent possible, the absence of both exhibits and case
34 files?

35 A. That's right.

36
37 Q. And does it appear from the document that those
38 proposals have been approved by then Detective
39 Superintendent Mick Willing, who was then the Commander of
40 the Homicide Squad?

41 A. That's correct, yes.

42
43 Q. And also Chief Superintendent Kerlatec, who was his
44 superior?

45 A. He was the Director of State Crime.

46
47 Q. And I think also somebody else, it appears might be an

1 Assistant Commissioner?

2 A. Yes, it would have gone through the Assistant
3 Commissioner.

4

5 Q. From any briefings that you have received, are you
6 aware of attempts that have been made by members of the
7 Unsolved Homicide Team, either before you became the head
8 of the Homicide Squad or after, whilst you have been the
9 head of Homicide - are you aware of steps that have been
10 taken by officers from the Unsolved Homicide Team to locate
11 these missing documents, to locate missing exhibits and to
12 process them in a way that makes them available for future
13 reinvestigations?

14 A. So what I've been briefed, in relation to the items
15 that were known and locations known, those places were -
16 they generated files to have those documents or exhibits
17 available. Unsolved Homicide Team collected those
18 documents and exhibits, transported them to the MEPC and
19 then - the process was quite lengthy. The ongoing issues
20 when I took over and into 2020 was that - the items that
21 were at the MEPC, that could be found and located, was
22 transferring those items on to EFIMS so we would have
23 a record, an electronic record of where those items were.
24 And that was the next phase, which took some time, and that
25 was during 2020 that was done.

26

27 Q. So it involved a process of Unsolved Homicide Team
28 members going to various stations and getting physically
29 hold of the documents?

30 A. Yes.

31

32 Q. Taking them to the MEPC?

33 A. Yes.

34

35 Q. Entering them into the records of the MEPC?

36 A. Yes, on to the EFIMS system, which is the Exhibits,
37 Forensic Information and Miscellaneous Property System,
38 which is the corporate system for exhibits and --

39

40 Q. And I suppose that involves allocating them to
41 a particular matter, a particular homicide or suspected
42 homicide?

43 A. That's right, labelling them properly and having them
44 recorded properly.

45

46 Q. Is it still the case that there are documents, files
47 and exhibits that are still missing from unsolved

1 homicides?

2 A. Yes, there is.

3

4 Q. You were asked a number of questions by Counsel
5 Assisting concerning when DNA testing became viable in
6 New South Wales and when it became active in policing in
7 New South Wales and in the court system?

8 A. Yes.

9

10 Q. Was that a two-part process that involved, firstly,
11 the availability of testing for DNA in New South Wales, but
12 also an ability for Forensic Services to be able to give
13 evidence about databases?

14 A. Yes.

15

16 Q. What was the significance of the availability of
17 databases within New South Wales?

18 A. Well, we need a database to test whatever the item was
19 or whatever the DNA sample was. So you needed to have
20 a database available for the testing purposes, to make it -
21 so we'd have positive identifications.

22

23 So from about - again, the idea was around the
24 mid '90s, as I said before, with Commissioner Ryan, and the
25 UK place came over to start that process, and by about mid
26 to late '90s there was a database that was starting to be
27 formulated, and then by - again, our (Forensic Procedures)
28 Act came in in about 2000. So it was that time for getting
29 the database together which was really important.

30

31 Q. A database is also important so that if DNA is
32 detected, and if it can be matched to a suspect, that
33 somebody, some expert, can give evidence about how rare or
34 commonplace --

35 A. That's right, it's got to be --

36

37 Q. -- a particular profile is?

38 A. That's right. So they'd have to give their expert
39 opinion in relation to that - in relation to matching,
40 positively matching, the DNA.

41

42 Q. And do you know when that sort of evidence became
43 available within New South Wales?

44 A. Well, I know in New South Wales the database was
45 starting to be formed around '98, or late '90s, and then
46 from that, the (Forensic Procedures) Act was enacted 2000,
47 was implemented in early 2001. Then you had procedures and

1 legislation involved and processes in place to obtain DNA
2 from suspects and volunteers.

3
4 Q. You gave evidence about the fact that back in
5 the '70s, and even the '80s, that police officers didn't
6 know about DNA and they really had no way of knowing that
7 DNA would become available as a forensic procedure and an
8 investigative tool?

9 A. That's right.

10
11 Q. Are the police in the Homicide Squad looking to the
12 future in terms of possible technological advances that
13 might be made?

14 A. Absolutely. In terms of, you know, we have a strong
15 relationship with FE&TS in relation to - and the DNA
16 Management Unit, and all advances in forensic technology
17 and forensic science we like to keep abreast of. We have
18 in recent times utilised familial DNA.

19
20 Q. Could you explain what familial DNA is?

21 A. Where it is from a member of a - I'm not an expert,
22 but in terms of a DNA sample from someone else in the
23 family or the relative, or it is a next of kin in relation
24 to a person.

25
26 So if we have a sample - and we only used this
27 recently and it resolved a murder, where a member of the
28 family, through - it was a hit for us in relation to
29 a familial DNA and then we have to do a lot of
30 investigative work then to obtain the sample from the
31 actual person who we believe is alleged to have committed
32 the murder and then - which has given us a confirmation,
33 but also then we have to test it to the scene of crime DNA
34 as well.

35
36 So from that matter we were able to resolve a murder
37 from I think 2008, and that person's before the court as we
38 speak, and that victim was part of the LGBTIQ community,
39 and that was only just - so that was a great example of the
40 familial DNA and where we can go from here. It's not only
41 for homicides but also for serial sexual assault matters.

42
43 From there, there's a lot of advancements and there's
44 training in relation to forensic genealogy and the DNA
45 that's kept on databases around the world. Our Unsolved
46 Homicide Team have done that training with Missing Persons
47 Registry and our intel staff. So it involves putting

1 exhibits and samples to the databases that are owned by
2 non-law enforcement, for example, you know, an Ancestry
3 type database, where we can then test it and see if there
4 are any matches there that may be on a genealogy basis, and
5 then we can investigate from there. So that's the future
6 that we're looking for.

7
8 THE COMMISSIONER: Q. Can I just interrupt you. I'm
9 sorry to ask you this: is the matter that you referred to
10 a few moments ago that said you were able to get a DNA
11 match, and you said the person was a member of - did
12 I understand you to say the victim was a member of the
13 LGBTIQ community?

14 A. Yes, Commissioner.

15
16 Q. Did you also say the matter was in court at the
17 moment?

18 A. Yes.

19
20 Q. Are you able to tell me what it is?

21 A. Strike Force --

22
23 Q. Do you want to take some instructions on any
24 confidentiality? But I am unaware of this matter - and
25 perhaps I am --

26
27 MR TEDESCHI: I'm not aware of which matter it is.

28
29 THE COMMISSIONER: Q. If you say it is in court, when
30 you say it is in court, has the matter been tried,
31 concluded?

32 A. No, we're still waiting for the trial to come.

33
34 Q. So somebody has been charged?

35 A. Yes, Commissioner.

36
37 Q. Is the charging of that person, as far as you
38 understand it, a matter of public record?

39 A. Yes, it is.

40
41 Q. Are you able to tell me what the matter is, then?

42
43 MR TEDESCHI: Can I suggest that maybe he writes down the
44 name of the matter?

45
46 THE COMMISSIONER: If it is a matter of public record and
47 the person has been charged, why should I be concerned

1 about it? I'm happy to adjourn --

2

3 MR TEDESCHI: I'm in your hands.

4

5 THE COMMISSIONER: No, I'm happy to adjourn for to you get
6 some instructions. If you satisfy yourself that I should
7 take a particular course, I'd be guided by you. This is
8 the first I've heard of this matter, and it may not be
9 a matter that was in my Terms of Reference, I don't know,
10 but my ears, for obvious reasons, were attracted to
11 a certain number of integers.

12

13 What about if I go off the bench for a few minutes and
14 you can find out a bit more about it, and you can tell
15 Mr Emmett about it and then he can make a decision about
16 whether I need to know more about it or not.

17

18 MR TEDESCHI: All right. I've almost completed
19 re-examination. Would you like me to finish the rest of
20 it?

21

22 THE COMMISSIONER: Yes, if that's convenient, absolutely.

23

24 MR TEDESCHI: Q. What about, looking to the future,
25 other types of DNA testing or DNA testing of old samples
26 where there was not enough DNA in the past but there might
27 be enough DNA sample now?

28 A. That's right. We are working closely with FE&TS but
29 also FASS in relation to where there may not have been
30 a strong profile or a mixed profile or not enough DNA.
31 We're re-examining those because there have been
32 enhancements in relation to DNA as you just said.

33

34 THE COMMISSIONER: Q. But do I understand you to say, in
35 relation to the matter you just mentioned, that you are
36 routinely going through every unsolved homicide case to
37 identify exhibits where DNA may have existed previously and
38 test it, or is it an ad hoc exercise?

39 A. It's a point where we're working with the DNA
40 Management Unit for unsolved matters, where there is DNA.

41

42 Q. I wonder if you could just answer my question: is it
43 an ad hoc position, namely, that you are addressing cases
44 as and when they may arise, or are you systematically going
45 through all of your unsolved homicide cases?

46 A. The reason it's difficult to answer, Commissioner, is
47 because DNA Management Unit are going through their

1 holdings in relation to it and working through in their own
2 system with FASS. However, when we have a review or
3 a reinvestigation, then a forensic review is conducted and
4 we look at that technology.

5
6 THE COMMISSIONER: All right. Yes, Mr Tedeschi.

7
8 MR TEDESCHI: Thank you, Commissioner. Apart from that
9 one issue, that's my questioning of this witness.

10
11 THE COMMISSIONER: All right. Do you have any further
12 questions?

13
14 MR EMMETT: I do.

15
16 <EXAMINATION BY MR EMMETT:

17
18 MR EMMETT: Q. Can I just understand your evidence about
19 the database for DNA. Am I right in understanding that
20 from the early days, the first benefit of DNA as used in
21 forensic analysis was to match it to known samples?

22 A. Yes.

23
24 Q. So when you had DNA from a scene of a crime and DNA
25 from someone else, in the early days, you could match that
26 up if you --

27 A. No, we needed to have a database, and that wasn't
28 until the late '90s.

29
30 Q. As I say, without a database, in the early days, the
31 benefit of DNA was matching to known samples?

32 A. So - and from my experience, those matters were quite
33 few and far between in relation to --

34
35 MR EMMETT: Q. Is the answer "yes"?

36
37 THE COMMISSIONER: I'm sorry --

38
39 THE WITNESS: Yes, I'm sorry.

40
41 THE COMMISSIONER: Q. It may be that there is a problem
42 here with translation, but if you can just try and address
43 the actual question - maybe just start again.

44 A. No, sorry, Commissioner, yes, that's right. The
45 answer is right.

46
47 MR EMMETT: Q. Later, I think you said from the

1 mid '90s, a database started to develop; is that right?
2 A. More towards the late '90s.
3
4 Q. More towards the late '90s. Before the database had
5 been developed, while the samples were gradually
6 accumulating, it was clear that the database would grow
7 over time and get better and you would acquire more and
8 more DNA samples in the database?
9 A. Well, the database is only as good as what is in the
10 database in the DNA testing but it was always, from my
11 recollection - from the '90s, the late '90s onwards, that
12 was the impetus in relation to getting the database
13 together, prior to there becoming the (Forensic Procedures)
14 Act.
15
16 Q. Well, investigators knew from the early '90s, didn't
17 they, that DNA matching was available and that the database
18 or the population of DNA samples that the police had would
19 grow over time?
20 A. From some time in the '90s, again, the UK had the
21 technology, and there was exceptional cases where some
22 investigations involved taking DNA samples to the UK.
23
24 Q. But it was obvious, wasn't it, to an investigator who
25 thought about it in the early '90s, that the database of
26 samples would grow over time in the future?
27 A. Well, again, from my recollection, it was more from
28 the time where - from the mid '90s, where Peter Ryan
29 brought in the UK specialists to start educating and
30 setting up the program. That wasn't really until about
31 '98.
32
33 Q. Do you agree or disagree with the proposition that
34 from the early '90s it was obvious that the database would
35 grow over time?
36 A. Well, I can't answer that because it's a point where
37 my recollection was that the database wasn't really in
38 place until the late '90s.
39
40 Q. You are not able to assist the Commissioner --
41 A. No.
42
43 Q. -- with whether or not it was obvious that the
44 database would grow over time?
45 A. In terms of - no, I can't, because that wasn't
46 readily - no, I can't help the Commissioner.
47

1 Q. If someone in the early '90s had turned their mind to
2 the prospect of the database growing over time, they would
3 have appreciated at that time that improvements in the
4 database would mean, at some time in the future, there may
5 be more DNA samples to which a sample at a crime scene may
6 match?

7 A. Yes.

8

9 MR TEDESCHI: It is hypothetical.

10

11 MR EMMETT: Of course it is hypothetical.

12

13 Q. If a person turning their mind to it in the early '90s
14 had thought of it, it would have been obvious, wouldn't it?

15 A. Again, it wasn't really well known among all
16 investigators for NSW Police Force until about the
17 mid '90s.

18

19 Q. And it would have been obvious to someone who thought
20 about it that, even if there wasn't yet a database, if
21 a database was likely to grow over time, that database may
22 provide breakthroughs in the future in relation to existing
23 cases.

24

25 MR TEDESCHI: I object. It's hypothetical.

26

27 THE COMMISSIONER: I am sorry, what was the objection?

28

29 MR TEDESCHI: The objection is that it is just so
30 hypothetical it is of no use to you.

31

32 THE COMMISSIONER: Why isn't it, Mr Tedeschi? I mean, one
33 of the issues that I may have to look at is how imaginative
34 or unimaginative the Police Force has been in relation to
35 possible technological change. It may go to that issue.
36 Of course, you may want to put forward something to say
37 this was rocket science and it wasn't something that an
38 ordinary investigator would have had his mind or her mind
39 applied to.

40

41 MR TEDESCHI: It is asking a question about some
42 hypothetical police officer who had prescience, eight to
43 10 years before the database started.

44

45 THE COMMISSIONER: Are you giving evidence from the Bar
46 table now, are you?

47

1 MR TEDESCHI: No, the evidence is that it was in the late
2 '90s . He has been asked about the early '90s.

3
4 THE COMMISSIONER: I'm going to allow it, Mr Tedeschi,
5 thank you.

6
7 MR EMMETT: Q. It was obvious, wasn't it, to somebody
8 who thought about the subject in the early '90s, that the
9 database of known DNA samples was likely to grow and that
10 if DNA samples were taken in the early '90s, future DNA
11 samples may provide a breakthrough in relation to that
12 matter?

13 A. That would be a possibility.

14
15 Q. It was obvious, wasn't it?

16 A. I don't think it's obvious, because again, as I said
17 before, from the mid '90s to the late '90s, it became
18 obvious then.

19
20 Q. But you are not aware of anyone thinking of the
21 prospect of a database earlier than that?

22 A. No.

23
24 MR EMMETT: Thank you, Commissioner.

25
26 THE COMMISSIONER: Mr Tedeschi, why don't you get some
27 instructions on the matter, and perhaps at 2 o'clock -
28 would you mind, in advance, perhaps letting Mr Emmett know
29 if there is any problem about it.

30
31 MR TEDESCHI: Yes.

32
33 THE COMMISSIONER: What I will do for the moment, witness,
34 is I won't excuse you just for the moment, Mr Doherty, just
35 until we resolve this issue.

36
37 If it is resolved shortly and Mr Doherty can get away,
38 then obviously let him get away.

39
40 MR EMMETT: Yes. If we're able to inform you,
41 Commissioner, without Mr Doherty being here, I will discuss
42 that with Mr Tedeschi.

43
44 MR TEDESCHI: I'm content with that.

45
46 THE COMMISSIONER: All right. Thank you. I will adjourn,
47 thank you.

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LUNCHEON ADJOURNMENT

THE COMMISSIONER: Yes.

MR EMMETT: Commissioner, before I call Detective Chief Inspector Laidlaw, I am about to tender volume 11 of the tender bundle for this proceeding, but I hand up first a form of orders, non-publication orders, in relation to that volume.

THE COMMISSIONER: Okay. Thank you.

MR EMMETT: I understand those orders are common ground between those assisting you and the police.

THE COMMISSIONER: Thank you. I have made those orders. Thank you.

MR EMMETT: Subject to those orders, I tender volume 11 of the bundle. Commissioner, you should have a copy of that.

THE COMMISSIONER: I do, thank you.

MR EMMETT: The version for the file is being provided.

EXHIBIT #53 VOLUME 11 OF THE TENDER BUNDLE

MR EMMETT: I call David Laidlaw.

THE COMMISSIONER: Thank you.

<DAVID LAIDLAW, sworn: [2.04pm]

<EXAMINATION BY MR EMMETT:

MR EMMETT: Q. Would you tell the Commissioner your full name, please?

A. David Laidlaw.

Q. Your occupation?

A. I'm a Detective Chief Inspector.

Q. You're with the Homicide Squad?

A. That's correct, I'm with the Unsolved Homicide Team within the Homicide Squad.

1 Q. Thank you, Detective Chief Inspector. You have made
2 a statement for the purpose of this Special Commission
3 dated 13 June 2023?

4 A. Yes, that's correct.

5

6 Q. Are the contents of that statement true and correct in
7 every particular?

8 A. Yes, they are.

9

10 Q. You've got a copy of that in front of you, I think?

11 A. Yes, I do.

12

13 Q. You've been with the Force since the late '70s?

14 A. That's correct.

15

16 Q. You've been a detective since 1988?

17 A. That's correct. I trained - from 1985, I was a plain
18 clothes senior constable, so from there is when I started
19 my criminal investigation duties.

20

21 Q. You did the Homicide Investigators Course in 1996?

22 A. That's correct.

23

24 Q. And have you been a Homicide detective since then?

25 A. No, no. I was attached to the Major Crime Squad South
26 in 1995 through to the inception of Crime Agencies, and
27 then within Crime Agencies I was promoted to inspector in
28 2000, but in 2001 I transferred to the Drug Squad, and then
29 in 2007 I returned to the Homicide Squad within State Crime
30 Command.

31

32 Q. You joined the Unsolved Homicide Team in 2017; is that
33 right?

34 A. That's correct.

35

36 Q. In your current role?

37 A. Yes, I'm the - that's my current role, yes.

38

39 Q. And that's as the investigation coordinator for the
40 review team; is that right?

41 A. Yes, that's correct.

42

43 Q. What are the functions of the investigation
44 coordinator of the review team?

45 A. It's primarily with - the aim of the review team is to
46 prioritise - sorry, identify and then review and prioritise
47 and consider reinvestigation of unsolved matters and -

1 unsolved homicide but also suspicious missing persons.

2

3 Q. In your statement, beginning at paragraph 19, you give
4 evidence as to the history of the Unsolved Homicide Team?

5 A. Yes.

6

7 Q. It was established in 2004?

8 A. Yes, that's correct.

9

10 Q. And what's its remit? What is its remit?

11 A. Sorry?

12

13 Q. What's its function?

14 A. Oh, the function there. Sorry, I do apologise.

15 Initially in 2004, it was created, it was only a review

16 mechanism. There was no investigative arm attached to the

17 Unsolved Homicide Team at that stage, whereupon that they

18 were tasked with collecting any information that they have,

19 briefs, files, et cetera, to consider for a review of those

20 matters.

21

22 Q. Before the Unsolved Homicide Team was established,

23 would it be detectives, officers within patrols or area

24 commands that would manage homicide investigations?

25 A. No, not necessarily. They would. However, any ones

26 that were defined to be allocated to the Homicide Squads -

27 that's both within the region concept and State Crime

28 Command and also Crime Agencies - they would be in control

29 of those investigations.

30

31 Q. And to your knowledge, was there a systematic process

32 or procedure for the management or review of unsolved

33 homicides before 2004?

34 A. No, there wasn't.

35

36 Q. How might unsolved homicides be reviewed or come to be
37 reconsidered, to your knowledge, before 2004?

38 A. To my knowledge, whilst I was attached to the Major

39 Crime Squad South and to Crime Agencies, there was no

40 system in place because of the - I suppose the resources

41 available, where we were reacting to actually homicide,

42 current homicide investigations.

43

44 Q. And would the file remain with the original team that
45 investigated the homicide - I'm sorry, investigated the

46 incident, whether it be a suspected homicide or a

47 suspicious missing person?

1 A. That's correct. The squad - both Crime Agencies and
2 State Crime Command, they don't have a particular area, so
3 therefore, wherever the offence occurred, that is generally
4 where the material is maintained. However, if the Homicide
5 Squad conducted the investigation, it would remain with the
6 Homicide Squad at those commands.

7
8 Q. Are you aware of any matters being reviewed or
9 reinvestigated before 2004?

10 A. No, I haven't.

11
12 Q. Is that the sort of thing that would have come to your
13 attention in the course of your role?

14 A. Possibly not, no.

15
16 Q. The Unsolved Homicide Team was formed following - or
17 established following a coronial recommendation?

18 A. That's correct, yes.

19
20 Q. That was a recommendation by State Coroner Abernethy
21 to have systematic audits of unsolved homicides?

22 A. Yes, that's correct.

23
24 Q. At paragraphs 33 and following of your statement you
25 explain the structure of the Unsolved Homicide Team?

26 A. Yes.

27
28 Q. There are four - since 2009, am I right, there have
29 been four investigative teams and one review team?

30 A. Yes, that's correct.

31
32 Q. And you explain - we don't need to go through the
33 numbers, but you explain the number of personnel in various
34 teams in your statement?

35 A. That's correct.

36
37 Q. In order to become an Unsolved Homicide Team
38 detective, an officer needs to be a detective; is that
39 right?

40 A. That's correct. They need to be designated as
41 a detective.

42
43 Q. And they need --

44
45 THE COMMISSIONER: Is there a problem?

46
47 MR TEDESCHI: I just don't like a situation where, when

1 I'm writing notes, that I'm being filmed and my notes can
2 be publicly seen. I don't mind if I'm caught in the
3 screen, but I don't think it is very fair to have me
4 writing my notes being filmed. When I'm so close to the
5 camera, my notes would be able to be read.

6
7 THE COMMISSIONER: I would ask the cameraman not to film
8 anywhere near your notes. I didn't notice it occurring.

9
10 MR TEDESCHI: I've only just noticed it just then.

11
12 THE COMMISSIONER: I didn't notice it until you stood up.
13 We will make sure that doesn't happen. I'm sure it wasn't
14 intentional to intrude in any way, Mr Tedeschi.

15
16 MR TEDESCHI: No, I accept that.

17
18 THE COMMISSIONER: Yes, okay.

19
20 MR EMMETT: Q. To become a member of the Unsolved
21 Homicide Team, I think you said it was necessary to be
22 designated a detective?

23 A. That's correct, yes.

24
25 Q. And all staff, once assigned to the Unsolved Homicide
26 Team, must undertake the Homicide Investigators Course?

27 A. That's correct, yes.

28
29 Q. Are there detectives who are assigned to the team who
30 have not yet completed that course, in your experience?

31 A. Yes.

32
33 Q. Is that the usual course, that people will be assigned
34 to that team and then undertake the course or is it more
35 common for --

36 A. It's either way.

37
38 Q. Is there one --

39 A. They may be out at a police area command, as we call
40 them now, and shown an interest in or been accepted to
41 undertake the course. There's only two courses a year of
42 about 24 participants, and they may have been accepted
43 through their own - nomination through their own commands
44 that they attend the course and then they come into the
45 Unsolved Team.

46
47 Q. Is there any specific training for Unsolved Homicide

1 Team Homicide detectives beyond what is necessary to join
2 the Homicide Squad?

3 A. No.

4

5 Q. Are there particular skills that are recognised to be
6 important for dealing with unsolved homicides that require
7 special development?

8 A. No, a lot of - because they're already designated as
9 detectives, they should have - and I've never seen any that
10 haven't had - a broad understanding and acceptance and
11 responsibility for how they investigate matters of all
12 types.

13

14 So I think on-the-job training is so important,
15 because they're led by their peers, generally they're
16 senior constables that come in, and they're led by their
17 team leaders, who are sergeants who have had a - who've
18 always had the requisite knowledge to pass that on to the
19 staff.

20

21 Q. What are the special skills that an Unsolved Homicide
22 detective needs?

23 A. Having an open mind is the first and foremost, I feel,
24 and accept all things on the table, and never discount
25 until such time as you're happy that it's not the case.
26 You have to be inquisitive, an inquisitive nature, and ask
27 questions, because you will never know the answer if you
28 don't ask. So they're the sort of broad-brush concepts.
29 And you certainly have to have a passion for what you do,
30 and commitment, is how I see it.

31

32 Q. The matters you have described are important skills
33 for any Homicide detective?

34 A. Of course, for any police officer.

35

36 Q. Are there any skills that you would recognise as
37 particularly important specifically for the role as an
38 Unsolved Homicide detective?

39 A. No, not apart from the ones I've mentioned because
40 it's a general concept of being a detective, I feel.

41

42 Q. There aren't any areas of knowledge or expertise that
43 somebody who deals with cold cases ought to develop?

44 A. No, I don't - I don't see that. It's one of their
45 appreciation of - such as a cold case, as you called it, is
46 having an understanding of what investigation has been
47 undertaken and whether there is new evidence to be

1 resolved, whether they can - like I said, an open mind on,
2 well, this investigation went this way; why did it go this
3 way? So there's your inquisitive nature behind being
4 a detective of looking at, okay, well, then we may have to
5 go in another direction.
6

7 Q. I think you have said the Unsolved Homicide Team is
8 highly sought after?

9 A. Yes, yes.
10

11 Q. What are the features of it that make it highly sought
12 after?

13 A. I think the nature of the work. As has been seen,
14 there's a number of investigations that have - of recent
15 times that have resulted in charges and convictions of
16 matters that have been dormant for quite some time, and to
17 me, that is an appreciation of how they've then
18 investigated the matter to get that matter to that status.
19

20 Q. At paragraphs 54 to 56 of your statement you give
21 evidence about the historic as well as the current Standard
22 Operating Procedures for the Unsolved Homicide Team?

23 A. Yes.
24

25 Q. I think you have said you can't speak from personal
26 experience in the team prior to 2017?

27 A. That's correct.
28

29 Q. You have provided the Standard Operating Procedures,
30 and I think you have said, so far as you were aware, they
31 were followed, or at least that those were the procedures
32 that applied at the time?

33 A. Yes, that's my understanding, yes.
34

35 Q. You have given evidence about the creation of the UHT
36 tracking file?

37 A. Yes.
38

39 Q. The tracking file - was that created or was that
40 started in 2004, when the Unsolved Homicide Team was first
41 established?

42 A. Yes, it was.
43

44 Q. Was it established as a spreadsheet of --

45 A. I can't answer that directly, but I can only assume it
46 would be, because I haven't seen the actual document, the
47 tracking file document, for 2004.

1
2 Q. But in 2004, as part of the establishment of the
3 Unsolved Homicide Team, searches and inquiries were made to
4 identify unsolved homicides and suspicious missing persons?
5 A. That's correct, yes.
6
7 Q. And when it started, the focus was the period 1970 to
8 2000; is that right?
9 A. That's correct, yes.
10
11 Q. Are you able to assist the Commissioner with what
12 those searches and inquiries were?
13 A. Through the police stations, through the COPS, which
14 is our computerised operation system, through any of the
15 Major Crime Squads that were current at that - sorry, at
16 that day, of Homicides, and whether they went through
17 archives, I can only assume that they would have.
18
19 Q. The result was that - and I'm taking this number,
20 I think, from - you have referred to Superintendent
21 Doherty's statement in a number of places in your
22 statement.
23 A. Yes.
24
25 Q. According to Superintendent Doherty's statement, that
26 initial search identified 366 cases; is that right?
27 A. Yes, about that.
28
29 Q. That's not a number you are able to confirm or deny?
30 A. I've got a feeling it was 400.
31
32 Q. What Mr Doherty says in his statement - and tell me if
33 you agree or disagree - was that it started at 366, and
34 then over the course of the period from 2004 to 2008 it
35 grew to 400?
36 A. That's correct. That's my understanding, yes.
37
38 Q. During the period from 2004 to 2008, the period when
39 I think you said the Unsolved Homicide Team was a review
40 team rather than - was concerned with reviews, not itself
41 concerned with investigations --
42 A. That's correct, yes.
43
44 Q. -- those cases, or at least some of them, were
45 reviewed?
46 A. That's correct, yes.
47

- 1 Q. Pardon me for a moment. The upshot of that review is
2 that in 2008, 201 cases were identified as warranting
3 reinvestigation; is that right?
4 A. That's correct.
5
- 6 Q. What happened to the other 199 - I assume it is
7 approximately 199, but the other cases, the ones that
8 weren't?
9 A. I can't advise the Commission exactly what happened to
10 them, because, as I said, the 2004 database, 2004 to 2008,
11 I don't have access to that. I've only got the current
12 database for the tracking file.
13
- 14 Q. So how do you know that 201 were identified as
15 warranting reinvestigation?
16 A. That's what I was advised.
17
- 18 Q. By whom?
19 A. I can't recall now.
20
- 21 Q. You've not seen a written record of that figure?
22 A. No.
23
- 24 Q. In relation to the other half of the 400 cases, you
25 don't know what's happened to them?
26 A. No.
27
- 28 Q. Do you know if they are still on the tracking file?
29 A. They could be. Why I say that is because the tracking
30 file is a live document, as you can appreciate, and those
31 2004 to 2008 matters are incorporated into the tracking
32 file and I'm unable to identify the - even the date range,
33 you have the date range in the tracking file, but I'm
34 unable to identify which of those cases actually were
35 investigated from 2004 to 2008 as a - sorry, as a review,
36 I meant.
37
- 38 Q. You mean you are unable to identify which of the cases
39 were among the 201 or among the 199?
40 A. That's correct, yes.
41
- 42 Q. And you can't even say which were among the 400 in the
43 first place?
44 A. That's correct.
45
- 46 Q. Is that right?
47 A. That's correct, yes.

- 1
2 Q. During the period 2004 to 2008, what was the quality
3 control or supervision of the process by which the cases
4 were reviewed?
5 A. I've been advised that the quality control was by the
6 investigation coordinator at the time, Inspector Jarratt,
7 and those matters were put on a case screening form, then
8 they were assessed as to their viability for
9 reinvestigation.
10
11 Q. Individual officers prepared screening forms for
12 particular cases; is that right?
13 A. That's correct, yes.
14
15 Q. And was there a review committee in relation to those
16 screening forms after they had been completed?
17 A. I don't know.
18
19 Q. Are you aware of any document recording a review
20 committee or other process by which the completion of those
21 screening forms was checked or the consistency reviewed?
22 A. No, I'm not aware, no.
23
24 Q. To your knowledge, did one exist?
25 A. I'm not aware, no, so, yes, sorry, I don't know.
26
27 Q. You just don't know one way or the other?
28 A. I don't know.
29
30 THE COMMISSIONER: Can I interrupt.
31
32 Q. Of the 201 cases that were thought appropriate for
33 reinvestigation, was a list made of those? You quote the
34 number, but does it mean somewhere there should be a list
35 of those 201 cases?
36 A. I believe so, sir, yes.
37
38 Q. But you don't know where it is?
39 A. No.
40
41 Q. So who in the Police Force - forgive me, perhaps
42 I should start again. Do you know whether anyone has ever
43 been tasked with the actual reinvestigation process in
44 relation to any one or more of the 201 cases?
45 A. No, I don't, sir.
46
47 Q. So I should assume that someone identifies 201. There

1 doesn't appear to be readily available a list of which they
2 are nor any update of whether any one or more of them have
3 been subject to any reinvestigation?

4 A. No, sir, I don't - I can't give you a figure because
5 I don't know.

6
7 Q. You immediately report to Mr Doherty, I think, don't
8 you?

9 A. I do, sir.

10
11 THE COMMISSIONER: Thank you.

12
13 MR EMMETT: Q. One thing that at least Mr Doherty refers
14 to in his statement - I will just turn up whether it is in
15 yours as well - is a reference to - yes, it's paragraph 62
16 of your statement, that after the review of cases from 2004
17 to 2008, there were nine cases that were referred for
18 reinvestigation?

19 A. Yes, I can see that, yes.

20
21 Q. Should the Commissioner infer that the other 192 were
22 not referred for reinvestigation?

23 A. I can only assume that, yes.

24
25 Q. Should the Commissioner - well, are you able to assist
26 the Commissioner with whether anything was done in relation
27 to those 192?

28 A. No, I can't assist, sorry.

29
30 Q. Because it may be, for instance, that the review could
31 have identified - are there levels or gradations of the way
32 in which something might be reinvestigated, that is,
33 a screening form might identify some steps which could be
34 easily taken?

35 A. Yes, I believe there would have been like a rating
36 associated with each of the matters - would have been?
37 Should have been.

38
39 Q. But I'm also exploring, reinvestigation is not
40 necessarily an on/off switch. You don't need to decide
41 that a case should be reinvestigated and then put the full
42 force of an investigatory team towards it, do you? One
43 option that may have occurred is to identify cases where
44 there are some obvious steps to take and take those steps?

45 A. Yes, that's correct.

46
47 Q. An example being in relation to exhibits, test them

1 for DNA or fingerprints?
2 A. That's correct, yes.
3
4 THE COMMISSIONER: Q. Or find them? Or find them?
5 A. Yes, exactly, sir.
6
7 MR EMMETT: Q. Are you aware of that taking place during
8 the period 2004 to 2008?
9 A. No, I'm unaware.
10
11 Q. You just don't know one way or the other?
12 A. No, I don't.
13
14 Q. And do you know how the nine that were selected for
15 reinvestigation were identified for reinvestigation?
16 A. No, I don't, sorry.
17
18 THE COMMISSIONER: Q. Is there a list of which are the
19 nine?
20 A. I don't have that list with me, sir.
21
22 MR EMMETT: Q. Does that list exist?
23 A. Sorry?
24
25 Q. Does that list exist?
26 A. I don't know.
27
28 Q. Might exist; you just don't know?
29 A. Yeah, I don't know, no.
30
31 Q. After 2008, as you explain, investigatory teams were
32 introduced into the Unsolved Homicide Team in 2009?
33 A. That's correct.
34
35 Q. And since that time, the tracking file has continued
36 to grow; is that right?
37 A. That's correct, yes.
38
39 Q. Are any cases taken off the tracking file?
40 A. Sorry?
41
42 Q. Are cases taken off the tracking file?
43 A. No.
44
45 Q. So would it be fair to assume, then, that the 199 - of
46 the 400, the 201 that we have been talking about were on
47 the tracking file and still are?

1 A. They should still be, yes.
2
3 Q. And the 199, even though they weren't identified for
4 reinvestigation, were on the tracking file and still are?
5 A. Yes, they should be, yes.
6
7 Q. You're not aware of anything being taken off?
8 A. No.
9
10 Q. Are you aware of a policy prohibiting anything being
11 deleted from the tracking file?
12 A. No, there's no policy associated with it. Even today,
13 when matters are solved or we've identified that they're
14 not homicides at all, they still remain on the tracking
15 file as a record management.
16
17 Q. But do you know whether cases have been taken off the
18 tracking file over the last 20 years?
19 A. No, I don't.
20
21 Q. May have happened?
22 A. It may have, yes.
23
24 Q. If so, there's just no - there's no record of it that
25 you're aware of?
26 A. No, no.
27
28 Q. At paragraph 70 you explain that the latest matter on
29 the tracking file, at least as at the date of this
30 statement, was an incident of 17 August 2016?
31 A. Yes, that is correct.
32
33 Q. To your knowledge, is that still correct?
34 A. No.
35
36 Q. More have been added since?
37 A. Yes.
38
39 Q. Do you know how many?
40 A. No, I can't give you a figure, sorry.
41
42 Q. But as at 13 June 2023, the last matter added to the
43 tracking file was added - was an incident dated 17 August
44 2016?
45 A. That's correct, yes. If I can reiterate, that is as
46 a result of a coronial finding that the matter has been
47 referred to the Unsolved Homicide Team. That's the last

1 one that's recorded on there.

2

3 THE COMMISSIONER: Q. But does that mean that everything
4 that's happened since that date has been solved or that
5 there may be unsolved cases since that date that have not
6 made their way yet to the tracking file?

7 A. That's correct, sir, yes.

8

9 MR EMMETT: Q. If the latter --

10 A. Well, sorry, if I can --

11

12 THE COMMISSIONER: Q. I will put it again. Does that
13 mean that every case since August 2016 has been solved, or
14 does that mean that there might be or may well be unsolved
15 cases that have arisen since August 2016 but have yet to be
16 added to the tracking file?

17 A. There could be, only that with matters we're saying
18 they should all go to the coronial jurisdiction, and that's
19 when we receive them back from the coronial jurisdiction as
20 a matter that is unsolved.

21

22 Q. I see. So, what, the process since August 2016 is to
23 only nominate a case as unsolved for the purposes of adding
24 to the tracking file if a coronial finding is of foul play
25 or suspicious circumstances or something?

26 A. That all matters would be - all homicide-related
27 matters would be put on the tracking file.

28

29 THE COMMISSIONER: I'm not following. Perhaps you take it
30 up, Mr Emmett.

31

32 MR EMMETT: Q. I'm just trying to understand. When you
33 say all homicides would be put on the tracking file --

34 A. Sorry, what I mean by that is all the matters up to
35 then and beyond, we have - we would have knowledge of
36 across the board because of our obvious associations with
37 the investigative teams, what we call on the floor, within
38 the investigative teams, so we would have knowledge of.
39 Currently, to alleviate some of the issues we've identified
40 in the tracking file, we're creating a database that as
41 soon as a homicide occurs, it gets put on that database.
42 That's presently being built, but it hasn't come into
43 fruition yet.

44

45 Q. So you've got a second database, being a database of
46 homicides in addition to the homicides on the tracking
47 file?

1 A. That's correct. The old homicide tracking file, the
2 current tracking file - all that data will be incorporated
3 into that database, and whenever a homicide occurred, it
4 will get put straight on to that database so that we've got
5 a track of all homicide-related matters.
6

7 THE COMMISSIONER: Q. But the homicides - and they're
8 those which have occurred, are they, post August 2016?

9 A. Yes, sir.

10

11 Q. And does that database, though, include cases where
12 a person of interest has been charged and is in the process
13 of being tried or has been tried and those cases where
14 there may or may not be a person of interest, but it is
15 unsolved?

16 A. Yes, sir, all homicides.

17

18 Q. All homicides?

19 A. Yes, yes.

20

21 MR EMMETT: Q. You referred to that step being taken to
22 alleviate pressures on the tracking file?

23 A. No, alleviate issues, I said.

24

25 Q. I'm sorry, I misheard. What were the issues with the
26 tracking file that the creation of this new database were
27 intended to alleviate?

28 A. I suppose the multi-wording of where the status may be
29 of an investigation. I suppose the database, we're hoping
30 to alleviate any - all cross-references, so there's only
31 one reference point to where that investigation is actually
32 at and the result thereof. So that's what we're attempting
33 to do with that database.

34

35 Q. Were there multiple - when there was just the tracking
36 file, were there multiple cross-references?

37 A. Yes, there were.

38

39 Q. Of what kind?

40 A. Oh, some like the matter might be solved, yet we
41 wouldn't realise it was solved until such time as we did
42 a triage on it; or some matters that are not homicide, when
43 you look at the triage and review, it's clearly not
44 a homicide, but it initially came in to us as a homicide.

45

46 Q. So the issues were with other parts of the Police
47 Force, information that arose in other parts of the Police

1 Force not making its way to your team?

2 A. Part of it is our - sorry, part of it is the way we've
3 entered that data on, too, so we're not blameless in
4 relation to that from the Unsolved Homicide - the review
5 team.

6

7 Q. By that, you mean the issues include that the data is
8 unreliably entered; is that what you mean to say?

9 A. I won't say unreliably. It's meaningfully entered,
10 but there's some cross-references that may be confused
11 extracting data from the tracking file.

12

13 THE COMMISSIONER: Q. No, but what you said a moment
14 ago - I'm just trying to follow it. I think each of us is
15 trying to follow it. Is the tracking file - was the
16 tracking file to some extent inaccurate in the sense that
17 it might have identified a case which was once unsolved,
18 but a prosecution has taken place elsewhere, a person has
19 been convicted but the tracking file not updated?

20 A. That's correct, sir, yes.

21

22 MR EMMETT: Q. Now, at paragraph 77, you describe the
23 number of cases listed on the tracking file for the period
24 1970 to 2010?

25 A. Yes.

26

27 Q. You say that as at the date of your statement, there
28 were 829 of those cases?

29 A. Yes, that's correct, yes.

30

31 Q. Has that number changed since the date of your
32 statement?

33 A. Can I refer to a document here?

34

35 Q. Yes.

36

37 THE COMMISSIONER: What paragraph is that, Mr Emmett?

38

39 MR EMMETT: Paragraph 77.

40

41 Q. Can I ask you to indicate what document you're
42 referring to?

43 A. Oh, just in relation to trying to establish the exact
44 figures that we have.

45

46 Q. And I'm just asking you what document you're referring
47 to to do so. So by all means do so, but could you also let

1 the Commissioner know what document it is you're referring
2 to?

3 A. The document you provided to NSW Police counsel, and
4 just to clarify what matters are actually recorded there as
5 compared to nowadays, because the difference there from
6 2006 - sorry, from 2010, there were numbers there, but the
7 additional information we may have where we continually
8 update the tracking file. So we've continued to update the
9 tracking file from June 2022, where matters would either be
10 added to or re-identified.

11

12 Q. So is the document you are referring to a document
13 that is titled "Special Commission of Inquiry into LGBTIQ
14 hate crimes, Aide-Memoire, UHT Tracking File"?

15 A. That's correct, yes.

16

17 MR EMMETT: It might be convenient at this stage,
18 Commissioner, to hand up a copy of that, which I will
19 tender shortly.

20

21 THE COMMISSIONER: Thank you.

22

23 MR EMMETT: Q. Do you have a copy of that?

24 A. I've got a very --

25

26 Q. We might provide you with a better copy. That way, we
27 all know we're looking at the same document.

28 A. Thank you, yes.

29

30 Q. Could I confirm, you've seen this three-page document
31 before?

32 A. Yes, yes.

33

34 Q. This was a document that emanated from the Commission
35 of Inquiry?

36 A. That's correct, yes.

37

38 Q. To your knowledge - are you able to agree or
39 disagree - it was provided to the NSW Police Force, who
40 reviewed it and added the numbers in red, or the entries in
41 red that appear next to other digits?

42 A. That's correct, yes, yes.

43

44 Q. And your understanding is the figures and entries in
45 black reflect the position on the tracking file as at
46 6 June 2022?

47 A. Yes, that's correct.

1
2 Q. And the figures and other entries in red reflect
3 information that has been provided - matters that have been
4 added to this document by the NSW Police Force to reflect
5 the tracking file in its current form as at today or
6 yesterday?
7 A. Yes, that's correct, yes.
8
9 THE COMMISSIONER: Do you want to tender that?
10
11 MR EMMETT: Yes. I tender that.
12
13 THE COMMISSIONER: All right. Thank you. What number is
14 that?
15
16 MR EMMETT: Exhibit 54.
17
18 **EXHIBIT #54 THREE-PAGE DOCUMENT TITLED "SPECIAL COMMISSION**
19 **OF INQUIRY INTO LGBTIQ HATE CRIMES, AIDE-MEMOIRE, UHT**
20 **TRACKING FILE"**
21
22 MR EMMETT: Just for the Inquiry's benefit, Commissioner,
23 your Commission has not yet received a tracking file that
24 reflects the red. We may or may not need to, but these
25 figures are the figures that have been provided by the
26 Police Force.
27
28 THE COMMISSIONER: Thank you.
29
30 MR EMMETT: Q. Reviewing that, going back to your
31 statement at paragraph 77 --
32 A. Yes.
33
34 Q. -- there it says that for the period 1970 to 2010,
35 there are 829 matters listed in the UHT tracking file?
36 A. Yes, that's correct.
37
38 Q. Is that figure correct?
39 A. Yes, I believe so, yes.
40
41 Q. Could you help us reconcile, if there were 829 matters
42 during the period 1970 to 2010 on 13 June 2023 --
43 A. Mmm-hmm.
44
45 Q. -- the figure provided by NSW Police as at yesterday
46 for that period is 790?
47 A. Yes. I can't assist, no.

1
2 Q. Do you know what - so do you know what has happened to
3 those 39 files?
4 A. No, I don't, no.
5
6 Q. Where did you get the figure 829 from?
7 A. That was provided to me at the time of making my
8 statement from our tracking file, the person who
9 administers it.
10
11 Q. Am I right in assuming there appears to be an error
12 somewhere?
13 A. There is, yes, yes.
14
15 Q. As you sit in the box, you can't assist us with where
16 the error is?
17 A. No, I can't, and I apologise to the Commission for
18 that.
19
20 Q. We might see if we can get to the bottom of it in due
21 course. The other thing you do in paragraph 77 is provide
22 a breakdown of matters categorised in different ways?
23 A. Yes, that's correct, yes.
24
25 Q. Those figures - I hope I have my arithmetic correct -
26 sum to 829?
27 A. I hope so, yes.
28
29 Q. May we assume, if the correct figure is 790, then
30 those figures may also not quite be right in certain
31 respects?
32 A. That's correct, yes.
33
34 Q. Who administers the tracking file? Is there one
35 person who is responsible for --
36 A. No, no, there's not. The only people who have access
37 to the tracking file are the investigation coordinators, of
38 which there's three of us; the two detective sergeant team
39 leaders within the review team; and the two detective
40 senior constables, together with two of our intelligence
41 staff personnel attached to the Unsolved Homicide Team.
42
43 Q. Do any of those people have the ability to edit the
44 document from time to time?
45 A. Only those persons can. All other persons are "read
46 only" within the squad.
47

1 Q. And is there a single person who is responsible for
2 the upkeep of the file?

3 A. No, there's not, no.

4

5 Q. You describe categories in paragraph 77?

6 A. Yes.

7

8 Q. You refer to various categories - "Undetected"?

9 A. Yes.

10

11 Q. And a matter is "Undetected" if the perpetrator is
12 unknown or the matter has not resulted in charges being
13 brought; is that right?

14 A. That's correct, yes.

15

16 Q. Except that there is an exception if a Coroner has
17 returned an open finding, then it is not recorded as
18 "Undetected"; it is recorded as "Undetermined"; is that
19 right?

20 A. That's right, there's no determination on the cause of
21 death or the fact that it is a homicide or the missing
22 person has been murdered.

23

24 Q. But typically with an open finding --

25 A. Yes.

26

27 Q. -- that means the Coroner has concluded that homicide
28 is a possibility?

29 A. I'd have to - the matters that have come before me -
30 before - in relation to the tracking file, because of my
31 role as a coronial liaison officer, I had to speak with the
32 Coroners in relation to every - the majority of the missing
33 persons that went before the coronial jurisdiction, they
34 would report back as - to us as unsolved homicide, when
35 clearly the matter didn't appear to be homicide. So, as
36 part of that, the recommendations now coming from the
37 Coroner identify that if the matter is to be referred to
38 the Unsolved Homicide Team to be - for the information and
39 as per our protocols, only when there is a suspicion that
40 the person, missing person, has been murdered.

41

42 Q. And when you say "a suspicion", you mean by that that
43 the Coroner may do one of three things: the Coroner may
44 make a finding that a person died by homicide but not be
45 able to identify who it was?

46 A. That's correct.

47

- 1 Q. That's one possibility. Another is that the Coroner
2 may return an open finding in the sense of just not being
3 able to say, not being able to find on the balance of
4 probabilities either that it was or it wasn't a homicide?
5 A. That's correct. Yes, that would still be referred to
6 us.
7
- 8 Q. And then a third category is a category where the
9 Coroner is able to make a positive - is able again on the
10 balance of probabilities to conclude that the cause of
11 death was something other than homicide?
12 A. Yes, that's correct.
13
- 14 Q. And in that third category, matters are not referred
15 to the UHT; is that right?
16 A. No, it would be - it would be on our tracking file.
17 That's where we've identified there that there's ones
18 recorded as not homicide because of medical, misadventure
19 or suicide, et cetera, et cetera. So those matters would
20 still be recorded on our tracking file, but they would be
21 recorded now as not homicide.
22
- 23 Q. I'm just trying to understand - they wouldn't be
24 recorded as "Undetermined"?
25 A. No, they wouldn't, no.
26
- 27 Q. I'm sorry. I'm focusing on the category you describe
28 in paragraph (b).
29 A. Sorry, no.
30
- 31 Q. "Undetermined". Those are matters in respect of which
32 the Coroner has been unable to make a finding one way or
33 the other as to homicide; is that right?
34 A. That's correct, yes.
35
- 36 Q. In the Standard Operating Procedure, it refers to it
37 as "Undeterminable"?
38 A. That's correct, yes.
39
- 40 Q. But those cases are not undeterminable, are they?
41 A. Well, they are - they're still open, they're open
42 matters, so it is undetermined as to whether the person
43 died as a result of a homicide or whether the suspicious
44 missing person has actually been - is actually deceased, so
45 they're still open findings.
46
- 47 Q. Look, this may just be a matter of nomenclature, but

- 1 you appreciate there is a difference between saying
2 a matter is undetermined - that is, nobody has made
3 a decision yet or nobody has made a concluded finding --
4 A. That's correct.
5
6 Q. -- and saying it's undeterminable?
7 A. Well, "Undetermined" is how we use - how we phrase it.
8
9 Q. Well, except it's not, is it, in the Standard
10 Operating Procedures? They say "Undeterminable".
11 A. I think for a variance of a word - I deem that to be
12 the same, sorry.
13
14 Q. And are members of the team educated to understand
15 that even though the Standard Operating Procedure describes
16 the case as "Undeterminable", all that means is the Coroner
17 hasn't made a finding one way or the other?
18 A. That's correct, yes.
19
20 Q. Is there a reason why you use the language of
21 "Undetermined" instead of the language of "Undeterminable"?
22 A. No. It's the same, as far as I'm concerned.
23
24 Q. You have told his Honour that if a matter does come to
25 the Unsolved Homicide Team as "Undeterminable" or
26 "Undetermined", that receives a lower priority?
27 A. A lower priority together with the others that have -
28 obviously the "Undetected" is the higher priority.
29
30 Q. That's the case even if the open finding of the
31 Coroner was in the '70s or early '80s?
32 A. Was in, sorry?
33
34 Q. If there was an open finding by a Coroner in the '70s
35 or early '80s --
36 A. Yes.
37
38 Q. -- the case is still categorised as "Undetermined"?
39 A. That's correct, yes.
40
41 Q. And if a Coroner makes an open finding recently - if
42 a Coroner in the last 10 years has returned an open
43 finding, that is, has said, "I just can't tell one way or
44 another whether this is a homicide" --
45 A. Yes.
46
47 Q. -- the consequence of that finding is that the matter

1 will be deprioritised in the unsolved homicide list?

2 A. I wouldn't say deprioritised. It would be a matter
3 of - it would still be active within the list, and if any
4 fresh information came to the fore, then that
5 prioritisation would raise itself to a level that we could
6 consider reinvestigating the matter.

7

8 Q. But I think you have said in your statement that
9 unless fresh information comes to light about a matter,
10 your team is reviewing all of the cases labelled as
11 "Undetected" before coming to any that are labelled as
12 "Undetermined"?

13 A. That's correct, yes.

14

15 Q. So when a Coroner returns an open finding, are
16 Coroners aware that the consequence of that is that the
17 matter won't be looked at by the Unsolved Homicide Team
18 until after all of the "Undetected" cases have been viewed?

19 A. No, not that I know, no.

20

21 Q. And then the other categories are "Solved"?

22 A. Yes.

23

24 Q. And that means a suspect has been detected and
25 charged, resulting in a successful prosecution?

26 A. That's correct, yes.

27

28 Q. And then there are matters that you identify that
29 there were 24 in this category as at 13 June 2023, where it
30 was possible to say "Not homicide"?

31 A. That's correct, yes.

32

33 Q. Could I ask you to turn now to exhibit 54, that table
34 that I handed to you earlier?

35 A. Yes, yes.

36

37 Q. Could you help us understand, on the first page, is it
38 right that there are - of either 785 cases as at 6 June
39 2022 or 790 cases as at yesterday --

40 A. Yes.

41

42 Q. -- 572 have been triaged?

43 A. That's correct, yes.

44

45 Q. And 213 have not yet been triaged?

46 A. No, with that figure there, it was only identified
47 late yesterday that this actually should be 125. There's

1 no indicator in red, as you notice, from us. There was 125
2 not triaged, because they were either "Solved" or "Not
3 homicide", so they hadn't been taken from that list.
4
5 Q. I see. So the 213, your understanding is that's the
6 total number of cases that are not recorded as having been
7 triaged, but that includes cases that were recorded as "Not
8 homicide" --
9 A. That's correct, yes.
10
11 Q. -- and cases that were recorded as "Solved"?
12 A. Yes, that's correct.
13
14 Q. I understand. The 125 - I just want to make sure
15 I understand. The 125 are the ones that are left, the ones
16 that are not triaged even though they are neither "Solved"
17 nor "Not homicide"?
18 A. That's correct, yes.
19
20 Q. Of that 125, how long have those cases been on the
21 tracking file?
22 A. I can't advise the Commissioner that.
23
24 Q. At least seven years, because the latest was 2016; is
25 that right?
26 A. That's correct, yes.
27
28 Q. And some of them may be decades old?
29 A. No, with that comment of at least seven years --
30
31 Q. The reason I say that is that you said the latest case
32 on file was August 2016.
33 A. Oh, yes, I appreciate that, yes.
34
35 Q. That's the only reason why I say seven years.
36 A. Okay, righto. Okay.
37
38 Q. But some of those cases, that 125 that have never been
39 triaged, may be decades old?
40 A. They could be, yes. You have to understand the
41 resource implications surrounding the triage and the review
42 process.
43
44 Q. Well, when you say I don't understand, that's
45 something I think the Commissioner would like to
46 understand.
47 A. Yes.

1
2 Q. So having volunteered that, tell us what the resource
3 implications are around triage?
4 A. We don't have enough people to do them. And "enough
5 people", I mean people who are qualified to at least review
6 and review - review the - triages nowadays are almost
7 a mini review, where they collect as much data as they can
8 so that they can formulate the triage form to forward on to
9 the respective reviewer.

10
11 So we're already - we're sort of - if I can say it,
12 we're moving a backlog of triage forms into the review area
13 and they're unable to be reviewed because we can't resource
14 them adequately.

15
16 THE COMMISSIONER: Q. Have more resources been
17 requested?

18 A. No.

19
20 MR EMMETT: Q. The object of triage is to assess all
21 the - if I can put it this way, the population of cases in
22 order to prioritise them; is that right?

23 A. That's correct, yes.

24
25 Q. There is a balance to be struck, isn't there, between
26 the level of detail necessary for triage - that is, how
27 closely you review any given case, on the one hand?

28 A. That's correct, yes.

29
30 Q. And the speed with which you can get through them
31 because you need to get through a high volume; is that
32 right?

33 A. That's correct, yes.

34
35 Q. Do you think you have that balance right at the
36 moment?

37 A. Possibly no, no.

38
39 Q. One of the indicators that the balance may not be
40 right is that there are 125 that have never been triaged?

41 A. That's correct, yes.

42
43 Q. And the triage system was introduced in 2018; is that
44 right?

45 A. That's correct, yes.

46
47 Q. So in five years, there are still about 20 per cent of

1 the cases that have never been triaged?

2 A. That's correct. Of those 125, I know there's
3 19 triages ready for me to vet and I haven't had the
4 opportunity to vet yet.

5

6 Q. How many triages does the team get through in a month
7 or in a six-month period?

8 A. I couldn't tell you - well, there's been no triages
9 completed since the start of the Commission assistance from
10 the Unsolved team, because my review team has been
11 assisting Detective Inspector Warren's team in relation to
12 collating data for the Commission.

13

14 Q. You tell the Commissioner, do you, that triaging of
15 cases has stopped?

16 A. Yes.

17

18 Q. For how long?

19 A. Since, I'd say - since June, I would say, last year.

20

21 Q. And what about the 19 that are on your desk, have they
22 been there since June of last year?

23 A. Well, they're still there, but they're for me to vet
24 in relation to what data is available in that document so
25 that I can establish, together with the other inspectors,
26 whether there is enough information there to send it to
27 review or not.

28

29 Q. So those 19 where somebody has completed a review and
30 sent it to you to assess, they've been sitting on your desk
31 for over 12 months?

32 A. That's correct, yes.

33

34 Q. When do you expect to get to them?

35 A. I don't know. I can't - I can't tell the Commission
36 that, because of other inquiries that I'm doing, so --

37

38 THE COMMISSIONER: Q. Have you drawn this to the
39 Commissioner's attention, that your triaging has been
40 hindered by the requests made by this Commission and that
41 you need to triage these matters and you need more
42 resources one way or the other?

43 A. No, I haven't, sir.

44

45 Q. Why not? If the work is that important and you need
46 to respond to what this Commission has been asking you for,
47 why on earth has not Unsolved Homicide drawn this to the

1 Commissioner's attention as a matter requiring urgent
2 attention, or does it not require urgent attention?

3 A. It does require urgent attention.
4

5 Q. Well, then, why hasn't somebody said something to the
6 Commissioner instead of sitting quietly, leaving files
7 collecting dust on the desk?

8 A. If I can reiterate what I said before, we're going
9 from a backlog of - we've still got triage forms that have
10 been completed that we cannot get out even to review
11 because there's so many of them. That's why, in 2008, the
12 investigative arm of Unsolved became an investigative arm,
13 because there was so much of a backlog of case
14 screen/triage forms then, that they were just sort of
15 sitting there. So that's why that - that concept - it's
16 still there. It's - it's just another important aspect of
17 policing in general, sir, is how I see it.
18

19 MR EMMETT: Q. Can I ask you to turn to the next page --
20

21 THE COMMISSIONER: Q. So do I work on the basis that the
22 present Commissioner is entirely unaware of the resources
23 issues that you currently face; is that right?

24 A. That's correct, sir.
25

26 THE COMMISSIONER: Well, that is remarkable, if I may say
27 so. Yes, Mr Emmett.
28

29 MR EMMETT: Q. Can I ask you to turn to the second page
30 of that document, please, Detective Chief Inspector?

31 A. Yes.
32

33 Q. Now, according to these figures, there are 291 cases
34 that have never been reviewed - I should say, where it
35 appears at least that no review has been completed.

36 A. That's correct. With that 291, we have 178 actually
37 not reviewed. However, 19 of that 291 are ongoing
38 investigations as we speak.
39

40 Q. Is that the 19 you mentioned that are sitting on your
41 desk?

42 A. Yes.
43

44 Q. The 291 that were not reviewed, that includes they
45 weren't reviewed - at least they were not recorded as being
46 reviewed in the period 2004 to 2008; is that right?

47 A. I would assume, yes.

1
2 Q. May we assume that the review - the process conducted
3 from 2004 to 2008 was not comprehensive; it did not review
4 all files on the list during that period?
5 A. That's correct, yes.
6
7 Q. When I look at the number on the left, does that look
8 about right to you, that in fact 329 of the 400 were
9 reviewed during that five-year period?
10 A. Yes, that's correct, yes.
11
12 Q. Do you know what happened to the other 71?
13 A. No, I don't.
14
15 Q. Do you know if the - you said that there were 201 that
16 were identified for investigation and what I've been
17 calling the 199 that weren't?
18 A. Yes.
19
20 Q. Do you know whether the 71 that weren't reviewed at
21 all are in one category or the other?
22 A. No, I don't.
23
24 Q. And from 2009 to 2017, only 76 files were reviewed in
25 total; is that right?
26 A. Yes, that's correct, yes.
27
28 Q. Is that also because of - well, that doesn't seem like
29 very many to be reviewed in nine years?
30 A. No, it's possibly not, no. But once again, it would
31 be a matter of - an investigation can be one lever-arch
32 folder or it could be 200 lever-arch folders where you have
33 to go through each of the documents to identify the
34 investigation and what is best as an investigative strategy
35 that can be implemented. So it does take time. It
36 doesn't - there's no set parameters around the time to do
37 the review, because some are quite long and lengthy.
38
39 Q. I know this was before your time, but was the
40 Commissioner of Police during that period, 2009 to 2017,
41 aware that only 76 were reviewed during that time?
42 A. No.
43
44 Q. You are able to say from your knowledge that the
45 Commissioner wasn't aware of that?
46 A. I can only assume, sorry.
47

1 Q. You can only assume that because, to your knowledge,
2 it's not a matter that's likely to have been brought to the
3 Commissioner's attention?
4 A. I don't know.
5
6 Q. Looking at 76 being reviewed during the period from
7 2009 to 2017, is that consistent with having the balance
8 right between getting through a volume and taking too long
9 or taking a certain period of time on each review?
10 A. Yes, I would say so, yes.
11
12 Q. You would say it is consistent with getting the
13 balance right?
14 A. Yes, yes.
15
16 Q. Really? Even though, at the rate of 76 every nine
17 years, it would take decades to get through - to review all
18 of the files or even half the files, wouldn't it?
19 A. That's because we've got so many unsolved matters
20 listed.
21
22 Q. Doesn't that suggest that the balance isn't right
23 between speed and level of detail?
24 A. No, I can't answer that.
25
26 Q. Can you help us - as I look at some of the other
27 figures, over the last 12 months, where it says "Under
28 review", the cases that are under review have gone from 71
29 to 36?
30 A. Yes.
31
32 Q. So 35 cases over the last 12 months have ceased to be
33 under review?
34 A. Yes.
35
36 Q. But only five of them, if that, have ended up in the
37 "Review" column - that is, the number that have been
38 reviewed increased from 494 to 499.
39 A. Yes.
40
41 Q. Can you assist us with what happened to the other 30?
42 A. No, I can't.
43
44 Q. They wouldn't be - if they were under review and then
45 ceased to be under review, that's not the same as being
46 rejected for review, is it?
47 A. It can be.

- 1
2 Q. Well, if you turn to the third page, I'm just looking
3 at what the NSW Police Force has added in red.
4 A. Yes.
5
6 Q. Under the line where it says "Rejected for review", it
7 says 59?
8 A. That's correct, yes.
9
10 Q. And then it says 88 matters were rejected for review,
11 75 rejected without review, 13 were reviewed prior to being
12 rejected. Do you see that?
13 A. That's right, yes.
14
15 Q. So the 75 that we see on the preceding page, those are
16 the ones that have been rejected without review, aren't
17 they - isn't it?
18 A. That's correct, yes.
19
20 Q. So between 6 June 2022 and yesterday, 19 cases were
21 rejected for review without being reviewed?
22 A. Yes, because of the reasons indicated when you see the
23 next column underneath. Of the 75 rejected without review,
24 it identifies the list there as to why.
25
26 Q. And so the reason why is that there may be cases in
27 which an offender was convicted or an offender was charged
28 and at that point it was taken off the list for review?
29 A. That's correct. That's what I say with the tracking
30 file, there are those sort of anomalies where there's
31 multiple information that should be more defined.
32
33 Q. Another one I'm struggling to understand is that
34 between June of last year and yesterday, the number that
35 are recorded as "Not reviewed", with no reason given, has
36 increased by 12.
37 A. Yes. With that, 66 of those matters are listed as
38 "Unresolved". So they're matters that have - a person has
39 been acquitted or there's a warrant in existence for the
40 person identified as the offender.
41
42 Q. But I'm just trying to understand, you would expect to
43 see in a tracking file that reason given, wouldn't you?
44 A. You would, yes.
45
46 Q. Is there any reason why the number of cases with no
47 reason given should increase?

- 1 A. Sorry?
2
- 3 Q. Is there any reason why the number of cases in which
4 no reason is given should increase?
5 A. I think we've redefined, as in we've delved into parts
6 of the tracking file that had incorrectly recorded data on
7 them.
8
- 9 Q. I see.
10 A. Yes.
11
- 12 Q. So there may be cases in which a reason was given, but
13 it was a wrong reason, and so someone's just deleted that
14 reason and left it empty?
15 A. That's correct, yes, that's correct.
16
- 17 Q. And not made a record that that's what's happened?
18 A. No, but I can only assume that that's where these
19 anomalies are made.
20
- 21 Q. Is there someone within the Unsolved Homicide Team who
22 monitors these changes?
23 A. We do have a number, but there is a certain detective
24 sergeant who assists in this process, of the team leaders.
25
- 26 Q. And that's something - is it consistent with that
27 person's instructions to remove a wrong reason and not
28 insert a correct reason?
29 A. That's correct, yes. It would - it's in preparation
30 of the new database, is to try to reconcile these records
31 on the tracking file so that the correct data is put into
32 the new database, what we call the HIMS system.
33
- 34 Q. Can I try to understand this about the process by
35 which cases were screened or reviewed. So I'm interested
36 both in the period from 2004 to 2008 and the period since.
37 Do you understand?
38 A. Yes, yes.
39
- 40 Q. Is it important that the review be by investigators
41 who have no prior commitment to theories that were
42 originally developed?
43 A. That's correct.
44
- 45 Q. That lowers the likelihood of information being made
46 to fit a prevailing investigative hypothesis?
47 A. It's a fresh-eye approach is what we hope to achieve.

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Q. It's important for a person screening or reviewing to be vigilant as to conscious or unconscious bias?

A. Yes.

Q. How are people who screen or review trained or educated to ensure - or to avoid or reduce the risk of conscious or unconscious bias?

A. There is certain training, training procedures that are undertaken by the organisation. There's a module, training module, under PETE, which is a training system, that is related to hate crime, and there is also a customer service face-to-face which brings into account unconscious and conscious bias, that we can only hope that our people have that understanding and that concept, that they understand it and don't utilise it.

Q. And during the period 2004 to 2008, during the initial review, was there a process of supervision in which someone sought to ensure that conscious or unconscious bias wasn't creeping into the process?

A. I'm unable to advise the Inquiry, sorry.

Q. It's important to be vigilant about that, because conscious and unconscious bias can affect the way investigators approach cases?

A. That's correct, yes.

Q. There's a risk that someone with a conscious or unconscious bias might more readily conclude that a death is not suspicious?

A. That's correct.

Q. Conscious or unconscious bias could even affect the speed with which particular police officers conduct the screening, triage or review?

A. That's correct, yes.

Q. They might work harder or faster in relation to a matter where there's a sympathetic victim - where there's a victim that they think of as sympathetic?

A. Yes, that's correct.

Q. And is there any system of management or oversight to combat that?

A. Well, under the present processes that we have from 2018, we have identified a review committee that reviews

1 all of the reviewed material. We have a quality assurance
2 which is undertaken by a senior investigator within the
3 Unsolved Homicide Team. That document, together with the
4 review document, the triage document, is brought before the
5 review committee, which currently consists of all the
6 investigation coordinators, the three of us, the
7 intelligence manager, the commander and team leaders within
8 the Unsolved, various team members from the investigative
9 team and also the review team, to go about and review the
10 actual review document to see what outcomes that can come
11 from that review.

12
13 Q. And how does that committee monitor or control for the
14 risk of conscious or unconscious bias?

15 A. I think within their own perception of and their own
16 ability to identify as to whether there is anything that,
17 "Why wasn't this matter looked at a certain way?", has to
18 be assessed, I think. There's no specific way of doing it.
19 It's just a matter of, we can only hope that people - we
20 train our people to not do that. So it goes across all
21 broad sections of life, not just within the Police Force.

22
23 Q. It's not something that the review committee
24 specifically looks for, then; is that what you mean?

25 A. No, not specifically, but we're aware of it as
26 experienced detectives, experienced investigators, and also
27 managers.

28
29 Q. Can I ask you about the - is it called the Homicide
30 Investigation Management System? Is that the new system
31 that you're introducing?

32 A. That's correct, yes.

33
34 Q. What was that system introduced?

35 A. It was only last year it was. It hasn't been
36 introduced, if I can say, concept of it. Phase 1 is under
37 way and there's a building phase of that data, and that's
38 currently in the process. That is being - the technical
39 side of that system is undertaken within the Unsolved
40 Homicide as to identify this is the data we need on that
41 database to ensure we have the right information.

42
43 Q. So it started last year, did you say?

44 A. Yes.

45
46 Q. Phase 1 has been completed or is nearly completed?

47 A. Is in the process of being completed. I can't tell

1 you it's - and that's trying to back-capture a lot of the
2 data from the tracking file to make sure it's correct.

3

4 Q. And what is the system? Is it another spreadsheet
5 or is it something --

6 A. No, it's a database where - that we can rule out some
7 of these anomalies that we've identified here in evidence
8 in relation to different aspects of an investigation,
9 whether it's solved, unsolved or not a homicide, that sort
10 of concept. It is - the system is defined that when the
11 homicide comes into - whether it - I've called it a fresh
12 homicide, comes into our organisation, we then put it on
13 this HIMS system and we can monitor it all the way, for
14 want of a better word, from cradle to grave, as to
15 whether - when it starts, we know all the concept of the
16 investigation.

17

18 Q. Thank you, Chief Inspector. I was asking you - you
19 told the Commissioner about the review process or the
20 management and oversight under the review committee since
21 2018?

22 A. Yes.

23

24 Q. Was there any similar form of supervision or oversight
25 before 2018, to your knowledge?

26 A. No, not that I - not that I know of, no.

27

28 Q. Was there any other kind of supervision or oversight
29 of the individual screening or reviews that were conducted,
30 to your knowledge, before 2018?

31 A. I can only - prior to me being transferred into the
32 Unsolved Homicide Team, there were two investigation
33 coordinators at that stage attached to the Unsolved
34 Homicide Team, where they would assess the reviews. Those
35 reviews would then go up into the investigation support
36 within State Crime Command, who would then allocate people
37 to undertake those reviews and/or investigations.

38

39 Q. But in terms of quality control of the screening
40 process, who managed or supervised that?

41 A. I can only assume the investigation coordinators
42 would.

43

44 Q. But if it existed, you don't --

45 A. I don't have first-hand knowledge, no.

46

47 Q. What about today in relation to the triage process?

1 The review committee looks at a review after a matter has
2 been reviewed, is that right, after a review has been
3 completed?

4 A. That's correct, yes.

5

6 Q. What about that first step of the triage? What
7 supervision or oversight is there of the triage step since
8 2018?

9 A. Well, we look at the triage document itself. That's
10 where the team leaders and myself are able to sit down with
11 whoever is conducting the triage to identify what
12 information is there and what information we can obtain.
13 As it is, it's a significant snapshot of how that
14 investigation was - the information obtained from the
15 investigation, so we can identify if there are any
16 investigative opportunities, and we can then decide, okay,
17 there should be something here; there are exhibits
18 available; there were suspects. Some reviews that we
19 triage, we identify down the track that the offender is now
20 deceased, so we don't continue with that triage. So you
21 have those checking mechanisms before it's actually sent in
22 to the - out for review.

23

24 Q. So the review, is that done - is that a formal process
25 by the review committee as well?

26 A. Yes, that - no, no, no, the review committee is
27 separate. This is where the triage document comes to
28 myself, and I will sit down with the other investigation
29 coordinators. This is where we have, "What's your
30 thoughts?" Sometimes we see that the person conducting the
31 triage may have said, "I don't think it should go out";
32 however, we've decided we think it should go out for
33 review, and then we send it out for review. And we now
34 manage that. It wasn't managed by the Unsolved Homicide
35 Team back in 2018. It was managed by our Crime Operations
36 Section at State Crime Command, where the triage would go
37 up to that section, they would then send that - sorry, they
38 would then send that review to the respective commands for
39 the other personnel to actually conduct a review.

40

41 Q. And reviews - well, before we come to a review,
42 a triage can take weeks or months to complete?

43 A. Yes, yes - sorry, especially now, if we're - because
44 we're now looking at going back in time, so there's - even
45 though there might be a lot less records around, it's
46 a matter of trying to identify where those records may be.

47

- 1 Q. So the triage can take weeks or months?
2 A. It can, yes.
3
4 Q. When it's completed, it then comes to you and sits on
5 your desk until you review it?
6 A. Yes, until --
7
8 Q. How long does that typically take?
9 A. Oh, that's hard to say, because there's so many
10 variances.
11
12 Q. We know that there are 19 that have been sitting there
13 for 12 months?
14 A. Yes, yes, yes.
15
16 Q. If the triage document is reviewed - is assessed and
17 a decision is made that the matter should be reviewed, that
18 review can take, what, months or years?
19 A. Yes, it can. Well, initially, in 2018, there was
20 a time frame given of three months for the review to be
21 undertaken. However, when we resumed control of those
22 reviews, we identified that some matters had been out there
23 for three years and due to obviously competing priorities
24 within that certain command, they were either only
25 partially completed or not yet completed.
26
27 Q. And so there was a period - in 2021, the Unsolved
28 Homicide Team team took back all uncompleted reviews under
29 their own control; is that right?
30 A. That's correct, yes.
31
32 Q. And during that three-year period, there were
33 a significant number of matters that were referred to be
34 reviewed, and that review simply didn't happen?
35 A. They hadn't been completed and --
36
37 Q. And when they came back to the Unsolved Homicide Team,
38 if the Unsolved Homicide Team starts to look at it, they
39 may have to start again; is that right?
40 A. Yes, yes. Yes.
41
42 Q. At the moment, is this the case, that the review
43 committee receives five to 10 reviews every three to six
44 months?
45 A. Approximately, yes.
46
47 Q. Is it more likely to be fewer reviews than that?

- 1 A. Yes, there could be, yes.
2
- 3 Q. Not likely to be more reviews than that in a three- to
4 six-month period?
5 A. No, no.
6
- 7 Q. So that's fewer than 20 in a year; is that right?
8 A. Yes.
9
- 10 Q. So of the 442 "Undetected" cases, it will take 22
11 years to review all of them, on that average?
12 A. Yes, it could do.
13
- 14 Q. Do you still think you have the balance right between
15 the speed with which these steps are conducted and the
16 inquiries that are being made?
17 A. In a perfect world, no.
18
- 19 Q. I'm sorry to go back to the HIM System, but am
20 I right, nothing has been added to the tracking file since
21 2016 because matters have been --
22 A. No, no, no. Matters have been - the tracking file is
23 a live document. So ever since even 2022, when you receive
24 that data, there's matters being added to the tracking
25 file. That's the only mechanism that we have at present --
26
- 27 Q. Maybe we're at cross-purposes. When I talk about
28 a matter, I mean a case, a particular death. Are deaths
29 being added to the tracking file, deaths or missing
30 persons?
31 A. That's correct, yes.
32
- 33 Q. But only - well, does that mean there are more recent
34 cases than August 2016 that are currently on the tracking
35 file?
36 A. There could be. I would have to check. I don't want
37 to mislead the Inquiry.
38
- 39 Q. But at the moment, as deaths or missing persons come
40 to the attention of the police, you're adding them in two
41 places, are you - first to the tracking file, and second to
42 the nascent HIM System?
43 A. Well, that is still in progress, so that data hasn't
44 been completely input into that system yet. That's still
45 a work in progress.
46
- 47 Q. Are you aware of academic commentary recommending that

1 cold cases should be reviewed ideally every two years?

2 A. No.

3

4 Q. Such an approach would not be consistent - I'm sorry,
5 you were about to say something?

6 A. No, we use a concept of five years.

7

8 Q. So your view, your attitude, is that an unsolved
9 matter ought to be reviewed every five years?

10 A. Hopefully, yes. That would be the optimum if you
11 could, but only providing if there's new information or new
12 technology surrounding any exhibits, et cetera, or new
13 information such as witnesses or suspects. However, like
14 I said, probably in an ideal world you could do it every
15 five years, but we don't have the resources to do it every
16 five years.

17

18 Q. But one reason to do it every five years is
19 developments in technology, isn't it?

20 A. That's correct, yes.

21

22 Q. In the last five years since the 2018 system was
23 introduced, during that period, some more may have been
24 reviewed, but there are still 125 that have not been
25 triaged and 291 that have not been reviewed?

26 A. Some may not have exhibits in that number. So for
27 forensic - sorry, for forensic technology to take effect,
28 there'd have to be exhibits within those.

29

30 Q. Do you know how many in that number do have exhibits
31 that haven't been examined?

32 A. No, I don't. I'm just using an example of the number
33 you're giving me, that I can assume that that may be the
34 case. I don't know. I don't know all matters, I'm sorry.

35

36 Q. And that number of cases that have been neither
37 triaged nor reviewed, they may include cases from the '70s
38 and '80s?

39 A. They could do, yes.

40

41 Q. And if those cases have any exhibits, there's every
42 reason to think that there's more to be done in relation to
43 them?

44 A. Yes, there would be, yes.

45

46 Q. And a failure to review them within five years means
47 that nobody knows, in relation to those cases, whether

1 there are simple steps that can be taken on current
2 forensic technology?

3 A. Well, we're now - the concept back in 2018 was cases
4 from 2014 backwards. But now that we've taken over, we're
5 now going to the ones that are old cases, to advise, to see
6 whether - now, it's obviously because of the tyranny of
7 time and exhibits, et cetera, et cetera, that we're now
8 looking at those matters to try to identify if there's any
9 investigative techniques or forensic evidence that can be
10 obtained.

11

12 Q. One matter that may weigh on this Commissioner's mind,
13 or both Commissioners' minds, is that as at 2018 the
14 Unsolved Homicide Team had been in place for 14 years?

15 A. Yes.

16

17 Q. So that's nearly three times the cycle of five years?

18 A. Yes.

19

20 Q. And in that time, fewer than 400 - I'm sorry, slightly
21 more than 400, certainly fewer than 500, had been reviewed
22 at all?

23 A. Can I have that figure again, sorry?

24

25 Q. I'm just adding the two figures, 329 plus 76.

26 A. Yes, yes.

27

28 Q. Just a little over 400?

29 A. Yes.

30

31 Q. Which means --

32 A. But, sorry, with that 494, the ones that have been
33 reviewed, we have established the figure now is 499, and of
34 that, 403 have been reviewed once and 96 have been reviewed
35 more than once.

36

37 Q. Yes. So what I'm interested in is that during the
38 first 14 years of the life of the Unsolved Homicide Team,
39 around 400 cases were reviewed --

40 A. Yes.

41

42 Q. -- out of how many, 700, 800?

43 A. Approximately, yes.

44

45 Q. And of those that haven't been reviewed, you don't
46 know how many might well have exhibits - might predate DNA
47 and have exhibits ripe for examination for DNA?

1 A. That's correct, yes.
2
3 Q. And you don't know when you will get to those matters?
4 A. No, I don't know. Like I said, we're now working from
5 1977 forward to see if we can identify any exhibits in
6 those.
7
8 Q. From 1977 forward?
9 A. 1970.
10
11 Q. 1970?
12 A. Did I say '77? I apologise. That's when I joined.
13
14 Q. I may have misheard.
15 A. I meant '70.
16
17 Q. And when you joined the Unsolved Homicide Team in
18 2017, were you already aware of difficulties in locating
19 exhibits that were appreciated within that team?
20 A. Yes.
21
22 Q. Was that notorious within the Unsolved Homicide Team?
23 A. That's a rather strong word, notorious. I would say
24 it was known.
25
26 Q. Well known?
27 A. Yes.
28
29 Q. Also well known in relation to documentary files, that
30 those files may not be complete in relation to cases --
31 A. Yes, that's correct, yes.
32
33 Q. And those files may be stored in any number - in at
34 least a number of different places?
35 A. That is correct.
36
37 Q. Can I ask that you be shown a memorandum written by
38 Detective Chief Inspector Lehmann in August 2016?
39 A. Yes.
40
41 Q. The reference is [NPL.0100.0018.0001]. It looks like
42 you may have brought a copy with you?
43 A. I have a copy of that, yes.
44
45 Q. I infer from that that you were aware of this document
46 before you got in the box?
47 A. I was aware of this document when I took over the

1 Unsolved Homicide Team, the review team.
2
3 Q. When you took over the review team, someone showed you
4 this document, did they?
5 A. Yes, I was aware because that was part of - Mr Lehmann
6 had left the organisation by then, and I had taken his
7 role. He was looking after the review team plus the
8 investigation team, so I took over his role.
9
10 Q. When in 2017 was that?
11 A. Sorry?
12
13 Q. When in 2017 was that?
14 A. Oh, I can't say. I don't recall.
15
16 Q. Mid 2017, early 2017, late 2017?
17 A. Honestly, I don't know.
18
19 Q. When you assumed your role, did you have a handover
20 with Mr Lehmann?
21 A. No, he had already left the organisation.
22
23 Q. But someone provided you this document as part of your
24 induction or in the course of your commencing?
25 A. Yes, plus my briefing with the review team about
26 what - the current status of what they were doing. They
27 were in the process of collecting these exhibits.
28
29 Q. As a result, when you saw this document, you were
30 aware of the fact that at least as at August 2016, five
31 problems had been identified?
32 A. Yes.
33
34 Q. Those problems included that it was difficult to
35 locate exhibits because they were lost, destroyed or
36 misplaced?
37 A. Yes.
38
39 Q. And that same problem - were you made aware, when you
40 joined, that that same problem applied to some
41 investigative files or other documentary records?
42 A. Yes, briefs of evidence, et cetera, yes.
43
44 Q. Indeed, that's problem number five identified, or it's
45 part of problem number 5 - I'm sorry, problem number 4?
46 A. Yes, number 4, I believe, yes.
47

- 1 Q. And also that there were problems when exhibits were
2 located, because they were not labelled or improperly
3 labelled or improperly secured or mixed with other exhibits
4 from separate cases?
5 A. That's correct, yes.
6
- 7 Q. And you were aware of what is described as problem
8 number 5, which is that exhibits, even if they weren't
9 located on a first search, they were known to exist and --
10 A. Yes.
11
- 12 Q. When you joined the team in 2017, was that problem -
13 were all of those problems still problems with the cases on
14 file?
15 A. Yes.
16
- 17 Q. And they were well-known problems at that time?
18 A. Yes, it was in the middle of - this project was
19 undertaken to obtain forensic-related exhibits.
20
- 21 Q. When you say "this project", do you mean the
22 reconciliation plan?
23 A. Yes.
24
- 25 Q. Let's turn to that just to make sure we're all on the
26 same --
27 A. Yes, sorry.
28
- 29 Q. So the problems were identified, being the problems
30 we've been talking about?
31 A. That's correct, yes.
32
- 33 Q. And the reconciliation plan, which is referred to on
34 page 4 of this document, that's the project that you're
35 about to tell the Commissioner about; is that right?
36 A. That's correct, that's correct. That's only in
37 relation to outstanding exhibits that - because the review
38 team had identified - the Unsolved Homicide Team had
39 identified there were a number of exhibits still out there,
40 therefore the reconciliation plan was to get all exhibits
41 for forensic analysis to be back into one place, which is
42 the Metropolitan Exhibit and Property Centre.
43
- 44 Q. That project was under way, was it, when you joined
45 the team?
46 A. Yes.
47

1 Q. Has that project been completed?
2 A. I'm unable to tell the Commissioner that --
3
4 Q. Do you - I'm sorry.
5 A. -- for the reason being we are beholden to whatever -
6 we sent the forms out to the respective commands, which
7 were local area commands I think at that stage, and also
8 Crime Scene, that we're beholden to what information they
9 provide back to us. It wasn't a matter of the Unsolved
10 team or the review team to go to every police station to
11 try to locate these exhibits. So there could still be
12 exhibits there; I don't know.
13
14 Q. But you said that there was a project that was
15 ongoing?
16 A. Mmm-hmm.
17
18 Q. Have you received written updates as to the progress
19 of that project?
20 A. No, I haven't, no.
21
22 Q. You haven't received any written update as to the
23 progress of that project since you commenced?
24 A. That's correct, yes.
25
26 Q. Have you asked for --
27
28 THE COMMISSIONER: Q. Are you the person who would be
29 expected to receive the updates?
30 A. Yes, sir, I would be.
31
32 Q. Have you asked for them?
33 A. No, sir.
34
35 Q. Why not?
36 A. I can't give the Commissioner a reason why not.
37
38 Q. I'm finding it very difficult to follow this. You
39 knew that the requests were made, and you are waiting,
40 I imagine, for important information, and you tell me that
41 you have not made any requests in relation to any of the
42 outstanding inquiries as to see where they're up to and
43 when they might get around to doing it?
44 A. No, as I said, we're beholden to whatever information
45 is --
46
47 Q. When you say "beholden", do you mean - I don't want to

1 be driven by semantics. When you say "beholden", do you
2 mean you are waiting, is that what you mean, or do you mean
3 that you will only get a response if they choose to give
4 you one?
5 A. That's correct.
6
7 Q. And you are not in a position of authority or you
8 can't invoke anyone in authority to require a response?
9 A. Yes, I can, and I haven't undertaken.
10
11 Q. Forgive me, I may have misheard you. You have not
12 done that?
13 A. No, I haven't done that, sir.
14
15 Q. Why not?
16 A. I can't give the Commissioner an answer as to why
17 I haven't.
18
19 Q. Is the person that you would look to in order to get
20 that authority Mr Doherty?
21 A. Yes, it would be, yes.
22
23 Q. Have you raised with him the problems you are now
24 discussing with me?
25 A. No, I haven't, no.
26
27 THE COMMISSIONER: Okay.
28
29 MR EMMETT: Q. This project you said related to
30 exhibits?
31 A. That's correct.
32
33 Q. You were aware, weren't you, that the problems applied
34 equally to documentary records?
35 A. That was one of the issues, yes.
36
37 Q. And there is no similar project that has yet been
38 undertaken in relation to documentary records; is that
39 right?
40 A. As far as I know, no.
41
42 Q. And you are the person who would know about that?
43 A. Yes.
44
45 Q. When you saw this document, did you observe that
46 Detective Superintendent Willing, as Commander of the
47 Homicide Squad, made a note that said - and I hope I'm

1 going to read this correctly - "Forwarded for the
2 information of the Director, SCD and Commander, SCC". This
3 is on page 5?

4 A. Yes. Yes.

5
6 Q. What do you understand to be - where you see
7 a reference to "Director, SCD and Commander, SCC", do you
8 understand what that is?

9 A. Yes, that's the Commander of State Crime Command and
10 obviously the Director that we had in place at State Crime
11 Command, who was above the respective commands.

12
13 Q. And then the note appears to say, "I have provided" --

14
15 THE COMMISSIONER: I'm sorry to interrupt.

16
17 Q. At the date of this memorandum, who filled each of
18 those roles?

19 A. Well, Detective Chief Inspector John Kerlatec was the
20 Director.

21
22 Q. Yes.

23 A. And I can't be sure - it could have been Assistant
24 Commissioner Lanyon. I don't know.

25
26 THE COMMISSIONER: All right. Thank you. Sorry,
27 Mr Emmett.

28
29 MR EMMETT: Q. It then goes on to say:

30
31 *I have provided approval to the UHT in*
32 *relation to the proposal outlined by*
33 *DCI Lehmann, but the contents of this*
34 *report outline systemic risks for the*
35 *NSW Police Force similar to those being*
36 *experienced by other jurisdictions,*
37 *(ie WAPOL) ...*

38
39 I assume that's WA Police?

40 A. Yes.

41
42 Q. And it says:

43
44 *For further discussion.*

45
46 Are you aware what further discussion there was in relation
47 to this note?

- 1 A. No.
2
3 Q. Have you seen any written record of further discussion
4 in relation to this matter?
5 A. No.
6
7 Q. The Director, SCD and the Commander of the State Crime
8 Command appear to have approved or supported the proposal?
9 A. Yes, sir.
10
11 Q. To your knowledge, the proposal was only implemented
12 as a project in relation to exhibits, not in relation to
13 documents?
14 A. That's correct, yes. It wasn't until October of that
15 year that I think the first memorandum went out to the
16 respective commands to undertake that search for any
17 exhibits.
18
19 Q. So a memorandum went out in October of 2016 to
20 undertake a search for exhibits?
21 A. I believe it was October, yes.
22
23 THE COMMISSIONER: Q. Are they the requests or some of
24 the requests that are still outstanding?
25 A. Yes, they are, outstanding in that they hadn't - if
26 anybody hadn't identified any exhibits, then there was
27 nothing to return to us. I am of that belief.
28
29 Q. No, but - we're at cross-purposes, I think. Is it
30 your understanding that everyone who was canvassed has
31 responded one way or another?
32 A. No.
33
34 Q. So there are still outstanding requests from October
35 2016?
36 A. That's correct, yes.
37
38 Q. And I don't want to guess the answer to the question,
39 but is the answer to the question that they haven't been
40 followed up?
41 A. They were followed up in 2017 by Detective Chief
42 Inspector Chris Olen. He sent another what we call
43 a "green", which is an intercommand form, out to the
44 respective commands.
45
46 Q. How did that go?
47 A. We have approximately 80 per cent replies to all of

1 those requests that went out.
2
3 Q. Some of those responses would have said things like,
4 "We've got them all", "We don't know where they are",
5 "We've got some"?
6 A. I haven't - I haven't seen the replies, sir.
7
8 THE COMMISSIONER: I see.
9
10 MR EMMETT: Q. Where are the replies kept?
11 A. I don't know. I can - they would be on what we call
12 our Records Management System. If that can be
13 interrogated, I would be able to identify --
14
15 Q. Is someone --
16
17 THE COMMISSIONER: I'm sorry, Mr Emmett.
18
19 Q. But at least 20 per cent at that stage weren't
20 responded to?
21 A. Yes.
22
23 Q. And is that 20 per cent or some percentage still
24 outstanding?
25 A. I don't know. I'm unable to advise the Commission.
26
27 MR EMMETT: Q. Is there someone responsible for
28 collating the replies and reviewing them?
29 A. Well, I suppose the responsibility now rests with me.
30
31 Q. But you haven't conducted that exercise?
32 A. No, no.
33
34 Q. When you started, do you know how many responses had
35 been received as at --
36 A. No.
37
38 Q. -- the time you started? Have you taken any steps
39 towards reviewing the responses that have been received?
40 A. No, I haven't, no.
41
42 THE COMMISSIONER: Q. And prior to the commencement of
43 this Commission of Inquiry, had you sought any additional
44 resources for the purposes of pursuing responses?
45 A. No, I haven't, sir.
46
47 THE COMMISSIONER: Thank you.

1
2 MR EMMETT: Q. Can I ask that you be shown another
3 document. This is an article that was published in the
4 Daily Telegraph on 8 October 2017, [SC0I.84313_0001].
5 A. Yes.
6
7 Q. This is an article that was published referring to
8 50 unsolved homicides that have evidence that's missing or
9 discarded?
10 A. Yes.
11
12 Q. Have you seen this article before?
13 A. No.
14
15 Q. Was this before or after you became - before or after
16 you joined the Unsolved Homicide Team?
17 A. I'm unable to identify. I notice it's dated 8 October
18 2017, but I'm unable to advise if I was at the Unsolved at
19 that stage.
20
21 Q. Did you overlap with Detective Chief Inspector Olen in
22 the team?
23 A. Yes, Mr Olen was one of the investigation
24 coordinators, together with Mr Leggat, of the investigative
25 teams.
26
27 Q. Is this the sort of publication that would have come
28 to your attention, had you joined the team by this stage?
29 A. Yes, yes. I - to say I don't know - I know of it,
30 but - because of my involvement in other aspects of the
31 Homicide Victim Support Group, et cetera, in relation to
32 some of these matters that are referred to.
33
34 Q. If you turn to page 4 of that document - they're not
35 numbered, so you will need to count them over, but the
36 fourth page?
37 A. Yes.
38
39 Q. It starts "The unfortunate consequence"?
40 A. Yes.
41
42 Q. And there is a reference to Detective Chief Inspector
43 Olen making certain statements about that?
44 A. Yes.
45
46 Q. So this was a matter that the Unsolved Homicide Team,
47 may we take it, was alive to in October of 2017?

1 A. Yes.

2

3 Q. Can I ask you to turn two pages over. There is
4 a reference that says:

5

6 *We've managed to locate a lot of exhibits.*

7

8 A. Yes.

9

10 Q. To your understanding, was that part of the project
11 that you have been talking about?

12 A. Yes.

13

14 Q. And it was known at that time, was it, that some of
15 the exhibits were in the bowels of the police stations,
16 attics of retired investigators, or hiding in plain sight,
17 just incorrectly marked?

18 A. That's correct.

19

20 Q. And that there were others that were - where it was
21 discovered that they had been destroyed 30 years ago?

22 A. That's correct, yes.

23

24 Q. There is also a reference to storage areas cluttered
25 with boxes and boxes of exhibits; without knowing the
26 potential of DNA and other technology, things were
27 destroyed?

28 A. Yes, that's correct.

29

30 Q. And that exhibits weren't returned from trials and
31 inquests or when sent to other agencies for analysis and
32 examination?

33 A. Yes, that's correct.

34

35 Q. And when you joined the Unsolved Homicide Team,
36 whether it was before or after the publication of this
37 article, were you aware that these matters were not only
38 well known within the Unsolved Homicide Team but were
39 a matter of public comment?

40 A. Yes, yes, definitely public comment, and it was well
41 known that that was the whole idea behind the project, is
42 to try to (a) get the exhibits, and obviously with the
43 review team, was to collate all the information we could so
44 that we can put it in one place.

45

46 THE COMMISSIONER: Q. Has it ever occurred to anyone in
47 the NSW Police Force that a specially funded project needs

1 urgently to take place by way of audit of all unsolved
2 matters to find out where the records are, such that do
3 exist, whether exhibits are sitting in boxes somewhere
4 untested, which may be? These are all people's lives and
5 people's families' lives?

6 A. I appreciate that, your Honour.

7
8 Q. Has anyone, as far as you know, ever put to the
9 Commissioner, the current one or any prior Commissioner,
10 that some specially funded project is urgently needed to
11 get a grip on all of these unsolved cases?

12 A. I'm unaware, sir.

13
14 THE COMMISSIONER: Okay.

15
16 MR EMMETT: Q. Physical exhibits are of course
17 critically important to unsolved homicides?

18 A. Of course they are, yes.

19
20 Q. The loss, contamination and deterioration of physical
21 exhibits is a major obstacle to the success of any
22 investigation?

23 A. Yes, that's correct.

24
25 Q. And we've known for at least two decades now how
26 transformative scientific advances can be to forensic
27 analysis?

28 A. That's correct, yes.

29
30 Q. We've known that for many more than two decades?

31 A. Mmm.

32
33 Q. To your knowledge, having been in the Force in
34 the '70s an '80s, while people might not have been aware of
35 DNA, investigators and forensic investigators were aware of
36 the transformative power of scientific advancement?

37 A. Yes, you're aware of it, but back when I joined, it
38 was mainly fingerprints. There was no concept of
39 transference of DNA or the like.

40
41 Q. There was a concept of transference, wasn't there -
42 that is, of a perpetrator leaving signs --

43 A. Yes.

44
45 Q. -- that could be picked up by physical evidence?

46 A. Yes.

47

1 Q. And it was appreciated that technology had advanced
2 and was likely to continue to advance to improve the kinds
3 of things that could be picked up?
4 A. Yes.
5
6 Q. That was well known in the '70s, wasn't it?
7 A. Yes.
8
9 Q. And it was well known in --
10 A. It was well known in life, not just within policing.
11
12 Q. And it was well known in the '70s that that was a good
13 reason to keep physical exhibits?
14 A. It would have been, yes.
15
16 Q. Well, you are able to say from personal experience,
17 aren't you?
18 A. Yes.
19
20 Q. It was well known in the '70s, wasn't it?
21 A. It was known to keep - retain the exhibits, especially
22 in homicide related matters and also sexual assault
23 matters.
24
25 Q. I want to turn next to some of the particular
26 screening or triage documents in relation to some of the
27 matters into which the Commission is inquiring. For that
28 purpose, can I ask that you be provided with volume 11 of
29 the tender bundle.
30 A. Thank you.
31
32 Q. You have a folder hopefully that begins with tab 19,
33 [SCOI.03130_0001]
34 A. Yes.
35
36 Q. That is a triage form in relation to Mr William
37 Allen --
38 A. Yes.
39
40 Q. -- who died of a head injury sustained on 28 to
41 29 December 1988?
42 A. Yes.
43
44 Q. I should ask, are you familiar with this case?
45 A. No, not myself personally, no. 1988, I was stationed
46 down in the Illawarra area.
47

1 Q. What about in your capacity as a member of the
2 Unsolved Homicide Team, are you familiar with it as an
3 unsolved homicide --
4 A. Yes, the name rings a bell, yes.
5
6 Q. But you haven't had occasion to look at this case as
7 part of your role in the Unsolved Homicide Team?
8 A. No, not me personally, no.
9
10 Q. When I turn to page 12 - just to assist you, I'm going
11 from the numbers in the top right-hand corner. They
12 normally overlap with the substantive page numbers, but it
13 is _0012.
14 A. Yes.
15
16 Q. And can I just let you know, when looking at this
17 file, apart from the deceased person, could you take care
18 not to read onto the record other names, because they may
19 be the subject of a non-publication order. Do you
20 understand?
21 A. Yes, I understand.
22
23 Q. This matter, it appears, was assessed - the triage was
24 completed and it was recommended for review on 24 August
25 2021?
26 A. Yes.
27
28 Q. And there is no record of any review having been
29 undertaken that has been provided to this Inquiry.
30 A. No, not that I - I don't know, no.
31
32 Q. If a matter was triaged and recommended for review
33 in August 2021 and proceeded to review after that time, so
34 in the last two years --
35 A. Yes.
36
37 Q. -- would you be aware of the fact that the review had
38 commenced?
39 A. Yes, I would be, provided I was given the data that
40 the review actually went out.
41
42 Q. In other words, it's a matter that you would be made
43 aware of but, as you sit there in the box, you might not
44 remember. Is that what you mean?
45 A. That's correct, yes.
46
47 THE COMMISSIONER: Q. Does it also mean that

1 a recommendation for review may have occurred but the
2 review has not been activated?

3 A. That's correct, yes.
4

5 MR EMMETT: Q. Sitting in the box, you have no idea
6 whether this review was commenced?

7 A. No, no.
8

9 Q. The case of Mr Allen was not reviewed - according to
10 the tracking file, was not reviewed at any time from 2004
11 to 2008.

12 A. I accept that.
13

14 Q. It was obviously a homicide.

15 A. Yes.
16

17 Q. It would be very odd, wouldn't it, if it wasn't on the
18 tracking file from the start in 2004?

19 A. It would be - yes, it would be odd, for want of
20 a better word. It could have been missed. I don't know.
21

22 Q. The reason I ask is you have said that there's no
23 record of what the 366 cases were that were identified in
24 2004?

25 A. That's correct. This could be one, yes.
26

27 Q. From your knowledge of the system, this is highly
28 likely to be one of those 366, isn't it?

29 A. Yes.
30

31 Q. But, according to the tracking file, nevertheless, it
32 wasn't reviewed between 2004 and 2008. Does that surprise
33 you?

34 A. I am unsure of that because I don't know whether there
35 was a review conducted from 2008 up to this report written
36 by the senior constable in 2021.
37

38 Q. I want you to assume that the tracking file records no
39 earlier review.

40 A. Okay.
41

42 Q. On that assumption, would it be correct to assume that
43 this matter was not reviewed between 2004 and 2020?

44 A. I would assume that, yes.
45

46 Q. What's the typical time frame between triage and
47 review? This having been recommended to proceed to

1 a review in August 2021, how long would it ordinarily take
2 to go from that stage to a review commencing?

3 A. From 2021?
4

5 Q. Noting that the recommendation, on 24 August 2021, was
6 "Proceed to review" --

7 A. Yes.
8

9 Q. -- how long does it normally take from the time such
10 a document is completed to the time a review commences?

11 A. It's - I suppose it's hard to say, because it's a -
12 there is a bit of time variance. I can't recall when in
13 2021 that we took back the process of these reviews. So,
14 prior to that, we had the other resources out there at
15 other commands, but I don't know whether this was one of
16 those ones that actually went out to get reviewed.
17

18 Q. But it was only triaged - the triage was only
19 completed in August 2021?

20 A. Yes, yes.
21

22 Q. So if the step of calling all matters, unreviewed
23 matters, back into the Unsolved Homicide Team had not
24 occurred by that date, it occurred within a couple of
25 months of that date?

26 A. It could have yes.
27

28 Q. Or within a few months of that date?

29 A. I'd say so, yes.
30

31 Q. And could you help us understand, it says in item 12:

32
33 *Warning - under no circumstances are*
34 *witnesses to be contacted as part of the*
35 *review process.*
36

37 A. Yes.
38

39 Q. Now, you have given evidence that that doesn't apply
40 to people in the Unsolved Homicide Team; is that correct?

41 A. That's correct, yes. The reason behind that concept
42 was that when these matters - when this triage form was
43 formulated in 2018, the reviewer was told just to review
44 the information that they could obtain and not go
45 reinvestigate the matter. That wasn't their role. It was
46 a matter of coming back to see whether a reinvestigation
47 should be undertaken.

1
2 Now, with the expertise of our personnel at the
3 Unsolved Homicide Team, if it's deemed during the review
4 process, that there's a possibility of contacting
5 a witness, et cetera, then that will be assessed by the
6 investigation coordinator as to whether that will occur.

7
8 It's normally unlikely, but that sort of restriction
9 is put there to make sure nothing is contaminated within
10 the review.

11
12 Q. Because the 2022 Standard Operating Procedure also
13 says "No witness is to be contacted as part of the review"?

14 A. Yes, yes, it does.

15
16 Q. That's after all matters have been brought back within
17 the Unsolved Homicide Team; is that correct?

18 A. Yes.

19
20 Q. So the practice within the Unsolved Homicide Team is
21 not consistent with the Standard Operating Procedure; is
22 that correct?

23 A. It is if you are talking literally, yes.

24
25 Q. Well, how else should we understand the Standard
26 Operating Procedure?

27 A. Well, I'm saying - I'm agreeing with you, sir.

28
29 Q. Can I ask you about some other matters that, according
30 to the tracking file, there's no record of them being
31 reviewed during the period 2004 to 2008, so I'm interested
32 in that period?

33 A. Yes.

34
35 Q. Because that was the period, as I understand it, in
36 which there was an initial review that led to 201 cases
37 being identified --

38 A. Yes.

39
40 Q. -- for review. Among those that appear not to have
41 been reviewed during that period is the case of
42 Robert Malcolm, who was killed in 1992.

43 A. Yes.

44
45 Q. You may or may not be familiar with Mr Malcolm. It
46 was a case --

47 A. No.

1
2 Q. -- that was obviously homicide.
3 A. Sorry?
4
5 Q. I want you to take it from me that it was obviously
6 a homicide; he was beaten to death.
7 A. I accept that, yes.
8
9 Q. Again, it would be odd if that case were not on the
10 list of unsolved homicides from the start?
11 A. I'm sorry?
12
13 Q. It would be very odd if that case were not on the list
14 of unsolved homicides from the start?
15 A. It should be, yes.
16
17 Q. Now, that is a case in which three people were charged
18 and were discharged at committal.
19 A. Yes.
20
21 Q. Knowing that much, how would the matter be classified
22 on the tracking file?
23 A. It would be "Unresolved", in that persons have been
24 charged and they have been acquitted, except for
25 self-defence or mental health aspects, or where there's
26 a warrant issued. So it would sit in that "Unresolved"
27 area.
28
29 Q. Well, they weren't acquitted, they were discharged at
30 committal.
31 A. Which - I can see, yep. It could still be current,
32 then, if that's the case. If they were discharged, there
33 obviously wasn't enough evidence to convict, so therefore,
34 it'd still be in the "Undetected" realm.
35
36 Q. It should still be in the "Undetected" realm?
37 A. Yes.
38
39 Q. If the system were working, it should certainly remain
40 on the tracking file?
41 A. Yes - it would always remain on the tracking file.
42
43 Q. And it would be appropriate for it to be screened or
44 reviewed in 2004 to 2008?
45 A. Yes.
46
47 Q. And again, I know this was before your time, you are

1 not aware of any good reason why it wouldn't be screened or
2 reviewed during that period?
3 A. No, I'm not, no.
4
5 Q. The matter of James Meek - he was killed in 1995 and
6 there was a suspect who was tried and acquitted, do you
7 understand?
8 A. Yes.
9
10 Q. In that situation, I think your evidence is that
11 matter would have been classified as "Unsolved"?
12 A. No, "Unresolved".
13
14 Q. I'm sorry, "Unresolved"?
15 A. "Unresolved", yes.
16
17 Q. It would stay on the tracking file?
18 A. Yes.
19
20 Q. But it may receive a lower priority; is that right?
21 A. No, oh, it would receive a lower priority until such
22 time as any information came forward or new evidence or
23 even forensic techniques became available.
24
25 Q. But no active step is going to be taken to obtain that
26 new evidence if it's not being --
27 A. Well, if there were exhibits involved in that matter,
28 I would assume that they would then be identified that they
29 could be - go before new forensic analysis.
30
31 Q. How would that happen if it's not the subject of
32 a screening or review?
33 A. It would be a matter of - if it's - if we have
34 identified - if - you are talking double jeopardy here,
35 where, to get that evidence it would have to be fairly
36 significant. So how would it be screened? It would be
37 a matter of having a look at it. I don't know - I can't
38 give you a time frame of when, but it would be a matter of
39 going through these - some of these matters to identify if
40 there are forensic possibilities.
41
42 Q. Well, you say it's a matter of double jeopardy. It's
43 only a matter of double jeopardy if you are considering the
44 person who was acquitted; is that right?
45 A. That's correct.
46
47 Q. If it is not known who did it and it might have been

1 someone else, then shouldn't it be reviewed for
2 consideration of whether --
3 A. Yes. I thought you identified the persons were
4 acquitted.
5
6 Q. That's what I'm saying, somebody was charged and
7 acquitted.
8 A. Yes.
9
10 Q. My question for you is, that wouldn't be a reason for
11 it to fall off the tracking file or for it not to be ripe
12 for a screening or review; is that correct?
13 A. That's correct, yes. It would receive less priority,
14 though, because we're still looking at the "Undetected"
15 matters.
16
17 Q. It should still have been reviewed, shouldn't it, as
18 part of the - assuming it was part of the original 366, it
19 should have been reviewed between the period 2004 to 2008?
20 A. Yes. Yes.
21
22 Q. And if there is no record of that, can you offer any
23 reason why it wasn't reviewed?
24 A. No, I cannot give you a reason.
25
26 Q. Another one that is not on the tracking file - I'm
27 sorry, another person who is on the tracking file but is
28 not recorded as ever having been the subject of a screening
29 or review is Mr Rooney. Are you familiar with the death of
30 Mr Rooney?
31 A. No.
32
33 Q. The Coroner returned an open finding in relation to
34 him in May 1987.
35 A. Yes.
36
37 Q. Do you understand? That being the case, am I right,
38 it would be placed on the list as "Undetermined"?
39 A. That's correct, yes.
40
41 Q. Of course, the Coroner's open finding in 1987 was
42 before DNA, before a range of other steps that were
43 available?
44 A. Yes.
45
46 Q. It's a matter that may be ripe for review?
47 A. Yes. Yes.

1
2 Q. Do you know how it got onto the tracking file?
3 A. How it what?
4
5 Q. How it came to be on the tracking file?
6 A. No, I don't know that. The tracking file - it's from
7 1987, did you say - the inquest?
8
9 Q. Yes, there was an inquest in 1987 which returned an
10 open finding. Would that be enough for it to get onto the
11 tracking file because of -- -
12 A. It should be, from the first concept for the Unsolved,
13 2004.
14
15 Q. Again, if there's no record of its being reviewed, of
16 that case being reviewed between 2004 to 2008, so far as
17 you are aware, it should have been reviewed during that
18 period?
19 A. Yes, yes.
20
21 Q. And you are not aware of any reason why it wasn't?
22 A. No.
23
24 Q. Another matter before the Commissioner is the matter
25 of Richard Slater, who died on 22 December 1980, again,
26 obviously an assault.
27 A. Yes.
28
29 Q. Again, may I take it you are not familiar with that
30 case?
31 A. No, no.
32
33 Q. Again, not reviewed at all.
34 A. Mmm.
35
36 Q. That case should have been among the 366 first
37 identified in 2004?
38 A. Should be, yes, but I don't know whether it was
39 captured then. I don't know.
40
41 Q. And we've got no way, now, of finding out whether it
42 was captured then; is that what you are saying?
43 A. No; that's correct, yes.
44
45 Q. If it was captured then, it should have been reviewed
46 during that five-year period?
47 A. Yes.

1
2 Q. And if it wasn't reviewed during that five-year
3 period, you've got no explanation for why not?
4 A. No; that's correct.
5
6 Q. Another matter that the Commissioner is looking at is
7 Karl Stockton, who died on 11 November 1996 after an
8 incident several days earlier, and the Coroner returned an
9 open finding, do you understand?
10 A. Yes.
11
12 Q. That matter was reviewed in 2019, but only in 2019, do
13 you understand?
14 A. Yes.
15
16 Q. Again, given the Coroner returned an open finding, you
17 would expect that case should have been picked up as one of
18 the 366 in 2004?
19 A. It should have been, yes.
20
21 Q. And should have been reviewed over the five-year
22 period after that?
23 A. Yes.
24
25 THE COMMISSIONER: Mr Emmett, is that a convenient point?
26
27 MR EMMETT: It is, Commissioner.
28
29 THE COMMISSIONER: Mr Tedeschi, I know you won't be here
30 tomorrow. I don't know whether Mr Mykkeltvedt or Mr Short
31 will be here for the documentary tender.
32
33 MR TEDESCHI: Somebody else will doing the documentary
34 tender.
35
36 THE COMMISSIONER: For Mr Mykkeltvedt's point of view,
37 I will say not before 12 in the continuation of witness's
38 evidence. So you need not come here until a bit before 12
39 tomorrow morning.
40
41 THE WITNESS: Thank you, Commissioner.
42
43 THE COMMISSIONER: Thank you. All right. I will adjourn
44 until 10, thank you.
45
46 **AT 4.01PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**
47 **ACCORDINGLY**

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