

**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 Wednesday, 5 July 2023 at 10.05am

(Day 73)

Mr James Emmett	(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 Anders Mykkeltvedt for the NSW
Police**

1 THE COMMISSIONER: Yes?

2

3 MR EMMETT: Commissioner, if it is convenient, we are
4 ready to resume the examination of Superintendent Best.

5

6 THE COMMISSIONER: Yes, thank you.

7

8 Mr Tedeschi, you appear today, do you?

9

10 MR TEDESCHI: Yes, thank you.

11

12 THE COMMISSIONER: Thank you.

13

14 <ROGER ANTHONY BEST, on former oath: [10.05am]

15

16 <EXAMINATION BY MR EMMETT CONTINUING:

17

18 MR EMMETT: Q. Mr Best, you gave some evidence yesterday
19 about the Gibson Review in 1990; do you remember that?

20

21

22 Q. The Gibson Review included a number of observations
23 about the state of forensic science at the time and
24 prospective developments in the state of forensic science?

25

26

27 Q. Do you recall I asked you some questions yesterday
28 about the developments in forensic science over the course
29 of the '70s and '80s?

30

31

32 Q. And indeed perhaps earlier, the proposition being that
33 it was clear - or the proposition that I wanted to explore
34 was whether it was reasonably clear, or should have been
35 reasonably clear, to investigators in the '70s and '80s
36 that there had been significant developments in forensic
37 technology and that there were likely to continue to be
38 significant developments?

39

40

41 Q. Can I ask, are you in a position to agree or disagree
42 with the proposition that police officers or investigators
43 in the '70s and '80s should have been alive to the
44 significant developments in technology and prospective
45 future developments in technology?

46

47

A. My personal opinion is that they wouldn't have been,
based upon the outcomes of their investigations in relation

1 to fingerprints and what Crime Scene would have been
2 returning to them. But that's --
3
4 THE COMMISSIONER: We'll just wait until Mr Hodgetts turns
5 his phone off.
6
7 THE WITNESS: Sorry, your Honour.
8
9 THE COMMISSIONER: No, I'm sorry. You go on.
10
11 THE WITNESS: When contemplating that, I look towards the
12 outcomes for investigators in relation to what they were
13 getting from the service, from the Crime Scene Branch and
14 predominantly being fingerprints, and those identification
15 outcomes for their investigations as opposed to, well,
16 obviously now predominantly in terms of being able to make
17 sense of microscopic DNA, those sorts of advancements that
18 we've seen perhaps over the last - or since 2000.
19
20 MR EMMETT: Q. Am I right, that - again, I appreciate you
21 can't possibly speak across the board or for - but at least
22 speaking from your observations and this may be, to
23 a certain extent, anecdotally or ad hoc, your impression is
24 that investigators in the '70s and '80s were not mindful of
25 those matters as a whole?
26 A. I just look at the outcomes they were seeing from the
27 Crime Scene Branch, in reviewing those practices. That's
28 all I can draw upon to make that statement.
29
30 THE COMMISSIONER: Q. So does that mean there was no
31 person within the Force who regularly monitored changes in
32 technology so as to make sure that the officers were kept
33 up to date with changes that were occurring to ensure,
34 again, that where they could exploit those changes, they
35 could do so?
36 A. I understand, your Honour. All I can say is that now
37 we have a Science and Research Section within FE&TS whose
38 sole job is to do - well, a large part of their job is to
39 do that and I can't find any indication of a similar
40 section being present historically.
41
42 Q. When was this - and you may not have the faintest idea
43 about this, I accept. When was the Bachelor of Policing
44 degree instituted at Charles Sturt? Perhaps only the last
45 20 or 30 years, I just don't know, but are you, offhand,
46 able to --
47 A. So the Bachelor of Policing that I undertook in the

1 '90s --
2
3 Q. Yes.
4 A. So my recollection is I was in the earlier cohorts for
5 that.
6
7 THE COMMISSIONER: Okay, thank you.
8
9 MR EMMETT: Q. What I propose to do is take you to some
10 parts of the Gibson Review and see if that jogs your memory
11 or assists in relation to particular investigative
12 techniques or --
13 A. Yes, I understand.
14
15 Q. -- forms of forensic analysis and the technology, and
16 again whether it was on officers' radar to the extent that
17 you can assist with that or, perhaps with the benefit of
18 hindsight, whether it should have been?
19 A. Thank you.
20
21 Q. Hopefully you have in front of you tab 2B
22 [NPL.9000.0003 0606] of the tender bundle, the review of
23 physical evidence, dated 20 November 1990?
24 A. I do.
25
26 Q. That's what we've been referring to as the "Gibson
27 Report"?
28 A. Correct.
29
30 Q. I propose to go, unless the digits get too small to
31 look at, from the little numbers in the top right-hand
32 corner, the numbers that on the first page end in .0606.
33 So if you start on the first page of the report, just to
34 make sure we're on --
35 A. Sorry.
36
37 Q. Do you see on the first page - sorry, I mean the cover
38 page, just the first page of the document.
39 A. Apologies.
40
41 Q. On the top right there is a Commission numbering?
42 A. I see, yes, the NPL number, yes.
43
44 Q. Those are the numbers I'm using.
45 A. Yes, sorry.
46
47 Q. In those numbers if you turn to .0646.

- 1 A. Yes.
- 2
- 3 Q. At the bottom of that page there is an entry on facial
4 identification.
- 5 A. Yes.
- 6
- 7 Q. There are a number of references to this in some of
8 the evidence the Commissioner has received, but could you
9 assist the Commissioner, the Penry system - are you able to
10 assist in what the Penry system is?
- 11 A. Only a broad notion of - yeah. So --
- 12
- 13 Q. I'm sorry, I didn't mean to cut you off.
- 14 A. No, no. So that notion of having a rendition of
15 a person of interest off the description of a witness.
- 16
- 17 Q. And there is a reference there to the Physical
18 Evidence Section having the responsibility and expertise
19 for facial identification techniques and having had that
20 for many years. Is that a forensic technique that
21 developed and improved over the course of the '60s, '70s
22 and '80s, to your knowledge or --
- 23 A. No, I don't know, I'm sorry.
- 24
- 25 Q. There's a reference to computer technology opening the
26 way for more sophisticated images and so forth. Again, is
27 that something that you're able to assist with in terms of
28 when that became available, when that was on the cards?
- 29 A. Only I recall having that as a technique that I used
30 as an investigator in the '90s, that the computerised
31 version of that, but that's taking the penmanship,
32 I suppose, away from the process somewhat and having that
33 computerised speak to it.
- 34
- 35 Q. Thank you, Superintendent. Can I ask you to turn next
36 to .0648.
- 37 A. Yes.
- 38
- 39 Q. There begins a quotation which is said to describe
40 Edmond Locard's principle of transference?
- 41 A. Yes.
- 42
- 43 Q. Oversimplifying, perhaps, it stresses the importance
44 of physical evidence?
- 45 A. Correct.
- 46
- 47 Q. That was appreciated in 1947 - that's what --

1 A. Yes, and, you know, back - yes, that's right. Of
2 course, that principle goes back before then, so --

3
4 Q. Yes, indeed. 1877 is the date described to the
5 so-called principle. And there was an appreciation,
6 and I'm reading the following paragraph, that there was
7 a development of the sophistication in forensic medicine
8 and forensic science fields in relation to
9 evidence-gathering and analysis.

10 A. Yes.

11
12 Q. To your knowledge, was that the case over the course
13 of the '50s, '60s, '70s and '80s?

14 A. I don't know the specifics of that, other than in
15 relation to physical evidence, the collection techniques,
16 I can't think of anything particularly ground-breaking in
17 relation to that. Then what I wouldn't be able to comment
18 on is the side of science in relation to the work that DAL
19 would be doing then in their ability to, say, work on
20 toxicology or work on some of those chemical criminalistic
21 aspects, whether that was developing. That would be very
22 case specific, as opposed to the broad-brush improvements
23 that I was perhaps turning my mind to.

24
25 Q. Thank you, Superintendent. And then at the bottom of
26 that page, there's a reference to the skills that are
27 necessary for the successful provision of the physical
28 evidence service to the investigation process?

29 A. Mmm-hmm.

30
31 Q. And over the page, and can I ask you - I'm going to
32 draw attention to some of the skills and ask you whether
33 you are able to assist with whether it was understood, it
34 had been understood for some decades, over the course of
35 the '70s and '80s, that these were important skills to
36 investigators. The first is the second bullet point on the
37 on top of the next page, that is, "Scene searching
38 techniques to identify physical evidence"?

39 A. Yes.

40
41 Q. And moving down, the next, about halfway down the
42 page, "Appreciation of scientific and medical testing
43 procedures and requirements"?

44 A. Yes.

45
46 Q. And further down, "Keeping abreast of developments
47 within physical evidence examination field to ensure that

1 the final stage" - that is presentation of evidence before
2 the court - "is done in the most professional manner in the
3 interests of justice"?
4 A. Yes.
5
6 Q. And "Contribute to the development of a specialty
7 field through research and training of other examiners and
8 police officers"?
9 A. Yes.
10
11 Q. Those were all well recognised over the course of the
12 '70s and '80s, to your knowledge?
13 A. All I can say is common sense tells me that they are,
14 but the report is saying that there's something they want
15 to enshrine in the future of the Crime Scene Service
16 Branch.
17
18 Q. Do you mean by that common sense says they are, and
19 they were probably in some people's minds, but your
20 impression or experience is maybe they weren't in the --
21 A. Oh, I just don't have that --
22
23 Q. I'm sorry?
24 A. I don't have that exposure to make a definitive answer
25 for you.
26
27 Q. Okay. Over the page at the top of page .0650, the
28 paragraph after the bullet points, may I take it you would
29 agree with that paragraph?
30 A. Yes.
31
32 Q. Could I ask you to turn to .0743. Can I ask you to
33 read the first three paragraphs on page .0743, that is, the
34 section 17.1, "Background", under "Ongoing Training".
35 A. Sorry, I've gone to - what was the area again, 07?
36
37 Q. .0743?
38 A. 0743.
39
40 Q. I should say, it's also up on the screen if it's
41 easier for you to look at it on the screen.
42 A. Much better, thanks. Thank you. So the first three
43 paragraphs in relation to "Background", 17.1?
44
45 Q. Yes, yes.
46 A.
47

1 *The progressive development of forensic*
2 *science is evolving --*

3

4 Q. You don't need to read it aloud.

5 A. Oh, I'm sorry, I thought you asked me to read it
6 aloud.

7

8 Q. Sorry.

9 A. Yes.

10

11 Q. You would agree those were important matters in 1990?

12 A. Yes, that's right, and it does, in fact, that I hadn't
13 seen before, mention the fact of DNA.

14

15 Q. So DNA was at least on the cards by 1990?

16 A. Absolutely.

17

18 Q. But DNA was one of a number of technologies and there
19 was an appreciation that forensic science advances, as so
20 much technology did over the course of the 20th century?

21 A. So, not - yeah, in relation to the DNA in the 1990s,
22 1990s it was limited, limited in its application for
23 investigations because it was requiring such large
24 quantities of gross biological material, typically blood,
25 and scenes where you had blood at a scene, you were
26 invariably looking at a victim's blood, so the ability to
27 match via DNA that blood to the victim, it is helpful at
28 some level but not ground-breaking in relation to
29 progressive investigations. It was really when that trace
30 DNA came in that we found some really ground-breaking
31 abilities within that to solve crime.

32

33 Q. DNA, we know, was transformative, but DNA is an
34 example of technology. What was clear in 1990 was that
35 there were significant advances in technology and there
36 were expected to be significant further advances in
37 technology and an important part of ongoing training was
38 being up to date in relation to those technologies?

39 A. No, I understand what you are saying. What
40 I struggled - and my original answer was trying to think of
41 something as having such an impact as DNA in those '70s and
42 '80s, really, in answering that initial question.

43

44 Q. Well, rather than trying to think of something as
45 significant as DNA, can I ask first, you agree that those
46 three paragraphs reflected the position as at 1990?

47 A. Yes.

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Q. Really, apart from the example of DNA, everything else in those three paragraphs is a matter of common sense?

A. I agree.

Q. And either was or should have been clear to investigators in the 1970s and '80s?

A. Well, it just depends on what point of reference they have to think forward in relation to that. So that notion of what their understanding of potential future advancements could possibly be, and that's the only reason I hesitate in relation to making a broad comment for the '70s and '80s because I was trying to think of what would be fair for them and then, in doing so, what point of reference would they have to look at and go, "Okay, this is an amazing advancement. I wonder what else is happening."

Q. What about people in the Science Investigation Bureau or Science Investigation Section, as it was later named the Physical Evidence Section? What about people in that section? It would have been fairly clear to them that there were a range of technologies that became more and more sophisticated --

A. It would be reasonable --

Q. -- year by year?

A. It would be reasonable to say more so, but, yeah, we're not in the era then of our officers like we are now, all holding science degrees, and, you know, the people coming into the Crime Scene Service Branch now have all got forensic science degrees before they even come to us, let alone the training that we give them now. But then, we're talking about police officers that turned their mind to a career as a crime scene officer. So I don't think I could say, in fairness to them, that they definitely have that mind set of thinking about scientific advancements.

Q. I don't want to belabour the point, but by the 1970s, science and technology had completely changed almost all disciplines and certainly including forensic science, hadn't they?

A. I think, as I say, all I - in trying to answer that question, I'm just trying to turn my mind to what was changing for them there. So there's probably nothing more that I can add.

Q. Can I take you to one last reference and see if this

1 jogs your memory about some kinds of technologies, perhaps
2 none of them as significant as DNA, but forensic
3 technologies and their potential significance. Can I ask
4 you to turn to page 0755, so .0755. This is a list of what
5 is described as "New Technology", so you will see at the
6 bottom, section 20.9, "Technology Used in Other Police
7 Agencies"?

8 A. Yes.

9

10 Q. Can I ask you to turn over and you will see a list of
11 equipment and procedures.

12 A. Yes.

13

14 Q. Those are all significant technologies - well, take
15 the time to read them, to review them. We can go through
16 them individually if you'd be assisted by it, or
17 collectively.

18 A. Yes. So they are, yeah, they're significant. They
19 are ones that we use now. Those light sources for BMD, all
20 those are significant advancements that we have taken on
21 board and at 1990 they were pointing towards that.

22

23 Q. And then over the page, there are more on the next
24 page, down to subparagraph (n).

25 A. Yes.

26

27 Q. Are you able to assist the Commissioner with whether
28 some of those were on the cards or already known to be
29 available, at least to forensic investigators, in the 1970s
30 or 1980s, for example, the use of databases?

31 A. So data - no, I'm not, but databases I would say no
32 prior to the advent of our computer systems. But those
33 others, in relation to timelines, I can't assist, I'm
34 sorry.

35

36 Q. What about dental records? The analysis of dental
37 records, do you know when that occurred?

38 A. I don't know, but I - no, I don't know, sorry. I know
39 that we were using them but I couldn't give you a history
40 in relation to when they came in to our investigative
41 toolkit.

42

43 Q. And then bloodstain interpretation computer programs,
44 do you know when they started to, well, when they were on
45 the cards?

46 A. No.

47

1 Q. What about metal detectors?

2 A. No, I don't have any - I haven't researched any of the
3 history of those items. Certainly we would have that
4 information, but in preparing for today I haven't
5 researched those, and so --

6

7 Q. Thank you for that, Superintendent Best. Can I move
8 next to another matter that you gave evidence about
9 yesterday, that is, the circumstances in - the relationship
10 between the investigating officers, especially the - or the
11 investigating officers or the police officers who are first
12 on the scene and the crime scene investigators or forensic
13 investigators, as the case may be.

14

15 Again, I want to ask you about a particular death that
16 the Commissioner has looked at that you may not have had
17 occasion to look at. That's the death of a Mr Rooney, who
18 died on 20 February 1986. He was found on the ground
19 between a toilet block and a retaining wall near
20 a nightclub in circumstances where he had obviously
21 suffered serious injuries, and it was not known whether
22 that was accidental or an assault.

23 A. I understand.

24

25 Q. And the evidence indicates that police arrived at 9am
26 on that morning, after he had been found. He was at that
27 time alive, although tragically died, either on the way to
28 the hospital or at hospital. Do you understand?

29 A. Yes, I understand.

30

31 Q. The police first arrived at 9am and the Scientific
32 Investigation Section arrived at 11am. But between 9am and
33 11am, the owner of one of the premises - well, either the
34 scene was not secured at all or something happened such
35 that the owner of the retail premises next door hosed down
36 the scene, thereby destroying the availability of blood or
37 other evidence.

38 A. I understand.

39

40 Q. Again, the Commissioner needs to ask whether he can
41 understand how that happened or if that is consistent with
42 proper police practice at the time. Are you able to assist
43 the Commissioner with that?

44 A. So I can say that that's the very scenario that drove
45 those issues raised in the Gibson Report and what we saw
46 implemented in training for our first responders, so that
47 the first police on the scene secure the scene, basically,

1 to preserve evidence, and that was, as you saw, highlighted
2 in the Gibson Report and so then brought into our training
3 through our police recruits.
4

5 I can't comment on what was said in training prior to
6 that. So I'm basing that, the notion of understanding that
7 it was an issue, off seeing it in the Gibson Report and
8 then actually living that through training in those early
9 '90s. But what I couldn't comment on was the sufficiency
10 or otherwise of what was told to recruits in relation to
11 that prior to 1990.
12

13 Q. They may or may not have been told about --

14 A. I simply don't know.
15

16 Q. -- securing the crime scene, you just don't know?

17 A. No. So I know that it was an issue, because I've seen
18 it in the Gibson Report. I know that we increased our
19 training in it, because I saw that come out, but I just
20 don't know what was in place prior to that.
21

22 Q. Thank you, Superintendent Best. Can I return to
23 your statement now and I'm going to ask you questions
24 starting at paragraphs 58 and following where you give
25 evidence about the management of exhibits. If you would
26 like to follow along, it would be probably useful to have
27 it in front of you. So that's in that folder at tab 2
28 [NPL.9000.0003.1533].

29 A. Thank you. And paragraph?
30

31 Q. Paragraph 58. At paragraphs 58 to 65 you give some
32 evidence about the management of exhibits?

33 A. Yes.
34

35 Q. Now, the Commissioner received some evidence about
36 that from Assistant Commissioner Conroy yesterday?

37 A. Yes.
38

39 Q. But were you here for that? Did you hear that
40 evidence?

41 A. I was, yes.
42

43 Q. I won't go over the same ground as we covered, but you
44 give that evidence at paragraphs 58 to 65, explaining the
45 procedure during the 1970s and 1980s by reference to the
46 hard-copy exhibit book? You need to say "Yes" for the
47 transcript.

1 A. Yes, sorry.

2

3 Q. At paragraph 62 you make the point in the middle of
4 the paragraph that once an exhibit was transferred to
5 either CSSB or FASS, there was a reduction in the effective
6 recording of information about the status and location of
7 that exhibit by exhibit officers and others.

8 A. Yes.

9

10 Q. Am I right that there wasn't meant to be a reduction
11 in that recording process?

12 A. It was the clarity that the exhibit officers then lost
13 on that item, and I think I heard Ma'am Conroy mention that
14 notion of audits and physically going into those areas and
15 seeing those, and then that would also generate monthly
16 reports, requesting updates on the status of those.
17 Because they were then not in the custody of those stations
18 and those exhibit officers, that follow-up then wasn't as -
19 as regular because there was no understanding, certainly at
20 times when these processes took a long time, to know how
21 long an item might stay at DAL.

22

23 So when an item left that police station from that
24 exhibit book, and was signed out to go to DAL, the notion
25 of how long that might take was unknown and so those
26 follow-ups perhaps weren't as effective or as efficient as
27 they were for normal items.

28

29 Q. When you say there was no understanding, the officers
30 should have understood that the records should be
31 maintained in respect of items when they were with --

32 A. No, so the exhibit book would have, "Signed out to
33 DAL", the times. If I was doing that, I would put my name,
34 my registered number, the time and date that I took it out,
35 and I was required to bring back a receipt, so the P337 -
36 377, four copies of those, to DAL. I would get the officer
37 at DAL to sign, I would take that back as my receipt. That
38 would go into that exhibit book and then sit there so that
39 exhibit officer every month would go "Oh, that item, number
40 10, is at DAL."

41

42 Q. That's what should have happened each time; is that
43 right?

44 A. Yes.

45

46 Q. Am I right what you are saying in paragraph 62 is
47 there was a reduction in the effective recording so that

1 that didn't happen each time?

2 A. No, that's - no, I apologise.

3

4 Q. Sorry.

5 A. That's not the point I was trying to make. The point
6 I was making was that those officers that had overall -
7 well, not overall, you know, exhibit officers were there to
8 manage the risks associated with exhibits and they had that
9 ability to physically sight those items, yes, they're still
10 here, they haven't been lost. When they left their
11 physical control, that's when I say the system was more
12 fraught for them because the item now was not with them and
13 then it could be for months and months and months, and so
14 the follow-up wasn't as effective.

15

16 Q. But had the procedures been followed, there would
17 continue to be effective recording of information about the
18 status of the location of the exhibit, wouldn't there?

19 A. Insofar as simply saying that it's at DAL. As opposed
20 to being able to say, "I saw it in March, I saw it
21 in April, I saw it in May", where there's somebody saying
22 that they've physically done that check and seen it.

23

24 Q. Because the language you've used, and I just want to
25 understand whether we need to revisit, whether you want to
26 revisit it, is that there was a reduction in the effective
27 recording of that information?

28 A. Perhaps that's not the correct language then. So what
29 I was pointing towards was how that system works well or
30 did work well, even though it was an exhibit book, when we
31 had an exhibit officer whose sole task was to maintain the
32 continuity and the safety of those exhibits, versus when
33 they physically left their presence, and then, because it
34 wasn't there in front of them, the requirement for those
35 monthly updates sort of could fall away.

36

37 Q. And so --

38 A. So - sorry.

39

40 Q. I'm sorry.

41 A. No, I was just simply going to say because then it's
42 that officer's job to drive compliance with exhibits, and
43 certainly as a young constable I had that with a very
44 effective and efficient exhibit sergeant, you know, who
45 would call - "Where is this exhibit now? What's happening
46 with its status?" - who would drive that compliance. And
47 so when that item wasn't there, the ability to drive that

1 compliance was reduced, and perhaps that's what I was
2 trying to make a point of.

3

4 Q. You've said you had a very good exhibit sergeant,
5 though. I've forgotten what you said, "diligent",
6 or whatever word you used --

7 A. All those things.

8

9 Q. Under the system in the '70s and '80s it was dependent
10 on the care and diligence of the exhibit sergeants?

11 A. I can see looking back how that would have a huge
12 impact, and the one that I was under was in charge of all
13 Sydney Metropolitan, the CBD, the eight stations, he was
14 stationed at Surry Hills and he was an outstanding officer
15 and he drove compliance very well.

16

17 Q. One of the things you're adverting to there, am
18 I right, in paragraph 62, is the increased scope for human
19 error when exhibits are transferred to a different
20 location?

21 A. Physically out of our custody, that's right.

22

23 Q. And increased scope for carelessness amongst some
24 exhibit officers?

25 A. Exhibit officers or those transporting? But, yeah,
26 certainly risk is there because they've physically now left
27 the control of those officers.

28

29 Q. Are you able to assist the Commissioner with what
30 kinds of factors influenced the risk of either officers or
31 transporters or others being either more careful or being
32 more careless?

33 A. Insofar as the individual officers, what would - what
34 would make a particular officer --

35

36 Q. Well, what are the factors that influence the risk of
37 an officer becoming more careless in this process or
38 influenced? I stress we're talking about the past.

39 A. So then oversight and that notion of having to show
40 their actions, and in that example that I gave in relation
41 to having a receipt, so me taking an item to DAL, knowing
42 that if I walked out and forgot to get that receipt, I'd be
43 called to account, and I'd be going back to get that
44 receipt. So that oversight was the key to all our systems
45 back then and was rank-based and you knew that there was
46 a sergeant there that was going to call you to account if
47 you failed to follow those procedures.

1

2 Q. And was there a view or an appreciation of a risk of
3 officers being more careless in relation to matters that
4 officers were less focused on or less interested in?

5

6 A. I don't - I can't see how that would be the case
7 because they're simply doing that task of transportation.
8 If you're thinking about an officer in charge of a - oh,
9 I can't think of examples where that would be the case.

10

11 Q. But are you aware of an appreciation of that as a risk
12 that could influence --

13

14 A. No.

15

16 Q. -- carelessness? Or, again, if the officer in charge
17 or the person involved, or the - one of the people who had
18 a role in this system, was there an appreciation of a risk
19 or a prospect of officers taking greater care in relation
20 to investigations where there is a sympathetic victim?

21

22 A. Not that I - not that I've seen or am aware of.

23

24 Q. And nor the converse - that is, perhaps being
25 a greater risk of carelessness if it's perceived to be an
26 unsympathetic victim?

27

28 A. No.

29

30 Q. At paragraph 64 you explain that once the relevant
31 test had been completed by CSSB or FASS, the results would
32 be provided and the OIC would then arrange for exhibits to
33 be retrieved?

34

35 A. Yes.

36

37 Q. What happened if those arrangements weren't made?

38

39 A. Yeah, that was another risk and I think - it's
40 certainly the case that on occasion you would attend DAL
41 and - and this still happens now - they ask, "Where are you
42 from?" And then that would then instigate the returning of
43 those exhibits back to the station that you came from. So
44 if I turned up - and it happened to me, turned up to DAL
45 with some items, "Where are you from?" "I'm from Redfern".
46 "Oh, great, you can take this back."

47

48 Q. While that may seem convenient at the time, that leads
49 to a failure in the record-keeping or that could lead to
50 a failure in the record-keeping?

51

52 A. Only insofar as if the officer was incompetent,
53 I suppose, because I'm still signing for it, I then have -
54 I'm signed for it at this end so there's a record for me of

55

1 signing for it and so I'm going to be held to account if
2 I lose it, so I'm going to take it back and then sign it in
3 at Redfern.

4
5 Q. Were steps taken to supervise officers in charge to
6 ensure that arrangements were made to get the exhibits back
7 one way or another?

8 A. So I suppose this is where that additional risk would
9 lie, what I was pointing towards in that time taken: so at
10 what point is it reviewed to say, "This exhibit 's not back
11 from DAL?" Perhaps that's where the system had some issues
12 there to say, "An item's gone to DAL. It's been three
13 months. Where is this item now?" Whereas if I was at the
14 police station and it was an item that had to have some
15 action to it, if it hadn't been done for three months, I'm
16 getting followed up. So I'm not aware of, in that process
17 or that system, where, apart from perhaps case
18 finalisation, that that - that a trigger in our management
19 may just turn our minds to where that was at DAL.

20
21 Q. So, so far as you're aware, there wasn't a separate
22 review to ensure that someone followed up on that at some
23 point in the future?

24 A. Not that I can think of.

25
26 Q. At paragraphs 66 and 67, you explain, am I right, the
27 exhibit management procedures were generally the same as
28 those described above through the 1990s?

29 A. Yes.

30
31 Q. So may we take it that the answers that you've given
32 today also apply in relation to the 1990s?

33 A. Yes. And a lot of those examples that I was drawing
34 from were from my time in the early '90s.

35
36 Q. Indeed, is the same true of the 2000s up until March
37 2011?

38 A. EFIMS coming in was the game changer in relation to
39 exhibits, yes.

40
41 Q. So the answers you've given today apply equally to the
42 2000s?

43 A. Correct.

44
45 Q. At paragraphs 68 and following you give evidence about
46 the decision to undertake forensic analysis.

47 A. Yes.

- 1
2 Q. And that's a decision made, the crime scene officer
3 and the OIC consult about that?
4 A. Correct.
5
6 Q. But you've explained that, at least following the
7 Gibson Review, the main point of contact between the OIC
8 and an external agency such as FASS was the crime scene
9 officer?
10 A. Yes.
11
12 Q. I think you explained yesterday, that was to ensure
13 clarity of reporting lines and to avoid enthusiastic
14 officers burdening FASS?
15 A. Yeah, the negative impact on FASS and DAL.
16
17 Q. Then at paragraph 72 and following you explain the
18 developments in DNA?
19 A. Yes.
20
21 Q. Now, I've got to ask you a couple of questions about
22 DNA. If you don't know, say so. Are you aware that DNA
23 was being used by laboratories to establish paternity by
24 the 1980s?
25 A. Yes, I have read that.
26
27 Q. And that DNA was first used in a criminal
28 investigation in the UK in 1986 --
29 A. Yes, I'm aware of that.
30
31 Q. -- leading to a conviction in 1987? And by 1989,
32 there were New South Wales cases where DNA testing took
33 place, albeit by sending the samples overseas?
34 A. I wasn't aware of that.
35
36 Q. Are you aware of FASS having started to test DNA
37 itself in New South Wales through its Forensic Biology and
38 DNA Unit in 1989 or 1990?
39 A. Through my inquiries, yes, but as an officer back
40 then, no, I wasn't. My first exposure to DNA was in 1998
41 in a personal case study.
42
43 Q. And you explained in the early days, in the early
44 '90s, a significant volume - more DNA was needed or more
45 biological material was needed than we need today?
46 A. So our 1993 manual, physical evidence manual, points
47 to a 20 cent piece. They say, "You need a fairly large

1 sample, for example, the size of a 20 cent piece", in
2 relation to blood.

3

4 Q. I'm sorry, I misheard. The size of a 20 cent piece?

5 A. Correct.

6

7 Q. Do you know what the limits of - how - what the limits
8 of the testing was or is the 20 cent piece the best you are
9 able to assist with in terms of, in the early '90s?

10 A. Yes, that's the only reference I have. I have spoken
11 to officers who've taken me through that process of what
12 they did in relation to - so those officers that were there
13 through that transition, point to the fact that it didn't
14 really change in anything that they did because they were
15 taking blood for grouping and that process remained the
16 same using the - taking the swab, not the swab, the blood
17 and using a sterile cloth, putting it onto a piece of
18 cardboard, bagging that and sending it off for grouping.
19 That didn't change and that didn't change until 1999 when
20 we got the swabs in.

21

22 Q. And again, if you don't know, that's fine, but when
23 one talks about the 20 cent piece, are we talking a smear
24 the size of a 20 cent piece or do you need, sort of,
25 accumulated liquid of that size or you don't know?

26 A. So the wording of the manual said - I'd have to - it's
27 certainly in the material I've provided but my recollection
28 is a reasonable size, a reasonable quantity of material,
29 "for example, the size of a 20 cent piece". So I think it
30 was just simply using to guide the officer, the notion of
31 a portion of blood the size of a 20 cent piece is required.

32

33 Q. So we shouldn't conclude that that's any strict limit
34 to the technology at that time?

35 A. That's not my understanding.

36

37 Q. You explain at paragraphs 73 to 74 the practice of
38 blood typing.

39 A. Yes.

40

41 Q. Or, sorry, the blood typing technology. Blood typing
42 technology has been around for a very long time?

43 A. That's my understanding.

44

45 Q. I think for most of the 20th century, is that --

46 A. I'm not entirely sure.

47

1 Q. At paragraphs 76 to 82 you give evidence about the
2 attendance at the scene of a crime by CSSB officers?

3 A. Yes.

4

5 Q. I and the Commissioner asked you some questions about
6 that yesterday. Could I just understand, unless I'm
7 overlooking something, the references you have given in
8 this section are to manuals from 2005 and 2007?

9 A. That's correct.

10

11 Q. Are there earlier manuals or procedures governing the
12 attendance of crime scene investigators that you are aware
13 of?

14 A. Not that I came across.

15

16 Q. I should say in fairness --

17 A. Yeah, sorry, I was going to say, there's some
18 reference there earlier but I'm just not sure what those
19 two documents are that I have referenced.

20

21 Q. This is the section where you're talking about the
22 1990s to 2010, so I'm interested first in whether there
23 were such procedures applicable in the 1990s, and then in
24 the 1970s to the 1980s, which is the previous section to
25 your statement, I can't see similar references to a similar
26 procedural manual or handbooks for those periods.

27 A. No, I just - I can't recall what documents I've
28 referenced at point 1144 and 1147 in there, where I say:

29

30 *Given the specific role and*
31 *responsibilities of the CSSB discussed*
32 *above, it was/is not possible for CSSB to*
33 *attend every incident (this has been*
34 *a consistent approach throughout the*
35 *periods mentioned in the statement). Call*
36 *out guidance for this period is at ...*

37

38 Those two documents. I just can't recall what those two
39 were.

40

41 Q. I'm sorry, which paragraph were you reading?

42 A. Oh, 76.

43

44 Q. Thank you. We'll turn up the reference for those. In
45 the meantime, at paragraph 78 you give evidence about major
46 complex investigations and the formal review process?

47 A. Yes.

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Q. You explain that there's a first report within 24 hours and then a review two weeks after that. Am I right, the first few hours are crucial to any investigation?

A. Correct.

Q. And that goes also for forensic analysis - for identifying items that might be suitable for forensic analysis?

A. Insofar as that the items degrade, is that what you mean? That we have to get them early so we can get a result?

Q. That they might degrade or they might be lost or the crime scene might be disturbed?

A. Oh so in relation to - no, I think it would be fair to say that once we've got that scene secured, I can't think of anything that drives urgency other than identifying it, to identify the offender to limit that risk of an offender being at large.

Q. In terms of the interaction between, on the one hand, as you say, securing a crime scene and the first report 24 hours later, at least according to current practices, if the crime scene has been secured, would you expect it to remain secure for the 24 hours until that first report has been prepared?

A. Not necessarily, no. So that - and that's within 24 hours. So it would be a regular occurrence where that would be undertaken certainly much quicker than that. So, for example, going to a case where they deploy to a crime, finish that crime scene and then submit that sit rep, situation report, that update, within their shift of 12 hours.

Q. And then the formal review comes two weeks later?

A. So as soon as possible, and within that time. So often it's not - it's not irregular for it to be within a few days after that, although typically, whilst we're waiting for results to come back from FASS, it can be a little premature to do them too early, so --

Q. And are you able to indicate whether that system was in place in the '90s?

A. As far as formalised in relation to - in reports, I can't say. I haven't found any - I know that it happened

1 because I did it. So as a detective, then the process -
2 and I recall this being taught - as a detective, Crime
3 Scene would do the crime scene and then the first thing you
4 did is, as the detective there, was to have a briefing from
5 Crime Scene whilst the crime was still there. Crime Scene
6 would take you through and explain what it was that they
7 did, that was your opportunity to give case context,
8 because it's a balance between case context and contextual
9 bias, that relationship between the investigator and the
10 crime scene officer.

11
12 And so that was the opportunity for the investigators
13 to do a walk-through, get updated in relation to what had
14 happened, give some case context that might prompt the
15 crime scene officer to undertake some further examinations
16 and then, once that was finished, an investigative search
17 of that crime, you know, when the crime scene officer
18 finished.

19
20 So it was definitely happening. There would be an
21 ongoing relationship with that crime scene officer in those
22 periods after the crime had taken place, waiting for
23 results to come back. This has formalised it. I can't
24 think of nor find documents that formalised it in the '90s
25 but it definitely happened.

26
27 Q. You say "definitely"; it definitely happened. Was it
28 also part of the training of all Homicide detectives, do
29 you know?

30 A. So it was certainly, in the Homicide course that
31 I did, that was in 2000, though. So I'm talking about when
32 I was a detective at patrol level, in the mid '90s.

33
34 Q. So you're able to tell us it definitely happened but
35 are you able to indicate whether it happened in most cases
36 or in the usual case or --

37 A. I understand. No, I was only talking about the fact
38 that it existed as a concept and that I did it but
39 I couldn't say that it happened in every case, no.

40
41 Q. You're not able to say - or, sorry, are you able to
42 say whether, even if it didn't happen in every case, it was
43 recognised as good practice?

44 A. I'm hesitating for the '90s. I just can't recall
45 where it came into my - whether it was in the detectives
46 course, where it was first introduced as a concept, I can't
47 recall.

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Q. Then at paragraph 79 you address the situation where a Crime Scene Services Branch officer did not attend the crime scene, and in that situation, they would provide advice to the OIC?

A. Yes.

Q. Would that advice include advice about what exhibits it might be appropriate to take into custody?

A. It could. It could. I'm just trying to think of some - I think those are fairly - they're going to be fairly straightforward cases where, you know, there's an item there that we know exists and is linked to a crime, giving us some advice in relation to packaging, I suppose, but the police know that generally.

Q. And at paragraphs 83 and following, you address the decision to undertake forensic analysis, as it's been since 2010?

A. Yes.

Q. What are the changes since 2010 in relation to the decision to undertake forensic analysis?

A. Well, the biggest change from 2010 - it was actually 2011 when we went to automation. And so the ability or Crime Scenes' role then of taking swabs, swatches, or tapelifts to then send to DAL from the items and it was an automatic process for DNA, and so that ability to - well, sorry, the decision-making process of what to target in those areas was handed over to the crime scene officers, whereas previously, they had been the biologists who were in the Evidence Recovery Unit at DAL and they would target those areas and then that would progress through, so --

Q. What's the significance of moving from the crime scene officers to the FASS biologists? Is that - did I understand you correctly?

A. Other way round.

Q. Other way round?

A. Yeah, so 2011 saw the automation of the processes at DAL - so they call it robotics - where, when we take a sample now, we put it into a tube that then doesn't have to be handled by anybody, it gets loaded into the robotics and off it goes on its journey of discovery in relation to the DNA in that.

1 Q. And the object of that is to ensure that as few humans
2 come close to it as possible because of the risk of
3 contamination?

4 A. That would certainly be one aspect, and efficiency is,
5 yeah, another huge aspect to that. So then that pushed
6 that process to crime scene officers in their
7 decision-making process of what to target and - in relation
8 to those exhibits.

9
10 That had been happening to some level previously. You
11 know, we had our scene of crime officers, our volume crime
12 officers, out there taking swabs in relation to trace DNA,
13 and our crime scene officers doing that also at the scene
14 for those immovable objects, but our exhibits were being
15 managed by people from DAL or FASS - it would be DAL then.

16
17 Q. And the automation obviously - the benefits once the
18 sample goes into the automated system, you've explained,
19 that is both efficiency and protection from - reduced risk
20 of contamination. How has that affected the
21 exhibit-gathering process, the process by which, at a crime
22 scene, particular exhibits are identified and swabs taken
23 or tapelifts taken?

24 A. Not a huge difference there, perhaps. Our ability to
25 do that without having to remove significant items, like
26 walls or carpet I'm thinking of, but even then we might
27 still do that. But that ability to take a sample from
28 a scene and have that secured and then sent off.

29
30 Outside of that, we're still taking our exhibits back
31 with us, we're doing that work in the laboratory. And, of
32 course, it's important to do that because they might be
33 required for further analysis. You know, if it's a murder
34 weapon or some item with blood, we'd do that examination,
35 we send that off, we hold that item, and then we might come
36 back to it if we're not successful, or we might have that
37 process of a large number of exhibits and we target those
38 that we believe have the highest probative value and work
39 down through that as those results come back through.

40
41 Q. And just to make sure I understand, because I think -
42 and I may have confused it by getting it the wrong way
43 around the first time just to be clear - after 2011, when
44 the new system was in place, in terms of the person who
45 decided or the officer or individual who decided which
46 samples should be targeted or which areas should be
47 swabbed, what the tapelift should - what should be

1 tapelifted or otherwise analysed - was that the crime scene
2 officer or the biologist from FASS?
3 A. So post 2011, the crime scene officer, yes.
4
5 Q. And before 2011, was it the biologist from FASS?
6 A. Yes.
7
8 Q. Presumably before 2011 the crime scene officer still
9 had a role --
10 A. Yes, absolutely.
11
12 Q. -- in relation to it? And what was that role?
13 A. Collecting the exhibit. So that was - at the scene,
14 collecting the exhibit from the scene, packaging it and
15 bringing it back and then submitting it for analysis.
16
17 Q. Thank you, Superintendent. At paragraphs 90 and
18 following you give evidence about the attendance of Crime
19 Scene Service Branch officers?
20 A. Yes.
21
22 Q. Could you assist the Commissioner with the protocol
23 or the procedure for the attendance of Crime Scene Service
24 Branch officers?
25 A. In relation to now? So what dictates that --
26
27 Q. Yes. What's the system now?
28 A. -- simply corporate service. So very rarely that we
29 don't attend when we're called. And there's then - the
30 guidelines underneath that dictate what level of service it
31 is, so if it's volume crime we have our scene of crime
32 officers attending those, and then going up, and I think
33 I explained yesterday, to that level of incident that
34 requires our experts to attend. But it's seldom that we
35 say no, and perhaps that previous example where they call
36 and it's clear that we don't need to attend because
37 whatever is there can simply be collected by them.
38
39 Q. At paragraphs 98 and following you give evidence about
40 the testing process, including at paragraphs 101 to 103,
41 the prioritisation of testing?
42 A. Yes.
43
44 Q. Could you explain to the Commissioner what you mean by
45 the "prioritisation of testing"?
46 A. So that management of risk and capacity, and first of
47 all in relation to risk, the greatest risk that we have is

1 that there is an offender that has yet to be arrested and
2 we have evidence to facilitate that arrest and that person
3 commits another crime. So that's the greatest risk that we
4 have, and if we are inefficient in that space and we don't
5 get that evidence back and another crime is committed, then
6 that's obviously a huge risk to us as an organisation.

7
8 So we manage that based upon our assessment of the
9 crime and the offender and, at the highest level, we call
10 them "critical", and those come to me and then I ring FASS
11 and we have a critical priority. So the last time I did
12 that, more recently did that, was for some sexual assaults
13 in Goulburn where there were two sexual assaults, a week
14 apart, and it was apparent it was the same offender and it
15 was clear that there was a potential for a third to happen.

16
17 When that goes to a critical priority, that's where
18 FASS are working after hours and on weekends. So they're
19 coming in and working until the job is done. And FASS,
20 I know, are giving evidence later but there are - there are
21 periods of time where simply nothing can happen because it
22 must spend that many hours in that machine, is my
23 understanding, so it wouldn't matter how many staff you
24 throw at it, but there's processes that can be done and
25 they do it after hours and on weekends for those.

26
27 Then there's the notion of a priority, where it simply
28 jumps the queue, so it's a more serious job that requires
29 more attention from FASS to the other jobs, and so that job
30 jumps the queue to the front. That might be physically us
31 getting it there and they physically put it to the front of
32 the queue, or then if it's already gone through the process
33 of automation and the DNA has come out, putting it to the
34 front of the queue in the reporting phase.

35
36 Q. What are the factors that --

37
38 THE COMMISSIONER: Can I just interrupt for a moment?

39
40 MR EMMETT: Yes.

41
42 THE COMMISSIONER: Q. What, if any, interaction occurs
43 between the crime scene officer and the forensic
44 pathologist? Does the crime scene officer routinely,
45 regularly, sometimes, attend a post-mortem?

46 A. So if it's for suspicious deaths we're there. And
47 then we get called by the pathologist, if there's a death

1 there that then has issues, they'll stop. We have that
2 fairly routinely, where a post-mortem will be conducted
3 without us and then, because of what the pathologist has
4 seen, they'll stop that and call us to go down.

5
6 Q. But doesn't it sometimes arise the other way around?
7 If the crime scene officer thinks there may be a reason to
8 have suspicion, is there - I would imagine as a matter of
9 common sense, would there not be some collaboration between
10 crime scene officer and forensic pathologist because the
11 crime scene officer may have a theory or may have a view
12 about an injury and may not know one way or the other or
13 may have something that he or she wants to pursue with the
14 pathologist? I mean, is there a protocol for that or is it
15 more or less ad hoc depending on the interests of the
16 particular crime scene officer?

17 A. No, so that would - your Honour, that would be then
18 placed within - in the P79A. So that would be that - the
19 crime scene officer briefing the police investigator to
20 say, "This is what we've found, this is what we've seen",
21 perhaps like we spoke of yesterday where initially there
22 wasn't an apparent injury but then, on closer examination,
23 there was, so that's the crime scene officer's role to
24 update that investigator, that goes on the P79A and that
25 matter then goes through as marked as suspicious.

26
27 MR EMMETT: Q. On pathologists, you gave some evidence
28 yesterday about a previous practice, you said you couldn't
29 remember when it had --

30 A. Stopped.

31
32 Q. -- ceased, of the pathologist attending the crime
33 scene. Do you remember that?

34 A. Yes.

35
36 Q. Do you remember the factors that led to a decision
37 that pathologists would cease doing that?

38 A. What stopped them going? No, I don't. No, I just
39 simply know that it was something that I was doing as an
40 investigator when I - and having conversations with them,
41 and then that ceased, and I don't know what --

42
43 Q. Do you have a sense of or do you - going from your own
44 experience, you had experienced a pathologist attending,
45 what, in the '90s, did you?

46 A. Yes.

47

1 Q. What about in the early noughties?

2 A. In the?

3

4 Q. In the early 2000s?

5 A. I can't be certain. Perhaps, but I can't be certain.

6 I'm just trying to think of some of the cases that I did

7 then and I don't have a clear recollection.

8

9 THE COMMISSIONER: Q. I presume to some extent it's
10 a resources issue because if you have to have a pathologist
11 who would almost certainly be a medical practitioner, there
12 would have to be someone available 24/7 to be of any use?

13 A. And I was going to suggest perhaps communication, you
14 know, our ability to send photographs as we do now and that
15 ability to communicate remotely, perhaps, was something
16 that negated their need.

17

18 MR EMMETT: Q. Yes, presumably technology, handheld
19 phones, means it's able to provide more information
20 remotely faster?

21 A. Perhaps, yes.

22

23 THE COMMISSIONER: Q. But the case we were dealing
24 with yesterday is an example where the police officer
25 concerned - rightly or wrongly, it doesn't really matter -
26 made a call which was in part a medical call as to the
27 cause of death?

28 A. Yes.

29

30 Q. And as a result of that, things were left in the flat
31 which, had a question mark been raised by perhaps someone
32 else to say, "Well, how old is the deceased", "50, 51,"
33 "well, maybe cardiac arrest is not high on the agenda --

34 A. I understand.

35

36 Q. -- so collect everything in the room", whereas there
37 what happened was the police officer clearly believed that
38 natural causes, as it were, was the most likely event,
39 therefore, no attention was given to things in the room.

40 A. The surrounds.

41

42 Q. And it wasn't until a few days later when the
43 pathologist advanced a theory which was not cardiac arrest
44 but probably a blunt instrument to the head?

45 A. I understand.

46

47 THE COMMISSIONER: All right.

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MR EMMETT: Thank you, Commissioner.

Q. Can I come back to the prioritisation of testing. You referred to so - you explained critical, so the critical cases, and then the next level down is the priority cases, where they jump the queue. What are the factors that lead to - that influence a case becoming a priority case?

A. The seriousness of the offence. So that clear - that top critical one is that clear risk of an offender offending again, and then it would scale down to the seriousness of the offence and managing that aspect, versus then our volume crime.

Although that said, volume crime could be a priority as well, if we get the sense that these are - and that does happen routinely, where we get a series of events and get the sense that there's somebody out there who is just doing volume crime over and over again, then we can put those as priorities.

Q. And is there a formal scale of priority after that or is it that - is it just --

A. Case context.

Q. -- jump the queue? I don't mean to be critical when I say "jump the queue", but move something to the front of the queue on a case-by-case basis?

A. Yes.

Q. It's the latter?

A. Yeah, so once it goes priority, it's then an agreement with FASS, and generally they'll get those back within 48 hours, those results with priority.

Q. Moving back to your statement, section D, you deal with the arrangements with FASS?

A. Yes.

Q. As you say, the Commissioner will hear further from FASS, but could you explain to the Commissioner your role in dealing with FASS?

A. So that's an operational level, you know, essentially our workflows affect their workflows, and so managing the efficiencies and effectiveness in that space, and that could come - an example would be priorities, where we did a review after a conversation with my equivalent, where

1 priorities were causing issues to workflows. We had
2 a conversation and realised that there was a better way to
3 do it, and that was that we would make sure our priority
4 samples got there before 9am, and then that all the
5 priorities for that day were processed then, and then we
6 would wait.

7
8 Because what we found, having that interaction, was
9 that if we're bringing in priorities at midday, then it was
10 interrupting the whole flow and the whole run of it and it
11 was actually inefficient and it wasn't that much quicker
12 for the priorities. So we went "That's a good idea. Let's
13 stop that." So that's that - you know, "How does our work
14 affect your work", and managing the effectiveness in that
15 space.

16
17 Q. Thank you, Superintendent. At paragraphs 112 to 123
18 you describe various agreements and arrangements between
19 the CSSB, or the Police Force generally, and FASS?

20 A. Yes.

21
22 MR EMMETT: Commissioner, you have that material in your
23 tender bundle. I don't need to take the Commission to it.

24
25 THE COMMISSIONER: Thank you.

26
27 MR EMMETT: Q. Finally in paragraph 125 you refer to
28 a procurement exercise to acquire an upgraded forensic case
29 management system. Are you able to explain that system in
30 more detail?

31 A. The only reason I hesitate is I heard Ma'am Conroy say
32 yesterday in relation to the procurement process and the
33 contracts not being signed.

34
35 Q. To the extent that it may trespass on anything that is
36 not or you have concerns about it being in the public
37 domain, say so, but to the extent that you can assist the
38 Commissioner with it?

39 A. I understand. So perhaps I can say that some outcomes
40 that we're hoping for in relation to a new system would be
41 some efficiency gains in our processes. So my
42 understanding is that there's an ability within some of the
43 systems out there that we've looked at for our staff to
44 reduce duplication in relation to notes; an ability to
45 secure photographs and notes from the scene that are then
46 secured within the system automatically, as opposed to
47 taking some notes, coming back to the police station, or

1 our office, then transcribing those into EFIMS. So some
2 real efficiency gains in the way that that process works,
3 using tablets at the scene and just making that workflow
4 much more effective and efficient.

5
6 Q. And you explain that either that system, or a system
7 that's similar is currently used in all comparable
8 jurisdictions?

9 A. Yes.

10
11 Q. What are the comparable jurisdictions?

12 A. As in every jurisdiction in Australia.

13
14 Q. So at the moment, all the other jurisdictions have
15 a capability that the NSW Police Force hopes to have but
16 doesn't have yet?

17 A. They have a system that is being used - and that,
18 again, I hesitated there because there's different levels
19 of that system that they haven't all engaged in. It's been
20 developed over 15 years. Some are still in earlier phases.
21 That system was actually developed in a local jurisdiction
22 and then purchased by an external company. My hesitation
23 is that some of the jurisdictions are in older versions.
24 Everybody's moving towards the same, is my understanding.

25
26 Q. I understand. Thank you, Superintendent.

27
28 THE COMMISSIONER: Q. And what about the Australian
29 Federal Police? They have a different agenda, for obvious
30 reasons because --

31 A. But they're using it as well.

32
33 THE COMMISSIONER: Are they? Okay.

34
35 MR EMMETT: Q. I just want to make sure that I understand
36 what you mean. Near the end of that paragraph, in the
37 third-last line, you identify a number of matters - that
38 is, systems to manage case notes, exhibits management and
39 job requests - and you say, "All these will now be
40 conducted within the one system." Am I right that when you
41 say "now", you mean all these will be conducted within the
42 one system when we have that one system?

43 A. Correct.

44
45 MR EMMETT: Thank you, Superintendent.

46
47 Commissioner, those are my questions.

1
2 THE COMMISSIONER: Yes, Mr Tedeschi.
3

4 <EXAMINATION BY MR TEDESCHI:
5

6 MR TEDESCHI: Q. Superintendent, you were asked some
7 questions by Counsel Assisting about sympathetic victims?

8 A. Yes.
9

10 Q. Firstly, you state in your statement at paragraph 15
11 that the majority of your career has been spent in the
12 field of criminal investigation?

13 A. That's correct.
14

15 Q. And you describe how you moved to investigative duties
16 at Redfern, then Manly, then you had a career in crime
17 investigation in Crime Agencies?

18 A. Yes.
19

20 Q. You moved to the Homicide Squad?

21 A. That's correct.
22

23 Q. Where you were promoted to detective sergeant?

24 A. Yes.
25

26 Q. You were a team leader there?

27 A. That's correct.
28

29 Q. And you then performed duties as the crime manager of
30 the New England Local Area Command before being promoted to
31 superintendent in July 2021 at the CSSB?

32 A. That's correct.
33

34 Q. What I want to ask you is this: based upon your
35 experience as an investigator and your experience since
36 then with CSSB, what do you say about this proposition,
37 that in some individual police officers there may be an
38 impulse or a tendency to work harder and be more thorough
39 when dealing with a sympathetic victim?

40 A. It's not something that I have experienced. In
41 relation to my investigations, it's about achieving
42 a positive outcome and that notion of making sure that the
43 truth of the matter is exposed and known.
44

45 But perhaps that notion of extra effort - some of the
46 cases that I've been involved with certainly touch you on
47 some level, but I don't know that that necessarily equates

1 to an investigation that would be any different other than
2 the way that it touches you as an investigator going
3 through that. You are still doing the processes, you are
4 still looking for those outcomes, and it's just that some
5 cases perhaps have an effect on you more than others.
6 I can't think of any time that I've investigated a crime
7 and given it less because, perhaps, I didn't like the
8 victim or some issue like that.

9
10 Q. What about your observation of your investigator
11 colleagues?

12 A. I can't think of an example, not that that's
13 indicative of the entire Police Force, but in my time and
14 in the places - I have worked in high-output places. I've
15 always tried to place myself where it's been busy. I don't
16 know if that's a reflection of that, that people go to busy
17 places that want to work. I'm not sure. But that hasn't
18 been my experience.

19
20 MR TEDESCHI: Yes, thank you. Thank you, Commissioner.

21
22 THE COMMISSIONER: All right. Thank you. Thank you very
23 much, Mr Best.

24
25 <THE WITNESS WITHDREW

26
27 THE COMMISSIONER: There are a couple of things I need to
28 deal with off the bench, so what I'm going to do is take
29 the break now. Who is the next witness?

30
31 MR EMMETT: Detective Superintendent Daniel Doherty will
32 be the next witness.

33
34 THE COMMISSIONER: Is Mr Doherty here?

35
36 MR EMMETT: I am terribly sorry, it is Detective Inspector
37 Warren.

38
39 THE COMMISSIONER: All right. Is Mr Warren here? He is?
40 All right. I don't see Mr Warren in court. He is outside
41 somewhere, is he? Okay.

42
43 It might be about half an hour, Mr Tedeschi. There
44 are just a couple of matters that I need to attend to.

45
46 MR TEDESCHI: Yes.

47

1 THE COMMISSIONER: If it is going to be any longer --
2
3 MR TEDESCHI: With us or independently of us?
4
5 THE COMMISSIONER: No, independently of you. There are
6 some other matters that have arisen that I need to address.
7 One of them concerns something that Mr Emmett will deal
8 with.
9
10 So perhaps if I say half an hour, I don't think that
11 will unduly cause a problem for today and tomorrow.
12 I think you are on schedule, aren't you, to finish all
13 those that you intend to?
14
15 MR EMMETT: Yes, yes, Commissioner.
16
17 THE COMMISSIONER: All right. I will adjourn for the time
18 being. Thank you.
19
20 <THE WITNESS WITHDREW
21
22 **SHORT ADJOURNMENT**
23
24 THE COMMISSIONER: I'm sorry about the delay, Mr Tedeschi
25 and others. Yes?
26
27 MR EMMETT: May it please the Commission. I call
28 Detective Inspector Nigel Warren.
29
30 THE COMMISSIONER: Thank you.
31
32 <NIGEL KEITH WARREN, sworn: [12.09pm]
33
34 <EXAMINATION BY MR EMMETT:
35
36 MR EMMETT: Q. Could you tell the Commissioner your full
37 name?
38 A. Nigel Keith Warren.
39
40 Q. And your occupation?
41 A. Detective Inspector of Police.
42
43 Q. Thank you. And you work in the Homicide Squad of the
44 NSW Police Force?
45 A. I do.
46
47 Q. How long have you been a police officer, Mr Warren?

- 1 A. Since 1988.
2
- 3 Q. You have been a detective for 23 years; is that right?
4 A. Probably a little bit longer than that. So I was
5 uniform officer from '88 till about '93, and then plain
6 clothes at a police station until I was designated in 1995
7 as a detective.
8
- 9 Q. And when did you join the Homicide Squad?
10 A. I joined the Homicide Squad in '97. '97/'98, spent
11 until 2006, where I then moved to the Sex Crimes Squad for
12 14 years, and then returned to the Homicide Squad.
13
- 14 Q. Just doing the maths, that means you've been back in
15 the Homicide Squad since 2020; is that right?
16 A. That's right.
17
- 18 Q. Detective Inspector, have you prepared a statement for
19 the purpose of this Commission dated 9 June 2023?
20 A. I have.
21
- 22 Q. The contents of that statement are true and correct in
23 every particular?
24 A. Yes.
25
- 26 Q. Do you have in front of you a copy of that statement
27 [NPL.9000.0018.0507]
28 A. Yes, I do.
29
- 30 Q. Thank you. You prepared that statement in response to
31 a request from the Commission dated 26 May 2023?
32 A. Correct.
33
- 34 Q. Could I ask that you be provided with a copy of that
35 letter. Hopefully you have the letter of 26 May 2023
36 [SCOI.04217_0001]
37 A. Yes, I do.
38
- 39 Q. And your statement addresses primarily those matters
40 that are summarised in what's titled "The Investigative
41 Steps Schedule", which starts on - well, if you turn in
42 that document to the page number, going from the top
43 right-hand corner, the last digits are 0014.
44 A. I gather that's page 4. I just can't see because it's
45 stapled. Yeah.
46
- 47 Q. You've got the page titled the "Investigative Steps

1 Schedule"?

2 A. The table, yes.

3

4 Q. The table. Thank you. If I could just ask you to

5 have that to hand for the time being?

6 A. Sure.

7

8 Q. But your statement addresses the matters raised in

9 that table?

10 A. That's right, the investigative - not so much the

11 exhibit schedule but the investigative schedule, which

12 I think is the second part of that.

13

14 Q. Yes. You refer to the exhibit schedule, that

15 there's - the previous pages are another schedule dealing

16 with exhibits that haven't been located?

17 A. That's correct.

18

19 Q. For the most part you haven't addressed those, but

20 there are three matters in that table where there's

21 a missing file, and you give some evidence about those

22 three matters of the missing file?

23 A. That's right.

24

25 Q. In preparing your statement, what inquiries did you

26 make in relation to each of these matters?

27 A. So the material that was available through a tender

28 bundle, I looked through and read through, and also looked

29 at historical rules and instructions from 1960 through to

30 the 1980s and also 1990s, when it became Commissioner's

31 Instructions.

32

33 Q. Did you also look at the written submissions of

34 Counsel Assisting and of the NSW Police Force in relation

35 to these matters?

36 A. I did when they came in, yes.

37

38 Q. That's right. To be clear, when you prepared your

39 statement, written submissions had not been prepared for

40 all of the matters that you looked at?

41 A. That's right.

42

43 Q. But to the extent that written submissions were

44 available for - either from Counsel Assisting or from the

45 Commissioner of Police or both - you reviewed those?

46 A. That's right.

47

1 Q. Were there any other inquiries you made to assist you
2 in preparing your statement?
3 A. Not off the top of my head, no.
4
5 Q. Now, in your statement in section A, which commences
6 at paragraph 13, you address the three matters you referred
7 to as the matters in the exhibit table.
8 A. Yes.
9
10 Q. That is, Mr Sheil?
11 A. Yes.
12
13 Q. You refer to "Williams-Lloyd" - did you mean
14 Mr Lloyd-Williams?
15 A. I did.
16
17 Q. And there's Raye?
18 A. Yes.
19
20 Q. Now, in relation to those three matters - well,
21 dealing first with Mr Sheil and Mr Lloyd-Williams, you
22 observed that in relation to those two matters, each of
23 Mr Lloyd-Williams and Mr Sheil were found at the bottom of
24 a cliff?
25 A. Yes.
26
27 Q. From your knowledge of police practices, you would
28 expect documents to be created in the course of police
29 responding to deaths of that kind?
30 A. Yes, that's correct.
31
32 Q. And according to the standards of the day, you would
33 expect those documents to be placed among the police
34 records?
35 A. Yes.
36
37 Q. Are you able to assist his Honour with the police
38 record-keeping practices in relation to such documents?
39 A. In relation to that period of time or --
40
41 Q. Yes.
42 A. -- what we --
43
44 Q. We'll come shortly to current record-keeping
45 practices. At that time?
46 A. Yeah, so obviously it was paper based. There was no
47 electronic record-keeping, so to speak, so it was all

1 notes - notes taking, typing. There would have been
2 particular documents required to be completed for the
3 Coroner, particularly a P79A, statements. You would expect
4 scientific examinations of some form that would produce
5 either their reports, statements, photographs, as well as
6 any police involvement and statements from them in regards
7 to what they - inquiries they carried out, what
8 investigations they carried out, as well as statements from
9 witnesses that would have been spoken to or suspects or
10 persons of interest if they were identified.

11

12 Q. And to your knowledge, according to police practices
13 of the day - and just to remind you, for Mr Lloyd-Williams,
14 that's 1979 and for Mr Sheil that's 1983.

15 A. Yes.

16

17 Q. To your knowledge, according to practices of day,
18 would those records have been kept in one place or in
19 multiple places?

20 A. They would have been kept with the officer in charge
21 of those investigations at the time, which would have been
22 at the police station where the incident occurred, which
23 would obviously be where the officer in charge is working
24 from.

25

26 Q. And again, assuming police practices were followed,
27 how long should the records be kept at that location?

28 A. Being a death, depending on if it went to an inquest
29 and depending what the Coroner's determination was, the
30 records probably should have been kept. I don't know of
31 a policy that particularly states that they should be
32 destroyed, but archives would be the appropriate situation
33 for those records to be stored.

34

35 Q. Indeed, even if the Coroner formed the view that it
36 was more likely, on the balance of probabilities, that it
37 was a non-suspicious death, in your view, proper police
38 practices would require those records to be retained?

39 A. Absolutely.

40

41 Q. In relation to Samantha Raye, there are some
42 documents, but it appears there was a missing person report
43 and that report hasn't been able to be located?

44 A. No, that's right.

45

46 Q. Again, where there is a missing person report, that's
47 a document that according - to assist you in timing, that

1 was 1989. According to the police practices of the day,
2 such a document ought to have been prepared?
3 A. Yes, it wouldn't have been an electronic document. It
4 would have been, most likely, what they called a "police
5 information report" or a "crime information report"
6 detailing the person missing and the circumstances.
7
8 Q. So there should have been an electronic record created
9 in 1989 in relation to this matter?
10 A. There - I know of electronic - those forms being
11 electronic or digitised, I know that they do exist.
12 Whether for this particular, one I'm not sure.
13
14 THE COMMISSIONER: Q. No, that wasn't --
15 A. Well, it's obvious that it wasn't then.
16
17 Q. That wasn't what you were asked, though. You were
18 asked whether it should have been created, not whether it
19 was or it wasn't. In your view, knowing what you know now,
20 should an electronic document have been created back then?
21 A. Yes.
22
23 THE COMMISSIONER: All right. Thank you.
24
25 MR EMMETT: Q. And you're not able to say whether such
26 a document was created or not?
27 A. No.
28
29 Q. Are you aware, just sticking with that document, of
30 what inquiries have been made to endeavour to find out
31 whether such a document was created or not?
32 A. This is, if I remember correctly, the document that
33 was on a COPS - I think it might be a different one I'm
34 thinking of. I can't recall what inquiries were made with
35 that particular one. There's been so many.
36
37 Q. I might ask for more details to be turned up and we
38 will come back to it, if it would assist you.
39 A. Sure.
40
41 Q. Can I turn next in your statement to section B dealing
42 with investigative steps.
43 A. At what page?
44
45 Q. I'm sorry, that's at page 7, begins at paragraph 20.
46 A. Yes.
47

1 Q. You explain that the policies and procedures are not
2 prescriptive?

3 A. No, that's right.
4

5 Q. And could you explain to the - and you say there's
6 good reason for that. Could you explain to the
7 Commissioner what you mean by saying the policies and
8 procedures are not prescriptive and why you say there's
9 good reason for that?

10 A. So generally overall the rules and instructions aren't
11 prescriptive to a detective's role. It is prescriptive in
12 terms of different instructions across the rules and
13 instructions as a whole, for instance, the Coroner's
14 inquests instructions, which is instruction 78. That gives
15 a lot more detail and describes more of a process that's
16 taken in regards to deceased, particularly the first time
17 police locate a deceased body, all the way to attending the
18 morgue and the way that clothing and exhibits are dealt
19 with at the morgue and in relation to statements being
20 obtained in relation to suicide matters.
21

22 Q. In terms of considering investigative steps
23 themselves, in relation to those matters, you tell the
24 Commissioner the procedures are not prescriptive?

25 A. No, that's right. So it's very difficult to define
26 and - it is difficult, sorry - the rules and instructions
27 at that time appear to struggle to describe and
28 particularly show what a detective's role and type of work
29 is. And in a lot of ways, I understand that, because there
30 is a lot of knowledge and experience that a detective draws
31 on during an investigation. There's not as much
32 legislation or policy, I think, that was put in place back
33 in the '70s and '80s to what there is now, which provides
34 more of a guide and - in your decision-making and policy
35 decisions. When you attend a scene or you're investigating
36 a matter, there's a lot more basis and requirements that
37 you're required to ensure are conducted during an
38 investigation.
39

40 Q. But is one reason why the policies and procedures are
41 not prescriptive because you want to ensure that
42 investigators keep an open mind and keep in mind a range of
43 different lines of inquiry?

44 A. Yes.
45

46 Q. You say that investigators are provided with the best
47 opportunity to establish the circumstances where they

1 carefully consider the investigative response, forensic
2 considerations, record-keeping, information management,
3 staffing, resourcing and communication?

4 A. That's right.

5
6 Q. To your knowledge, were those considerations
7 understood to be important in the 1970s and 1980s?

8 A. Yes, they're - I think during that period there
9 appears to be, from investigations that I've reviewed -
10 there is a general flow of those concepts, for instance,
11 your crime scene, your canvassing, witness identification,
12 your victim - we call it "victimology" now. I don't know -
13 I'm not sure what they called it back then, but, you know,
14 understanding what the victim's background was and as well
15 as, you know, your information management. Obviously now
16 that's become a lot more detailed and, you know, as part of
17 our training we're quite - it's quite important that we
18 train people in regards to those aspects of investigative
19 processes.

20
21 Q. And as a Homicide detective or other investigator, is
22 one important attribute what might be described as
23 "professional curiosity"?

24 A. Yes.

25
26 Q. And detectives should strive to avoid blinkered views
27 or tunnel vision?

28 A. Yes, that's correct. Open mind is the key thing
29 there, and ensuring the way you interpret information,
30 I think, is important as well.

31
32 Q. When you say open minded in "the way you interpret
33 information", do you mean by that, among other things, that
34 you might have tentative case theories but it's very
35 important that case theories remain tentative?

36 A. That's right.

37
38 Q. And that's because you don't want to foreclose or you
39 want to avoid making assumptions that are consistent with
40 that case theory and perhaps overlooking signs that are
41 inconsistent with that case theory?

42 A. Correct.

43
44 Q. If an investigator doesn't keep that open mind, they
45 may overlook important lines of inquiry?

46 A. That's right.

47

1 Q. Is that also a reason why it's important to maintain
2 objectivity?

3 A. Yes.

4

5 Q. And to avoid, so far as possible, rigid thinking?

6 A. Yes.

7

8 Q. Things like lateral thinking can be valuable and
9 avoiding thinking along particular lines?

10 A. Yes, yes, you --

11

12 Q. And that's one of the reasons - is that one of the
13 reasons why you say there's good reason for not being too
14 prescriptive?

15 A. Yes, that's right. You don't want to close yourself
16 off.

17

18 Q. Related to that, is there a risk of confirmation
19 bias - that is, an investigating officer interpreting facts
20 to fit a case theory rather than recognising that some
21 evidence may point towards a different theory?

22 A. Yeah, it's possible.

23

24 Q. Is it something that, to your knowledge, detectives
25 were trained to be vigilant about in the '70s and '80s?

26 A. I don't know.

27

28 Q. What about since then, in the '90s and since?

29 A. Well, probably more recently, about bias, I think.
30 The period of time that I was a detective it was always
31 instilled to keep that open mind and not to, I guess, lock
32 in on a particular issue because that can cause you to,
33 I guess, yeah, as you're saying, a bias towards that
34 particular view.

35

36 Q. And indeed, you mention bias. There's a risk of
37 conscious or unconscious bias affecting an investigator's
38 conduct of a particular investigation?

39 A. Yeah, there can be.

40

41 Q. And that may include conscious or unconscious bias
42 against members of particular communities?

43 A. Yes.

44

45 Q. Could I ask this about the value of cultural awareness
46 and sensitivity towards - I'm going to ask particularly
47 about the LGBTIQ community, but what I ask may well go for

1 other diverse and minority communities. One of the reasons
2 why it's important to have that cultural awareness is that
3 a climate of trust and confidence between police and
4 members of that community will tend to facilitate the flow
5 of information towards the police from members of that
6 community?

7 A. Correct.

8

9 Q. And likewise, a climate of suspicion or distrust or
10 fear will tend to hamper that flow of information?

11 A. Yes, that's right.

12

13 Q. Second, knowledge about a community might assist
14 investigators to make more informed judgments about what
15 might be fruitful lines of inquiry in an investigation that
16 might involve members of that community?

17 A. That's right, and understand that, you know, it can
18 provide trust between the police and the community.

19

20 Q. One example that has come up in a number of cases
21 before the Commissioner is recognising that an area might
22 be a beat and that that could inform the circumstances in
23 which somebody died near that area?

24 A. It could, yes.

25

26 Q. Third, a reason why that kind of cultural awareness or
27 open-mindedness is important is that, as a general
28 proposition, investigators with broader horizons and more
29 open minds will tend to be more professionally curious and
30 perceive lines of inquiry that a narrow-minded investigator
31 might overlook?

32 A. Yes, I can see that.

33

34 Q. And fourth - this might not be deliberate and it might
35 not be the case in all investigators, but in some
36 investigators, is there a risk that they may work harder or
37 be more thorough if an investigator is dealing with a
38 sympathetic victim - or what they perceive to be
39 a sympathetic victim?

40 A. Yes, yeah, that's possible.

41

42 Q. Is that something that, in your experience, police
43 officers should always - are you able to assist his Honour
44 with whether, including, starting with the '70s and '80s,
45 in the '70s and '80s, officers were vigilant in relation to
46 those matters?

47 A. Oh, I couldn't - I couldn't tell you.

- 1
2 Q. What about since then? In your involvement, are there
3 steps taken to ensure that police officers are vigilant to
4 avoid those risks?
5 A. Yeah, I think - I think there's a lot more awareness,
6 you know, from the - probably the '90s into currently.
7 There's a lot more supervision, particularly from the
8 late '90s onwards. You know, there was particularly
9 changes in the Police Force at that point that I think was
10 a good thing and really provided an oversight of
11 investigations.
12
13 Q. Can I ask, what education did you receive about the
14 risks, if any, in your progression towards becoming
15 a Homicide detective, in relation to matters of conscious
16 or unconscious bias or dealing with members of minority
17 communities?
18 A. I can't recall anything specific but I'd hope that my
19 own morals and personality would be identified by someone
20 that if that was the case, it would be - I would be
21 corrected or provided some sort of awareness as to that
22 taking place.
23
24 Q. In your initial education, do you recall any formal
25 training about that?
26 A. No, I don't.
27
28 Q. And what about since that time? While you have been
29 a detective, has there been any training or other support
30 or guidance?
31 A. Yes, there's been - we have an online education system
32 that is constantly being utilised to provide awareness in
33 areas such as this as much as other particular matters
34 within the NSW Police, from, you know, legislation to
35 investigative processes to LGBTIQ awareness.
36
37 Q. And when you say that, could you assist the
38 Commissioner with that online system. When you say there
39 is an online system, is it a resource that people plug into
40 or do they do regular courses, how does it work?
41 A. So it's called "PETE" and it's effectively - you can
42 access it through your desktop and there are directions as
43 to certain ones that are mandatory or there's ones that you
44 can choose to - through video and readings - learn about
45 whatever that subject is.
46
47 Q. Can I understand, PETE, that's P-E-A-T?

1 A. P-E-T-E.

2

3 Q. I'm sorry. Do you know what that stands for? It's
4 okay if you don't.

5 A. I don't. Parts of it I do, but --

6

7 Q. And if the courses are mandatory, what's the process
8 of ensuring that people - that the officers undergo them?

9 A. So there's a requirement each - every 12 months,
10 there's a requirement of conducting mandatory training, and
11 that could be from your weapons training to physical to
12 legislation to community awareness subjects, and you are
13 required to complete that within the 12-month period, and
14 that's part of - well, it's part of the - I was going to
15 say "part of your increment" but I don't think that's
16 correct. It's - if you do not complete it in that
17 12 months, questions are asked as to why and you're
18 directed to do so.

19

20 Q. So when you say if you do not complete it within that
21 12 months, does that mean officers complete these mandatory
22 courses every 12 months or they do it once?

23 A. Oh, it varies. So weapons and physical training is
24 every 12 months. That's mandatory. Normally when the
25 legislation comes in to practice of a particular year, that
26 will be also a mandatory. There's also face-to-face
27 training that's incorporated with the PETE system,
28 depending what the subject is, and there's also - sorry,
29 I've lost my train of thought. What was your question?

30

31 Q. You were indicating in relation to the mandatory ones,
32 how often they - how often people do different kinds of
33 mandatory courses?

34 A. Oh, sorry. So although legislation might have come in
35 one year, it may not - it may not be a mandatory subject
36 for the following year. There's also certain issues that
37 may arise in the community that police need to have
38 a better understanding on or more training in, so that will
39 be a mandatory component for that particular 12 months.

40

41 Q. And what about matters like cultural awareness in
42 relation to certain kinds of diverse communities?

43 A. That's - yeah, that's quite regular, our indigenous
44 community, any particular awareness that is an issue,
45 I guess, between police and that community is raised and
46 provided as some sort of training or insight into those
47 issues.

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Q. And how does that operate in practice? You've said it's online. Do they sort of play a video and watch? What do the officers do as part of participating in that program?

A. So it's a software. It's effectively - it's a system within the police network and it's a matter of clicking in to that system and you will have a menu that you select or you can see what's mandatory and what's by choice. Obviously if there's a mandatory one it will tell you whether you've completed it or not. If you haven't completed it by activating that training package, it can - it's in the form of normally a PowerPoint or video presentation, and depending what the subject is, it can go from 10 minutes to 45, to an hour.

Q. Now, coming back to your statement, in responding to the table, you've said that one of the reasons why you felt unable to comment on particular matters of concern was because you did not know why particular steps were or were not taken in relation to those investigations.

A. Yes. It's difficult for me. If it's viewing the records, if it wasn't recorded in some way, whether the matter of concern was raised, it was going to be very difficult for me to put myself in the mind of that person at the time as to why they were making certain decisions, along with whatever information they were receiving at the time would affect their investigative process.

Q. One of the difficulties, am I right, is the paucity of the records or the difficulty of --

A. The what, sorry?

Q. The paucity of the records - the fact that we don't have all of the records from each investigation?

A. That's right, and it makes it difficult for me to comment on whether something did or didn't happen.

Q. Can I now come to what you're able to say about the records now. You've been involved in the process of trying to - of gathering records for the purpose of this Inquiry?

A. That's correct.

Q. Am I right in understanding that the archiving of records within the Force - the responsibility for that rests on the individual OIC on the case?

A. Yes, that's - during those periods of time, in my

1 experience in the '80s and '90s, that the officer in charge
2 would be required to, at finalisation of the particular
3 matter, compile the material and place them in some sort of
4 container that would be stored at a police station, where
5 it would be up to the officer in charge of that police
6 station to determine what happens with that material,
7 ideally to be archived at some point.

8
9 Q. But whether or not it does get archived, that's
10 a matter for the OIC in each case?

11 A. I think it's more a matter for the officer in charge
12 of the police station, so effectively the commander of the
13 police station. There were at one point brief handling
14 managers, later in the '90s, I think it was, but that was
15 ultimately discontinued, I don't know why. And what we're
16 finding is that a lot of material or records were stored in
17 the particular room or exhibit area of the police station
18 that the original matter was connected to.

19
20 Q. And from your inquiries in connection with this
21 Special Commission, have you observed that the
22 record-keeping and the archiving of cases from the 1970s
23 and 1980s is inconsistent?

24 A. Yes, yes.

25
26 Q. There are a number of cases where you have found it
27 difficult to identify what records exist and where they
28 are?

29 A. Yes, so it's been complicated in trying to understand,
30 just putting a victim's name, why material is not getting
31 picked up, and some months later it's getting identified.

32
33 Q. Tell me, we'll come to the experience in relation to
34 this Special Commission in a moment, but are you able to
35 assist, do you know what the Unsolved Homicide Team does
36 when they need to find all the documents relating to
37 a particular matter because they are looking at that
38 matter? How do they go about doing that?

39 A. So there's a unit called Corporate Records. So the
40 Unsolved Homicide, if there was a review to be conducted,
41 they would, through an internal system, an electronic
42 computer, through the computer system, so a portal, would
43 request the Corporate Records Unit to do a search of any
44 records in relation to the matter being reviewed, which
45 would ideally be the victim's name.

46
47 They would then return a result notifying us of

1 whether or where those records were and ultimately we get
2 those sent to us, to the Unsolved Homicide Team.

3

4 Q. Did the unit called Corporate Records - is that a unit
5 within the Police Force?

6 A. Yes.

7

8 Q. Where does it fit in the Police Force?

9 A. So it's under Corporate Services. So it's - they're
10 not police officers that are connected with the Corporate
11 Records Unit that we deal with, and their - my
12 understanding is that their function is to manage the
13 movement and storing of the archive material or any other
14 records or files that - outside of unsolved matters, you
15 know, within the NSW Police.

16

17 Q. And are those officers responsible for the storage
18 and - the storage, retention and retrieval of those
19 records?

20 A. Yes.

21

22 THE COMMISSIONER: Q. Who's in control of that group?

23 A. Sorry?

24

25 Q. Who is the person who's in control of that Corporate
26 Records?

27 A. There's a director. I'm not sure who that --

28

29 Q. So it's not Assistant Commissioner Conroy?

30 A. No.

31

32 MR EMMETT: Q. Is Corporate Records separate from the
33 archive, the State Archives?

34 A. So the government repository - records repository,
35 yes, it's my understanding that that's a separate
36 government facility altogether.

37

38 Q. And are you able to assist the Commissioner with the
39 relationship between the police Corporate Records Unit and
40 the State Records repository?

41 A. Am I what, sorry?

42

43 Q. Able to assist the Commissioner with what the
44 relationship is between those two?

45 A. So it's - the Corporate Records is controlled by the
46 NSW Police as a unit within NSW Police. Government Records
47 Repository is - maintains all government records across

1 New South Wales. It's not just NSW Police. That's
2 a facility that's not connected to any NSW Police site, and
3 access to those records are on request from the government
4 department.

5
6 Q. If it's outside your knowledge, say so, but what are
7 the arrangements between the Corporate Records Unit and the
8 State Archives? So if you wanted to find documents, could
9 they be in both locations? Could they be in one or the
10 other? How do you find out which?

11 A. So when we put our request in for a particular record,
12 Corporate Records will do a search on a Records Management
13 System. That will provide them with, my understanding is,
14 a box number. They would see where that location of that
15 box is, which could be the Government Records Repository,
16 it could be at a police station depending what the record
17 is, and then they request the particular box or document
18 from wherever the location is.

19
20 Q. So if the system is working as it should work,
21 Corporate Records is the point that you or another
22 detective would contact to try to identify what records
23 exist, and if the system is working as it should, Corporate
24 Records is able to identify records that have been held
25 physically in different places, whether they be --

26 A. That's right.

27
28 Q. -- at a State records repository or individual police
29 stations?

30 A. That's right.

31
32 Q. And in your experience, have you found the Corporate
33 Records Unit's records to be reliable?

34 A. Initially when we started this process with the
35 Inquiry, it was my understanding that you would put
36 a victim's name in and ideally all the records would be
37 identified. As the process has gone along, it has been
38 discovered that records, and historically records that have
39 been archived by police, have not been put under
40 a particular name; it's found that they could be under
41 a particular number, could be under a location, could be
42 under a - or a particular file could be in a box with
43 multiple other matters that don't relate to that particular
44 file. So there has to be a broader varied search in
45 relation to or in addition to just stating a name.

46
47 THE COMMISSIONER: Q. So does that mean that your

1 experience, partly as a result of this Inquiry, is that
2 Corporate Records is not necessarily the most reliable
3 source of the whereabouts of records?

4 A. No, that's right, and they're relying on,
5 unfortunately, I think, the NSW Police --
6

7 Q. All right. And so your experience is, what, that the
8 police's response or the police's providing information to
9 Corporate Records has been such that Corporate Records
10 can't give you an easy road to find documents that may
11 relate to particular cases?

12 A. That's right.
13

14 Q. That must mean there was no protocol in place guiding
15 the police officer as to how he or she might provide
16 information?

17 A. It does seem to be that situation. I don't know what
18 the policy was back then and it's obvious that the naming
19 of the documents is so varied.
20

21 Q. Well, not just the naming of the documents but where
22 they might be. I mean, if some are in local commands and
23 some are elsewhere, and so on, it's - but do I take it that
24 whatever protocol was in place, it was incumbent upon
25 officer in charge, let's call the person that for the
26 moment, to provide precise information about the
27 whereabouts of documents in the event they were needed?

28 A. Yeah, I think also along with that is that when the
29 Records Management System - so a digitised system
30 commenced, whatever was written on the container, so to
31 speak, whether that was ideally searched and documented on
32 the Records Management System was up to it being digitised,
33 which is creating, I think, for Corporate Records a very
34 difficult job in trying to identify those records.
35

36 MR EMMETT: Q. Are you able to assist with how much is
37 digitised and how much remains only in paper form?

38 A. No, I couldn't tell you that.
39

40 Q. But from your involvement so far, is it the case that
41 a significant volume remains only in paper form?

42 A. So inquiries during this process of inquiry is that
43 there appears to be a number of records we've located that
44 haven't actually been archived. So that's happened on
45 three occasions during this period.
46

47 Q. If they haven't been archived, they haven't been

1 digitised?

2 A. That's right. They're not recorded.

3

4 Q. And what about in relation to if they have been
5 archived or they have been - if they've at least made it to
6 Corporate Records, are all of those records then digitised
7 or do you not know?

8 A. I don't know if they're actually digitised, they're
9 obviously recorded on the Records Management System, but
10 digitising I don't think - that's a big - that's a big job.

11

12 Q. If it was up to each OIC to pull the material together
13 and archive it in each case, are you able to assist the
14 Commissioner with what supervision there was of the OIC to
15 ensure that it was done reliably and consistently?

16 A. From my experience when I did it, there was no
17 supervision. Whether that was the case - so that was
18 during the '80s and '90s. I was - from the late '90s
19 I wasn't at a patrol, I haven't been in a patrol since then
20 so I don't know what the situation is now.

21

22 Q. But you're able to say from your own experience that
23 there wasn't that supervision in the '80s and the '90s?

24 A. No, it was up to the individual to compile it into
25 a container and store it at the police station.

26

27 Q. And are you aware of any information that might
28 suggest that supervision had existed in the '70s?

29 A. No.

30

31 Q. Coming back to the Unsolved Homicide Team - and again
32 if you're not able to assist in relation to this, say so -
33 when the Unsolved Homicide Team decides it wants all the
34 information about a matter, does it need to go through the
35 same process you've just been describing?

36 A. To retrieve archived material?

37

38 Q. Yes.

39 A. Yes.

40

41 Q. And does that mean in order to be confident that it
42 has all the records, it needs to consult first the
43 Corporate Records Unit?

44 A. Yes.

45

46 Q. Second, the individual station where the investigation
47 was conducted?

1 A. Yes.

2

3 Q. And, third, am I right, it's possible that the records
4 could end up in a different station if the OIC moved and
5 took records with them?

6 A. It's possible. It - depending with all the
7 restructures that's happened over time, they could move
8 around to different stations. But when I say "move around
9 to different stations", they're still within that
10 particular area, so, for instance, you look at Paddington,
11 Bondi, those sort of areas, you would - it would be
12 contained within that particular command.

13

14 THE COMMISSIONER: Q. And were records moved at some
15 point either from or to Paddington or Bondi when Waverley
16 was established as a courthouse, or perhaps you can't
17 answer that?

18 A. Yeah, I couldn't be sure on that.

19

20 Q. And I suppose with historic cases, even if you knew
21 who the officer in charge was, that may not be of much
22 utility because it then would turn upon the memory of that
23 officer in charge, which may or may not be available if he
24 or she is still alive?

25 A. That's right.

26

27 THE COMMISSIONER: Okay.

28

29 MR EMMETT: Q. Another thing that the Commissioner has
30 received evidence about is officers when they leave the
31 Police Force occasionally retaining records themselves,
32 after they've left the Police Force. Are you aware of that
33 happening?

34 A. I have heard of that happening, yes.

35

36 Q. To your knowledge, was that consistent with police
37 procedures at the time?

38 A. No.

39

40 Q. Officers were meant to leave police records with the
41 police?

42 A. Yes, yes.

43

44 Q. And if officers did take records with them, that was
45 a breach of one obligation or another?

46 A. I think it's the security of the information

47

1 Q. But that is something that you've heard --

2 A. Yes.

3

4 Q. -- occurs? And so if one wished to retain all the
5 evidence relevant to a particular case, you may need to ask
6 yourself whether such records have been taken home?

7 A. Yeah. Unsolved Homicide Team, when they receive the
8 archived material, it becomes apparent that - if there's
9 something missing. So with unsolved matters there's
10 normally a sequence or a category system, and if you find
11 that there is a particular number or something that's
12 missing, then - or not in the archived material, then you
13 have to start searching elsewhere.

14

15 Or same with if a document speaks to another document
16 or a set of photos or something like that, and they're not
17 contained within the archived material, then you have to go
18 searching to see if you can locate them. So there might be
19 cases where you do have the whole brief of evidence or the
20 case files, and other times there might not be.

21

22 Q. But if you don't have the whole record, there will
23 often be indicators that you're missing something like
24 numbered documents won't be sequential or there will be
25 a reference to a document that ought to be in the file but
26 is not there?

27 A. That's right.

28

29 Q. And is another example: you would assume there would
30 be notebooks of individual officers involved in the
31 investigation and if they're not there, one would ask why?

32 A. Sorry, did you say "notebooks"?

33

34 Q. Yes.

35 A. Yes. Well, notebooks, duty books seem to have been
36 stored separately to case files, because they were - they
37 were instruments used for many jobs, not just the
38 particular one for the case file. So they were stored
39 independently to the actual case files.

40

41 Q. And so you'd need to identify them separately, would
42 you?

43 A. You would need to identify the officer and then try
44 and track down - notebooks were an accountable document so
45 they had a number, and you would normally identify the
46 police station that was - that the officer was at and then
47 try and identify the archiving of those notebooks or duty

1 books by that police station.

2

3 Q. And again, is there a system to identify where those
4 notebooks are? What --

5 A. So it's the same, same issue with the Corporate
6 Records or using the Records Management System, you have to
7 search through and identify whether it's the officer's name
8 or whether it's the police station they were at.

9

10 Q. And all of that is dependent on the record having made
11 it to the Corporate Records in the first place?

12 A. Yes.

13

14 Q. And you're aware of instances in which that hasn't
15 happened?

16 A. We haven't been able to locate certain notebooks or
17 duty books. Whether that's because they have a termination
18 period under the schedule of - I think it's the State
19 Records Act, or they just never got archived.

20

21 Q. When you say a "termination" date, you mean the date
22 upon which they may be destroyed?

23 A. Yes.

24

25 Q. There would be a record if there were a decision to
26 destroy particular documents such as notebooks, wouldn't
27 there?

28 A. Yes, there should be.

29

30 Q. And that record ought to be somewhere with Corporate
31 Records?

32 A. I'm not sure.

33

34 Q. Do you mean by that, a record exists somewhere, you
35 just don't know where - you personally?

36 A. Yeah, I don't know whether there would be a record
37 kept. Understanding of - if it was within the schedule,
38 I don't know whether it would be - there would be
39 a decision made within New South Wales police prior to it
40 being destroyed and a record kept or whether it's something
41 that's just, you know, the Government Records Repository
42 would make, which I'd find probably unlikely. So you'd
43 hope there'd be a record, but to be honest, I have never
44 come across --

45

46 Q. You'd hope there'd be a record, and is it also true,
47 you would expect police to be consulted before records are

1 destroyed?

2 A. Yes. Whether that's happened, I couldn't tell you
3 that.

4
5 MR EMMETT: Would that be a convenient time, Commissioner?

6
7 THE COMMISSIONER: Yes, it is, thank you.

8
9 **LUNCHEON ADJOURNMENT**

10
11 THE COMMISSIONER: Yes.

12
13 MR EMMETT: Commissioner, if it's convenient, we are ready
14 to resume the evidence of Detective Inspector Warren.

15
16 THE COMMISSIONER: Yes, thank you. Thank you, Inspector.

17
18 MR EMMETT: Q. Detective Inspector, are you aware of any
19 policy that indicated to OICs at what point documents in
20 their investigative files should either be put in the back
21 room of the police station or sent to Corporate Records or
22 sent to the State Archives?

23 A. Not historically.

24
25 Q. When you say, "not historically"?

26 A. So only from - effectively from early 2000s. I don't
27 know of a policy before then.

28
29 Q. Are you able to say to the Commissioner that there was
30 not such a policy or you just don't know?

31 A. I just don't know.

32
33 Q. If there was such a policy, it appears it was not
34 adhered to?

35 A. If there was a policy, that's right.

36
37 THE COMMISSIONER: Q. And likewise, whether it was
38 adhered to or not, you can't find it?

39 A. No.

40
41 Q. And while I'm interrupting, does it go without saying
42 that you looked for such a policy, couldn't find it, or
43 what --

44 A. I did search for it, but I didn't --

45
46 Q. And just so that I know, where did you look?
47 I presume in more than one place, but how did you

1 interrogate the system or how did you try to find out where
2 it might be?

3 A. So I looked on our intranet, we'll put it that way,
4 basically trying to find an historical document that might
5 relate to some policy in regards to archiving.

6
7 THE COMMISSIONER: Okay, thank you.

8
9 MR EMMETT: Q. Can I come back to the historical
10 investigations. Before coming to the individual matters in
11 the table, can I ask some further introductory questions.
12 To your knowledge, investigators have known for many
13 decades that physical exhibits are very important to any
14 investigation?

15 A. Yes.

16
17 Q. At least from the 1970s, indeed for some time before
18 that, but during the relevant period we're looking at from
19 the 1970s onwards, police investigators have been aware
20 that courts place a premium on contemporaneous records
21 because they're more reliable than eyewitness accounts?

22 A. That's right.

23
24 Q. And eyewitness accounts are fallible and vulnerable to
25 change?

26 A. Over time?

27
28 Q. Over time.

29 A. Yes, yes.

30
31 Q. To your knowledge, were police - were investigators in
32 this State also mindful from the 1970s onwards that delay
33 is a problem for the prospects of conviction because
34 a defendant may face a forensic disadvantage, and special
35 allowance may need to be made of that?

36 A. I'm aware of that.

37
38 Q. And that the loss, contamination and deterioration of
39 evidence is a major obstacle to the success of an
40 investigation?

41 A. Yes.

42
43 Q. To your knowledge, those matters were understood in
44 the 1970s and 1980s?

45 A. I couldn't say.

46
47 Q. You couldn't say?

1 A. No.

2

3 Q. You just don't know one way or the other?

4 A. I just - yeah.

5

6 THE COMMISSIONER: Q. But in terms of charging an
7 accused person or charging a person and proceeding with
8 a prosecution, it must have been, as a matter of common
9 sense, plain and obvious to anyone at any point that not
10 only the court but the whole process would expect whatever
11 relevant exhibits were there would be presented, if
12 a prosecution was going to be launched?

13 A. Absolutely, yes.

14

15 MR EMMETT: Q. At paragraph 30 of your statement, you
16 explain the general structure used to approach an
17 investigation and say that that has not changed
18 dramatically since at least 1995?

19 A. Yes.

20

21 Q. And that includes taking command and control of the
22 scene?

23 A. Yes.

24

25 Q. Coordinating the crime scene response?

26 A. Yes.

27

28 Q. And by that you mean the response of the crime scene
29 investigators or forensic investigators?

30 A. So by that I mean the officer in charge coordinating
31 the crime scene response or allocating that to someone
32 appropriate to coordinate the crime scene response, which
33 would mean attendance of crime scene and communications
34 with crime scene officers.

35

36 Q. Canvassing the area for witnesses or information?

37 A. Yes.

38

39 Q. Searching the area for items or secondary crime
40 scenes?

41 A. Yes.

42

43 Q. Retrieving information from witnesses?

44 A. Yes.

45

46 Q. Coordinating liaison with next of kin?

47 A. Yes.

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Q. Coordinating and managing suspects?

A. Yes.

Q. And establishing information management processes and systems?

A. Yes.

Q. Were all of those matters, so far as you're aware, also appreciated as important matters in investigations in the 1970s and 1980s?

A. Yes, because you draw your evidence from a lot of those aspects.

Q. At paragraph 31 you have set out some significant developments in recent times.

A. Yes.

Q. They include - you've identified developments in technology, including especially DNA?

A. Yes.

Q. Are there other developments in technology that you would single out?

A. There'd be chemical enhancements for latent evidence; there would be the change in technology for processes to extract DNA or fingerprints; oh, just probably photography has come a long way in regards to detail that it can provide and effectively software that can be used to enhance and things like that.

Q. Software that can be used to enhance photographs, do you mean?

A. Yes.

Q. At paragraph (f) you refer to improved training. What kind of improved training did you have in mind?

A. I think training at a detectives course has just continued to improve, particularly with technology, change of technology in information. I think legislation has developed, with the legislation (Forensic Procedures) Act, Law Enforcement (Powers and Responsibilities) Act - all of those are adapted in training, detectives training particularly. Also, I think case studies from particular subject matter experts in investigating or crime scene or solicitors, legal - the legal fraternity. That's a continual improvement in our training, and as well as

1 obviously community aspects and different community groups
2 and understanding victims, victimology - that's all - all
3 a progress, I think, for us in training.
4

5 Q. Can I ask you about victimology. You referred to it
6 before the luncheon adjournment as well. By victimology,
7 the way you introduced it a moment ago was to say
8 "understanding victims"?

9 A. Yeah, I think it's - we've got a better approach to
10 understanding why a victim is subject of a crime, and
11 particularly why that person is a victim in regards to the
12 perpetrator, whether there's a relationship there, whether
13 it's from a different offence that's - you know, like
14 a robbery or something like that, the community that the
15 victims come from and whether there's any cultural issues
16 that need to be considered. All those factors are now an
17 impact on how we look at victims.
18

19 Q. Those sorts of factors have been appreciated for
20 decades as potentially significant factors in an
21 investigation, haven't they?

22 A. Yeah, I think it helps you look at a motive, perhaps,
23 in regards to why the victims are - a person is a victim of
24 crime. Although a motive can assist, it sometimes can't be
25 determined overall at times. But, yes, historically that
26 is a consideration. But I think we've got more depth to
27 understand victimology and the person that is subject to
28 being a victim.
29

30 Q. Would this be a fair summary, that for many decades,
31 certainly throughout the whole period that the Commission
32 is examining, investigators have appreciated that
33 understanding the victim, understanding features of the
34 victim, asking about motive and asking what they know about
35 the victim is an important matter but that what has
36 developed is recognising victimology as its own branch
37 of --

38 A. Yes.
39

40 Q. -- learning and perhaps an increased rigour in the
41 approach to victimology?

42 A. Yes.
43

44 Q. In your role, have you had occasion to assess the
45 quality of investigations in the past in circumstances
46 where the investigating officer is not available?

47 A. Yes.

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Q. In what contexts have you had occasion to do that in the past?

A. So at Unsolved Homicide, I've looked at previous investigations.

Q. And how do you go about assessing the quality of an investigation in circumstances where the investigating officer is not available?

A. You have to - it's a long process. You have to look at all the information. You've got to put, in some ways, your mind back into the time period and try and understand why certain decisions were made or weren't made. It's about learning about all the information, reading all the information so that you can come to a point of trying to understand what reasons - what has been done and for what reasons or what we can do that hasn't been done.

Q. And it's possible to - in conducting that exercise, you've conducted that exercise on the basis of incomplete information in the past?

A. Yes.

Q. And am I right, you will look at the information you have, you try to gather as much information as you can, you look at that and then you try to make a judgment about whether there is a sensible explanation for what appears to be errors or oversights apart from oversight or poor judgment?

A. Yes.

THE COMMISSIONER: Q. But you might look at a previous investigation, though, for two reasons, at least: one, let's say, because you are interested in quality control issues?

A. Mmm-hmm.

Q. But, two, if you're considering reinvestigating that case. Now, if you're reinvestigating the case, whilst you might look at things that weren't done, you wouldn't be looking at it quite to the same extent as you might be if you were, say, comparing the quality of investigations then as opposed to now?

A. No, it comes down to what evidence is before you.

Q. Yes. So if the purpose of going back and looking - for example, you have a tip-off or you want to subject an

1 exhibit to another analysis by FASS, you may or may not be
2 very concerned that that has been subjected to previous
3 analyses?

4 A. No.

5
6 Q. Because you might just want to see again whether
7 there's something new?

8 A. That's right.

9
10 THE COMMISSIONER: All right.

11
12 MR EMMETT: Q. Has your previous - have you had occasion
13 to undertake the previous kind of examination or assessment
14 that his Honour described a moment ago - that is, assessing
15 the quality of an investigation for a quality assurance or
16 review purpose or to compare the quality of the
17 investigation then to what you would expect of a police
18 officer?

19 A. So I think focusing on a matter that was historically
20 investigated to be able to see what other avenues that we
21 can take to either locate evidence or to test the
22 information, if it's information that's come from a person
23 of some sort - that, depending where that comes may lead to
24 some sort of a recommendation as to whether we
25 reinvestigate it or whether we look at just taking
26 a forensic review of it.

27
28 Q. What about looking at past investigations, looking at
29 what may be oversights or deficiencies in order to learn
30 from mistakes and improve investigations for the future?

31 A. That - yes, that's - I think learning from mistakes,
32 it depends what it is, I think, but - are you talking about
33 mistakes that were done by police or?

34
35 Q. Well, what I'm trying to understand is the extent to
36 which, in your role, in circumstances where the original
37 investigating officer is not available, you have had
38 occasion to look at past investigations in order to make an
39 assessment as to whether there may have been oversights or
40 deficiencies or errors of judgment with a view to learning
41 from that or improving processes for the future?

42 A. Yes, yes, I think - I think that's definitely an
43 important aspect. There's so much legislation now, which
44 I think is an example of how that's changed the view of
45 what happened historically to how things can be approached
46 now.

47

1 Q. And among other things, you conduct that exercise,
2 don't you, by gathering the information that is available,
3 and if there are matters of concern, matters that either
4 have been taken that don't look like they should have been
5 taken or gaps, steps that you would think should have been
6 taken that don't appear to have been taken --

7 A. Yes, that's right.

8

9 Q. -- you may ask yourself whether there's a good reason
10 for that or not that you can see on the file?

11 A. Yes.

12

13 Q. And if there's not a good reason for it, you may take
14 the view that this is something we can learn from?

15 A. That's right.

16

17 Q. And learn that, in the future, this is the sort of
18 step that it would be good to take and that should have
19 been taken?

20 A. Yes, that's a consideration that we look at.

21

22 Q. Did you conduct that exercise or take that approach to
23 your review of the items in the table in the letter of
24 26 May 2023?

25 A. Yes, there was those issues that I considered in
26 amongst the rules and instructions and my experience.

27

28 Q. Well, I'm going to go through some of them in a bit of
29 detail. I propose to go - unless this gets confusing,
30 I propose to go in the order - in chronological order of
31 the date of death rather than the order you've got in the
32 table, so that we're dealing with cases of a similar age in
33 the one order.

34 A. Sure.

35

36 Q. That being the case, I won't force you to flick;
37 I will hopefully be able to tell you where to go when we go
38 to it. The first person I want to ask about is Michael,
39 known as Mark Stewart, who died on 10 to 11 May 1976, who
40 is number 14 in the table and (n) in your statement?

41 A. Sorry, what number in the table?

42

43 Q. Fourteen.

44 A. Fourteen. It's redacted.

45

46 Q. Do you have that?

47 A. No. It's redacted.

1
2 MR EMMETT: Pardon me for a moment. Commissioner, may my
3 instructing solicitor approach?

4
5 THE COMMISSIONER: Yes.

6
7 THE WITNESS: Oh, sorry, wrong table. Sorry.

8
9 MR EMMETT: Q. I'm sorry, there are two.
10 A. Yes.

11
12 Q. So the relevant page number, if you look, going from
13 the page numbers in the top right-hand corner, the last
14 digits are 0018. If you have number 14 --
15 A. Yep.

16
17 Q. -- Stewart?
18 A. Yep.

19
20 Q. And then next, the date is 10 to 11 May 1976?
21 A. Yep.

22
23 Q. On your review of the files, you observed that
24 Mr Stewart died on 10 or 11 May 1976?
25 A. Yes.

26
27 Q. And that his body was found lying face-down on the
28 rocks about 20 feet from the cliff face, about 250 metres
29 south of the Fairy Bower headland in Manly?
30 A. Yes.

31
32 Q. And that the area was adjacent to or part of a known
33 beat?
34 A. Yes.

35
36 Q. No alcohol was found in Mr Stewart's blood?
37 A. No.

38
39 Q. And he had last been seen at 9.30pm on 9 May 1976 at
40 the Hilton Hotel in George Street in the CBD, where he had
41 booked a hotel room for two nights?
42 A. Yes.

43
44 Q. Do you remember that? And the Police Force found on
45 his body a small piece of paper with the name and telephone
46 number of a hotel on one corner?
47 A. Yes.

- 1
2 Q. The notepaper was from the Chevron Hotel in Sydney?
3 A. Yes.
4
5 Q. Do you remember that? And the notation said "7.20,
6 11.5.76" in biro?
7 A. Yes.
8
9 Q. And a man's Seiko wrist watch was found about 21 feet
10 east of the body where the watch had stopped at 8.02,
11 Tuesday, 11?
12 A. Yes.
13
14 Q. And Mr Stewart's shoes were found laced up and in
15 close proximity to his body but not on his feet?
16 A. Yes.
17
18 Q. And it appeared that NSW Police did not take
19 photographs or other documents relating to the location and
20 position of the body or of Mr Stewart's possessions. Did
21 you observe that?
22 A. There's no record of that.
23
24 Q. And the absence of that record means it's difficult
25 accurately to identify the location where the body was
26 found?
27 A. Yes, I agree.
28
29 Q. Those steps were available with technology, with the
30 technology of 1976?
31 A. Yes.
32
33 Q. It's important, in an investigation, to have
34 a photograph or other reliable record of the location of
35 the position of the body and where personal effects were
36 found?
37 A. Absolutely.
38
39 Q. And that was appreciated in the mid '70s?
40 A. Yes.
41
42 Q. Could you offer any reason why one would not expect
43 those steps to be taken in 1976 - the photographing of the
44 body and the effects?
45 A. No, I can't.
46
47 Q. Did you also observe the evidence that at the Chevron

1 Hotel, the bar called the Quarter Deck was a popular venue
2 for gay men at the time?
3 A. Yeah, I don't remember that, but I acknowledge that.
4
5 Q. There are no records of - the evidence indicated that
6 the hotel receptionist of the Hilton Hotel, that is, not
7 the Chevron Hotel, provided a statement, but no further
8 attempts were made to contact hotel staff to obtain
9 information about Mr Stewart's movements at any time after
10 he checked in?
11 A. No; that's correct.
12
13 Q. And those are steps that you would expect police to
14 undertake --
15 A. Yes.
16
17 Q. -- investigating a death like this?
18 A. Yes.
19
20 Q. And you would expect those steps, if proper police
21 procedures had been followed, to be taken in the mid '70s?
22 A. You'd expect so.
23
24 Q. Can I move next to Paul Rath, who died on 15 to
25 16 June 1977, and it's item 10 on the table and
26 subparagraph (j) of your exhibit.
27 A. Yes.
28
29 Q. On review of your file - sorry, on your review of the
30 file, you observed that Mr Rath died on 15 or 16 June 1977
31 at Fairy Bower headland, Manly?
32 A. Yes.
33
34 Q. Again, it appeared as a result of a fall from
35 a height?
36 A. Yes.
37
38 Q. According to the file, penile and anal swabs were
39 collected and the penile swabs showed the presence of
40 semen, but the samples were not retained?
41 A. Yes.
42
43 Q. According to the file, Mr Rath had a schizophrenia
44 disorder which was being treated at the time, and the
45 evidence obtained indicated he was fairly well?
46 A. Yes.
47

1 Q. The only documented attempt to search or inspect the
2 vicinity of the cliff top was a note from the OIC that he
3 had made an examination of the ledge from where the
4 deceased apparently fell but found no notes left or signs
5 of a struggle?

6 A. No; that's right.

7
8 Q. Now, first, in relation to the semen that was
9 detected, as you may have seen - you will have seen from
10 the written submissions, the Inquiry has received evidence
11 that emission of semen is relatively common post-mortem,
12 and so detecting semen is not necessarily evidence of
13 recent sexual activity?

14 A. Yes.

15
16 Q. Is it nevertheless a matter that, in your view, ought
17 to have prompted investigating officers to make inquiries?

18 A. Yes, I noticed they determined it non-suspicious,
19 which may have influenced their progress from that point.

20

21 Q. I'm sorry, I missed that?

22 A. I noticed they determined that as non-suspicious, or
23 they considered the death to be non-suspicious. Depending
24 at what point they determined that would possibly influence
25 what they did from that point on.

26

27 Q. Just looking at the matters identified in paragraphs
28 (2) to (5) on item 10 - well, sorry, dealing first with the
29 bloodstained clothing, in the 1970s, blood type analysis
30 was an important forensic technique?

31 A. For grouping.

32

33 Q. For grouping, yes.

34 A. Yes, yes.

35

36 Q. And that was a good reason to ensure in the 1970s that
37 bloodstained clothing was not destroyed or cleaned?

38 A. I can't answer that. It's too long ago. I - from -
39 I do recall reading somewhere the P79As, there was an
40 actual - there was an actual entry that related to disposal
41 of clothing, and it seems to be if examinations were made
42 of the clothing, whether that's just for blood grouping -
43 I tend to think that they would consider it not further
44 useful, not understanding that DNA was at the specific
45 point in that history in the '70s to be available in
46 future.

47

1 Q. I'm sorry, just to be clear, you said you think you
2 recall a form. Sorry, did the form encourage the retention
3 or the disposal of clothes?

4 A. Disposal. It's a P79A. So, my understanding, that
5 was that they had to get authority to dispose of the
6 clothing, and considering that it was only looked at for
7 blood grouping, and DNA wasn't at the forefront of their
8 mind, obviously, at that point, that may explain why the
9 clothing wasn't retained.

10
11 THE COMMISSIONER: Q. So does that mean, though, that if
12 someone is found, say, with blood on their clothing - does
13 that mean that - and when you say a P79A, you mean the
14 document prepared for the Coroner?

15 A. Yes.

16

17 Q. But does that mean that it was never the case that you
18 checked whether there might be another blood grouping on
19 the clothing? For example, there are several blood groups,
20 four, perhaps, with the Rhesus factor, and why wouldn't you
21 routinely - sorry, perhaps I shouldn't ask. Would it
22 follow this way, that unless there appeared to be some sign
23 of a struggle or something, a police officer would just
24 assume all the blood was that of the deceased?

25 A. No, I wouldn't think so. I - well, I don't know what
26 was on their mind at the time.

27

28 Q. No, no, of course, but what I'm --

29 A. It's quite possible.

30

31 Q. Okay, well, then let's go back. Was it practice to
32 exclude, or, rather, to see whether all of the blood on the
33 relevant items was that of the deceased person? Was that
34 a practice, or was it not pursued, as far as you're aware?

35 A. It's a practice now. I couldn't say for back then.

36

37 Q. Okay. But back then, it would have been appreciated
38 there was more than one blood group?

39 A. Yes, yes.

40

41 MR EMMETT: Q. And if one was asking whether or not to
42 dismiss a death as suspicious - as non-suspicious or to
43 recognise it as potentially suspicious, that would be
44 a highly significant inquiry to make?

45 A. Yes, yes.

46

47 Q. And one that, so far as you're aware, was available to

1 investigating officers at the time?
2 A. Yes.
3
4 Q. Looking at paragraphs (2) to (5), the steps identified
5 there, those are all steps available to --
6 A. Sorry, where are you?
7
8 Q. I'm sorry. Looking at the table, item 10, the first
9 entry, there are five subparagraphs.
10 A. Yes.
11
12 Q. The first is the bloodstained clothing?
13 A. Yes.
14
15 Q. Looking now - and by all means, re-read to jog your
16 memory subparagraphs (2) to (5)?
17 A. Yes.
18
19 Q. Those are all steps that were available to
20 investigating officers in the mid '70s?
21 A. Yes.
22
23 Q. And those were all steps that would assist in forming
24 a view about whether or not the death was suspicious?
25 A. Yes.
26
27 Q. You would expect an investigating officer today to
28 make the inquiries identified in those subparagraphs,
29 wouldn't you?
30 A. Yes.
31
32 Q. Can you offer a reason why that wasn't equally so in
33 1977?
34 A. No, I can't.
35
36 Q. Can I ask you to turn next to Mr Sheil. It's item 13
37 on the list.
38 A. Yes.
39
40 Q. Subparagraph (m) of your statement. Mr Sheil died
41 sometime between 27 and 29 April 1983.
42 A. Yes.
43
44 Q. Again, from your review of the file, am I right you
45 would have observed that Mr Sheil was found deceased on the
46 rocks below the coastal track at the northern side of
47 Gordons Bay?

- 1 A. Yes.
- 2
- 3 Q. That's south of Clovelly, north of Coogee. He was
4 found by a civilian, who called the police?
- 5 A. Yes.
- 6
- 7 Q. He was found in a short-sleeved shirt with trousers -
8 and trousers with his belt and fly undone?
- 9 A. Yes.
- 10
- 11 Q. The OIC attended the scene alone and observed
12 a magazine of a sexual nature, as it was put in the
13 records, just below a rock outcrop about 20 metres above
14 Mr Sheil's body?
- 15 A. Yes.
- 16
- 17 Q. And observed that the rock outcrop had a very mossy
18 surface of a slippery nature?
- 19 A. Yes.
- 20
- 21 Q. In the week following the discovery of Mr Sheil's
22 body, the OIC made inquiries of the immediate area as to
23 anyone who may have witnessed anything?
- 24 A. Yes.
- 25
- 26 Q. The record is that that was to no avail, nothing
27 turned up?
- 28 A. Yes.
- 29
- 30 Q. And the OIC concluded that Mr Sheil had stepped off
31 the coastal track to masturbate and then accidentally
32 fallen to his death?
- 33 A. Yes.
- 34
- 35 Q. You would expect an investigating officer, both today
36 and in the early '80s, to ask themselves how likely it was
37 that somebody would step off the coastal track for that
38 reason and then accidentally fall to his death?
- 39 A. Yes.
- 40
- 41 Q. You would expect an officer, then and now, to have an
42 open mind as to whether or not the path above where
43 Mr Sheil was found operated as a beat?
- 44 A. I couldn't speak for back then, but I think now, with
45 the intelligence that we can draw from, I'd expect it an
46 issue, presently, to have that --
- 47

1 Q. Well, if it was a known beat at the time - I'm sorry,
2 Detective Inspector, I spoke over you. I didn't mean to.
3 A. No, no, that's fine. Go on.
4
5 Q. If there was evidence available at the time in 1983
6 that this was a beat, that's something that you would
7 expect an officer at that time to take into account?
8 A. The officer's from the local area?
9
10 Q. Yes.
11 A. And kept up to - kept his knowledge up to what was
12 happening in the area? Yes, I would.
13
14 THE COMMISSIONER: Q. And would you expect them to be
15 coy about the nature of the sexual magazine, either not to
16 collect it or not even to describe it, one way or the
17 other? I mean, it's hardly a time to be prissy. You've
18 got someone who's fallen, you've got a piece of evidence
19 which somebody thought it was relevant to mention, so why
20 would you mention it if you don't describe what it is or
21 even take it for the purposes of evaluating its relevance?
22 I mean, why mention it? It's obviously thought by the
23 person concerned to be relevant somehow or other?
24 A. That's right, yeah. It was obviously mentioned
25 because of its relevance to the officer at the time, yes.
26
27 Q. Well, and presumably its proximity to the spot
28 where --
29 A. The deceased.
30
31 Q. -- it was assumed the person fell. But yet I just
32 wonder why you would be so coy not to say precisely what it
33 was, or for that matter to pick it up. Why mention it and
34 not pick it up?
35 A. Yeah, I don't know.
36
37 MR EMMETT: Q. And if the investigator did have
38 information as to whether or not the area operated as
39 a beat, that's a matter that you would expect the
40 investigator to draw to the attention of the Coroner?
41 A. Yes.
42
43 Q. And it's a matter that would be relevant to the
44 Coroner's assessment of whether the death was suspicious or
45 not?
46 A. It would go to forming that, yes.
47

1 Q. And if there was a delay in obtaining statements in
2 relation to the matter, that would not be consistent with
3 proper police practice as it was appreciated in the early
4 1980s?
5 A. I don't recall how long the delay was, but delay means
6 losing opportunity, information.
7
8 Q. Memories fade over time?
9 A. That's right.
10
11 Q. People who don't have occasion to think about an
12 incident, even after the passage of a week or two, may --
13 A. Yes, that's right.
14
15 Q. -- their memory may deteriorate. The delay here was
16 only a month. We're not talking years, we're talking one
17 month, do you understand, but that passage of time is
18 a passage of time that creates the risk of degraded
19 memories?
20 A. Yes.
21
22 Q. And all of that was appreciated in 1983?
23 A. Yes, I'd think so.
24
25 Q. Could I turn next to Mr Rooney, who died on
26 20 February 1986. That's item 12, the immediately
27 preceding item on the table, and subparagraph (1) of your
28 statement.
29 A. Yes.
30
31 Q. You observed from your review of the file, I take it,
32 that Mr Rooney died on 20 February 1986 as a result of
33 a blunt force head injury sustained on 14 February?
34 A. Yes.
35
36 Q. He was found on the ground between a toilet block and
37 a retaining wall near a nightclub?
38 A. Yes.
39
40 Q. This is the one - I don't know if you were in - were
41 you in court this morning, when this is the one that -
42 sorry, were you in the room this morning when --
43 A. No.
44
45 Q. Okay. We heard evidence about this case this morning.
46 A. Okay. Is this where the ambulance turned up and
47 conveyed him to hospital?

1
2 Q. The ambulance turned up, and at that time there was no
3 clear indication of how the person received the injuries.
4 A. Yes, I think it was an ambulance officer note that
5 someone had fallen from a roof?
6
7 Q. That was undoubtedly identified as a possibility. But
8 on 20 February 1986, in the report to the Coroner, the
9 officer in charge recorded "Suspicious circumstances are
10 related to this deceased".
11 A. Yes, and they eventually established a crime scene
12 some time after that.
13
14 Q. Yes.
15 A. Later, after he passed away.
16
17 Q. On 26 February 1986, so a week later, in the report to
18 the Coroner, the Casualty Registrar at the Wollongong
19 Hospital wrote "Circumstances, accident or assault
20 unknown". So at that time it was appreciated - it wasn't
21 known whether it was an accident or an assault?
22 A. Yes.
23
24 Q. Nearly 12 months later, on 5 January 1987, one of the
25 officers on the case expressed an opinion in a statement to
26 the Coroner that Mr Rooney fell whilst intoxicated?
27 A. Yes.
28
29 Q. Did you observe that? And you observed that this
30 opinion was said to be influenced by lengthy discussions
31 with Detective Sergeant Pasmore of the Scientific
32 Investigation Section?
33 A. Okay.
34
35 Q. Do you remember --
36 A. I don't remember that, no.
37
38 Q. It's okay. If you don't recall, take that as me
39 reminding you.
40 A. Yes.
41
42 Q. And that Detective Sergeant Pasmore prepared an
43 unsigned statement in October of - had prepared an unsigned
44 statement in October of 1986, having observed Mr Rooney in
45 hospital back in February, said he appeared to have very
46 slight superficial external injuries on his face and body
47 which were not consistent with an assault victim?

1 A. No, I do recall that.
2
3 Q. Do you recall observing that there was other evidence
4 that raised the possibility that it was not an accident,
5 including that Mr Rooney was not carrying ID and that his
6 pants and underwear were lowered?
7 A. Yes.
8
9 Q. And he was missing a shoe and sock?
10 A. Yes.
11
12 Q. And he appeared to have fingernail marks on his neck?
13 A. I don't recall that, but --
14
15 Q. Take it from me --
16 A. Yes, yes.
17
18 Q. -- that there was evidence to that effect.
19 A. Yes.
20
21 Q. And there was evidence - and if you have a view about
22 the reliability or the value of this evidence, say so --
23 A. Oh, no.
24
25 Q. -- but there was evidence from people who knew him
26 that he held his liquor well?
27 A. Sure.
28
29 Q. In the presence of evidence of that kind, you would
30 expect, wouldn't you, a careful record of why the death
31 might be dismissed as non-suspicious?
32 A. You would expect there would be some records. Without
33 that record, I - I'm unable to --
34
35 Q. You can't help one way or the other?
36 A. No, no.
37
38 Q. The other thing that happened, the constables who
39 were - the police who were first on the scene, two
40 constables, they were called and arrived at 9am on
41 14 February, and shortly afterwards Mr Rooney was taken to
42 hospital?
43 A. Yes.
44
45 Q. Two hours later, the Scientific Investigation Section
46 arrived. But in the intervening two hours, the lessee of
47 the retail premises next door had cleaned the area by

1 hosing it down?

2 A. Yes.

3

4 Q. It appears that the police did not prevent that from
5 occurring?

6 A. It doesn't sound like the police were actually there.

7

8 Q. That naturally limited the ability of investigators to
9 assess the area and recover evidence --

10 A. That's right.

11

12 Q. -- of forensic value?

13 A. Yes.

14

15 Q. And the taking control of a crime scene, the matter
16 you identified before, is an important matter?

17 A. Absolutely.

18

19 Q. And was recognised to be an important matter in 1983?

20 A. Yes.

21

22 Q. Can you think of any good reason why, for those two
23 hours, the crime scene might not have been secured?

24 A. No.

25

26 THE COMMISSIONER: Q. And is - the discretion of the
27 person who arrives on the scene or the officers who are in
28 charge seemingly dictates what flows, does it?

29 A. Yes, yes.

30

31 Q. So that will vary - the discretion will vary depending
32 upon the maturity, the experience and the training of the
33 person arriving at the scene?

34 A. Yes, and I think we look at now the supervision that's
35 over police attending scenes is a lot more than may have
36 been back then.

37

38 Q. And understandably, because if you've got
39 a significant variety of experience and expertise, you
40 could have case theories differing wildly amongst --

41 A. Yes.

42

43 Q. -- police officers?

44 A. That's right.

45

46 Q. Because somebody might turn up and say, "Well, this
47 bloke's obviously fallen and I can smell alcohol.

1 Therefore, he's a drunk and he's just slipped over", or
2 someone turning up and saying, "Well, I'm not sure about
3 that. I'll just wait and see for a bit"?

4 A. Yes, and I guess it's that open mind issue, where you
5 need to be able to substantiate what you're --
6

7 Q. And when did the supervisory protocol - it is in the
8 evidence, but when was that first introduced, that level of
9 supervision or triaging or whatever we're talking about?

10 A. I think it's always been there, but as to I think
11 a more rigorous supervision is probably when we became more
12 digital, so through COPS, in perhaps '94, I think it was,
13 when that came to - was created, it was a requirement that
14 you had to review information put on by police. Prior to
15 that, it was obviously paper based, so there was probably
16 delays or - in other cases, I have no doubt that there were
17 officers that were prudent in their supervision of matters.
18 But I think in the digital age now, that - it's a lot more
19 on point.
20

21 THE COMMISSIONER: Thank you.
22

23 MR EMMETT: Q. Despite the matters I have identified,
24 including Mr Rooney's trousers and underwear being lowered,
25 there does not appear to have been any examination in the
26 nature of a sexual assault examination of his anus or
27 genitals during the post-mortem. Do you recall that?

28 A. Yeah, there's no record to say there was.
29

30 Q. If there was no such examination - you would expect
31 police officers, acting properly, including according to
32 the standard of the day in 1986, to ask for an examination
33 of that kind?

34 A. I would imagine Crime Scene would have considered that
35 at the time.
36

37 Q. Can you offer any reason why that wouldn't have been
38 requested?

39 A. No.
40

41 Q. Can you offer any reason consistent with proper police
42 practice understood at the time why, if that was not
43 requested, why it wasn't requested?

44 A. No, I can't.
45

46 Q. Can I move next to Mr Currie. This is item 2 on your
47 list, and at subparagraph (b) of your statement, Mr Currie

- 1 died between 12 and 13 December 1988?
2 A. Yes.
3
4 Q. He died at a toilet block in Nolan Reserve in North
5 Manly?
6 A. Yes.
7
8 Q. Now, Mr Currie had a longstanding and entrenched drug
9 use - well, the evidence indicates that he had
10 a longstanding drug use problem and was known to Manly
11 police?
12 A. Yes.
13
14 Q. And the conclusion that Mr Currie's death was the
15 result of an overdose was fairly promptly reached?
16 A. Yes.
17
18 Q. The statement of the OIC recorded Mr Currie as
19 somebody who was a well-known drug user who had come under
20 police attention numerous times?
21 A. Yes.
22
23 Q. You would expect an officer, nevertheless, to maintain
24 an open mind as to other possible reasons for death?
25 A. Yes.
26
27 Q. The circumstances of the death warranted its being
28 treated as suspicious, or at least warranted its being
29 treated as a death the cause of which was not known?
30 A. Yes.
31
32 Q. And potentially a homicide?
33 A. Yes.
34
35 Q. And that's the case according to the standards of 1988
36 as well as today?
37 A. Yes.
38
39 Q. In those circumstances, police, acting properly
40 according to the standards of the day, would obtain
41 statements from family members?
42 A. Yes. That would give you insight --
43
44 Q. And they might --
45 A. -- into the overdose side of it, too, so --
46
47 Q. I'm sorry, Detective Inspector, I spoke over you

1 again. I didn't mean to.
2 A. That's all right. Getting - you know, families would
3 have abundance of information about this particular person,
4 his behaviour, and contribute to any issues that may arise
5 that may not have been considered without speaking to them.
6
7 Q. And when police do that, they endeavour to do that in
8 a way that's not distressing or traumatic to the family?
9 A. Yes, yes.
10
11 Q. And if police do that, you would expect to see
12 a record of it?
13 A. Yes.
14
15 Q. And if police decided not to make those inquiries, you
16 would expect to see a record of the decision not to and the
17 reasons why not to?
18 A. I think again, without seeing a record of that
19 decision, it's hard to know whether they would have
20 recorded it or not. I know in our systems today, we record
21 everything, so you would expect to see that. Back then, it
22 may have been a bit more relaxed.
23
24 Q. So that's an aspect of record keeping where you're
25 able to say now you would expect to see it. You don't know
26 whether the standard of the day would call for that?
27 A. No. No.
28
29 Q. Now, the consideration - you will see there is also
30 a note there, the third - in the table, it's the third
31 matter, that is, "Consideration of whether or not the area
32 was a beat"?
33 A. Yes.
34
35 Q. Now, in fairness, it's important to - the Inquiry has
36 received no evidence to indicate that the area was a beat,
37 save that it was a toilet block in a reserve in the North
38 Manly area; do you understand that?
39 A. Yes.
40
41 Q. You would expect police who found a person dead in -
42 who had died in a toilet block today to give consideration
43 to that matter?
44 A. They would seek intelligence about the area and
45 whether that was - part of that intelligence was revealing
46 it was a beat, then - so yes.
47

1 Q. Was it something - are you able to assist the
2 Commissioner with whether it was something that police
3 typically gave consideration to in the late 1980s?
4 A. I can't, no.
5
6 Q. Just can't assist one way or the other?
7 A. No.
8
9 Q. Can I move next to William Allen. This is item 1 on
10 the table.
11 A. Yes.
12
13 Q. Subparagraph (a), Mr Allen died on 28 or 29 December
14 1988?
15 A. Yes.
16
17 Q. And on your review of the file, you observed that
18 Mr Allen was assaulted - the evidence indicated Mr Allen
19 was assaulted at Alexandria Park?
20 A. Yes.
21
22 Q. And that that was a known beat at the time, in the
23 late '80s?
24 A. Yes.
25
26 Q. Mr Allen was driven home by a passer-by, who recalled
27 Mr Allen had said he had been using the beat?
28 A. Yes.
29
30 Q. And Mr Allen, when he returned to the scene to collect
31 his car, spoke to another witness, again, saying that he
32 had been assaulted there?
33 A. Yes.
34
35 Q. And he returned home and was found deceased the next
36 day, having died of a head injury?
37 A. Yes.
38
39 Q. In searching Mr Allen's premises, the police found
40 what appeared to be child abuse material. Do you remember
41 observing that?
42 A. Yes.
43
44 Q. Now, if police found material of that kind today, you
45 would expect them to take it into custody?
46 A. Yes.
47

- 1 Q. It would be concerning if police left it there to be
2 taken by private parties, creating the risk of further
3 dissemination?
4 A. I don't think it was an offence back then, so I don't
5 think that was - child abuse material in '88.
6
7 Q. Certainly that definition wasn't used, but you don't
8 know --
9 A. So I would - if it was myself doing it now, I'd
10 consider that that could lead to, depending what's on it,
11 identification of persons, which could give you insight
12 into persons that Mr Allen had connection with. I think it
13 was - from memory, the footage was from overseas. I might
14 be wrong there, but --
15
16 Q. You might be wrong or it might be me not remembering
17 it. I don't recall.
18 A. So there's an avenue there to identify persons that
19 could lead to information that - about perhaps something
20 that happened before he was at the toilet block or --
21
22 Q. Are you able to assist his Honour with whether that
23 was - whether the failure to do that in the late '80s was
24 consistent with proper police practice at that time?
25 A. No, I can't.
26
27 Q. You can't assist?
28 A. No, no.
29
30 Q. Can I move next to Samantha Raye. This is item 11 on
31 your list, on the table, or subparagraph (k). Ms Raye died
32 between 12 and 20 March 1989.
33 A. Yes.
34
35 Q. From your review of the file, you observed that
36 Ms Raye was found deceased in a cave below Hornby
37 Lighthouse, South Head?
38 A. Yes.
39
40 Q. She had been last seen alive by her friend on 5 March
41 1989, when he visited her flat?
42 A. Yes.
43
44 Q. And the evidence was that the same friend spoke to
45 Ms Raye by phone on 11 March, and she seemed upset?
46 A. Yes.
47

1 Q. And do you remember observing evidence that the friend
2 went to Ms Raye's flat, let himself in, found the flat
3 empty and a note that said, "At lighthouse. Will be back",
4 followed by some question marks?
5 A. Question marks, yes.
6
7 Q. And the friend observed that a social worker had made
8 a note under that on the same piece of paper?
9 A. Okay. I can't remember that. That's okay.
10
11 Q. On 19 March, Ms Raye was reported as a missing person?
12 A. Yes.
13
14 Q. And the date of Ms Raye's death is unclear, but the
15 autopsy indicated it was between 7pm on 19 March and 7pm on
16 20 March?
17 A. Yes.
18
19 Q. You would expect investigating officers to take
20 a statement from the social worker, being one of the two
21 people who had reported her missing?
22 A. You would expect so.
23
24 Q. That would be a relevant step to take before reaching
25 a conclusion as to whether the death was suspicious or not?
26 A. Yes, and there's instructions under the Coroner's
27 inquest that lead to taking statements, providing all
28 evidence.
29
30 Q. Were those instructions in force, to your knowledge,
31 in 1989?
32 A. Yes.
33
34 Q. And as part of making inquiries to form a view about
35 whether or not the death was suspicious, you would expect
36 police to conduct investigations into Ms Raye's movements
37 for the eight or so days leading to her death?
38 A. Yes.
39
40 Q. And you would expect a record to be made or retained
41 of the initial report of 19 March 1989?
42 A. Yes, the - my memory is that she went to Kings Cross
43 Police Station, I think.
44
45 Q. Yes, it was Kings Cross Police Station.
46 A. Yeah, yep, and I think that was the entry I was
47 referring to earlier, that there seems to be historical

1 record on COPS, but it's - there's no detail, so --
2
3 Q. Yes. You can't offer a good reason why there wouldn't
4 be that detail?
5 A. So it's a historical information, so it was drawn from
6 a pre-COPS document.
7
8 Q. In other words, the COPS file says there was
9 a document about this?
10 A. But there's no detail.
11
12 Q. But the COPS file enables you to say that the document
13 existed?
14 A. That's right, yes.
15
16 Q. Of course, if the record keeping were working as it
17 ought to work, we would have that document?
18 A. Correct.
19
20 Q. The first two steps that I've identified are steps
21 that you would expect the matter to be - you would expect
22 to be taken before - as part of an investigation before
23 either police or the Coroner form a view as to whether the
24 death is suspicious or not?
25 A. Sorry, can you repeat that?
26
27 Q. Yes. The first two steps, numbered paragraphs (1) and
28 (2) --
29 A. Yes.
30
31 Q. -- you would expect those steps to be taken in the
32 course of the investigation before anyone reaches
33 a concluded view as to whether or not the death was
34 suspicious?
35 A. You would take them - yes, you would.
36
37 Q. And proper police practice in 1989 required those
38 steps?
39 A. Yes, that's right, yes.
40
41 Q. Can I move next to Mr Warren. This is item 16,
42 subparagraph (p), Mr Warren was last seen on 22 July 1989.
43 Do you recall from the review of the file that Mr Warren
44 was last seen at 2am on 22 July 1989 driving his vehicle on
45 Oxford Street?
46 A. Yes.
47

1 Q. And that on 23 July he did not turn up for work, and
2 he was reported missing by friends on the same day?
3 A. Yes.
4
5 Q. And those friends found his car near Marks Park on
6 23 July and reported that to Paddington Police the same
7 night?
8 A. Yes.
9
10 Q. On 24 July, those friends went back to Marks Park and
11 found Mr Warren's keys in what's described as a rock
12 pocket, or I assume a small hollow, below the cliff top
13 near the water's edge?
14 A. Yes.
15
16 Q. And again, reported that to Paddington Police on the
17 same night?
18 A. Yes.
19
20 Q. And on 28 July 1989, the OIC at Paddington Police
21 wrote in the occurrence pad that, "Investigating police had
22 no view that Mr Warren had been murdered and were of the
23 opinion that he had fallen into the ocean in some manner
24 and it is anticipated in the near future his body will
25 surface and be recovered"?
26 A. Yeah, that's problematic.
27
28 Q. I'm sorry, I missed that?
29 A. That is problematic.
30
31 Q. That is problematic?
32 A. Yeah.
33
34 Q. Why is that problematic?
35 A. Well, it's - there should have been a more substantive
36 approach to obtaining information about his - him being
37 missing.
38
39 Q. Indeed, that's especially so in circumstances where
40 Mr Warren was - the evidence, the available evidence,
41 either indicated or would have indicated that Mr Warren was
42 a gay man and Marks Park was a known gay beat?
43 A. Yes.
44
45 Q. And the police had evidence available of gay hate
46 assaults in that area at that time?
47 A. Yes.

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Q. And to dismiss the possibility of murder, as appears to have happened, was a significant oversight or deficiency in the police response to Mr Warren's death?

A. Dismissed that there possibly was foul play or dismissed that - any other possible option was probably too early.

Q. Well, it was more than too early. You're able to say, looking at the facts, that it was a significant oversight or deficiency in the response, aren't you?

A. Yes. I think he drove from Wollongong after work to Sydney, if I remember rightly. And I do note your question about associates at work - they may have provided information as to a possibility of his movements, his behaviour, his intentions.

Q. All of those should have been explored?

A. Yes.

Q. All of those matters should have been explored?

A. Yes.

Q. And the failure to do so was a significant oversight or deficiency in the response?

A. Yes.

Q. Are you able to - if the Commissioner comes to ask himself whether conscious or unconscious bias influenced that significant oversight or deficiency, are you able to assist the Commissioner with that?

A. No.

Q. You don't know one way or the other?

A. No.

Q. Could I move next to Blair Wark. That's W-A-R-K. It's item 15 on the table. Mr Wark died between 9 and 10 January 1990. This is subparagraph (o) of your statement, if you're following along with that.

A. Yes.

Q. Mr Wark - from your review of the file, you observed he died between 2pm on 9 January and 9.30am on 10 January 1990?

A. Yes.

- 1 Q. His body was discovered in the northern area of Sydney
2 Harbour, 200 to 300 metres from Dobroyd Point near
3 Haberfield?
4 A. Yes.
5
- 6 Q. Mr Wark's personal items were found by a member of the
7 public under a ledge at a cliff top at Gap Bluff in
8 Watsons Bay?
9 A. Yes.
10
- 11 Q. You would expect investigators to attend and examine
12 the location where personal effects were found promptly
13 upon receiving information about that?
14 A. Yes.
15
- 16 Q. You would expect them to examine the items found and
17 the location?
18 A. Yes.
19
- 20 Q. And you would expect police to photograph them and
21 consider their forensic utility?
22 A. Yes. Was - this was the property that was - by the
23 person that found and provided to the police?
24
- 25 Q. Yes.
26 A. Yes.
27
- 28 Q. You would expect police to make a record of the
29 property and --
30 A. Yes.
31
- 32 Q. -- visit the location and make sure that - and ensure
33 that there's a reliable record of both the property and the
34 location?
35 A. Yes.
36
- 37 Q. And you would expect - and you're able to say, aren't
38 you, that proper police practices at the time in 1990
39 required those steps?
40 A. Yes.
41
- 42 Q. The evidence indicated that in the days leading up to
43 his death, Mr Wark had been acting in an unusual manner,
44 characterised by what appeared to be some paranoia or fears
45 that he was in danger. Do you remember observing that
46 evidence?
47 A. Yes.

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Q. And that on the morning of 9 December 1990, Mr Wark left his family home and returned to hostel accommodation in Pymont, but then at around 11am on 9 December a person matching Mr Wark's description left a bag with some clothing in it at the lost property counter at David Jones in the city?

A. Yes.

Q. And at 2pm on that day, the evidence was Mr Wark travelled to a psychologist's house in Double Bay because he believed he had an appointment that afternoon but was advised the psychologist was not home?

A. Yes.

Q. Now, I want you to assume that it was Mr Wark's sister who noticed a David Jones receipt and prompted inquiries about his last movements, leading to identifying the lost property at David Jones?

A. Yes.

Q. Do you remember observing that?

A. Yes.

Q. That's something you would expect police, the investigating officers, to observe and inquire into themselves, wouldn't you?

A. If they looked through it and found - yes.

Q. You would expect police officers - let's start with now. You would expect police officers now to review and consider the forensic value of the property, including things like receipts, before returning them to the family?

A. Yes, yes.

Q. And you're able to say, aren't you, that proper police practice at the time in 1990 required those steps?

A. Yes.

Q. Later in January 1990 Mr Wark's body was examined by a forensic pathologist, who considered the direct cause of death was multiple injuries, which the pathologist thought had occurred four and a half to four and three-quarter days previously?

A. Yes.

Q. And toxicology testing identified antidepressants in

1 Mr Wark's blood?
2 A. Yes.
3
4 Q. And at the post-mortem, samples of scalp and pubic
5 hair, nail clippings, and anal and perianal swabs and
6 smears were taken, but we have no record now of whether
7 those samples were retained or consumed or, if so, where?
8 A. No; that's right.
9
10 Q. Do you recall observing that?
11 A. That's right.
12
13 Q. And that Mr Wark's clothing and other property was not
14 photographed or retained for forensic examination?
15 A. No.
16
17 Q. The Coroner was not provided with any material that
18 sought to explain how the body of a person who falls from
19 the vicinity of The Gap might end up near Dobroyd Head?
20 A. As in whether the tidal information --
21
22 Q. You would expect investigating officers to ask
23 themselves --
24 A. Yes.
25
26 Q. -- that's a significant distance; how did the body
27 travel that far?
28 A. Yes, yes.
29
30 Q. For eight years, until a few months prior to his
31 death, Mr Wark had resided with a person with whom he was
32 likely to be in a romantic or sexual relationship,
33 described by the pseudonym KN?
34 A. Yes.
35
36 Q. And the evidence was that Mr Wark had also apparently
37 been involved in a long-term affair with another man. You
38 recall observing that?
39 A. Yes.
40
41 Q. And there was evidence that the first-mentioned
42 partner regularly - there were at least allegations that
43 the first-mentioned partner regularly assaulted Mr Wark
44 when intoxicated?
45 A. Yes.
46
47 Q. In those circumstances, you would expect police to

1 treat the death as suspicious?
2 A. Yes.
3
4 Q. Both by today's standards and by the - so first by
5 today's standards?
6 A. When you consider the injuries.
7
8 Q. And proper police practice in 1990 also required that
9 police treat the death as potentially suspicious?
10 A. Yes.
11
12 Q. Can I ask next about Mr Dutfield. This is item 3 on
13 the list. He died on 19 November 1991.
14 A. Yes.
15
16 Q. Again, from your review of the file, you observed that
17 Mr Dutfield was found deceased in his apartment in Mosman
18 on 19 November 1991?
19 A. Yes.
20
21 Q. There were no signs of forced entry?
22 A. No.
23
24 Q. Mr Dutfield's injuries were observed to be consistent
25 with a tape dispenser having been used to inflict all blows
26 while Mr Dutfield was seated?
27 A. Yes.
28
29 Q. The tape dispenser was found in the kitchen sink, and
30 apparently an attempt had been made to wash it?
31 A. Yes.
32
33 Q. There were no fingerprints located on the glasses,
34 ashtray or table or elsewhere. Would you agree that
35 suggested the perpetrator had gone to some trouble to wipe
36 down objects?
37 A. It could suggest that, yes.
38
39 Q. At least it didn't prove it positively but certainly
40 ought to have suggested that to an investigator?
41 A. Yes, or they wore gloves.
42
43 Q. Well, if gloves were worn, you would expect there to
44 be some fingerprints, albeit not fingerprints of the
45 perpetrator, on those glasses, wouldn't you - on those
46 items?
47 A. Yes.

1
2 Q. The absence of any fingerprints suggests wiping down
3 objects?
4 A. Yes.
5
6 Q. There was a particular person of interest who had been
7 friends with Mr Dutfield for approximately 10 years?
8 A. Yes.
9
10 Q. And on the evening of Mr Dutfield's death, that person
11 of interest had been to dinner - had dined with
12 Mr Dutfield, and the evidence was they had returned to
13 Mr Dutfield's apartment?
14 A. Yes.
15
16 Q. And police received reports from that person of
17 interest that were inconsistent with objective civilian
18 witnesses - with evidence from objective civilian witnesses
19 as to movements that night?
20 A. Yes.
21
22 Q. Having that much information, it would not be
23 consistent with proper police practice at the time in 1991
24 to dismiss the person of interest because of that person's
25 age, whatever the age was?
26 A. No, that's right.
27
28 Q. If police had a basis for dismissing a particular
29 suspect who was otherwise implicated in the way I have
30 described, you would expect a concrete piece of evidence,
31 such as exculpatory evidence or an alibi or something of
32 that kind?
33 A. Yes.
34
35 Q. And you would expect a record to be made of that?
36 A. Yes.
37
38 Q. That's what proper police practice at the time
39 required?
40 A. Yes.
41
42 Q. In your statement - this is subparagraph (c) - you
43 refer to Mr Dutfield having died in 1988. He did in fact
44 die in November 1991. This was in the context of
45 addressing --
46 A. Oh, right, yep.
47

1 Q. -- the possibility of taking a DNA sample.

2 A. Yes.

3

4 Q. By November 1991, DNA technology was understood as
5 a viable technology?

6 A. It was understood that it was viable, but within
7 New South Wales it was still I think underestimated - well,
8 not underestimated; it wasn't available I think till later
9 in the mid to late '90s.

10

11 Q. So your understanding is DNA just wasn't available for
12 an investigation of this kind or - would you say there was
13 a reasonable prospect that it would become available in the
14 near future as at November 1991?

15 A. 1991? I can't recall. For myself being in the police
16 in 1991, it wasn't something that I was considering,
17 although I wasn't in criminal investigation at that point,
18 so it's hard for me to detail. I know that later on in the
19 late 90s, even with DNA opportunities, there was no
20 database, so you couldn't compare it to someone. So you
21 had to have a sample from effectively your suspect to
22 compare it with, and it wasn't - I think the only location
23 at that point was possibly South Australia or
24 international. I do note that there was a reinvestigation
25 into Mr Dutfield in 2008 that revealed, I think it was
26 familial DNA that possibly linked - or was a positive link
27 to that person that was referred to.

28

29 Q. By that stage, by the time that inquiry was made, that
30 person had passed away?

31 A. Yes.

32

33 Q. And in fact there was a recommendation to obtain DNA
34 from that person in 2005, before he passed away. Are you
35 aware of that?

36 A. Yes, I'm aware that it was the Unsolved Homicide that
37 reinvestigated in 2008. 2008 was when the investigative
38 teams commenced, so 2005 was still that reviewing component
39 of Unsolved. So I don't think, from my memory, that they
40 had the investigative capability, although I take note that
41 it was a recommendation for it.

42

43 Q. Thank you, Detective Inspector. Can I move next to
44 Robert Malcolm, who died on 29 January 1992. It is item 6
45 in the table.

46 A. Yes.

47

1 Q. You will recall from your review of the file that
2 Mr Malcolm died on 29 January 1992, after being attacked
3 some two or three weeks earlier, on the night of 10 to
4 11 January 1992; he was found unconscious in an abandoned
5 house in Redfern in the small hours of 11 January 1992?

6 A. Yes.

7

8 Q. He had suffered serious injuries, which were likely
9 the result of being assaulted with objects such as a piece
10 of timber or a brick?

11 A. Yes.

12

13 Q. In that case, there were three persons against whom
14 criminal prosecutions were commenced?

15 A. Yes.

16

17 Q. Although they didn't make it past the committal stage.
18 Do you remember observing that?

19 A. Yes.

20

21 Q. One of the principal suspects said to police that he
22 had spent what was likely to be the relevant part of the
23 night in question with his ex-girlfriend and gave the name
24 of that ex-girlfriend. Do you remember observing that?

25 A. Yes.

26

27 Q. And he said he was with her and at one point said he
28 was with her and her cousin and gave the cousin's name. Do
29 you remember observing that?

30 A. Vaguely, yes.

31

32 Q. There are no records of any attempts to prove or
33 disprove that alibi. Do you understand that?

34 A. There's no records that show that, no.

35

36 Q. Where a principal suspect has given an alibi, an
37 important step is to explore it?

38 A. Yes.

39

40 Q. I appreciate that you have no personal knowledge of
41 this investigation; all we're going from is the absence of
42 records, but if the Inquiry finds that there was no attempt
43 made to explore that alibi, that would be a significant
44 oversight in the investigation?

45 A. Yes.

46

47 Q. And if the alibi was explored but no record made of

1 it, that would be a significant oversight in the
2 investigation?
3 A. Sorry, can you repeat it?
4
5 Q. Yes. If the alibi was explored but no record was made
6 of it, that would be a significant oversight in the
7 investigation?
8 A. Oversight in the record keeping.
9
10 Q. Well, if the record was made and lost, that's
11 a failure of the record keeping. The distinction I'm
12 drawing is between failing to record it in the first place,
13 and having a record and then losing it.
14 A. Yes, so if it wasn't recorded in the first place, we'd
15 never know.
16
17 Q. And if it wasn't recorded in the first place, that was
18 a significant oversight by the person conducting the
19 investigation?
20 A. Yes.
21
22 Q. And if it was recorded, but it's been lost, then the
23 failure is in the record keeping process?
24 A. Yes.
25
26 Q. One way or another, there has been a failure
27 somewhere?
28 A. Yes.
29
30 Q. Can I move next to Mr - well, I should say, one way or
31 another there has been a failure, and that failure is not
32 consistent with proper police practice at the time. You
33 are able to say that, aren't you?
34 A. Yes.
35
36 Q. Sorry, I spoke over you. Your answer was "yes"?
37 A. Yes.
38
39 Q. Crispen Dye died - next, Crispen Dye, item 4. He died
40 on 26 December 1993?
41 A. Yes.
42
43 Q. Mr Dye died at 6.30pm on 25 December 1993 after being
44 attacked on 23 December 1993 at the intersection of
45 Campbell and Little Oxford Streets in Darlinghurst?
46 A. Yes.
47

- 1 Q. Do you remember observing that?
2 A. Yes.
3
- 4 Q. Witnesses observed that Mr Dye was attacked by three
5 people, who appeared, among other things, to grab something
6 from him?
7 A. Yes.
8
- 9 Q. And upon - Mr Dye was taken to hospital. Upon
10 admission to hospital, his clothing and property were
11 collected?
12 A. Yes.
13
- 14 Q. And crime scene officers examined Mr Dye's clothing on
15 23 December 1993, and at that time his property is recorded
16 as including his keys, some papers containing phone numbers
17 and a Metway Bank business card. Did you observe that?
18 A. Yes, yes.
19
- 20 Q. There is no record of Mr Dye's keys ever being tested
21 or checked for fingerprints. Did you observe that?
22 A. Yes.
23
- 24 Q. If the keys were not tested or checked for
25 fingerprints, that would be a significant oversight in the
26 investigation?
27 A. If not, yes.
28
- 29 Q. And the keys then being given to Mr Dye's brother on
30 1 January 1994 without them having been tested, that would
31 be a significant oversight?
32 A. Yes, you can lose potential --
33
- 34 Q. Now, in February of this year, 2023, two folded pieces
35 of paper were located in the top left-hand pocket of
36 Mr Dye's shirt. Are you aware of that?
37 A. Yes.
38
- 39 Q. It appears that those pieces of paper had not been
40 located before. You're aware of that?
41 A. It appears that way.
42
- 43 Q. And one of them included a bloodstain?
44 A. Yes.
45
- 46 Q. If the investigators failed to search the clothes
47 thoroughly in late 1993 or in 1994, that would be

- 1 a significant investigative oversight at that time?
2 A. Yes.
3
- 4 Q. Including judged by the standards of the day in 1993?
5 A. Yes.
6
- 7 Q. Also on file, an extendible baton was stored and
8 classified as an exhibit in the case?
9 A. Yes.
10
- 11 Q. The records did not detail how - the EFIMS records did
12 not detail how it was linked or when it came into the
13 possession of the police. Do you remember observing that?
14 A. I think there's other records that explain the baton,
15 though.
16
- 17 Q. And in fact the records indicate that the baton was
18 likely purchased by NSW Police sometime between 1996 or
19 1997?
20 A. As a comparison.
21
- 22 Q. A record - to the extent that there was a record from
23 the original investigation - I'm sorry, to the extent that
24 there was a record in police records in relation to this
25 investigation that that baton was possibly a suspected
26 murder weapon, that record is likely to be an error?
27 A. Yes.
28
- 29 Q. And if this Inquiry concludes that the baton was in
30 fact purchased at a time later than the crime, it was not
31 consistent with proper police practices at the time to
32 store and classify it as a potential murder weapon?
33 A. No, of course not.
34
- 35 Q. Can I move next to James Meek, who is at item 7 on the
36 list, who died on 7 March 1995.
37 A. Yes.
38
- 39 Q. From your review of the file, you observed that police
40 were called to Mr Meek's apartment after concerned
41 neighbours raised the alarm?
42 A. Yes.
43
- 44 Q. And a locksmith was called to open the door, and there
45 were no signs of forced entry?
46 A. No.
47

- 1 Q. Mr Meek lived alone?
2 A. Yes.
3
- 4 Q. Mr Meek's body was lying in the hallway. He had his
5 keys in his hands?
6 A. Yes.
7
- 8 Q. There was blood on the back of Mr Meek's head, and his
9 face was livid and looked bruised, but that lividity may
10 have been the pooling of blood, given that he was lying
11 face down after death?
12 A. Yes.
13
- 14 Q. Mr Meek was 51 years old and had no known history of
15 heart disease or any other condition that would explain
16 sudden collapse?
17 A. Yes.
18
- 19 Q. You observed that?
20 A. Yes.
21
- 22 Q. And the records indicate that there was a used condom
23 and two open sachets of lubricant and a crumpled
24 handkerchief in Mr Meek's bedroom?
25 A. Bedroom, yes.
26
- 27 Q. A crime scene was established, and crime scene
28 officers made certain investigations that afternoon, that
29 is, on the afternoon of 8 March 1995?
30 A. Yes.
31
- 32 Q. You observed that?
33 A. Yes.
34
- 35 Q. After that, on the same day, police released the crime
36 scene and informed the family, or the Commission of Inquiry
37 has received evidence that the police then informed the
38 family that Mr Meek had died of a heart attack?
39 A. Yes.
40
- 41 Q. On the basis of the material I have indicated, there
42 was no reason to - there was no evidence - there was no
43 basis to conclude affirmatively that Mr Meek had died of
44 a heart attack?
45 A. No.
46
- 47 Q. Indeed, it was clear upon autopsy several days later

1 that he died by trauma to the head and that the matter was
2 a homicide?
3 A. That's right.
4
5 Q. If that matter - if this occurred today, you would not
6 expect police to assume that a person in Mr Meek's position
7 had died of a heart attack?
8 A. No.
9
10 Q. Indeed, it was 1995. You would not expect police
11 then, acting properly, to assume that?
12 A. '95.
13
14 Q. 1995.
15 A. Yes, that's right - no, sorry.
16
17 Q. That would be inconsistent with proper police practice
18 at that time?
19 A. That's right, yes.
20
21 Q. If the police don't know the cause of death, they
22 should proceed on the basis that it might be a homicide?
23 A. As suspicious, yes.
24
25 Q. A suspicious death?
26 A. Yes.
27
28 Q. If this death was simply a suspicious death, items
29 such as a condom and the packets, the sachets of lubricant,
30 and the handkerchief, they were potentially highly
31 significant, weren't they?
32 A. Yes.
33
34 Q. And that should have been obvious to anyone
35 considering the case as suspicious or as a potential
36 homicide or as just "We don't know yet how he died"?
37 A. Correct.
38
39 Q. It should have been obvious to any person in 1995 that
40 they were potentially highly significant?
41 A. Yes.
42
43 Q. And the failure to take them into police custody
44 before releasing the crime scene was a significant
45 investigative oversight at the time?
46 A. Yes.
47

1 Q. Can I move next to ask you some questions about the
2 matters we have discussed generally. Having looked at
3 these matters, there is a significant number of what appear
4 to be investigative oversights and deficiencies.
5 A. Yes.
6
7 Q. And we're able to say that --
8 A. Yes.
9
10 Q. And you're able to say, from what we've seen, that
11 they are oversights or deficiencies including judged by the
12 standards of the day?
13 A. Yes.
14
15 Q. Now, we know now that in the 1970s and 1980s,
16 regrettably, there was widespread bias against LGBTIQ
17 people in the wider community and in the Police Force.
18 A. Yes.
19
20 Q. That doesn't mean everyone, but it was regrettably
21 widespread?
22 A. Yes.
23
24 Q. You probably - I expect, from what we have seen - are
25 you able to conclude that any individual oversight was the
26 result of conscious or unconscious bias against a suspected
27 LGBTIQ victim?
28 A. No.
29
30 Q. But having looked at all of them, it's a real
31 possibility that some of them were affected by that?
32 A. Yes, it's possible.
33
34 Q. Now, in fairness, we need to be careful about
35 selection bias in looking at unsolved homicides?
36 A. Yes.
37
38 Q. And one thing - while there are many reasons why
39 a homicide might end up being unsolved, if you only look at
40 unsolved homicides, there may be a greater likelihood that
41 you're looking at investigations that may have miscarried
42 for one reason or another; is that fair?
43 A. Because of bias?
44
45 Q. No, I mean because of selection bias - that is, if you
46 only look at unsolved homicides, there's a greater chance
47 that there may be investigative oversights among that pool?

1 A. Sorry, that's right, yes, yes.

2

3 Q. And so, we need to be clear that one may not be able
4 to draw any affirmative conclusions from these cases - that
5 is, unsolved homicides - about the quality of police
6 investigations in all cases, including solved cases?

7 A. That's right.

8

9 Q. Nevertheless, when the Commissioner comes to consider
10 the prevalence of apparent oversights or deficiencies in
11 the cases into which he has inquired, would you agree or
12 disagree that - would you agree that there is a risk that
13 some of the investigators, especially in the 1980s or
14 1990s, were influenced by conscious or unconscious bias
15 against suspected LGBTIQ victims?

16 A. I think because of society generally, there was
17 a risk.

18

19 Q. And that conscious or unconscious bias could have
20 contributed - could have created an increased risk of being
21 less thorough in investigations?

22 A. Not knowing the individual, it's hard for me to answer
23 that.

24

25 Q. And, in fairness, you don't know the individuals, and
26 I'm not asking you to express a view about any individual.
27 If you don't feel you're able to offer any --

28 A. No.

29

30 Q. -- to assist the Commissioner as to whether or not -
31 what conclusions can be drawn as to the prevalence of
32 conscious or unconscious bias and the extent of its impact
33 on any investigations, say so.

34 A. No, it's difficult for me to make that conclusion.

35

36 Q. If the Commissioner finds that there are a number of
37 apparent errors or oversights or investigative deficiencies
38 in the cases that he is examining, are you able to assist
39 him at all in assessing whether or not that is indicative
40 of the quality of police investigations in relation to
41 other unsolved homicides of the same vintage or whether
42 it's worse for matters where the victim was or appeared to
43 be a member of the LGBTIQ community?

44 A. No, I can't assist in that. The only real thing I can
45 say is that we've recently solved a number of matters that
46 are LGBTIQ related, so there's a real - it's difficult for
47 me to say that that existed back then. You know, what we

1 look at now is not that issue; it leads towards victimology
2 and the motive, so it's difficult - no, I can't.
3
4 Q. No. And when you say - what you look at now, in your
5 view, the matters you look at now assist in - have assisted
6 and you're aware of concrete examples where they have
7 assisted in solving old crimes; is that right?
8 A. Yes, that's right, yes.
9
10 Q. Just to distil the point, what are those matters?
11 A. So one is actually before the court at the moment.
12 The matter of Keam was one.
13
14 Q. I don't need you to give us any examples of the
15 individual matters. It's the factors or the --
16 A. Oh, sorry. So one was particularly in relation to
17 a bashing in a park. One was a particular association with
18 another member of that community. I can't think what the
19 third one is.
20
21 Q. What are the police techniques, the changed police
22 techniques, that in your view have assisted in being able
23 to solve those crimes, as they hadn't been solved earlier?
24 A. I think it's having an understanding of what occurred
25 back then and the so-called beats that were - and the
26 persons involved, plus I think also assisted was the
27 forensic technology as well.
28
29 Q. When you refer to understanding, that ties back to
30 some of the evidence you gave before lunch about the
31 importance of cultural awareness and the way that can
32 contribute to good policing?
33 A. Yes, yes.
34
35 MR EMMETT: Unless there are any further questions that
36 you have, Commissioner, those are our questions for
37 Detective Inspector Warren.
38
39 THE COMMISSIONER: No, thank you. Mr Tedeschi?
40
41 MR TEDESCHI: Commissioner, might I have just a few
42 minutes with Mr Warren to have a discussion with him, and
43 then I will be in a position to re-examine?
44
45 THE COMMISSIONER: Yes. I will adjourn. Why don't you
46 let me know when you are ready. Thank you.
47

1 **SHORT ADJOURNMENT**

2
3 MR TEDESCHI: Yes, thank you, Commissioner.

4
5 **<EXAMINATION BY MR TEDESCHI:**

6
7 MR TEDESCHI: Q. Inspector, you were asked some
8 questions by both Counsel Assisting and by the Commissioner
9 about the Corporate Records Unit of the NSW Police?

10 A. Yes.

11
12 Q. And you described that the Corporate Records Unit has
13 a system of digitised records which you can search?

14 A. Yes.

15
16 Q. And that the first - I understand the first port of
17 call for the search of documents in any particular case is
18 with the Corporate Records Unit?

19 A. Yes.

20
21 Q. You were asked a question, "Is it true that Corporate
22 Records is not the most reliable source of information?",
23 and you agreed with that, and you were asked, "Corporate
24 Records can't give you an easy road to finding a police
25 officer who might have information about other records?",
26 and your answer was, "The naming of records - the naming of
27 documents varies, that some records may not have been
28 archived, are not digitised." What I want to ask you is
29 this: is this what you were attempting to convey to the
30 Inquiry, that in fact there are some hard-copy records that
31 have not gone through the process of being indexed and
32 catalogued by Corporate Records?

33 A. Yes.

34
35 Q. And are those documents kept at individual police
36 stations as a result of individual police officers not
37 forwarding them to Corporate Records?

38 A. Not archiving them, yes.

39
40 Q. Not archiving them through Corporate Records?

41 A. Yes.

42
43 Q. So were you attempting to say that Corporate Records
44 is in fact not a reliable source because of their internal
45 records?

46 A. Not - no, it's the records that aren't archived is
47 what's unreliable.

1
2 THE COMMISSIONER: Q. Yes, so they're not a complete
3 record?
4 A. Yes.
5
6 Q. Because you don't know of hard copy - or the extent of
7 hard-copy records unless and until you go looking for them,
8 I suppose; is that right?
9 A. Go what, sorry?
10
11 Q. I'm sorry. You don't know the extent of the hard-copy
12 records, wherever they may be, unless you go to try and
13 find them or do find them?
14 A. At a police station, yes.
15
16 Q. And the hard-copy records, if they're not archived,
17 will not be in Corporate Records?
18 A. No.
19
20 Q. And therefore they're unreliable in the sense that
21 they cannot be - by reason of the fact that hard-copy
22 records may exist elsewhere, they can't be a comprehensive
23 record of what might be involved in a particular case?
24 A. So Corporate Records are reliable --
25
26 Q. They're reliable as far as they go?
27 A. Yes.
28
29 Q. But they can't be comprehensive, necessarily, because
30 hard-copy documents may exist elsewhere which have not been
31 archived and therefore are not part of the Corporate
32 Records system?
33 A. Yes, that's right.
34
35 THE COMMISSIONER: All right.
36
37 MR TEDESCHI: Q. So in your situation, is your first
38 port of call, when searching for documents, Corporate
39 Records?
40 A. Yes.
41
42 Q. Then what process did you adopt? How did you decide
43 where to go to the next step to try and find records that
44 were not digitised and archived through Corporate Records?
45 A. So the - where the crime actually occurred would
46 ideally be where those records could still be present, if
47 there are records still relating to them, so that we'd go

1 to the police stations in the particular area where it
2 was - it occurred and seek out assistance there to search
3 the exhibit room or any storage rooms to locate any records
4 relating to what we're looking for.

5
6 Q. Any other steps that you would take?

7 A. Yes. So we also went to FE&TS, which - that came
8 about in relation to a lot of requests we were getting in
9 regards to exhibits, and we were discovering that there was
10 records there as well that we needed to seek out as part of
11 that process.

12
13 Q. Yes.

14 A. We also went externally to FASS, to the Coroners Court
15 and to Forensic Medicine.

16
17 Q. Yes.

18 A. We also, in regards to exhibits, went to the MEPC,
19 which ideally --

20
21 Q. Sorry, you went to?

22 A. The Metropolitan Exhibit and Property Centre.

23
24 Q. Yes, yes.

25 A. But that is focused around exhibits, not case files.

26
27 Q. Yes.

28 A. And we also obviously look at our digital components,
29 our digital drives.

30
31 Q. What about where the investigation had been conducted
32 from a minor police station, did you go to the local area
33 command station?

34 A. Yes. So in restructures, obviously there was movement
35 of staff and some stations were rebuilt, so there was
36 movement of records to the new station, so to speak, or the
37 large - larger - or the station that was then, I guess, the
38 home station.

39
40 Q. Did you also send out general requests for people to
41 conduct searches at --

42 A. Yes.

43
44 Q. -- other police stations or State-wide, or what?

45 A. Yes, yeah. The requests went out to where the
46 incident occurred, because that's ideally where the
47 exhibits would have been stored, where the case files would

1 have been stored. So wherever that - whatever case we were
2 looking for, that's where we'd go to, that particular area
3 or police station.

4
5 Q. And did you get an immediate response from --

6 A. No.

7
8 Q. -- each of those sources?

9 A. No, it was - no, it was over - some were over days,
10 some were over a week.

11
12 Q. Were some even slower than that?

13 A. Yeah, we had to make contact again to get them to
14 search, but generally they were pretty good.

15
16 MR TEDESCHI: All right. Yes, thank you.

17
18 THE COMMISSIONER: Q. And that situation could not be
19 regarded as anything other than totally unsatisfactory?

20 A. Not being archived?

21
22 Q. Well, no, the fact that you had to go to so many
23 sources, potential sources, if not actual sources, to piece
24 together what might involve the file concerning
25 a particular homicide?

26 A. Makes it very difficult.

27
28 Q. Well, not only very difficult, totally unsatisfactory,
29 isn't it, because it does mean in every case, doesn't it,
30 that before you can even start to think about whether you
31 might reinvestigate or review an unsolved homicide, you'd
32 have to be sure, at least so far, all of those repositories
33 that you've identified - you'd have to go through each and
34 every one of those to make sure you didn't miss something,
35 wouldn't you?

36 A. Yes, and I think that that also is in line with when
37 we retrieve an archive or a case file, seeing that there
38 was something missing in that would initiate that sort of
39 step.

40
41 Q. Absolutely. But even if there wasn't something
42 missing, if you were going to investigate an unsolved
43 homicide, you would want to make sure you didn't miss
44 anything, because you wouldn't be certain that you would
45 pick up something that might be missing in the file?

46 A. I see where you're going, but I think knowing that all
47 the information was there, if it was straight out of

1 archives, I think it - it gives surety that we have the
2 whole amount of information.

3

4 Q. I don't think you're addressing what I'm putting to
5 you. I'm putting to you, as Mr Tedeschi has outlined, that
6 you had, in the end, to satisfy yourself that you had
7 everything by going to multiple repositories?

8 A. Yes.

9

10 Q. And multiple sources?

11 A. Yes.

12

13 Q. All right. And that would follow, wouldn't it, now
14 that you know from that experience - do I take it this is
15 the first time NSW Police have identified the multiple
16 sources that may need to be accessed for the purpose of
17 putting together a file?

18 A. It's --

19

20 Q. The first time you have done it?

21 A. Sorry?

22

23 Q. The first time you have done it, I mean?

24 A. Yes, that's right.

25

26 Q. And so that portrays for the future, doesn't it, that
27 if for some reason you are going to investigate an unsolved
28 homicide, having now recorded the various sources you have
29 gone to as a template, surely, in every case, you would
30 have to make sure that you didn't miss something?

31 A. No, I agree.

32

33 THE COMMISSIONER: Anything arising?

34

35 MR TEDESCHI: Yes, thank you.

36

37 Q. Inspector, you were asked by the Commissioner if this
38 is the first time you have done an exercise like that. As
39 part of the Unsolved Homicide Team, if you decide to
40 conduct a review, would you go through a similar exercise?

41 A. Yes, we want to make sure that we have logged all the
42 information, all the repository - all the archived
43 material, especially in regards to exhibits. If there was
44 information missing, we would go to police stations and
45 identify it, make sure there was nothing there.

46

47 Q. So is it an exercise that you have done before you

1 have done searches for this Inquiry?

2 A. No.

3

4 Q. How is it different?

5 A. I think it's different in discovering the fact that
6 a number of cases that were present before us during this
7 Inquiry has revealed that material wasn't archived.

8

9 Q. But when you make a decision to conduct a review of an
10 unsolved homicide in the Unsolved Homicide Team, is the
11 first task to get hold of all of the papers?

12 A. Yes. Yes.

13

14 Q. The case file and the exhibits?

15 A. Yes, that's right.

16

17 Q. And are they sometimes available through Corporate
18 Records?

19 A. Well, they are all through - we apply through or we
20 request through Corporate Records.

21

22 Q. And then if they are not available through Corporate
23 Records or if they are not all available?

24 A. Then we have to go the next step to see if we can try
25 and locate them.

26

27 Q. And do you go through similar steps to what you
28 described to the Commissioner, or if not, how is it
29 different?

30

31 THE COMMISSIONER: I don't think he says it is different,
32 Mr Tedeschi. He hasn't said it's different at all. You
33 are putting that to him.

34

35 MR TEDESCHI: I'm asking him --

36

37 THE COMMISSIONER: No, you are not asking him, you are
38 putting to him as a proposition that it is different. You
39 can ask him if it is different but I haven't heard him say
40 it is different.

41

42 It turns upon, as I understand it, what he finds when
43 he first goes to Corporate Records. It turns upon a proper
44 analysis of the documents and an assessment of whether they
45 think they've got everything or maybe they don't, as
46 I understand it.

47

1 MR TEDESCHI: Yes.

2

3 Q. And if you don't have everything, what's your next
4 step?

5 A. We try and find it but --

6

7 Q. At police stations?

8 A. Yes, that's been a - one allocation to - not to the
9 extent we've gone to at the moment though.

10

11 MR TEDESCHI: Yes, thank you.

12

13 THE COMMISSIONER: Yes, Mr Emmett.

14

15 <EXAMINATION BY MR EMMETT:

16

17 MR EMMETT: Q. Can I just understand, your evidence is
18 that the members of the Unsolved Homicide Team knew, before
19 the commencement of this Special Commission, that the
20 documents obtained on an initial search would not be
21 a comprehensive set of the documents?

22 A. No, no, no. So - no, so it was Corporate Records or
23 police stations. That's as far as it - my understanding,
24 it was done beforehand.

25

26 Q. But before this Special Commission, the members of the
27 Unsolved Homicide Team knew that a request for documents
28 held by Corporate Records would not give a complete record?

29 A. We didn't - no, we didn't know that. We didn't know
30 that - sorry, can you ask the question again?

31

32 Q. You knew that a search of what was held by Corporate
33 Records would not give a complete record of what was held,
34 of the documents held by police, in relation to any given
35 death?

36 A. Yeah, we learnt that through this process.

37

38 Q. But you told Mr Tedeschi - I'm sorry, you told the
39 Commissioner in response to a question from Mr Tedeschi
40 a moment ago that before this Special Commission, you knew
41 to check police stations?

42 A. Not me personally. This is a process I've learnt.
43 I am aware that previous matters, prior to this process,
44 that some police stations have been contacted to find
45 particular records that - my understanding, I think, is
46 from Corporate Records identifying that they were at police
47 stations through a record being made of them being

1 archived.

2

3 Q. So I just want to understand. Before this Special
4 Commission, you were not aware that Corporate Records did
5 not have a complete record?

6 A. No, it's my understanding that you speak to Corporate
7 Records and they will identify all the records.

8

9 Q. You know now that's not the case?

10 A. Yes.

11

12 Q. But you learnt that in the course of this Special
13 Commission?

14 A. Yes.

15

16 Q. To your knowledge, did other members of the Unsolved
17 Homicide Team know that earlier?

18 A. I don't think so.

19

20 Q. You were asked questions about the documents insofar
21 as they did make it to Corporate Records?

22 A. Yes.

23

24 Q. You have had experience in this Special Commission,
25 haven't you, of Corporate Records making searches but
26 failing to find material that was in their system because
27 it was recorded under a different name or a different
28 spelling?

29 A. Yes, that's right.

30

31 Q. And you have had experience of material, of
32 information that made it to Corporate Records but didn't
33 turn up in a search because it was recorded under
34 a different name altogether?

35 A. Yes, that's right, a number or --

36

37 Q. Or recorded under a different number or a different
38 case?

39 A. That's right.

40

41 Q. That's another deficiency in the system within the
42 Corporate Records unit, isn't it?

43 A. I think it's a deficiency of how police archived or
44 described that record. I don't know how Corporate Records
45 have uploaded it to the Records Management System. For
46 instance, you know, a particular record relating to a case
47 was under a number or an event number or was under - in a

1 box that related to a general police station; there was no
2 descriptive component to it.

3

4 Q. But you know now that a search from Corporate Records
5 will not necessarily return all of the records held by
6 Corporate Records in relation to a given death because of
7 the problems we've just spoken of?

8 A. Yes, that's right. Yes.

9

10 Q. Did you know that before this Special Commission?

11 A. No, no.

12

13 Q. That is something you have learned during this Special
14 Commission?

15 A. Yes.

16

17 MR EMMETT: Thank you, Commissioner.

18

19 THE COMMISSIONER: Mr Warren, thank you again for your
20 assistance. We will adjourn until the morning. Thank you.

21

22 <THE WITNESS WITHDREW

23

24 AT 4.04PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED
25 ACCORDINGLY

26

27

28

29

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