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TRANSCRIPT OF PROCEEDINGS

ACT BOARD OF INQUIRY – CRIMINAL JUSTICE SYSTEM

CHAIRPERSON: MR W. SOFRONOFF KC

CANBERRA

FRIDAY, 26 MAY 2023 AT 9.56 AM (AEST)

MS E. LONGBOTTOM KC with MR J. JONES and MS E. LYNCH appeared as Counsel Assisting

MR M. TEDESCHI KC with MS B. ANNIWELL appeared on behalf of MR S. DRUMGOLD SC

MS C. WEBSTER SC appeared on behalf of MS JEROME

MR A. MULLER appeared on behalf of MR S. WHYBROW

MR C. MITCHELL and MS W. HALL appeared on behalf of the Australian Federal Police

MR M. BLACK appeared on behalf of thirteen AFP members

MS K. EDWARDS appeared on behalf of MS H. YATES

MR J. MACK appeared on behalf of MR M. GREIG

MR SMITH appeared for MS JOHNSON

MS S. CHRYSANTHOU SC appeared on behalf of MS L. WILKINSON

MR A. STEWART appeared on behalf of MS T. SMITHIES

<THE HEARING RESUMED AT 9.56 AM

THE CHAIRPERSON: Where is Commissioner Cameron?

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MS ANNIWELL: Mr Chair, before Commissioner Cameron is brought back in -

THE CHAIRPERSON: Yes. Before she is brought in, yes.

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MS ANNIWELL: - can I just raise one matter that I took on notice yesterday afternoon -

THE CHAIRPERSON: Yes.

MS ANNIWELL: - and that was the question of whether service of -

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THE CHAIRPERSON: Yes.

MS ANNIWELL: - an audio-visual recording of an electronic interview in-chief is prohibited under any particular piece of legislation.

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THE CHAIRPERSON: Yes.

MS ANNIWELL: I can take you to the provisions if you would like, Mr Chair; otherwise, I will just indicate which provisions are relevant.

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THE CHAIRPERSON: Yes, just tell me what they are.

MS ANNIWELL: They are provisions - sections 54 and 55 of the Evidence (Miscellaneous Provisions) Act.

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THE CHAIRPERSON: Thanks.

MS ANNIWELL: Section 54 sets out that notice is required to be given by an accused person if they require access to an audio-visual recording. Then section 55 applies in circumstances where notice is given under section 54 and says that if an accused person is given access to the recording, they are not to take - not to be given a copy of it - or take a copy of the audio-visual recording. So while there isn't a provision that says it must not be served in a brief of evidence -

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THE CHAIRPERSON: No, no. That's it. That's right.

MS ANNIWELL: - it must follow from those two provisions.

THE CHAIRPERSON: That's right. Yes. Thanks. Thanks for that.

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MS ANNIWELL: Thank you.

<JOANNE LEE CAMERON, CONTINUING

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<EXAMINATION BY MS ANNIWELL:

THE CHAIRPERSON: Yes.

MS ANNIWELL: Thank you. Good morning, Ms Cameron.

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CMDR CAMERON: Good morning.

MS ANNIWELL: Yesterday afternoon, I asked you some questions about the adjudication process (indistinct) before it is served on an accused person. Do you recall we dealt with that yesterday?

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CMDR CAMERON: I do recall that.

MS ANNIWELL: And yesterday I asked you about the collaborative agreement that exists between the Australian Federal Police and the office of the DPP. Do you remember?

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CMDR CAMERON: That's correct.

MS ANNIWELL: Would you agree that save for in exceptional circumstances or a specific protocol being arranged, that there are provisions in the collaborative agreement that require the brief of evidence to be served - or provided to the DPP after a plea of not guilty is entered?

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CMDR CAMERON: Yes.

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MS ANNIWELL: Are you also aware that it is the practice that is adopted between the AFP and the DPP that the AFP and ACT Policing would prepare a brief of evidence and the disclosure certificate?

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CMDR CAMERON: That's correct.

MS ANNIWELL: That is then provided to the DPP?

CMDR CAMERON: That's correct.

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MS ANNIWELL: And the DPP has their own review or adjudication process that they go through to review the brief when it's served on defence in a matter?

CMDR CAMERON: I would assume that.

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MS ANNIWELL: So you would agree that there is both a policing and DPP adjudication process that's in place to review a brief before it's served to make sure that only the material that's supposed to go in the brief is ultimately served?

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CMDR CAMERON: Yes, that's correct.

MS ANNIWELL: And you would agree that in this particular instance, neither the police nor the DPP adjudication process was applied to the brief before it was served on the accused's team?

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CMDR CAMERON: I am not familiar with the processes that the Director of Public Prosecutions undertook, but I am briefed that that - for the adjudication process applied by the police. I would agree with that statement.

5 **MS ANNIWELL:** And do you understand that it was the case that the brief of evidence was served directly on the defence team, and it didn't go through the DPP office before it went to the defence team?

CMDR CAMERON: That - that would have been information that was briefed to me, yes.

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MS ANNIWELL: Thank you. I will just move on to a different topic, and that is the application that was made by Mr Lehrmann's second defence team seeking disclosure of particular documents. And were you aware around September 2022 that an application had been made by defence for certain documents?

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CMDR CAMERON: Yes, I was.

MS ANNIWELL: And on 13 September 2022, you were provided a copy of the defence application and some other documents from - and, I'm sorry, I have forgotten his rank, so please excuse this - Mr O'Meagher; is that correct?

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CMDR CAMERON: Yes, Detective Superintendent Hall O'Meagher gave me some information.

25 **THE CHAIRPERSON:** Yes.

MS ANNIWELL: Thank you. I would just like to take you to the correspondence you received about that. But first could we have document WIT.0030.0005.0003 displayed, please. We can start with 0232. Do you see on the bottom of the page that there's an email from Mitchell Greig of the Office of the Director of Public Prosecutions to Inspector Hughes and others?

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CMDR CAMERON: Yes.

35 **MS ANNIWELL:** And in that email, Mr Greig states that on 8 September 2022, defence filed an application seeking material?

CMDR CAMERON: Yes.

40 **MS ANNIWELL:** He lists that material and identifies the "investigative review document" referred in disclosure certificate. If we turn over - turn back to page 0231, do you see that in response to Mr Greig's email, there's an email from Inspector Hughes to Mr Greig:

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45 "Thank you for the notification. Would it be possible to obtain a copy of the defence application so AFP Legal can assess if we need to be represented/heard?"

Do you see that?

50 **CMDR CAMERON:** Yes, I can see that.

MS ANNIWELL: And then towards the top of the page, Mr Greig replies:

5 "Hi Callum, no problem. I've also attached our submission and affidavits pertaining to
the submission. I am filing these today."

Do you see that?

10 **CMDR CAMERON:** Yes, I can see that.

MS ANNIWELL: So that's -

15 **THE CHAIRPERSON:** Ms Anniwell, just so I can follow it - because, you know,
cross-examination is only useful if it is going to assist me in something.

MS ANNIWELL: Yes.

20 **THE CHAIRPERSON:** Where are you going with this? What is it - you can tell me in the
absence of the Commissioner if you want, but I want to know what this is going to. Because
it's taking a long time, and if it's important, by all means take all the time you need.

MS ANNIWELL: Certainly. And I can certainly attempt to shortcut the process.

25 **THE CHAIRPERSON:** Yes.

30 **MS ANNIWELL:** But it does go to the point of time in which Ms Cameron became aware of
the application and, in turn, when she commenced seeking legal advice from AFP Legal and
the process by which she commenced seeking advice for determining whether or not a claim
of legal professional privilege would be made over the investigative review documents.

THE CHAIRPERSON: And why is the process of how she got legal advice important,
rather than that she got advice and what it was?

35 **MS ANNIWELL:** Well, that she was - had an understanding with respect to the nature of the
application and the documents that were called upon with respect to that application is
important.

40 **THE CHAIRPERSON:** But why does that matter, in that - at the moment, what I have is
that there was a controversy about - the controversy between defence and prosecution about
access to (indistinct) documents -

MS ANNIWELL: Yes.

45 **THE CHAIRPERSON:** - and Mr Drumgold took a particular view and steps, and
Mr Whybrow took a particular view and took steps ultimately to cause a subpoena to be
served -

MS ANNIWELL: Yes.

THE CHAIRPERSON: - and he got the documents. We saw in the correspondence that AFP Legal offered a view, and Mr Drumgold's office offered a view.

MS ANNIWELL: Yes.

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THE CHAIRPERSON: What does Commander Cameron's role have to do with that issue about the status of the documents and whether the way people acted in relation to it was proper or improper?

10 **MS ANNIWELL:** Well, there is two purposes. The first I'm happy to identify in front of the witness, because I'm going to ask her this question.

THE CHAIRPERSON: Yes.

15 **MS ANNIWELL:** There's an allegation that Mr Drumgold has engaged in - has dealt with the disclosure application and the timing of it -

THE CHAIRPERSON: Improperly.

20 **MS ANNIWELL:** - in an unsatisfactory manner.

THE CHAIRPERSON: Yes, that's right.

MS ANNIWELL: And I would like to put the timing of these events to Ms Cameron -

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THE CHAIRPERSON: You say it's important that issue, to understand the timing?

MS ANNIWELL: Yes, because it's -

30 **THE CHAIRPERSON:** Well then, go ahead. Go ahead.

MS ANNIWELL: Thank you.

THE CHAIRPERSON: That's good enough for me. Thank you.

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MS ANNIWELL: Thank you. And then later, on 13 September 2022, you received an email from Mr O'Meagher attaching those documents that the ODPP provided to him; is that correct?

40 **CMDR CAMERON:** I believe so, yes.

MS ANNIWELL: And when you received those documents, did you read them?

45 **CMDR CAMERON:** Possibly. I will say that I - if I read them, it would have been with not as - perhaps as much time to digest the contents of the application.

MS ANNIWELL: Right. Were you aware - so you are unsure as to whether you read the application?

CMDR CAMERON: In a broad sense, I would have read the information that was forwarded to me at that time.

5 **MS ANNIWELL:** Were you aware that in the submissions that were provided that a submission had been made by the DPP that two documents that comprised the investigative review document were the subject of legal professional privilege?

10 **CMDR CAMERON:** At the time, I was - and this was 13 September as you have put there - was my first day of interacting with this issue.

MS ANNIWELL: Yes.

15 **CMDR CAMERON:** So as I've just stated there, I was time pressured. I would have read the emails. From my recollection now, technically you might say - did I open the attachments or not? I recall that I would have and looked at them.

MS ANNIWELL: Yes.

20 **CMDR CAMERON:** Was it with sufficient time for me to sit there and consume, in depth, their contents? I - I would say I was time pressured.

25 **THE CHAIRPERSON:** What you are saying is that according to your usual practice, you would have familiarised yourself with the fact that an application was made and what it was being made for, but you wouldn't have descended into the detail of it unless somebody said you had to - that you ought to; is that right?

CMDR CAMERON: That is correct. Thank you.

30 **THE CHAIRPERSON:** Yes, I understand.

MS ANNIWELL: And it was at this point in time, wasn't it, that you determined that you would be making the decision ultimately as to whether or not the documents called on by the defence application were the subject of legal professional privilege?

35 **CMDR CAMERON:** It was a number of days from - beyond 13 September that I was engaged on this issue, that I became aware that I would be the decision-maker with respect to that.

40 **MS ANNIWELL:** Right. Right. And you say that you were under some time pressures. That would be operational pressures, as well as those associated with the investigation; is that right?

CMDR CAMERON: Very much so.

45 **MS ANNIWELL:** Now, in your statement, you have said that Mr Drumgold - the fact that it took Mr Drumgold five days to inform police of the disclosure application was unsatisfactory. You would accept, though, based on the documents that I've shown you this morning, that Mr Greig informed Mr Hughes -

50 **CMDR CAMERON:** That's correct.

MS ANNIWELL: - about the application?

CMDR CAMERON: On the 13th of -

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MS ANNIWELL: On the 13th. And he engaged in some correspondence with Mr Hughes about that -

CMDR CAMERON: Yes.

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MS ANNIWELL: - and provided him with the documents?

CMDR CAMERON: Yes, that's correct.

15 **MS ANNIWELL:** Would you also accept that what was happening at this point in time was just two weeks shy of the trial commencing?

CMDR CAMERON: It was, yes.

20 **MS ANNIWELL:** You would also accept, wouldn't you, that it would be reasonable for Mr Drumgold to delegate some tasks in his office in preparing for the trial to some junior staffers?

CMDR CAMERON: Yes.

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MS RICHARDSON: I would like to start objecting to these questions in the absence of the witness.

THE CHAIRPERSON: Yes. Would you excuse us, Commissioner?

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<**THE WITNESS STOOD DOWN**

MS RICHARDSON: I object to questions being put to this witness on the basis that these tasks were delegated by Mr Drumgold to staff in his office, because the record makes plain that in the lead-up to the documents that were filed on 13 September, which, Mr Chair, you will recall was the affidavit on information and belief from Mr Greig that Mr Drumgold, in effect, dictated the contents of them -

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THE CHAIRPERSON: Yes.

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MS RICHARDSON: - and submissions in which Mr Drumgold said that AFP was claiming privilege over these documents - the documentary record in the lead-up to that shows that Mr Drumgold was intimately involved in that process. So, for example, in relation to -

45 **THE CHAIRPERSON:** But the question to which you've objected, I think, was, "Do you think it would have been reasonable for Mr Drumgold to delegate tasks like this to other staff members having regard to the imminence of the trial?" And I guess she was about to say "yes", which is what you would expect her to say. What's objectionable about that question?

MS RICHARDSON: I accept that question itself is not objectionable (indistinct) that a step further to suggest that Mr Drumgold has delegated responsibility -

THE CHAIRPERSON: I don't know. We have to wait and see, Ms Richardson.

5

MS RICHARDSON: We will.

THE CHAIRPERSON: Yes.

10 **MS RICHARDSON:** But if that happens -

THE CHAIRPERSON: But I'm aware of the documentary history that you are referring to.

15 **MS RICHARDSON:** There is actually more documentary history that hasn't yet been revealed, including -

THE CHAIRPERSON: Yes. Undoubtedly, there's more than I've seen. And you will show me in due course, I'm sure, but I don't know that Ms Anniwell was going to proceed in the way you're concerned about. Shall we see where she goes and -

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MS ANNIWELL: Well, I can indicate I'm not going there at all.

THE CHAIRPERSON: All right. Well, we will see where she goes and -

25 **MS ANNIWELL:** I'm just dealing with the allegation that Mr Drumgold's five-day time frame within which he provided the police with the disclosure application was "unsatisfactory".

30 **THE CHAIRPERSON:** Yes. Yes, I understand, that the evidence that - the evidence that Commander Cameron has given was given, you say, in the absence of some knowledge about what was actually happening -

MS ANNIWELL: Yes.

35 **THE CHAIRPERSON:** - in between and, therefore, although Drumgold was silent about the matter, as far as Commissioner Cameron is concerned, there were other things happening -

MS ANNIWELL: Yes.

40 **THE CHAIRPERSON:** - that the - his subordinates were dealing with. Is that the picture?

MS ANNIWELL: Yes.

45 **THE CHAIRPERSON:** All right. Let's have Commissioner Cameron back in, please.

<JOANNE LEE CAMERON, CONTINUING

<EXAMINATION BY MS ANNIWELL:

50 **THE CHAIRPERSON:** Ms Anniwell.

MS ANNIWELL: Thank you. Ms Cameron, would you accept that it would be reasonable for Mr Drumgold to delegate the task of communicating with police about the disclosure application to a junior staffer in the office?

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CMDR CAMERON: Yes, of course.

MS ANNIWELL: And you would accept that in preparing for a trial, matters often arise that are urgent that require attention?

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CMDR CAMERON: Yes, they do.

MS ANNIWELL: And sometimes there may be a delay in the communication of issues and matters that are otherwise arising in the trial to police?

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CMDR CAMERON: Yes, that would be correct.

MS ANNIWELL: You would also accept, wouldn't you, that sometimes there's a delay in information flowing from police to the DPP's office?

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CMDR CAMERON: Most certainly, yes.

MS ANNIWELL: Because that's trials, isn't it?

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CMDR CAMERON: Yes. Yes, it is.

MS ANNIWELL: They are high-pressure environments. We do our best, but everyone works towards communicating information as quickly as they can in the circumstances?

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CMDR CAMERON: Yes. Generally, yes.

MS ANNIWELL: With that in mind, I would just ask you to reflect on your suggestion that Mr Drumgold's delay in notifying you about the application was unsatisfactory.

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MS RICHARDSON: I object to that question.

THE CHAIRPERSON: I'm sorry. What was the question, Ms Anniwell?

MS ANNIWELL: I was asking Ms Cameron to reflect on her allegation in her statement that Mr Drumgold's notification to the AFP of the disclosure application was unsatisfactory.

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MS RICHARDSON: I object to that question.

THE CHAIRPERSON: Yes. What's your objection?

45

MS RICHARDSON: Because there's a whole series of things showing what Mr Drumgold was doing in those five days, and that material would have to be put to this witness if she's going to be asked to comment about -

THE CHAIRPERSON: Well, no, she's being asked whether, having earlier expressed a view that what he did was unsatisfactory, she now maintains that view. And she can give that evidence. And if the cross-examiner is proceeding upon a basis that elicits that withdrawal upon premises that you say are false, you can put the full premises and see what
5 Commissioner Cameron has to say after hearing that. But people have different perspectives on the significance of documentation and what has happened, and I don't know whether Commissioner Cameron's view one way or another about Mr Drumgold's - the satisfactoriness, the professionalism or the timeliness of his conduct matters much, because to
10 me - because I will make up my mind about what I think about his conduct, and you will tell me what I should take into account fully in making that - drawing that conclusion, if I should draw that conclusion.

MS RICHARDSON: The difficulty is, in my submission - and I would feel more comfortable doing this in the absence of the witness.

15 **THE CHAIRPERSON:** All right.

MS RICHARDSON: I apologise.

20 **THE CHAIRPERSON:** Excuse us, Commissioner.

<**THE WITNESS STOOD DOWN**

MS RICHARDSON: The unfairness is that the question is being put to this witness to, in
25 effect, withdraw or reflect on an observation that Mr Drumgold not informing them within that five-day period was unreasonable. And my learned friend has laid the groundwork that trials are complex and juniors can be delegated -

THE CHAIRPERSON: The underlings handling things and talking to each other.

30 **MS RICHARDSON:** Yes. Which creates a perception that Mr Drumgold, in effect, wasn't involved and that there are lots of things going on and this might explain the five-day delay. When one looks at the documentary record, that Mr Drumgold was intimately involved in this application in that five days and at no point told the AFP. So we have, on the day -

35 **THE CHAIRPERSON:** But can I - I'm sorry, just - forgive me for interrupting you. Your objection is that the premises of the question are incomplete and, therefore, the answer that she would give would be valueless because the hypothesis upon which the question is asked is a false one.

40 **MS RICHARDSON:** That's right.

THE CHAIRPERSON: Yes.

45 **MS RICHARDSON:** But this is a very public inquiry -

THE CHAIRPERSON: Yes.

50 **MS RICHARDSON:** - and so it's not just a question of, well, if the answer doesn't land because we know that the record is incomplete and there's a false premise, we will put the

answer to one side. A question is being put to a very senior officer as to whether she withdraws an observation that something was unsatisfactory on the basis of a picture that's been painted to her that is incomplete with the documentary -

5 **THE CHAIRPERSON:** I understand. And assuming, of course - assuming, as I do, that you're correct in what you put, I think the remedy is not to object to the question but to demonstrate the true position when you examine.

10 **MS RICHARDSON:** It's true, but the difficulty is that we have a question being put, in my submission, on -

15 **THE CHAIRPERSON:** But we can't proceed like that, because - just for practical reasons, because you would say - you've put two documents to Commissioner Cameron and then you ask that question. You should put 17 documents to her. And Ms Anniwell might agree or disagree. But I can't rule every time a question is put upon incomplete premises. In practical terms, the way to rectify the position, if an answer is extracted unfairly from a witness, is for you to demonstrate that unfairness in examination.

20 **MS RICHARDSON:** Well, except that -

THE CHAIRPERSON: And that won't happen next week; it will happen today.

25 **MS RICHARDSON:** Well, the difficulty is that in the five days that Mr Drumgold had this, behind the scenes he was directing -

THE CHAIRPERSON: Yes, I understand the point. But I'm saying that the way to deal with this -

30 **MS RICHARDSON:** - everything that was happening in relation to -

THE CHAIRPERSON: - is not to object to each question on the basis that, correctly, it's based upon an incomplete picture. The remedy is to demonstrate the fallacy underlying the question by revealing it in your question in due course.

35 **MS RICHARDSON:** Well, I have made the submissions I have made, but I think -

40 **THE CHAIRPERSON:** Yes. I have to approach - I understand your point, and I understand why you are objecting. And I've got no difficulty with that, but I don't think in practical terms I can deal with this difference in perspectives by stopping questioning. I would have to have a voir dire to see what the evidence was to allow the question or not, and I can't do that.

MS RICHARDSON: The difficulty, in my submission, is that the premise of the question is that Mr Drumgold is, in effect, very busy running a trial -

45 **THE CHAIRPERSON:** I understand. I understand.

MS RICHARDSON: But the premise is, in effect, he didn't have anything to do with this -

50 **THE CHAIRPERSON:** Yes.

MS RICHARDSON: - and he's used subordinates to deal with it.

THE CHAIRPERSON: Well, what do you think I should - perhaps I'm wrong. What do you think I should do?

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MS RICHARDSON: Well, the question -

THE CHAIRPERSON: You would have to demonstrate what you've just said.

10 **MS RICHARDSON:** Well, I can do it in about three documents, that on a daily basis, he is intimately involved in this application, including a range of -

THE CHAIRPERSON: If you can do it in three documents, you will rise to examine when Ms Anniwell is finished and you will do it.

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MS RICHARDSON: Well, perhaps the question should be put on this basis: assuming that Mr Drumgold wasn't dealing with this application and was using his subordinates to deal with it and the trial was busy -

20 **THE CHAIRPERSON:** Yes, that's right.

MS RICHARDSON: - in those circumstances -

THE CHAIRPERSON: Yes, that's right. That's fair enough.

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MS RICHARDSON: - do you think - and then I will seek to show that, in fact, he was intimately involved in this.

THE CHAIRPERSON: Yes. And in due course - yes.

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MS RICHARDSON: And so the five-day delay was very problematic in circumstances where he was intimately involved.

THE CHAIRPERSON: Yes. And if - and in due course, if Ms Anniwell wishes to make good her - the premises of her question, she will make submissions to me and show me that the premises were sound. Yes, that's the way to do it.

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MS RICHARDSON: Please the inquiry.

40 **THE CHAIRPERSON:** So I had better hear from you, but what -

MS ANNIWELL: Well, Mr Chair -

THE CHAIRPERSON: Just let me put to you what I understand Ms Richardson is saying to me.

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MS ANNIWELL: I think there is a misunderstanding as to the basis of the questioning.

THE CHAIRPERSON: It could be, but what I am understanding her to be saying is that you are putting some correspondence to the witness and then asking for her opinion about the

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reasonableness of Mr Drumgold's conduct in the light of that correspondence. And Ms Richardson says there are a few more facts that have to be taken into account before that answer would have any value. So she submits that you should put the question on the basis that these are the facts that you - upon which you ground the question. If the witness assumes that those are the relevant facts, what does she say about the reasonableness of the conduct? So you introduce an element - she says you ought to introduce an element of hypothesis into it rather than fact. So over to you.

MS ANNIWELL: Well, I respectfully submit that that doesn't properly characterise the nature of my question, nor the evidence of the witness in her statement.

THE CHAIRPERSON: All right. Go on. Go on.

MS ANNIWELL: So to assist with that, could I have document WIT.0033.0001.0001_0037 brought up. This is the statement of Ms Cameron. Perhaps I can read it. It says this -

THE CHAIRPERSON: Yes, read it out.

MS ANNIWELL: Paragraph 230. It says:

"In relation to the defence's application seeking the disclosure of documents, the application was filed on 8 September 2022. However, the AFP was only informed on 13 September 2022. This delayed notification from the DPP to the AFP was not explained. In my opinion, both the delay and explanation were unsatisfactory."

I submit that there is an allegation made by this witness that a delay in notification of the application - not how the application was dealt with, delay in notification was unsatisfactory.

THE CHAIRPERSON: Yes. Yes.

MS ANNIWELL: I've set the questions up to put to the witness that there's a lot going on in the files. There may be delays in communications both between the office of the DPP and police as a result. In those circumstances, would she like to reflect on the allegation that delay in notification was unsatisfactory. That's the basis of my question.

THE CHAIRPERSON: Yes.

MS ANNIWELL: I believe I've put the basis upon which I can put that question. I'm not suggesting anything broader than that.

THE CHAIRPERSON: Yes. Thank you. What do you say, Ms Richardson?

MS RICHARDSON: Well, the difficulty I have is that my learned friend has revealed the premise, which is, "There is a lot going on in trials, so please comment on - reflect on whether you think things were unsatisfactory." The position that Commissioner Cameron has commented on is that this application was filed on the 8th, and the DPP - Mr Drumgold - did not tell the AFP that the defence had filed an application seeking documents that were AFP documents, and over which we know there were months of toing and froing and discussion about disclosure and privilege issues. And the position of the AFP was these documents were not privilege. So Mr Drumgold did not tell the AFP until a very late stage through a

subordinate on the 13th that they had already filed an affidavit and submissions in which they asserted that the AFP were claiming privilege when, in fact, they were not. And when we look at the documentary record, it's not a case of Mr Drumgold being busy doing other things. He is intimately involved in -

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THE CHAIRPERSON: Yes, I understand.

MS RICHARDSON: - the response.

10 **THE CHAIRPERSON:** Yes.

MS RICHARDSON: And it's more than what was put previously. It's not just dictating to a subordinate to put on an affidavit on information and belief. There's correspondence where - between Mr Drumgold and Ms Pitney where he raises with her the fact that -

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THE CHAIRPERSON: Ms Pitney is in the DPP?

MS RICHARDSON: Yes. But he -

20 **THE CHAIRPERSON:** But really, Ms Richardson, with respect, I don't think this question is worth all the debate we are having. She's being asked whether the delay between the filing of the application and notification of the fact of the application of five days - whether she considers that to be reasonable having regard to the fact that the trial was imminent and the DPP was - must have been very busy. Undoubtedly she would say "yes" to that. You, in due
25 course, will show that the - whatever her opinions were - I don't know what her opinions were. She's being asked really to withdraw an allegation of unsatisfactoriness. The withdrawal will be valueless if you demonstrate by showing the witness the things that you are taking care to show me, what you say the true position was. Why don't we do it that way?

30 **MS RICHARDSON:** May it please the inquiry.

THE CHAIRPERSON: Yes. Thank you. Ask her to come back, please.

<**JOANNE LEE CAMERON, CONTINUING**

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<**EXAMINATION BY MS ANNIWELL:**

THE CHAIRPERSON: Yes, Ms Anniwell.

40 **MS ANNIWELL:** Thank you, Mr Chair. Ms Cameron, I would just like to read part of your statement to you - the statement that you've provided to the Board of Inquiry. And, Mr Chair, this is at paragraph 230.

THE CHAIRPERSON: Yes.

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MS ANNIWELL: You say:

"In relation to the defence's application seeking the disclosure of documents, the application was filed on 8 September 2022. However, the AFP..."

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And it's now on the screen in front of you.

CMDR CAMERON: Thank you.

5 **MS ANNIWELL:**

"However, the AFP was only informed on 13 September 2022. This delayed notification from the DPP to the AFP was not explained. In my opinion, both the delay and lack of explanation were unsatisfactory."

10

Now, in the context of the documents that I've shown to you just a moment ago, I would like you to reflect on the suggestion by you that the delay in notification was unsatisfactory. Do you still maintain that?

15 **CMDR CAMERON:** I maintain a position that the - the five-day delay had created an issue and attention for the agencies that was perhaps not best practice. I would have hoped we - in a more informal sense, I would have hoped our police agency would have been brought to knowledge of this application earlier. It would have been my preference that that had occurred.

20

MS ANNIWELL: Do you accept, though, that a quick turnaround of notification is sometimes not possible in the preparation of a trial owing to the pressures of the trial?

25 **CMDR CAMERON:** I absolutely accept that there's pressures otherwise that create these situations.

MS ANNIWELL: On 13 September 2022, you received a call from Superintendent Moller informing you that he had had a conversation with defence counsel, Mr Whybrow?

30 **CMDR CAMERON:** That's correct.

MS ANNIWELL: And please let me know if you require me to put the parts of your statement on the screen so that you can see them, but you also have a copy of your statement there.

35

CMDR CAMERON: Yes.

40 **MS ANNIWELL:** I'm more than happy for you to refer to that. So this is at paragraph 187. And you say at paragraph 187 that you were advised on that date by Mr Moller that he was contacted by Mr Whybrow regarding disclosure of certain documents. Do you recall what it was that Mr Moller told you in the conversation that he had with you?

CMDR CAMERON: Not with any specificity, no, I don't.

45 **MS ANNIWELL:** Just that it was -

CMDR CAMERON: Just that - sorry.

50 **MS ANNIWELL:** Just that it was about the disclosure application generally?

CMDR CAMERON: Correct. Correct.

MS ANNIWELL: And then the next day, you sent an email to Superintendent Moller following on from that interaction that you had?

5

CMDR CAMERON: That's correct.

MS ANNIWELL: And if I can take you to document AFP.2003.0003.4480. And I won't take you to it, but I can if you need to. At the bottom of the page, you see there's an email from Rachel Fisher to Superintendent Moller on 13 September?

10

CMDR CAMERON: Yes.

MS ANNIWELL: That is forwarded to you by Mr Moller in the email that is immediately above, which says:

15

"Ma'am, as anticipated, see below communication received from defence counsel acting for Bruce Lehrmann. As discussed, my view is the documents were for internal decision-making."

20

CMDR CAMERON: Yes.

MS ANNIWELL: And then at the top of the page, you reply:

25

"Thanks, Scott. Leave it with me, and I will forward to AFP Legal. I'm of the view that no comments or retort on any of this by investigators. It needs to run through Legal and Executive first so we stay aligned."

CMDR CAMERON: Yes.

30

MS ANNIWELL: So was it your view following your conversation with Mr Moller that AFP Legal needed to be consulted in relation to the application?

CMDR CAMERON: Yes, that was my view.

35

MS ANNIWELL: And it was your intention to do that and, indeed, you did do that, didn't you?

CMDR CAMERON: Yes, I did.

40

MS ANNIWELL: That's because between 15 and 21 September, you commenced engaging with AFP Legal and others about the status - the legal professional privilege status of a number of documents that were called on by the disclosure application; is that right?

CMDR CAMERON: That's correct.

45

MS ANNIWELL: And it was around 15 September that you decided that the decision with respect to legal professional privilege over these documents was ultimately yours to make?

CMDR CAMERON: That's my recollection.

50

MS ANNIWELL: And one of the interactions that you had with AFP Legal was on 15 September 2022, and you had a meeting with Mr Drumgold, Mr Greig, Assistant Commissioner Crozier and AFP Legal on that date; is that right?

5

CMDR CAMERON: That's - that's correct.

MS ANNIWELL: And you have made a note in your diary about that meeting?

10 **CMDR CAMERON:** That's correct.

MS ANNIWELL: I will take you AFP.2002.0001.0029. And that's your diary note?

CMDR CAMERON: Yes, they are.

15

MS ANNIWELL: I suggest that your handwriting is a bit better than some others that we've seen in this hearing. But that records the notes that you took during the meeting or after the meeting?

20 **CMDR CAMERON:** I was taking those notes during the meeting.

MS ANNIWELL: Part way down the page, you write:

"- finding on relevance on value for any LPP claim."

25

Is that right?

CMDR CAMERON: That's right.

30 **MS ANNIWELL:**

"Discussion surrounding 17 June discussion verse cover sheet dated 16 June linking police statements with the cover sheets/EB."

35 Is EB a reference to an executive briefing?

CMDR CAMERON: That's correct.

40 **MS ANNIWELL:** And you're aware that there was an executive briefing document that had been prepared by Mr Moller in relation to the investigation?

CMDR CAMERON: That's my understanding.

45 **MS ANNIWELL:** And that was one of the documents that was being discussed during the meeting with the AFP Legal and Mr Drumgold?

CMDR CAMERON: That's correct.

50 **MS ANNIWELL:** And I would just like to take you to another record of this meeting, which is Mr Greig's file note. That document is DPP.005.005.8751. This is Mr Greig's record of

what was discussed during the meeting. So, of course, it might not align with yours. Please indicate if it doesn't. Under the heading Tuesday, 13 September 2022:

5 "Stephanie [REDACTED], Scott Moller and Callum Hughes were contacted by defence regarding the disclosure document. None made any comment. Shane..."

Now, you understand that's Mr Drumgold:

10 "...informed the AFP in attendance that Scott Moller had discussed this with defence, and he was informed of this by Steven Whybrow at the bar table at the mention on Wednesday, 14 September. Scott Moller had previously informed Joanne and Scott he said no comment."

The next part:

15 "Investigative review document, Shane believed he had received for advice. Purported to be an assessment of the evidence."

20 And then there is setting out three strands that the DPP was referring to during that meeting. But the next part I would like to draw your attention to:

25 "AFP Legal, investigation review document. Have gone to government solicitor seeking advice. They have looked at the documents. Advice on face is that the documents appear to be seeking internal guidance. Not clear on face if privilege. If additional evidence on the evidence, why were they created? Seeking further legal advice."

30 So is fair to say that at this point in time at this meeting, a preliminary view had been expressed to you as to the status of the investigative review documents?

CMDR CAMERON: There were a number of views, from recollection, being discussed.

MS ANNIWELL: But one matter that was discussed was the need for additional evidence to see whether or not the document was, in fact, privileged?

35 **CMDR CAMERON:** I accept that. That's the - part of the notes that Mitchell had prepared.

MS ANNIWELL: And that you were, in fact, seeking further legal advice on the matter?

40 **CMDR CAMERON:** Yes, we were.

MS ANNIWELL: And I will take you to the last paragraph, please, of that page.

45 **MS RICHARDSON:** Well, I think, in fairness, the next bullet point is centrally relevant to this topic - it should be drawn to the witness's attention - starting, "Scott Moller didn't have in his mind."

MS ANNIWELL: I'm happy to do that. If you could please read the following two bullet points, the first one starting, "Scott Moller," and the next one, "PII claim."

50

CMDR CAMERON: Thank you.

MS ANNIWELL: And then the last bullet point:

5 "LPP, Scott Moller notes relating to the conversation with Michael Chew. Does this affect the document being LPP? Will speak to AGS relating to further advice."

So in this meeting, there was a discussion about Mr Moller's view that the documents were created not for seeking legal advice; is that correct?

10

CMDR CAMERON: That's my understanding of what's there.

MS ANNIWELL: But at the end of the meeting, it was the case, wasn't it, that further inquiries had to be made and further legal advice had to be sought by you before you could make a decision whether the documents were privileged?

15

CMDR CAMERON: A decision had not been made.

MS ANNIWELL: It had not been made. And that's because privilege is a complex question, isn't it?

20

THE CHAIRPERSON: Well, I don't know. Sometimes it can be.

MS ANNIWELL: Well, it can be. It was in this case, wasn't it? You had to seek extensive legal advice from AFP Legal about it?

25

CMDR CAMERON: I found it complex.

MS ANNIWELL: And it was the case that after this meeting on 15 September, you again sought further legal advice from AFP Legal. You had a meeting with them again on 20 September 2022. And you address in your statement at paragraph 210 your note about what was discussed during that meeting. If paragraph 210 of the witness's statement could be brought up, please.

30

CMDR CAMERON: I have it. I have it.

35

MS ANNIWELL: You have it?

CMDR CAMERON: I have it.

40

MS ANNIWELL: Thank you. We might bring it up for the room.

"At 11.30 am, I had a meeting with AFP Legal and I made notes about the documents being scrutinised."

45

You attach an extract from your diary, but you then, I would say, possibly interpret your notes and summarise them there in paragraph 110; is that right?

CMDR CAMERON: I believe they are my notes. We could bring up my diary to -

50

MS ANNIWELL: Would you like me to do that for you? We can take you to your diary if you would like.

CMDR CAMERON: If that's a question put to me, is that my notes of my notebook, I have -

MS ANNIWELL: Well, if we proceed on the basis that what you've set out in paragraph 210 is a summary of your notebook. You say there:

"McDevitt ultimately to seek legal advice embryonic of the issue of legal. Boorman used McDevitt's..."

THE CHAIRPERSON: We can read it. Let's not read it out.

MS ANNIWELL: Thank you. D:

"Do we want to? Yes. Can we? - ??"

Now, that is a reference, isn't it, to the question that was pertaining at the time to whether or not you could claim privilege over the documents?

CMDR CAMERON: Yes, it was.

MS ANNIWELL: And then - would you agree, then, as at this meeting on 20 September, again, you hadn't made a decision at that point whether the documents were privileged?

CMDR CAMERON: I had not made the decision.

MS ANNIWELL: And you knew there was a discussion going on with the assistance of AFP Legal as to the purpose for which the documents that were the subject of the disclosure application were created?

CMDR CAMERON: That's correct.

MS ANNIWELL: And you again were getting more legal advice about the status of them?

CMDR CAMERON: That's correct.

MS ANNIWELL: Now, after the meeting of 20 September 2022, you received a call from a lawyer at AFP Legal. And you address this in your statement at paragraph 214. You say:

"The short advice included: (a) we consider that the AFP only has evidence to support an LPP claim over one document; recommend that all documents in the table below, with the exception of document 6, be produced in response to the subpoena."

You then say at paragraph 215 that you were told that AGS - the Australian Government Solicitor - would provide you with written advice the following morning. And you say at paragraph 216 that you agreed with that lawyer's approach regarding the documents, but you requested a meeting at 5.30 that day. Is that correct?

CMDR CAMERON: Yes, that's correct.

5 **MS ANNIWELL:** Then at paragraph 217, you talk about the meeting that you had that afternoon with AFP Legal and a solicitor from AGS. And then it's the next morning, 21 September 2022, that AFP Legal forwarded to you an email from the AGS with advice with respect to the documents?

CMDR CAMERON: Yes.

10 **MS ANNIWELL:** And it was at this point in time, after you received that advice from AGS, that you determined that a privilege - a legal professional principle claim would not be made with respect to a certain number of the documents?

15 **CMDR CAMERON:** I was forming my opinion. I believe my statement refers to - sorry, it could be (indistinct) when the decision was made.

MS ANNIWELL: So on 21 September 2022 in the morning, at paragraph 218, you received the written advice from the AGS lawyer. And then later that day, you called Mr Drumgold and you told him that privilege would not be claimed with respect to the documents that were the subject of the application?

20 **CMDR CAMERON:** Yes, I recall that.

MS ANNIWELL: So you would agree that -

25 **CMDR CAMERON:** Yes. Yes.

MS ANNIWELL: - you made your final decision some time after you had received the email from AGS in the morning on 21 September. And on that afternoon of 21 September, was that the first occasion on which you informed Mr Drumgold that legal professional privilege would not be claimed with respect to the documents sought in the subpoena?

CMDR CAMERON: I recall ringing the Director and speaking -

35 **MS ANNIWELL:** Yes.

CMDR CAMERON: He rang me back, and I had the - a conversation with him that requested a meeting. And it is very possible - not recalling the exact conversation at the time, very possible during that phone call that that issue was raised.

40 **MS ANNIWELL:** But it was on that date that you told him for the first time that you had made the decision that privilege would not be claimed over those documents?

THE CHAIRPERSON: Do you recall if you told the Director before your meeting at 4 pm or at the meeting at 4 pm?

45 **CMDR CAMERON:** I believe it - it would have - I recall the phone - the telephone conversation.

THE CHAIRPERSON: Yes.

50

CMDR CAMERON: And I - I'm confident that it would have been raised -

THE CHAIRPERSON: During the call.

5 **CMDR CAMERON:** - during that conversation.

THE CHAIRPERSON: In the morning?

10 **CMDR CAMERON:** In the morning. It was - it was the reason why -

THE CHAIRPERSON: You rang.

CMDR CAMERON: - I was calling him, so that we could meet and discuss the outcome of -

15 **THE CHAIRPERSON:** Having regard -

CMDR CAMERON: - where to from now.

20 **THE CHAIRPERSON:** Having regard to the view you had formed?

CMDR CAMERON: Having regard to the view that I had formed.

THE CHAIRPERSON: Yes. Thank you.

25 **MS ANNIWELL:** I would like to move on to another topic, which was dealt with
very - which was dealt with briefly yesterday by counsel assisting, so I won't go into it too
much, but I do have some questions. If we could go to your diary note for - which is
document 2002.0001.0016. This is your diary note that you were taken to yesterday by
counsel assisting about the call that you received from Superintendent Moller on 12
30 September 2022?

CMDR CAMERON: Yes.

35 **MS ANNIWELL:** Now, you accept as a general proposition, don't you, that there's no
property in a witness?

CMDR CAMERON: I do accept that.

40 **MS ANNIWELL:** And you accept that depending on the case and the circumstances - so it's
conditional, but depending on the facts and the circumstances of the case, generally there's no
problem with defence counsel or solicitors approaching police and asking them questions
during the trial?

45 **CMDR CAMERON:** I accept there's no property in a witness. I recall - as I stated yesterday,
I have a view about witnesses and police witnesses in particular with respect to our
professional conduct and the approach with which we join with our prosecuting agency to
support a prosecution before a court. I also explained yesterday the uniqueness of this
situation and the general environment that this case had created was building perceptions, at
least over the course of the last 11 months to that - to this day, that I was trying to counter

through the avoidance of interactions between police officers and the defence so that these perceptions and these conspiratorial ideas would not be - would not be fed.

5 **THE CHAIRPERSON:** Yes. I - and I understand that. I think the question is being directed to the general position -

CMDR CAMERON: Generally.

10 **THE CHAIRPERSON:** - in relation to police dealings with defence. And I don't think Ms Anniwell has got to this particular case yet. So she will come to that, I'm sure.

CMDR CAMERON: I accept - I accept in the general proposition that can be the case.

15 **MS ANNIWELL:** And, of course, it's very case and circumstance specific as to what is inappropriate and what is appropriate in terms of that interaction between defence and police, isn't it?

CMDR CAMERON: Yes, that's correct.

20 **MS ANNIWELL:** So you gave evidence yesterday that you can't recall what Mr Moller said to you on the phone specifically. There was something about it that he told you that caused you to characterise the interaction as not appropriate; is that right?

25 **CMDR CAMERON:** Yes, I recall the emotion of - of the phone call. I recall Superintendent Moller being quite agitated. And on - in recalling what was the conversation he and I were having over the telephone, I recall it to be the issue around these perceptions that were being built, that these sorts of interactions were somehow an attempt by police to collude with the defence to continue to generate and agitate what was occurring through the proceedings.

30 **MS ANNIWELL:** And you - there was something about that approach from Mr Whybrow to Mr Moller that caused you to raise it, though, with the Chief Police Officer; is that right?

35 **CMDR CAMERON:** That's correct. It's indicative of the tension that was in the issue at the time.

THE CHAIRPERSON: The fact of the approach at all, you mean?

CMDR CAMERON: Yes.

40 **MS ANNIWELL:** And it must have been - there must have been something that Mr Moller said about that approach that you can't remember now that caused you to characterise it as not appropriate and caused you to raise it with the Chief Police Officer?

45 **CMDR CAMERON:** That's correct.

MS ANNIWELL: Because he's a busy man, and you don't bother him unless it's really important. Is that fair to say?

50 **CMDR CAMERON:** The nature of my role to identify issues of concern that I believe the CPO may wish to be appraised of. And, naturally, my reaction at that time was to brief him.

THE CHAIRPERSON: And was it the content of the approach - was it the content of Mr Whybrow's approach that concerned you or was it Mr Whybrow's approach that concerned you, or both?

5

CMDR CAMERON: In recollection - I'm - I'm recalling it was the approach in a general sense. And as I - as I sit here now, I can't quite recall the content.

THE CHAIRPERSON: Yes.

10

CMDR CAMERON: But - but it was the situation. We were mid-trial. Superintendent Moller was potentially still a witness in that trial. We didn't know whether he would be called or not. It was - it was -

15 **THE CHAIRPERSON:** Had Mr Drumgold spoken to you about the relationship that he perceived that the police had with defence lawyers?

20 **CMDR CAMERON:** Many, many months earlier - the first quarter of 2022, I recall conversations with the Director that led me to believe he had a suspicion that actions being taken by police were for nefarious or - you know, intended to somehow affect the prosecution. That was known to me generally, and I do recall conversations with the Director that suggested there was an issue with the professionalism and impartiality of some of my police, and that included Superintendent Moller.

25 **THE CHAIRPERSON:** Yes. Thank you.

MS ANNIWELL: And, again, there must have been something about that approach from Mr Whybrow that also caused you to contact Mr Drumgold and let him know about it?

30 **CMDR CAMERON:** That is correct.

MS ANNIWELL: And that caused you to send that email to Mr Drumgold that you were taken to by counsel assisting yesterday, and also caused you to send that email that you did to Superintendent Moller, and also Mr [REDACTED]. Who is Mr [REDACTED]?

35

CMDR CAMERON: Detective Inspector [REDACTED] -

MS ANNIWELL: Thank you.

40 **CMDR CAMERON:** - is within the Criminal Investigations chain of command. He was regularly acting in the role as a superintendent, and he was very much part of the supervisory rank overseeing ACT Criminal Investigations.

MS ANNIWELL: Thank you. And this - again, this happened on 12 September?

45

CMDR CAMERON: Correct.

MS ANNIWELL: And Mr Chairman, if it assists, there is some reflections that Ms Cameron makes about this in paragraph 349 to 351 of her statement, but I won't take her to that.

50

THE CHAIRPERSON: All right.

5 **MS ANNIWELL:** Are you aware that Mr Whybrow has given evidence to this Board of Inquiry about the conversation that he had with Detective Inspector Boorman on 25 October 2022?

CMDR CAMERON: No, I'm not.

10 **MS ANNIWELL:** Mr Chair, I would like to display that portion of the witness's statement on the screen, unless there's any -

THE CHAIRPERSON: Mr Whybrow's statement?

15 **MS ANNIWELL:** Yes. Alternatively, I can just read the portion that -

THE CHAIRPERSON: Well, I'm just wondering, because - anyway, you go ahead and put it up on the screen.

20 **MS ANNIWELL:** Thank you. Could document WIT.0031.0001.0001_0068 be displayed, please. I think I've given you the wrong reference. I'm after paragraph 34.10. I'm sorry, I don't have a pinpoint for that.

THE CHAIRPERSON: Is it a long passage? If it's not, you read it to her.

25 **MS ANNIWELL:** I'm happy to read it.

THE CHAIRPERSON: Yes, go ahead. Do that.

30 **MS ANNIWELL:** It says this - and it's on the screen now.

THE CHAIRPERSON: There we are. Let's have a look.

MS ANNIWELL: Would you like to read that, please?

35 **CMDR CAMERON:** Thank you.

MS ANNIWELL: Could you read the next paragraph 2, please, which is 34.11.

40 **CMDR CAMERON:** Thank you.

MS ANNIWELL: Now that you're aware of that evidence of what is alleged to have occurred on 25 October 2022, if Detective Inspector Boorman did say that, you would agree that that sort of interaction with defence is inappropriate?

45 **CMDR CAMERON:** I'm not ever familiar with this ever occurring.

THE CHAIRPERSON: I'm sorry?

50 **CMDR CAMERON:** I'm not familiar with this sort of conversation ever occurring between -

THE CHAIRPERSON: No, what's being put to you - the question being asked of you - if it's true, what do you think?

5 **CMDR CAMERON:** It's an opinion that a police officer shared with the defence. Would I do that? It's a matter for me, and I would not.

MS ANNIWELL: Would you agree that this is the sort of interaction that caused you concern to raise -

10 **THE CHAIRPERSON:** Why?

MS RICHARDSON: I object to that question.

15 **THE CHAIRPERSON:** Why? Why would it cause concern? It's very unusual, but what's the issue that you are putting?

MS ANNIWELL: Well, perhaps I will ask this question first.

20 **THE CHAIRPERSON:** Yes.

MS ANNIWELL: Would you agree that this sort of interaction has the capacity to create those perceptions that you, in fact, were concerned about that you raised in your email with Chief Police Officer -

25 **THE CHAIRPERSON:** But Mr Drumgold didn't know about this interaction.

30 **MS ANNIWELL:** I'm not talking about - my question isn't directed to Mr Drumgold's knowledge. It's about the perceptions that can be created when the police and defence interact. And if this is an example of the sort of conduct -

THE CHAIRPERSON: Perception in whose eyes? Nobody knew about this. So you must be saying that the interaction itself is corrosive of something. It can't be a matter of perception because nobody knew. They went around the corner to talk.

35 **MS ANNIWELL:** My understanding was - from Ms Cameron's evidence was it's not just the perception of the defence team; it could be perceptions obtained by the media in relation to witnessing such interactions.

40 **THE CHAIRPERSON:** Yes.

MS ANNIWELL: I'm just seeking to ask her -

45 **THE CHAIRPERSON:** But nobody perceived this, so how can you put a question to her about would this be - would this create a perception when it was not perceived?

MS ANNIWELL: I understand. I understand, and I will leave it at that. And you've given your evidence as to how you may react to those circumstances before in your evidence?

50 **CMDR CAMERON:** Yes.

MS ANNIWELL: I will move on to another topic. In your statement, you identify the tertiary qualifications that you've obtained and courses and diplomas that you've obtained during your career. And I would suggest they are extensive. You would agree, wouldn't you, that learning and training are vital to the integrity to the operations of police?

5

CMDR CAMERON: Absolutely.

MS ANNIWELL: It's something that you consider to be very important; isn't that right?

10

CMDR CAMERON: Absolutely.

MS ANNIWELL: And attached to your statement is the AFP learning strategy?

15

CMDR CAMERON: Yes, it is.

MS ANNIWELL: And you explain that in your statement as comprising a 70-20-10 model. You say in your statement that 70 per cent of learning and training is on the job; 20 per cent is through mentoring and coaching; and 10 per cent comes from formal training?

20

CMDR CAMERON: That's the model, yes.

MS ANNIWELL: Is it fair to say that some of the more legally technical aspects of training would be delivered in that 10 per cent?

25

CMDR CAMERON: Yes, but I also maintain that it's through engaging with the law in the work that we conduct, in that 70 per cent approach, is your understanding your practice of exercising the law.

30

MS ANNIWELL: So you learn about the law from being in court, for example - running cases in court as an investigator, but you also learn about the technical aspects of your job when you are given guidance from more senior officers that are mentoring you and coaching you in your role?

35

CMDR CAMERON: That's correct.

MS ANNIWELL: Would you agree that training has to be responsive to issues as they may arise within an investigative team?

40

CMDR CAMERON: Yes, that's the best approach.

MS ANNIWELL: So if you see an issue arising which might, for example, expose a shortcoming in skills or understanding, it's important, isn't it, to be responsive to that once you recognise it?

45

CMDR CAMERON: Yes, it is.

MS ANNIWELL: And when you returned to ACT Policing and became the commander of investigations in December 2021, that role involved you leading and directing operational business within the investigations command?

50

CMDR CAMERON: Yes, that - in addition to some other duties. Yes, that's correct.

5 **MS ANNIWELL:** And part of that did include some responsibility - some - not sole responsibility, but some responsibility for training and learning in association with the investigations unit; is that correct?

CMDR CAMERON: Yes, that's correct.

10 **MS ANNIWELL:** Now, in your statement, you say that since you returned to ACT Policing in December 2021, you've observed changes in influences over the police informant's decision to charge?

CMDR CAMERON: Yes, that's correct.

15 **MS ANNIWELL:** And you say in your statement - I will just read it to you:

"I've been party to conversations around the issue of threshold to charge, which do not always align to my own understanding of what threshold needs to be met."

20 When you became aware that there were some misalignment or misunderstanding as to the threshold for charge in December 2021, that must have caused you some concern. Is that fair to say?

25 **CMDR CAMERON:** It does - it did cause me concern. Whether I had formed that view in December 2021, it was in the first months of my appointment as commander -

MS ANNIWELL: Right.

30 **CMDR CAMERON:** - that I became aware of that issue, yes.

MS ANNIWELL: And that - the observation that you made, was that with respect to SACAT or across ACT Policing generally?

35 **CMDR CAMERON:** It needs to be considered across ACT Policing generally, but it was generated from the issue around sexual assault investigations.

MS ANNIWELL: And it caused you concern, I would suggest, because understanding the test for charging is an important skill for an investigator to have.

40 **CMDR CAMERON:** It's an important skill for every police officer to have, yes.

MS ANNIWELL: And that's because the misapplication of that test can have an impact on a complainant but also on a potential accused person; is that correct?

45 **CMDR CAMERON:** That is correct.

MS ANNIWELL: Because if the test threshold is too high, that may mean that a complainant doesn't have access to the court system?

50 **CMDR CAMERON:** That would be correct.

MS ANNIWELL: But also for an accused person, if it's too low, it might see a person accused or charged with a crime that shouldn't otherwise be; is that right?

5 **CMDR CAMERON:** That's right.

MS ANNIWELL: Now, you say in your statement that as a result of some discussions you had with Mr Drumgold following the release of the SAPR report, you formed a view that officers would be better served with a more robust framework in relation to making decisions to charge, including a clearer distinction between the decision to charge compared with the decision to prosecute?

CMDR CAMERON: That's correct.

15 **MS ANNIWELL:** Now, given that you have previously identified that a more robust framework is required, why has there been a delay in delivering a better practice guide to assist investigators knowing what the proper test for charging is?

20 **CMDR CAMERON:** That would - I would hold a view there are - when I speak of a framework, a better practice guide is but one example of a framework. And I accept the delay exists with respect to a better practice guide. But a broader, more robust framework - changes were brought forward to ACT Policing with respect to these decisions whilst we were developing a written document.

25 **THE CHAIRPERSON:** And what kind of changes were developed?

CMDR CAMERON: Within the sphere of ACT Policing criminal investigations specific to sexual assault investigations conducted by SACAT, greater review and oversight by more senior officers was instituted such that the case officer was not left alone and isolated in making the decision with respect to proceeding to a prosecution. It broadened the input to that decision. It heightened the oversight to that decision. And that was a very quick remedy to the issues identified whilst we then undertook -

35 **THE CHAIRPERSON:** Did other things.

CMDR CAMERON: - to produce and look towards developing a written document in support -

40 **THE CHAIRPERSON:** Yes. Thank you.

CMDR CAMERON: That would - that would support that existing framework that we had with respect to oversight of the decision.

45 **THE CHAIRPERSON:** Yes.

MS ANNIWELL: The establishment of that committee, though, that isn't directly related to an investigator's understanding of the test to charge, though, is it?

50 **CMDR CAMERON:** It goes towards - the conduct of that oversight committee definitely goes towards looking at the decision to proceed to a prosecution and charge someone.

MS ANNIWELL: Now, you say in your statement that ACT Policing received some advice from AFP Legal in mid-2022 precisely about the threshold to charge; that's right, isn't it?

5 **CMDR CAMERON:** That's correct.

MS ANNIWELL: And it was the case that in September 2022, Inspector Hughes sent out an email to the SACAT team setting out the test for charging based on legal advice that had been received from AFP Legal; is that correct?

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CMDR CAMERON: I believe so. That was the case.

MS ANNIWELL: I will take to you that email. The document is AFP.0025.0001.0011. Thank you. Could you please zoom in on the bottom of that page, please. So you see this email from Inspector Hughes on 16 September 2022, which also gets sent to SACAT team 1, team 2 and team 3; is that right?

15

CMDR CAMERON: That's right.

20 **MS ANNIWELL:** In fairness, you're not copied in to this email, though, are you?

CMDR CAMERON: According to that email, no.

MS ANNIWELL: No. Are you aware that this email was sent?

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CMDR CAMERON: I have a general recollection that was sent.

MS ANNIWELL: I would like to take you to parts of it. Under the heading Threshold to Charge, it says:

30

"We have gone on a lengthy journey, involving legal advice and significant consultation with the wider AFP, to produce an ACTP-wide policy position on when we charge. Our position (which will be produced in a new better practice guide that is being drafted) is not to charge at the point you hold a reasonable suspicion. Instead, you may charge on the basis of reasonable and probable cause, which is similar to a reasonable belief."

35

Now, it sets out a two-part test there:

40

"Do you hold an honest belief that the probability of the accused's guilt is such that a charge is warranted? And is there a sufficient basis on the material presented for this belief?"

And the email says:

45

"A belief is not overly high to meet and sets out the basis upon which we form a suspicion, conduct inquiries and ask ourselves if we hold a reasonable belief at the end of the investigation."

Could you turn the page, please. And if we could zoom in, please, on the image - or the flow chart, if you would. The diagram, which the email says will likely be included in a new better practice guide, shows the flow of investigation stage to prosecution stage to conviction or acquittal. Would you agree?

5

CMDR CAMERON: Yes, that's what the diagram indicates.

MS ANNIWELL: And there's three columns, each setting out, I would suggest, the relevant inquiry that is part of each body's responsibility. So with respect to police, it says, I would suggest, the test is reasonable and -

10

THE CHAIRPERSON: We can see that, Ms Anniwell.

MS ANNIWELL: Thank you.

15

THE CHAIRPERSON: We can see it. So ask your questions about it, if you like.

MS ANNIWELL: My question is this: are you aware that investigators have provided statements to the Board of Inquiry that demonstrates there's still a misunderstanding as to the test for charge that is to be applied by them?

20

CMDR CAMERON: I'm not aware of the other evidence that's been given to this inquiry, but I accept - if you state that, then I accept that.

25

MS ANNIWELL: I would like to take you to some of that evidence, please.

THE CHAIRPERSON: Why? I mean, isn't it for me to look at the way that they approached the charging issue when all of this was happening in order to understand things they did and things that they didn't do? But I'm not here really to conduct - it's helpful for me to understand the present state of play in terms of developments that are being undertaken so I can make useful recommendations, but it's not going to help me, I think, to have the witness go through beliefs that officers held at a particular time, or even hold now, in order to achieve the things that I have to achieve.

30

MS ANNIWELL: I accept that. I will, then, take the witness to a point which I do hope assists you with the recommendations that you will make.

35

THE CHAIRPERSON: Thank you. Yes, do that. Go ahead.

MS ANNIWELL: It was the case that you attended a governance meeting in relation to this issue in June 2021; is that right?

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CMDR CAMERON: June 2022?

MS ANNIWELL: Sorry, June 2022. 21 June. And one of the - can I take you, please, to document WIT.0033.0001.0001_0063. That's at paragraph 401 of the witness's statement. So in paragraph 401, you set out your notes of the meeting. After dealing with reasonable and probable cause and a High Court decision of *Robinson v New South Wales*, you refer to:

45

"Evidence manuals - recruits - does it cover this? Ben agreed that there is a gap in our training."

Who is Ben?

5

CMDR CAMERON: Ben refers to Superintendent Ben [REDACTED] who worked - works still at the - in - from our AFP Learning and Development Command.

10 **MS ANNIWELL:** So does that mean that Mr [REDACTED] agreed that there was a gap in the training material provided to recruits about the test to charge?

CMDR CAMERON: Superintendent [REDACTED] oversees the investigative training arm, not the recruit training. But I accept - we accepted generally on behalf of all of L&D that there was a gap.

15

MS ANNIWELL: And what has been done to bridge that gap?

CMDR CAMERON: I reference back to the development of governance with respect to the better practice guide draft as you refer. It's work that's ongoing.

20

MS ANNIWELL: What about training for investigators that are new to investigations? What's being done about the gap in their training with respect to the test to charge?

25 **CMDR CAMERON:** I don't work in (indistinct) development, so I can't say what work is being undertaken (indistinct).

30 **THE CHAIRPERSON:** But you are talking about the present, Ms Anniwell. And if I was inquiring into the adequacy of current training and what has to be done, this would be very important. But I'm looking at what happened in this investigation and the trial and why it happened. And so I'm interested in deficiencies at that time and wrong beliefs at that time, and some of those have been covered. But I'm not very interested in what's happening today unless it bears upon that in some way.

35 **MS ANNIWELL:** It may bear upon whether or not, Mr Chair, you wish to make recommendations with respect to training in terms of recruits that are trained in investigations and what it is that they do or do not know about the test to charge.

40 **THE CHAIRPERSON:** But I will - because it's clear already that - because the police witnesses who provided statements have shown that they have different views about the test - the threshold for charging. The fact that they have different views means that something has to be done to create consistency and correctness in their consistent belief. So I know that. And it won't help me to know what work is being done currently, because I'm not going to tell them - I'm not going to recommend what ought to be done in detail. I'm going to recommend, I would think - as I sit here now, I would think I would have to recommend that

45 work be done to - for police leaders to articulate in an official way the test for charging and to ensure that all officers know what it is. So at the moment, if they are doing something about that, that's interesting. But I will still be making that recommendation, I would think. So -

50 **MS ANNIWELL:** I understand. Thank you, Mr Chair. I don't need to take it further.

THE CHAIRPERSON: Thank you.

MS ANNIWELL: Excuse me. Thank you, Mr Chair. Thank you, Ms Cameron.

5 **THE CHAIRPERSON:** Thank you. Now, does anybody else have any questions for -

MR TEDESCHI: Chair, I'm aware of a document that Mr Jones gave to us.

THE CHAIRPERSON: Yes.

10

MR TEDESCHI: It's an inquiry document. I'm just wondering if it's been tendered. It's got the threshold to charge from each of the different witnesses.

THE CHAIRPERSON: Yes.

15

MR TEDESCHI: I can give you the reference to it. I assume that it's -

THE CHAIRPERSON: No, I will be aware of it in due course because that's an important subject.

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MR TEDESCHI: I'm just wondering if it's been tendered.

MS LYNCH: Yes, it has been tendered. I don't know exactly the exhibit number.

25 **THE CHAIRPERSON:** Yes. All right. So I will have it anyway. But even if I didn't have it, I would have to make my own document of that kind. Thank you. Does anybody else have any questions for Commissioner Cameron? No?

MS RICHARDSON: I do.

30

THE CHAIRPERSON: Yes, of course. Yes, Ms Richardson. Ms Richardson, is this a good time to have a break, then?

MS RICHARDSON: I might be 10 or 15 minutes, so -

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THE CHAIRPERSON: Well, why don't we do it, then? You go ahead.

<EXAMINATION BY MS RICHARDSON:

40 **MS RICHARDSON:** Okay. Assistant Commissioner Cameron, do you have a copy of your witness statement there?

CMDR CAMERON: Yes, I do.

45 **MS RICHARDSON:** Would you mind turning to paragraph 230, please.

THE CHAIRPERSON: Which one?

50 **MS RICHARDSON:** 230. Do you see there at paragraph 230, you were asked some questions about this - about the fact that the application was filed on 8 September - this is

defence's application seeking documents - and the AFP was only informed on the 13th, and you expressed the view that the delay in notification and the lack of explanation were unsatisfactory. You were asked some questions about that?

5 **CMDR CAMERON:** Yes, I was.

MS RICHARDSON: I just want to - and you were given some general background accepting that trials are busy, and things are happening in this period and so on. I just want to give you some additional - you were asked to reflect on your view about whether you thought it was unsatisfactory or not based on the delay. I'm just going to give you some information about what Mr Drumgold was doing in relation to this application in the five days that the AFP was not notified, and then I will ask you whether you still agree that the delay in notification was unsatisfactory or whether you want to revise your view. So could the witness statement - sorry, document WIT.0045.002.0022_0001 be brought up, please. So we see there that Mr Drumgold has actually received the application in the proceedings and the affidavit in support on 7 September 2022. So he actually received it the day before.

CMDR CAMERON: Yes, I see that.

20 **MS RICHARDSON:** He sent that to his team, saying:

"This gem just arrived now."

Just keep that date in mind. And then if we could please go to a document - I will just change the last digits. It ends in .0023_0001. And then we see the very next morning Mr Drumgold emailing - I want you to assume - well, are you aware that Sarah Pitney, Skye Jerome and Mitchell Greig are all people that are part of the DPP team working on the matter?

30 **CMDR CAMERON:** Yes.

MS RICHARDSON: And we see Mr Drumgold emailing his team, saying:

"I have looked at this overnight, and I think we need an affidavit outlining the following."

35 And we see 1, 2 and 3. So the Cellebrite Report; second, the investigative review document - do you see that?

40 **CMDR CAMERON:** Yes, I see that.

MS RICHARDSON: And 3, all material relating to the investigations and so on. Then we see underneath that, he is saying:

"Sarah..."

45 That's to Sarah Pitney:

"...my preliminary thoughts are whether you have access to both the redacted and unredacted Cellebrite report..."

50

Do you agree - do you understand there was a separate issue about the access to the Celebrite material?

CMDR CAMERON: Yes, there was. I don't have much knowledge.

5

MS RICHARDSON:

"...to affirm point 1 in affidavit form. And further, whether in relation to points 2 and 3, it would suffice to state that you have been advised and verily believe this to be true, and I can talk to it from the bar table."

10

Do you see that?

CMDR CAMERON: Yes, I see that.

15

MS RICHARDSON: So are you aware in proceedings like this that sometimes a lawyer connected to a case will put on an affidavit on information and belief where they are advised something and they state in an affidavit that they believe it to be true? Are you aware of that type of affidavit in a proceeding?

20

CMDR CAMERON: Not strongly, but I accept that that would be case.

MS RICHARDSON: Okay. So we see there he's directing Sarah Pitney, who was a subordinate to him on the team, in relation to three points about putting on an affidavit, including in relation to the investigative review documents that - whether she would put on an affidavit on information and belief that the documents formed a request for advice from police. Just going back a step, if you could just turn up - it doesn't need to come on the screen - your witness statement at 190. It's the case, isn't it, that you came into this aspect of the matter on 13 September, and you were rapidly trying to get up to speed that afternoon on this issue?

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30

CMDR CAMERON: Yes, that's correct.

MS RICHARDSON: And we see at 190(b) that as part of, in effect, briefing you into what had happened in this matter, you were sent two documents setting out AFP's views about privilege in relation on that?

35

CMDR CAMERON: Yes, that's correct.

MS RICHARDSON: And did you have a look at those documents that afternoon as part of getting up to speed on this issue?

40

CMDR CAMERON: I recall that I would have looked at those documents.

MS RICHARDSON: Thank you. And if we could just go back to the - if we could just pull up the 20 June email, please. The document ID of that is DPP.005.005.0468. Sorry, if we could go to the next page. So I can tell you that the header that's missing from there is it's a 20 June email from Stephanie of AFP Legal to Erin Priestly of the DPP. Do you recall -

45

THE CHAIRPERSON: Who is this from?

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MS RICHARDSON: It's from Stephanie of AFP Legal.

THE CHAIRPERSON: Yes. Thank you.

5

MS RICHARDSON: But it's going to - externally to the DPP and others.

THE CHAIRPERSON: Yes.

10 **MS RICHARDSON:** This is one of the documents that was briefed to Commissioner Cameron that afternoon. And - thank you. If we would go to the next page. Do you see there up the top, it's saying:

15 "We are advised that the various documents that fall within the description of the investigative review documents in the disclosure request received from defence in the matter."

And then we see the bullet points, five documents?

20 **CMDR CAMERON:** Yes.

MS RICHARDSON: And we see up the top the Boorman minute in the first bullet point?

CMDR CAMERON: Yes.

25

MS RICHARDSON: And the Moller executive briefing -

CMDR CAMERON: Yes.

30 **MS RICHARDSON:** - and other documents and so on. And then we see under that:

"We understand the Director has previously received the documents dated 4 June and 7 June."

35 I can tell you they are the Boorman minute and the Moller report in the context of being asked to give advice. And that in that context, those documents would be subject to LPP. Do you see that?

CMDR CAMERON: Yes, I see that.

40

MS ANNIWELL: Mr Chair, I object.

THE CHAIRPERSON: What do you object to?

45 **MS ANNIWELL:** I appreciate that the lines between examination and cross-examination and re-examination are fluid. It was my understanding that these questions were directed to notification of the disclosure application. These events precede notification of the disclosure application, so can't be relevant to the notification of the application itself.

50 **THE CHAIRPERSON:** But -

MS RICHARDSON: I'm actually doing two things -

5 **THE CHAIRPERSON:** - Ms Richardson is setting out the premises for something she's going to ask about, I think. She's drawing the witness's attention to material that Commissioner Cameron had read in the past and then she's going to ask her about something. I don't know what the something is. But at the moment, all she's doing is saying, "See this letter? Do you remember it?" I think that's what she's doing.

10 **MS ANNIWELL:** I understand. I understand.

MS RICHARDSON: I can indicate I'm doing two purposes -

15 **THE CHAIRPERSON:** Sorry?

MS RICHARDSON: I'm doing two forensic things simultaneously.

THE CHAIRPERSON: Yes. What are they?

20 **MS RICHARDSON:** Well -

THE CHAIRPERSON: You don't want to say?

25 **MS RICHARDSON:** Well, I don't want to be seen to be suggesting anything to the witness.

THE CHAIRPERSON: Yes. Anyway, let's see how you go.

MS RICHARDSON: (Indistinct) will become apparent.

30 **THE CHAIRPERSON:** But at the moment what you are doing is you are drawing documents to her attention, documents that she had seen, concerning her understanding of the status of these contentious review documents.

35 **MS RICHARDSON:** That's it. So you see there - and then - so the paragraph starting, "We understand," is referring to documents that were in the hands of the DPP that were sent to him to advise. And then can you read to yourself the paragraph starting, "Assuming at this stage." Do you see that?

40 **CMDR CAMERON:** Yes, I see that.

MS RICHARDSON: And it goes on to say:

45 "There's a potential argument the other copies of the documents in the hands of the AFP are not privileged."

CMDR CAMERON: Yes.

MS RICHARDSON: And the argument would be that prior to being provided to the Director, these documents were documents prepared for the purpose of internal AFP briefing

and guidance and that copies of the documents held by the AFP are not privileged for the reasons that go on. Do you see that?

CMDR CAMERON: I see that.

5

MS RICHARDSON: And also the next paragraph says, you see:

"We do not believe..."

10 It's referring to the third, fourth and fifth documents in the bullet points were never provided to the DPP for advice?

CMDR CAMERON: Correct.

15 **MS RICHARDSON:** So that was one of the documents that was briefed to you on the 13th, and you read that afternoon's part of getting up to speed; is that correct?

CMDR CAMERON: That's correct.

20 **MS RICHARDSON:** So just if we could please go back to document WIT.0045.002.0023_0001. I'm just taking you back through the timeline of Mr Drumgold's understanding that this application had been received in the period of delay before the AFP. So we are starting - I have taken you to the fact he was on notice from the 7th. This document on the 8th he is talking to his team about an affidavit is needed to deal with it. And we see
25 there in 2, he's setting out - telling his team that - he says:

"The document was one of two documents that formed a request for advice from police."

30 **CMDR CAMERON:** Yes.

MS RICHARDSON: And then we see he's directing to Sarah Pitney to whether she can put on an affidavit saying that she had been advised, in effect -

35 **MS ANNIWELL:** I object to that characterisation as a direction.

THE CHAIRPERSON: But I can read it.

MS ANNIWELL: Thank you.

40

MS RICHARDSON: There's a - either instruction or request being put to Sarah Pitney about putting on an affidavit in relation to points 2 and 3, that she would put on an affidavit that she had been advised something about the purpose of those documents in terms of privilege. And then if we could bring up the next document, please, WIT.0030.0005 0003_0653. Thank you.
45 If we could go to the page ending in 0654, please. Are we able to straddle the screen between 0653 and 0654? So do you see there down the bottom of the email chain, Sarah Pitney responds at 8.52 to Shane Drumgold. First of all, she's talking about timing issues. And she's saying in relation to 1 - and we can see down the bottom of the right-hand page, it's 1 from the previous email. So 1 is the Cellebrite report. Can you see that?

50

CMDR CAMERON: Yes.

MS RICHARDSON: She's saying, in effect, "I can deal with the Cellebrite report." And then she says in relation to 2 and 3, 2 being the investigative review document and purpose of the documents and 3 being all material relating to investigations:

"Who would I say I have been advised by?"

Do you see that?

10

CMDR CAMERON: I see that.

MS RICHARDSON: And then -

MS ANNIWELL: Sorry, in fairness to the witness, can the first email in this document be - about 24 hours' notice to respond.

MS RICHARDSON: Thank you. I'm happy to do that.

20

"Yes, that's fine, Sarah. My thinking is that given we have been given less than 24 hours to respond, if her Honour is willing to entertain it, we will need to adjourn the application for a week or two with our own evidence."

25

And then if we go to WIT.0045.002.0005_0001. And here, we see that Mr Drumgold is not dealing with Ms Pitney in relation to putting on an affidavit on information and belief about the privilege in the investigative documents. She's raised an issue in the previous email, "Who would I say I have been advised by?" And then we see Mr Drumgold engaging with Mr Greig. Did you understand he was a junior lawyer on the team?

30

CMDR CAMERON: Yes, I do.

35

MS RICHARDSON: Where he's giving suggested wording on an affidavit on information and belief. Now, it's the case, isn't it, that at no point during this period had - the period between 7 September and 12 September had the DPP given any notice to the AFP that they were proposing to put on an affidavit on information and belief saying that they had been advised that there was a claim for privilege over the documents; is that correct?

CMDR CAMERON: That is correct.

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MS RICHARDSON: And we see Mr Drumgold is giving the wording to Mr Greig as to what he would put on the notice of information and belief. That's on the 12th. Then if we can please bring up WIT.0045.002.0025_0001. Just on that, where a formal application has been made by the defence in a prosecution and the DPP is going to make an assertion in a document that's filed with the court about whether the AFP was claiming privilege over a document, would it be your expectation that the DPP would give you some notice before they did that?

CMDR CAMERON: One would absolutely expect so.

MS RICHARDSON: And we see then in this document on 12 September, Mr Drumgold again has obviously drafted submissions, and he's asking them to be proofed. Sorry, on 12 September that's happening. That's on the Monday. And then - and then if we could please bring up WIT.0045.0002.0026_0001. So if we go to the second page of that, please. We see - if we could straddle the second and third pages, please, on the screen. We see Mr Drumgold's engagement on this matter at 12:40 pm:

"Hi all..."

10 And it goes up to the top of the right-hand document:

"...where are we up to settling and filing the affidavits? Could I get you to affirm them and send me an electronic copy? We will need to get them filed."

15 And then we see on the left-hand page, in the middle, Mr Mitchell comes back saying:

"My two..."

Sorry, Mr Greig comes back to Mr Drumgold:

20

"My two are attached. Only providing the affidavit without exhibits."

And so on. So we know that Mr Greig puts on the affidavit about the claim for privilege. And Ms Pitney then responds - if we could go to the previous page starting - if you could straddle the first and second pages. Thank you. We see down the bottom, Ms Pitney writes:

25

"Dear Shane, my affidavit attached."

So we know she's putting on the affidavit about the Cellebrite report, and Mr Greig is putting on one about the review documents. And then we see up the top Mr Drumgold's further involvement where he's filing - the documents are, in effect, finalised and he's saying to Mr Greig, "Could I get you to file the affidavits and submissions?" And I want to you assume during this period that Mr Drumgold was also drafting the submissions that were filed on 13 September with the court. So in your view, was it satisfactory that these documents, in which claims for privilege were put forward by the AFP were filed in documents by the DPP, were filed without any input from the AFP?

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35

MS ANNIWELL: I object to that question -

40 **THE CHAIRPERSON:** Yes.

MS ANNIWELL: - on the same premise that, with respect, Ms Richardson took with respect to my question. If that's to be put, then the whole history as to the back story, if I can say that, about privilege, including what was in and what was not in disclosure certificates, has to be put to this witness.

45

THE CHAIRPERSON: Why is that? What she is being asked about is a narrow question - a narrower question than that, namely, was it satisfactory to prepare a response to an application for further disclosure based upon the facts that were set out in Mr Greig's affidavit without first taking instructions from the AFP?

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MS ANNIWELL: I have no difficulty with that question.

THE CHAIRPERSON: But that's what is being put.

5

MS ANNIWELL: I received it as being put slightly differently, but I certainly have no difficulty with the question that's been put.

THE CHAIRPERSON: Yes. Yes.

10

MS RICHARDSON: I will just ask it again. You've seen that Mr Drumgold received the application and affidavit on 7 September. You've seen the amount of involvement that he had in directing the preparation of affidavits and submissions that were filed in court without being provided to the DPP - sorry, without being provided to the AFP before being filed. Do you accept that?

15

CMDR CAMERON: I accept that.

MS RICHARDSON: What's your view about whether that's satisfactory, for the DPP to file in court documents asserting a claim for privilege over documents, in which the privilege was the AFP's to claim, without giving notice to the AFP that that was what would be put in those documents?

20

CMDR CAMERON: It wasn't satisfactory, which makes it unsatisfactory.

25

MS RICHARDSON: And I've taken you through the amount of engagement that Mr Drumgold had on this issue over the days between 7 September and the point at which these documents were given to the AFP after they had been filed in court. Could you turn up paragraph 230 of your witness statement, please. Just read that. You - given the background and involvement of Mr Drumgold over those five or six days, do you stand by that view that the delay was unsatisfactory, or do you wish to revisit that?

30

CMDR CAMERON: I stand by my statement there that it was unsatisfactory.

35

MS RICHARDSON: You've gone through the various - that you were the ultimate decision-maker in terms of (indistinct) formally communicating to the defence that these documents were not privileged; is that correct?

CMDR CAMERON: That's correct.

40

MS RICHARDSON: And you have given evidence about the various meetings you had along the way with the DPP about this issue. In a meeting you were in, was it ever conveyed to Mr Drumgold or anyone at the DPP that the AFP thought that these documents were not privileged?

45

MS ANNIWELL: I object.

MS RICHARDSON: Sorry, I will start again. Was it ever conveyed by you in any of those meetings that the AFP had formed a view that those documents were, in fact, privileged and that a claim for privilege would be made?

50

MS ANNIWELL: I object. Could a timeframe be put with respect to the proposition?

THE CHAIRPERSON: At the meetings that she had with Mr Drumgold and his team.

5

MS RICHARDSON: I will do that. Well, the relevant timeframe is you became involved on 13 September; correct?

CMDR CAMERON: That's correct.

10

THE CHAIRPERSON: 2022.

MS RICHARDSON: 2022. In any of these meetings, did you communicate to Mr Drumgold or any of the DPP people that the AFP had formed a view that these documents were privileged and that a claim for privilege would be made?

15

CMDR CAMERON: No.

MS RICHARDSON: And I will just ask for the relevant meeting on 15 May to be brought up, please. DPP.005.005.8751. So we see there in the heading halfway down -

20

THE CHAIRPERSON: Whose notes are these, Ms Richardson?

MS RICHARDSON: They are Mr Greig's.

25

THE CHAIRPERSON: Yes. Thank you.

MS RICHARDSON: You will see the heading AFP Legal Investigation Review Document. You see that?

30

CMDR CAMERON: Yes.

MS RICHARDSON:

"Have gone to government solicitor seeking advice."

35

Then we see they have looked at the documents:

"Advise on the face is that the documents appear to be seeking internal guidance."

40

CMDR CAMERON: Yes.

MS RICHARDSON: And then secondly:

"Scott Moller didn't have in his mind when he created the documents that they were seeking legal advice or that they would go to the DPP."

45

Do you see that?

CMDR CAMERON: I see that, yes.

50

5 **MS RICHARDSON:** So is it the position that at this meeting the view that was communicated on behalf of AFP people was that the position is that these documents were not privileged, but the final view was to be resolved through getting legal advice; is that correct?

CMDR CAMERON: Yes, that -

10 **MS ANNIWELL:** I object to that question.

THE CHAIRPERSON: I'm sorry. What was the question, Ms Richardson?

15 **MS RICHARDSON:** Was the view communicated during this meeting that these documents were not privileged but that the final position was being - would be resolved through legal advice?

THE CHAIRPERSON: Yes. So what's wrong with the question?

20 **MS ANNIWELL:** Well, in fairness, not one paragraph of the file note should be extracted and drawn to the witness's attention when she's being asked that question. The balance of it should, particularly the last paragraph.

25 **THE CHAIRPERSON:** But what's wrong with the question? She's got the notes of a meeting in front of her, and she's being asked whether something was said or not said at the meeting. What's wrong with it?

MS ANNIWELL: I say in fairness to the witness, attention should be drawn to the fact that -

30 **THE CHAIRPERSON:** But she's an acting assistant commissioner with the document in front of her.

MS ANNIWELL: And I mean no disrespect to her -

35 **THE CHAIRPERSON:** No, no, no. I know you don't. What I'm saying is I don't think she - the question is unfair for somebody of that - with that education and experience.

MS RICHARDSON: I'm happy for fairness if -

40 **THE CHAIRPERSON:** No, no. Just go ahead, Ms Richardson.

45 **MS RICHARDSON:** There is an extract - perhaps if we could just have the whole page up so that Commissioner Cameron can see that. You are welcome to read all those bullet points, Assistant Commissioner Cameron. So having read all of those things, including the last bullet point, is it the case that at this meeting the position conveyed by AFP Legal was that - the current position was that the documents were - there had been some advice from the government solicitor. Scott Moller had stated his position. The position was that the documents were not privileged, but a final position would be reached after more formal advice had been received; is that correct?

50 **CMDR CAMERON:** That is correct.

THE CHAIRPERSON: So at that stage, you hadn't reached a concluded view?

CMDR CAMERON: That is correct.

5

MS RICHARDSON: But it's the case - is it the case that in this meeting that no one from the AFP communicated to the DPP that a claim of privilege would be made in relation to these documents; is that correct?

10 **CMDR CAMERON:** That is correct.

MS RICHARDSON: But it's the case, isn't it, if you look further up above the heading AFP Legal, we've got a bullet point:

15 "Investigative review document, Shane believed..."

And this appears to be views that Mr Drumgold was communicating. We see in the second bullet point:

20 "The way it came into Shane's possession seeking an advice subject to LPP."

Is it the case that during that meeting, Mr Drumgold was saying he thought the documents were privileged; is that correct?

25 **CMDR CAMERON:** That's - that's my recollection.

THE CHAIRPERSON: Sorry. I'm just not seeing it for some reason. Where is it?

MS RICHARDSON: It's like a sub - round bullet point -

30

THE CHAIRPERSON: I see. Thank you. I've got it now.

MS RICHARDSON: Is it the case that Mr Drumgold was expressing the view he thought the documents were privileged; is that correct?

35

CMDR CAMERON: That is correct.

MS RICHARDSON: And he expressed that in an earlier part of the meeting and then the AFP set out its view was that its current position is the documents were not privileged but that a final position would confirm that with further formal advice to be obtained; is that correct?

40

CMDR CAMERON: Yes, that is correct.

45 **MS RICHARDSON:** And could I please have a further document, BOI.0012.001.001_001, please. Just to make things quicker, I want you to assume that the submissions that Mr Drumgold had filed on 13 September - so that's before the meeting I was just (indistinct) stated at paragraph 4 that:

50 "The document listed at order 1B..."

Which was investigative review documents referred to in the disclosure schedule:

"Is subject to a claim of legal professional privilege by the AFP."

5

That's what he wrote in the submissions. I want you to assume that. And then - that's on the 13th. On the 15th, I have taken you to the file note where Drumgold was expressing the view the documents were privileged and the AFP expressed the views that they were not privileged but subject to final confirmation of further formal advice. And you've given evidence that during the 15 September meeting, no one from the AFP communicated to the DPP or his people that a claim for LPP (indistinct).

10

So this is a transcript of proceedings on the following day where there's a pre-trial hearing, which is a pre-trial motion, if you like, to deal with an issue. And we see Mr Drumgold appearing on behalf of the DPP, and Mr Berger, who was a different counsel, appeared on behalf of the accused on that day. Now, given that - I've asked you to assume that Mr Drumgold stated in his submissions on the 13th that the investigative review documents is subject to a claim of LPP by the AFP. Would you have expected him to stand up and make a submission the following day on the 16th that that was the position of the AFP or that there was - that it could not be stated that the AFP was making a claim for privilege in circumstances of what you had told him the day before?

15

20

MS ANNIWELL: I object to that. There are a number of propositions in that question.

25

MS RICHARDSON: I will break it down. I have asked you to assume that the written submissions that Mr Drumgold had filed on the 13th said that:

"The document listed in order 1B..."

30

Which is the investigative review documents:

"...is subject to a claim of legal professional privilege by the AFP."

35

That's on - he's filed that on the 13th. And then you've had - and he also - I'm sorry, I think I will have to put this up on the screen. DPP.005.005.8874. This is further in the submissions Mr Drumgold filed. We see at 35:

"In the present case, the document investigative review document..."

40

We know it's actually a couple of documents; it's not a single document:

"...was provided by the AFP to the office of the DPP for the sole purpose of seeking legal advice, and a claim of privilege has been made at schedule 1..."

45

It goes on. And it's been claimed as a document falling within the definition of - and we see on the following page what that says. So we see Mr Drumgold positively putting the statement in a document filed with the court that it was provided to him for the sole purpose of seeking legal advice. Do you see that? And then I've taken you to the meeting that happened two days later on the 15th -

50

CMDR CAMERON: Correct.

5 **MS RICHARDSON:** - where you have given that evidence that no one from the AFP communicated that a claim for privilege was made and that while Mr Drumgold said he thought the documents were privileged, AFP had expressed (indistinct) that the current position was that they were not privileged but that the final position in terms of a decision would be confirmed with formal advice; correct?

10 **CMDR CAMERON:** That is correct.

MS RICHARDSON: Could we please bring up the transcript again. Given the submission that Mr Drumgold had filed on the 13th stating that the AFP - sorry, that the investigative review documents were subject to a claim of LPP by the AFP, what would your expectation as a senior commander of the privilege holder of the AFP be when Mr Drumgold stood up the following day after being told what he was told on the 15th - what would your expectation be that he would inform the court about the status of the AFP and the privilege claim?

15 **CMDR CAMERON:** I would have expected an engagement with the agency that holds the - holds the decision to make the claim. It would appear that did not occur.

20 **MS RICHARDSON:** What would you have expected him to inform the Chief Justice about the position of the AFP in claiming privilege, given what he had written in the 13 September submissions and what he had been told on the 15th? What would you expect he would have communicated to the court?

25 **MS ANNIWELL:** I object to the question.

THE CHAIRPERSON: What's wrong with that?

30 **MS ANNIWELL:** It's a hypothetical question.

THE CHAIRPERSON: Yes, it is.

MS ANNIWELL: In those circumstances (indistinct).

35 **THE CHAIRPERSON:** No, I think it is permissible, Ms Anniwell.

MS ANNIWELL: The Chair pleases.

40 **CMDR CAMERON:** I would - I would expect the - accurate representation be made of the meeting that was held between the AFP and the office of the DPP to have been accurately represented to the court.

MS RICHARDSON: Those are my questions. Thank you.

45 **THE CHAIRPERSON:** Thank you.

MS ANNIWELL: Mr Chairman, may I be given leave to ask two very short questions?

50 **THE CHAIRPERSON:** Yes, by all means. Go ahead.

<EXAMINATION BY MS ANNIWELL:

5 **MS ANNIWELL:** Ms Cameron, you will recall that I asked you at the beginning of my questioning of you about police preparing disclosure certificates, together with briefs of evidence that are served on an accused person?

CMDR CAMERON: Yes.

10 **MS ANNIWELL:** So you are aware that a disclosure certificate is prepared by the investigators of a matter?

CMDR CAMERON: Yes, I am.

15 **MS ANNIWELL:** And you are aware, aren't you, including based on your knowledge of the disclosure application that was made by the defence team, that a disclosure certificate in it identifies documents that are disclosable?

20 **CMDR CAMERON:** Yes, it does.

MS ANNIWELL: And the disclosure certificate also identifies documents which are disclosable but also may be the subject of an immunity or a privilege?

25 **CMDR CAMERON:** Yes, I understand that.

MS ANNIWELL: Including legal professional privilege?

CMDR CAMERON: That's correct.

30 **MS ANNIWELL:** So you would agree that a disclosure certificate on its face would indicate what the declaration maker of the certificate considers to be a disclosable document subject to legal professional privilege?

35 **CMDR CAMERON:** Yes.

MS ANNIWELL: Thank you, Mr Chairman.

40 **THE CHAIRPERSON:** Thank you. Does anybody else have any questions? Any re-examination, Ms Lynch?

MS LYNCH: No, Mr Chair.

45 **THE CHAIRPERSON:** Thank you, Acting Assistant Commissioner Cameron, for your assistance. You are free to go.

CMDR CAMERON: Thank you very much.

<THE WITNESS WAS RELEASED

THE CHAIRPERSON: We will have a 20-minute break. And, Ms Longbottom, what's happening then?

MS LONGBOTTOM: Mr Chair, the next witness is Tasha Smithies.

THE CHAIRPERSON: Yes.

MS LONGBOTTOM: And she will be appearing in person, and I understand Ms Chrysanthou will also be appearing but via AVL.

THE CHAIRPERSON: All right. Well, when all that is established - 20 minutes or as soon thereafter is the (indistinct) have been made.

MS LONGBOTTOM: Certainly. Thanks, Mr Chair.

<THE HEARING ADJOURNED AT 11.56 AM

<THE HEARING RESUMED AT 12.26 PM

THE CHAIRPERSON: Yes, Ms Longbottom.

MS LONGBOTTOM: Mr Sofronoff, the next witness, as I indicated, is Ms Tasha Smithies. Ms Smithies is represented by Mr Andrew Stewart, who appears here today and has sought leave to appear.

THE CHAIRPERSON: Yes, you have leave. And, Ms Smithies, will you take an oath or make an affirmation?

MS SMITHIES: An oath.

THE CHAIRPERSON: There is a card in front of you. If you would read the appropriate one. The affirmation is on one side; the oath is on the other.

MS SMITHIES: Thank you.

<TASHA TANYA SMITHIES, SWORN

<EXAMINATION BY MS LONGBOTTOM:

THE CHAIRPERSON: Thank you. Ms Longbottom.

MS LONGBOTTOM: Thank you, Mr Sofronoff. Ms Smithies, you are a solicitor?

MS SMITHIES: Yes.

MS LONGBOTTOM: And since 2014, you have been employed as a solicitor for Network Ten?

MS SMITHIES: Yes.

MS LONGBOTTOM: Ms Smithies, you have provided a statement to the Board dated 2 May 2023?

MS SMITHIES: Yes.

5

MS LONGBOTTOM: Have you had an opportunity to review that statement before coming to give evidence today?

MS SMITHIES: Yes, I have.

10

MS LONGBOTTOM: Is that statement true and correct to the best your knowledge and belief?

MS SMITHIES: Yes, it is.

15

MS LONGBOTTOM: Are there any amendments you would seek to make or corrections you would seek to make to that statement?

MS SMITHIES: No, although I thought there was one spelling mistake.

20

MS LONGBOTTOM: That might be - yes. Perhaps, operator, can you please display WIT.0097.0002.0001_0001 and go to the next page and highlight paragraph 9. Is that the passage where there is a typographical error?

25

MS SMITHIES: Yes.

MS LONGBOTTOM: And that's "logo", which should be "Logies"?

MS SMITHIES: Yes.

30

MS LONGBOTTOM: But save with that correction, you are content with your statement?

MS SMITHIES: Yes.

35

MS LONGBOTTOM: Now, Ms Smithies, as part of your duties, you are involved in providing legal advice to Network Ten and its employees?

MS SMITHIES: Yes.

40

MS LONGBOTTOM: And both now, but also as at 2022, one of those employees included Ms Lisa Wilkinson?

MS SMITHIES: Yes.

45

MS LONGBOTTOM: And it was in your capacity as a solicitor for Network Ten that you attended a proofing conference on 15 June 2022 with Ms Wilkinson and various members of the office of the ACT DPP?

MS SMITHIES: Yes.

50

MS LONGBOTTOM: Now, am I correct, you and Ms Wilkinson attended that conference from Sydney?

MS SMITHIES: Yes.

5

MS LONGBOTTOM: And because of that, and that the ACT DPP is based in Canberra, it occurred via Microsoft Teams?

MS SMITHIES: Yes.

10

MS LONGBOTTOM: Ms Smithies, Lisa Wilkinson has provided a statement to the Board dated 5 May 2023, in which she gives her account of an exchange that occurred during that meeting with respect to her then prospective speech should she win a Logie. Have you seen a copy of that statement?

15

MS SMITHIES: Yes, I have.

MS LONGBOTTOM: I might ask that it be brought up. Operator, can you please display WIT.0057.0002.00031_0001 and ask you to turn to_0003 and expand paragraph 14. And if it is possible, Mr Operator, can you also set alongside that the final two lines on the next page. Now, Ms Smithies, I'm content, if it would assist, to read out specific passages that occur in that statement. But if, as you say, you've had an opportunity to review it, would you care to comment on the account set out by Ms Wilkinson and if, in any respects, it disagrees with your own recollection of the meeting?

25

MS SMITHIES: So my recollection differs slightly. Would you like me to give my account?

MS LONGBOTTOM: Yes. If you could be specific, yes.

30

MS SMITHIES: I recall that Ms Wilkinson asked a number of questions at the end of the proofing meeting, and the last question related to her Logies speech. And she said words to the effect, "I'm nominated for a Logie. I don't think I will win. However, I have prepared a speech." And then I recall her starting to recount the speech, up until the point where it reads, "The truth is, you honour - this honour belongs to Brittany, and particularly through to the words "enough". And that's where I recall Mr Drumgold cutting her off and saying words to the effect that he was not a speech writer and couldn't give her any advice on the speech.

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MS LONGBOTTOM: Now, Ms Wilkinson goes on to say that after she had been interrupted by Mr Drumgold, she said words that included, "I take my legal obligations very seriously. The speech I prepared doesn't mention the trial. It doesn't mention the accused. It doesn't mention the charges, and it doesn't even mention Parliament House where this alleged crime is said to have taken place. Let me read the speech to you so you can see if it would be in any way problematic." Do you specifically recall those words being spoken?

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45

MS SMITHIES: I recall the part about where she said that the speech doesn't mention the trial -

MS LONGBOTTOM: Yes.

MS SMITHIES: - or Mr Lehrmann or refer to Parliament House, and then proceeded to read the speech. That's the part of what Ms Wilkinson says that I recall.

MS LONGBOTTOM: But you accept Ms Wilkinson's account -

MS SMITHIES: Yes.

MS LONGBOTTOM: - of that could have been said; you just don't have a specific recollection?

MS SMITHIES: Yes, that's correct.

MS LONGBOTTOM: And then you will see at the bottom of the page under the heading Me, there is a comment made by Mr Drumgold that he doesn't want to hear any more. Then Ms Wilkinson recalls that she said, "Mr Drumgold, I'm not seeking your guidance as a speech writer. As the person who is running this case for the Crown, I'm seeking your learned knowledge to make sure that nothing I say could in any way cause a problem with the upcoming trial." Do you have a specific recollection of that being said?

MS SMITHIES: No, I don't have a specific recollection.

MS LONGBOTTOM: But would you accept that it is possible that Ms Wilkinson may have said those words?

MS SMITHIES: Yes, I do.

MS LONGBOTTOM: Now, during the conference, at any point did you press mute on the Microsoft Teams function so you could have a private conversation with Ms Wilkinson?

MS SMITHIES: No, I did not.

MS LONGBOTTOM: Now, Ms Smithies, Ms Wilkinson gave her Logies speech on 19 June. The following afternoon, a stay application was brought on behalf of Mr Lehrmann as a result, amongst other matters, of the speech that Ms Wilkinson gave. When did you first become aware of that stay application?

MS SMITHIES: I don't think it was until the Tuesday when we received - it could have been the Monday or the Tuesday. I received an email from the court indicating that there would be some sort of court application. But I don't recall that we heard anything more about it until Justice McCallum's judgment was issued.

MS LONGBOTTOM: Okay. I have no further questions, thanks, Mr Sofronoff.

THE CHAIRPERSON: Yes. Mr Tedeschi, do you have anything?

<EXAMINATION BY MR TEDESCHI:

MR TEDESCHI: Yes. Thank you. Ms Smithies, as at the time of this Teams meeting with Mr Drumgold, you had been a senior litigation counsel with Network Ten for about eight years; is that right?

MS SMITHIES: Yes.

5 **MR TEDESCHI:** And during that time, had you been required to give legal advice to Network Ten and its employees about pending criminal trials or current criminal trials?

MS SMITHIES: Yes.

10 **MS LONGBOTTOM:** And what is your understanding of the risks that a media organisation and its employees run in relation to commentary about a trial that's forthcoming in the near future or a trial that is actually currently running? What are the sort of risks that you've been required to provide advice about?

15 **MR STEWART:** I object, Mr Chair. This (indistinct) to information that would be privileged in the hands of Network Ten. And I also don't - I'm concerned about its relevance to the Terms of Reference.

20 **THE CHAIRPERSON:** Well, what I understand Mr Tedeschi to be raising is the witness's knowledge of the relevant law in a nutshell. Is that right, Mr Tedeschi?

MR TEDESCHI: Yes.

THE CHAIRPERSON: So that he can then -

25 **MR TEDESCHI:** Her knowledge of the law and -

30 **THE CHAIRPERSON:** - develop questions about what happened. Now, some of what - some of what happened may be communications between Ms Wilkinson and Ms Smithies. That's the subject of privilege that your client wants to maintain. I don't think we have come there yet.

MR STEWART: I had understood Mr Tedeschi to be asking questions about specific cases.

35 **THE CHAIRPERSON:** Well -

MR TEDESCHI: I'm asking about her experience -

THE CHAIRPERSON: Yes. Yes.

40 **MR TEDESCHI:** - in providing advice about -

45 **THE CHAIRPERSON:** Yes. He's asking a general question about Ms Smithies' experience and how many cases she's looked at, which doesn't delve into what the cases were or what they entailed, and I don't think it's a question at the moment - the answer to the question could reveal any privileged information. So we will see how we go, and I think we are all conscious that your client is entitled to maintain privilege over communications between Ms Wilkinson and Ms Smithies that are privileged and also in relation to advice that Ms Smithies has given on previous occasions and matters of that kind. So let's take it a step at a time. And

50 Mr Tedeschi is conscious of that, so he will no doubt mould his questions. But -

MR STEWART: Thank you, Mr Chair.

THE CHAIRPERSON: - don't let me hamper you in standing up in case you need to.

5 **MR STEWART:** Thank you, Mr Chair.

THE CHAIRPERSON: Yes.

10 **MR TEDESCHI:** Ms Smithies, what's your knowledge of the risks that a media organisation runs in relation to criminal trials that are actually currently running or criminal trials that are soon to run?

15 **MS SMITHIES:** So I think - if I could put it in these terms, I think there will be a number of different factors that you would take into account. They would be whether there's a jury trial or not a jury trial; the timeframe to which the trial is to commence; the number of witnesses or the witnesses to give evidence. I think you would also consider factors like the existing
20 publicity to date, by both your media organisation and other media organisations. And I think the final comment I would make is that - that's how I would describe it in general terms, but I do think that in my role it becomes very case-by-case based and very specific to the set of
circumstances that I'm presented with. Bearing in mind they are general factors, but I would be looking at each case on a case-by-case basis.

25 **MR TEDESCHI:** And in the course of the eight years that you had had with Network Ten, had you provided advice to the network and its employees on those sorts of topics on many occasions?

MS SMITHIES: Yes.

30 **MR TEDESCHI:** And do you agree with this: that the closer a trial date is or if it's actually during the trial, the higher the risk?

MS SMITHIES: Yes.

35 **MR TEDESCHI:** If you are giving advice about a matter that's got months and months to run before the trial that's quite different to a trial that's going to take place a week or two later that or that - where you are actually in the middle of the trial?

MS SMITHIES: Yes.

40 **MR TEDESCHI:** And the degree of public interest in the trial is of relevance in the giving of advice?

45 **MS SMITHIES:** I wouldn't use the word "public interest". I would consider the existing and previous and ongoing publicity as distinct from just whether it was in the public interest or not.

50 **MR TEDESCHI:** All right. And I take it that you're aware that where a trial date is close, that you know that there is a risk if somebody does cross that boundary and make comment that could affect a fair trial, that there's a risk of the trial date being vacated?

MS SMITHIES: Yes.

MR TEDESCHI: And your role is to try and give advice to Network Ten and its employees to try and avoid that risk?

5

MS SMITHIES: That would be one factor that I would take into account -

MR TEDESCHI: Yes.

10 **MS SMITHIES:** - in advice that I would give.

MR TEDESCHI: And it's a very different situation before a person is charged compared to after a person is charged?

15 **MS SMITHIES:** Yes. I would put it in more general terms. Timing is a relevant factor. I think it depends on the facts of each circumstance about whether before or after a person is charge is relevant.

20 **MR TEDESCHI:** All right. Now, this interview that you had on 15 June 2022, had you seen Ms Wilkinson's speech - or what she anticipated to be her speech prior to that meeting?

MS SMITHIES: I think in - in order to answer that question, I would be disclosing advice that is privileged to Network Ten and its employees, including Ms Wilkinson.

25 **MR TEDESCHI:** Could I -

THE CHAIRPERSON: Mr Tedeschi, it might help you - since this is being done for my understanding - if I say to you that one would ordinarily expect that Ms Wilkinson would be well advised on such matters by lawyers within her employer's organisation, and whether they did or not we won't know because that's a privileged matter. But, ordinarily, life experience tells us that somebody of - any public broadcaster like Ms Wilkinson, but particularly somebody of her prominence, would be expected to be supported by legal advice. So whether she was advised or not is something that we won't know unless privilege is waived, but nothing turns upon whether it's waived or not. Because if you're going to submit at the end that it wasn't - that whatever Mr Drumgold's duty was to the court in advising or not advising Ms Wilkinson, I would be hard pressed to conclude that he owed a duty to Ms Wilkinson to advise her -

40 **MR TEDESCHI:** I understand.

THE CHAIRPERSON: - because that duty lies with her and any lawyers in her organisation, of which Ms Smithies is one.

MR TEDESCHI: Yes.

45

THE CHAIRPERSON: So if that assists you -

MR TEDESCHI: It does. Thank you.

THE CHAIRPERSON: - that's the position I've got now, and my preliminary view - and I think it's probably incontrovertible, but I will hear submissions about it in due course. So that might shortcut some of the things you have to do. But you go ahead. I don't want to restrict you at all.

5

MR TEDESCHI: Might I inquire through you, Mr Sofronoff - I notice that Ms Chrysanthou is online -

THE CHAIRPERSON: Yes.

10

MR TEDESCHI: - whether the privilege is maintained?

MR STEWART: It's not quite as simple as that, Mr Chair. It's a joint privilege owned by both Ten and perhaps Ms Wilkinson.

15

THE CHAIRPERSON: Yes.

MR STEWART: And Ten does not waive privilege.

20

THE CHAIRPERSON: It's not easy to achieve a position of complete waiver in all cases. And I think we can - I think the Commission can do its work without worrying about the content of advice, and I don't think your client would be prejudiced by not knowing what advice was given. Because as I've said, unless somebody persuades me to the contrary, I don't see how Mr Drumgold owed Ms Wilkinson a duty of any kind. He owed a duty to the court of some kind perhaps, but that's none of Ms Smithies's business, or Ms Wilkinson's for that matter.

25

MR TEDESCHI: I understand.

30

THE CHAIRPERSON: And perhaps, you know - Ms Chrysanthou, I don't know that you would be taking a different position, would you?

MS CHRYSANTHOU: No, Commissioner. Our position is that the complaint that we make in relation to what occurred is a failure of duties to the court.

35

THE CHAIRPERSON: Yes. And whatever that was. So I hope that assists you.

MR TEDESCHI: It does. Thank you. Ms Smithies, you've been asked questions by counsel assisting this morning about your recollection of what happened during the interview, and it's been pointed out to you that there are certain suggested parts of the conversation that are in Ms Wilkinson's statement that are not in yours. And do you recall being asked questions about those?

40

MS SMITHIES: Yes.

45

MR TEDESCHI: And I think you have acknowledged that in respect to those parts of the conversation that counsel assisting took you to, that they may well have been said by Mr Drumgold and by Ms Wilkinson, the things that were referred to?

MS SMITHIES: I thought I was taken to the parts that related to what Ms Wilkinson said. I'm happy to look again at the statements in relation to what Mr Drumgold said, if you like.

5 **MR TEDESCHI:** She also put to you something that had been said by Ms Wilkinson about, "The speech I've prepared doesn't mention the trial. It doesn't mention the accused. It doesn't mention the charges, and it doesn't even mention Parliament House where this alleged crime is alleged to have taken place."

10 **MS SMITHIES:** I do recall that.

MR TEDESCHI: You recall that?

MS SMITHIES: Yes.

15 **MR TEDESCHI:** And the part - Mr Drumgold, "If you give a speech, you can't mention the trial" - I think that was also suggested to you. You were asked whether that was said?

MS SMITHIES: I don't think I was asked if that was said.

20 **MR TEDESCHI:** I see. All right. Did Mr Drumgold actually say, "If you give a speech, you can't mention the trial"?

MS SMITHIES: I don't recall that he said that.

25 **MS LONGBOTTOM:** If it's in Ms Wilkinson's statement, do you accept that it was probably said?

MS SMITHIES: I accept that it could have been said, yes.

30 **MS LONGBOTTOM:** And I think it was also suggested Mr Drumgold - the following statement by Mr Drumgold, I think, was also read to you - correct me if I am wrong - "I don't want to hear any more. If I listen to the whole speech, I could be accused at a later date of endorsing it, which could cause problems. I'm not a speech writer." Was that - do you recall that being said?

35 **MS SMITHIES:** Not in those terms.

MR TEDESCHI: Something similar -

40 **MS SMITHIES:** I think I said that I recall that he said he was not a speech writer, and I think my words that I recall being said were that he couldn't advise Ms Wilkinson any further.

45 **MR TEDESCHI:** And do you recall Mr Drumgold saying words to this effect: "I can't approve or prohibit public comment, but what I can say is if there's any publicity, the defence can reinstate a stay application"?

MS SMITHIES: I do not recall that.

50 **MR TEDESCHI:** Do you deny that that was said?

MS SMITHIES: No, I don't deny it. I don't recall that Mr Drumgold said that.

5 **MR TEDESCHI:** All right. And is it possible that, in fact, there was a short period of time during the meeting when you and Ms Wilkinson went into mute mode and had a conversation between yourselves during the interview with Mr Drumgold so that he could see you but not hear you?

10 **MS SMITHIES:** I don't accept that.

MR TEDESCHI: Now, the actual speech itself, have you seen the transcript of it?

MS SMITHIES: I - I have. Not recently.

15 **MR TEDESCHI:** All right.

MS SMITHIES: But I have seen a transcript of it.

20 **MR TEDESCHI:** If we could bring up, please, WIT.0057.0002.0033_0001. Could I take you about halfway down the page. Ms Wilkinson has apparently said this during the Logies speech about the Logies award:

"It belongs to a 26-year-old's woman's unwavering courage. It belongs to a woman who said 'enough'."

25 What is your understanding about the word "enough"? Enough -

THE CHAIRPERSON: Well, how is that going to help - how is that going to help me what Ms Smithies thinks about it?

30 **MR TEDESCHI:** If I could make a submission in the absence of the witness.

THE CHAIRPERSON: No, I think I understand where you are going. What's the objection?

35 **MR STEWART:** This is not - sorry, Ms Smithies's view upon what it means cannot be relevant at all.

THE CHAIRPERSON: I see. I see. She hasn't said she recalls it. Do you remember - sorry, we are talking about the speech, though. This is an actual transcript of the speech, so -

40 **MR STEWART:** Yes, I understand that. But I don't see the relevance of what she thinks that word meant. How can that assist the -

45 **THE CHAIRPERSON:** Well, I've got a glimmer of - would you excuse us, Ms Smithies, while we debate this?

<THE WITNESS STOOD DOWN

50 **MR TEDESCHI:** Chairman, it's on the basis that, as I understand it, Ms Wilkinson has stated that the draft speech was the same as the speech that she gave.

THE CHAIRPERSON: Yes.

MR TEDESCHI: So from that, you, Chairman, could deduce that this is the version -

5

THE CHAIRPERSON: Yes.

MR TEDESCHI: - that the lawyer was -

10 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: - provided with and that she was going to read to Mr Drumgold. If in fact -

15 **THE CHAIRPERSON:** Are you going to be put putting to her that, if you like, that's the sting in the speech and that that would provoke a lawyer to give advice about it?

MR TEDESCHI: Correct.

20 **THE CHAIRPERSON:** Now, I can understand that. I thought that's where you were going. But what you are really asking her is whether - I know you're not trying to intrude on whether she gave advice as a consequence of that opinion, but it is getting pretty close.

MR TEDESCHI: I'm asking her -

25 **THE CHAIRPERSON:** But the other thing is -

MR TEDESCHI: - to concede that that's the sort of problem with a speech like this, that she appreciates that it raised issues that are prejudicial to the trial.

30 **THE CHAIRPERSON:** No, no. I understand the point, but - and if this was a jury trial, then you would want to bring that out, and no better way to bring it out than to get a lawyer for Ms Wilkinson to accept that reading that sentence would - ought to have generated a desire to give advice.

35 **MR TEDESCHI:** That's right.

THE CHAIRPERSON: But you are not before a jury, and I can understand the point without it being demonstrated. Because I understand this line of questioning that you're embarking upon now is not to elicit information so much as to - it is demonstrative cross-examination, but I don't need it. I understand the point. And I would think - I can say this, and Ms Chrysanthou can contradict me - can say she wants to be heard upon it in due course. But I would think that the speech as a speech, because of the subject matter and the timing of it, is one which a competent lawyer would regard as something that had to be thought through and advice had to be given about it, as I said earlier. So the point is that
40 proposition is particularly acute insofar as that sentence is concerned. So you don't need to demonstrate it through her mouth because she might say, "Yes, I think that's right." But
45 where do you go then? I know that's so.

MR TEDESCHI: What we want to submit is that this speech in that form did mention the trial, did mention the accused, did mention the charges -

50

THE CHAIRPERSON: Yes, but that's not for her -

MR TEDESCHI: - and implicitly referred to Parliament House.

5

THE CHAIRPERSON: But she doesn't remember Mr Drumgold saying, "Don't mention the trial." And -

MR TEDESCHI: She's acknowledged that Ms Wilkinson might have said that.

10

THE CHAIRPERSON: Yes, that's right. That's right. So what Ms Smithies thinks about the content of the speech and whether it contradicted the small piece of advice that it's said that Mr Drumgold actually gave and whether she ought herself - or some lawyers in the organisation ought themselves to have advised Ms Wilkinson is not anything that she needs to give evidence about. It's a legal inference to be drawn from what's happened, and I can draw it. You're going to ask me to draw it.

15

MR TEDESCHI: Chairman, I take it from what you've said -

20

THE CHAIRPERSON: Yes.

MR TEDESCHI: - you would receive a submission to the effect that it was her lawyer's role - or Network Ten's lawyer's role, not Mr Drumgold's role, to advise her.

25

THE CHAIRPERSON: Yes.

MR TEDESCHI: That a reasonable experienced lawyer, as she was, having seen a speech in this form, would have advised her client that there was a serious risk of aborting the trial date.

30

THE CHAIRPERSON: No, no, no. No. No.

MR TEDESCHI: That's what I want to put to her.

35

THE CHAIRPERSON: Sorry. We don't need to go that far, although we probably will go that far. As far as the witness is concerned, you're seeking to elicit from her what a reasonable lawyer ought to do faced with this speech.

MR TEDESCHI: And that she appreciated from these words that there was an appreciable risk of the trial being aborted, and if she didn't, she ought to have.

40

MR TEDESCHI: Well, assume that she didn't. Where does that take us?

MR TEDESCHI: Well, if she says that, then -

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THE CHAIRPERSON: It doesn't -

MR TEDESCHI: - I will have to suggest to her that she should have.

50

MR TEDESCHI: Yes. And assume that she says, "Yes, I should have." I don't really care what Ms Smithies personally thought about this speech in relation to a possible jeopardising

of the trial. What I care about is whether the speech was - had a propensity to jeopardise the trial. Well, we know the answer to that. Nobody contradicts it.

MR TEDESCHI: Yes.

5

THE CHAIRPERSON: Therefore, you are going to say to me, at the end of the trial, Ms Wilkinson perhaps should have realised herself or Ms Wilkinson's lawyers should have advised her because it's bleeding obvious, you would say.

10 **MR TEDESCHI:** That's correct.

THE CHAIRPERSON: All right. Well that's a pretty strong submission. I don't know that it's going to be much contradicted in submissions. The question is whether Mr Drumgold ought to have been impelled to give stronger advice to Ms Wilkinson for the same reasons. And if he was impelled, it could only have been a duty that he owed to the court to ensure that, to the extent that barristers can do this, defence or prosecution -

15

MR TEDESCHI: Yes. And he, of course, has given reasons in his evidence -

20 **THE CHAIRPERSON:** No, no. I understand. Yes, I understand that.

MR TEDESCHI: Yes.

THE CHAIRPERSON: Yes.

25

MR TEDESCHI: Yes.

THE CHAIRPERSON: And it's a big question, but she can't help me with it.

30 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: Does that assist?

MR TEDESCHI: I think -

35

THE CHAIRPERSON: In that I'm cleaning away some of the things that you have to do - you think you have to do with Ms Smithies by saying to her you don't have to do it because they are legal propositions, and Ms Smithies' legal opinion on that is not going to help me form my legal opinion on it. You will, and Ms Chrysanthou will, in your submissions.

40

MR TEDESCHI: I understand. And I think your assurances, Chairman, have meant that I don't have anything further to ask her.

45 **THE CHAIRPERSON:** All right. Ms Chrysanthou, I don't have it wrong in terms of the position you're going to adopt at the end of the day?

MS CHRYSANTHOU: Mr Sofronoff, I think the emphasis that my friend puts on the obviousness of the content of the speech giving rise to an issue will be a submission that I make -

50

THE CHAIRPERSON: Debated.

MS CHRYSANTHOU: Yes. Well, it will be -

5

THE CHAIRPERSON: Will be debated. Yes.

MS CHRYSANTHOU: Will be debated.

10 **THE CHAIRPERSON:** Go on. Yes.

MS CHRYSANTHOU: It will be a submission I make as against his client.

THE CHAIRPERSON: Yes. Yes.

15

MS CHRYSANTHOU: And whether it was obvious to Ms Smithies or not is irrelevant to the -

THE CHAIRPERSON: Yes, that's right.

20

MS CHRYSANTHOU: - inquiry.

THE CHAIRPERSON: Yes, that's right. So I think we are all on the same page. What Ms Chrysanthou said is that if it's true, as - if it's correct, rather, as you will submit, that Ten's lawyers should have regarded this as an obvious risk to a trial, Ms Chrysanthou will later submit it should have been obvious to your client that it was a risk to the trial, and she will submit that Mr Drumgold ought to have been plain in his warnings to Ms Wilkinson. You will submit something to the contrary, but the content of the speech and its propensity, that is, its possible effect, I think is common ground.

30

MR TEDESCHI: But if Ms Chrysanthou is going to suggest that the wording is not so obvious that it should have resulted in advice, then I should be able to ask her, "Did you, in fact, realise the risk?"

35 **THE CHAIRPERSON:** No, no. That's something you are going to put to me. Assume Ms Smithies is - assuming competence on the part of a Channel Ten lawyer, you will submit that they ought to have warned Ms Wilkinson.

MR TEDESCHI: Yes.

40

THE CHAIRPERSON: Alternatively, you will say they are incompetent. They lack competence in this, right?

MR TEDESCHI: Yes.

45

THE CHAIRPERSON: You can say that, and you don't need Ms Smithies' opinion - personal stance on that question. You can make good that submission - you can make good that submission irrespective of Ms Smithies' personal opinion about the character of the speech.

50

MR TEDESCHI: I accept that.

MS CHRYSANTHOU: And -

5 **THE CHAIRPERSON:** If she thinks it's a perfectly safe speech, you are still going to submit at the end of the day the same thing.

MR TEDESCHI: That's true.

10 **THE CHAIRPERSON:** It makes no difference. That's why I say it's irrelevant. Thank you. Ms Chrysanthou?

MS CHRYSANTHOU: Yes. Further to that, I mean, obviousness is an objective factor having regard to a competent - the standard of competent lawyer.

15 **THE CHAIRPERSON:** Yes. Yes.

MS CHRYSANTHOU: Given Network Ten wishes to maintain its privilege, going anything beyond that would infringe upon that if any subjective matter -

20 **THE CHAIRPERSON:** Yes.

MS CHRYSANTHOU: - was to be the subject of inquiry, and Channel Ten has made very plain that they don't wish to waive privilege. So any question shouldn't be allowed for that reason in any event. And also because -

25 **THE CHAIRPERSON:** Yes. Well, any question can't be allowed to that extent. And in any event, as I think Mr Tedeschi accepts, the question is a theoretical one based upon what one concludes is the propensity of this speech and what is expected from reasonably competent lawyers.

MS CHRYSANTHOU: Which is an objective -

THE CHAIRPERSON: Yes?

35 **MS CHRYSANTHOU:** Yes.

THE CHAIRPERSON: Yes, objective legal question. Yes.

40 **MS CHRYSANTHOU:** Yes.

THE CHAIRPERSON: So nothing further, Mr Tedeschi?

MR TEDESCHI: No, I don't -

45 **THE CHAIRPERSON:** Does anybody else have any questions for Ms Smithies? We better call her in and excuse her, then.

<TASHA TANYA SMITHIES, CONTINUING

50

THE CHAIRPERSON: Ms Smithies, that's the end of it. You are free to go.

MS SMITHIES: Thank you.

5 <**THE WITNESS WAS RELEASED**

THE CHAIRPERSON: And we will adjourn till 2.15 for - I think it's Mr Chew - Commander Chew.

10 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: All right. Do you think you will finish with him this afternoon?

MR TEDESCHI: Yes.

15

THE CHAIRPERSON: Yes. All right. Thank you. Adjourn.

<**THE HEARING ADJOURNED AT 1.01 PM**

20 <**THE HEARING RESUMED AT 2.31 PM**

THE CHAIRPERSON: Yes, Ms Longbottom.

MS LONGBOTTOM: I call Commander Michael Chew.

25

THE CHAIRPERSON: Have a seat, Commander. Yes. Will you take an oath or make an affirmation?

CMDR CHEW: Take an oath.

30

<**MICHAEL CHEW, SWORN**

<**EXAMINATION BY MS LONGBOTTOM:**

35 **THE CHAIRPERSON:** Thank you. Ms Longbottom.

MS LONGBOTTOM: You are a commander in the Australian Federal Police?

CMDR CHEW: Yes.

40

MS LONGBOTTOM: Between August 2018 and August 2021, you were the Deputy Chief Police Officer Response within ACT Police?

CMDR CHEW: Yes, I was.

45

MS LONGBOTTOM: Commander Chew, you have prepared a statement for the Board of Inquiry dated 21 April 2023?

CMDR CHEW: Yes, I did.

50

MS LONGBOTTOM: Have you had an opportunity to review that statement before coming to give evidence today?

CMDR CHEW: Yes, I have.

5

MS LONGBOTTOM: Is that statement true and correct to the best your knowledge and belief?

CMDR CHEW: It is, but there is a couple of amendments I would like to make to it.

10

MS LONGBOTTOM: Let's work through those amendments, then. Operator, can you please display WIT.0058.0001.0001_0001. While that's coming up, I might just note, Mr Sofronoff, Mr Chew's statement has already been tendered and is Exhibit 40.

THE CHAIRPERSON: Yes. Thank you.

MS LONGBOTTOM: Commander Chew, what is the first of the corrections you would like to make?

CMDR CHEW: The first amendment is at paragraph 61. It should read, "it is not unusual for police officers."

MS LONGBOTTOM: Just give us a moment for that to come up. So, operator, that's on - yes. So in the first line, it should say, "It's not unusual," rather than, "It is not usual"?

25

CMDR CHEW: Yes.

MS LONGBOTTOM: Okay. Any other corrections you need to make?

CMDR CHEW: And paragraph 91.

MS LONGBOTTOM: Yes.

CMDR CHEW: Having listened to testimony earlier this week, I now understand the Victims of Crime coordinator was actually performing a witness advocate role in support of Ms Higgins and not acting in her role as the Victims of Crime Commissioner.

35

MS LONGBOTTOM: So am I right to understand from the evidence you've just given, Commander Chew, that you no longer adhere to the statement that is set out here at paragraph 91?

40

CMDR CHEW: That's -

MS LONGBOTTOM: You now take a different view?

45

CMDR CHEW: Take a different view, yes.

MS LONGBOTTOM: Yes. Okay. Are there any further corrections you need to make?

CMDR CHEW: No, that's it.

50

5 **MS LONGBOTTOM:** Commander Chew, I want to focus on your involvement in the investigation of the allegations against Mr Lehrmann during the course of your tenure as Deputy Chief Police Officer. For shorthand, I might just refer to it as "the investigation".

CMDR CHEW: Yes.

10 **MS LONGBOTTOM:** Am I correct to understand that as Deputy Chief Police Officer Response, you were responsible for the policing response from the ACT community?

CMDR CHEW: Yes.

15 **MS LONGBOTTOM:** And one of the portfolios under your direct supervision was Criminal Investigations?

CMDR CHEW: That's correct.

20 **MS LONGBOTTOM:** And in that respect, Detective Superintendent Moller was your direct report?

CMDR CHEW: Yes.

25 **MS LONGBOTTOM:** And you were responsible for providing Detective Superintendent Moller with broad strategic direction?

CMDR CHEW: Yes.

30 **MS LONGBOTTOM:** But in the ordinary course, you wouldn't have any direct involvement with investigations under his supervision?

CMDR CHEW: Not direct involvement.

35 **MS LONGBOTTOM:** Can I focus particularly on your level of involvement in this investigation. Was it out of the ordinary?

CMDR CHEW: Yes, it was. It was very unique due to the - the profile of the investigation at the time. So it needed a closer oversight due to those external factors that were in place.

40 **MS LONGBOTTOM:** And when you say "a closer oversight", what in practice did that mean about your level of interaction with Detective Superintendent Moller about the investigation?

45 **CMDR CHEW:** With this particular investigation, it was a closer liaison and closer briefing from Detective Superintendent Moller on the progress of investigation and where the investigators were moving the investigation to.

MS LONGBOTTOM: And am I right that in terms of who you report to, you report to, amongst others, the Chief Police Officer?

50 **CMDR CHEW:** That's correct.

MS LONGBOTTOM: And during the course of the investigation, were you providing reports to Commissioner Gaughan?

5 **CMDR CHEW:** I was briefing Commissioner Gaughan - or Deputy Commissioner Gaughan.

MS LONGBOTTOM: Thank you for that correction. Now, Commander Chew, you were responsible for issuing a direction that the investigation in this matter be referred to the ACT DPP for advice?
10

CMDR CHEW: Yes, I was.

MS LONGBOTTOM: You issued that direction having regard to an executive briefing you received from Detective Superintendent Moller under cover of an email dated 10 June 2021?
15

CMDR CHEW: Yes.

MS LONGBOTTOM: Now, I want to step you through the events that led to you issuing that direction. Am I correct that you have kept file notes of a number of your meetings with Detective Superintendent Moller with respect to the investigation?
20

CMDR CHEW: Yes.

MS LONGBOTTOM: But would you accept that that's not a complete record of all the interactions you had with Detective Superintendent Moller about the matter?
25

CMDR CHEW: Yes, no, not all the interactions.

MS LONGBOTTOM: Okay. Operator, can you please display AFP.0035.0001.0001. Take an opportunity to read that. This is at least, it appears, the first file note of yours pertaining to the investigation. Do you recall - you will see at the top of the page, there are some other references to things like business continuity, ACTP RATP. Can you give me some context to what this diary note concerns?
30

CMDR CHEW: Yes. At - at that time - and I checked my - my diary - I was in a meeting - it was the ACT executive steering committee meeting, which is essentially a meeting where the executive of ACT Policing - so the two sworn commanders and the manager - unsworn manager, as well as all the superintendents for portfolio responsibility within ACT Policing, have a regularly fortnightly meeting to discuss the operational and strategic direction of ACT Policing across every part of ACT Policing.
35
40

MS LONGBOTTOM: Okay. And about halfway down the page, there's a reference to Scott. I take it that's reference to Detective Superintendent Moller?
45

CMDR CHEW: Yes, it is.

MS LONGBOTTOM: You will see there's recorded an observation about Brittany. Am I correct to understand that's a reference to Ms Higgins?
50

CMDR CHEW: Yes, it is.

5 **MS LONGBOTTOM:** And your diary note records that Ms Higgins maintains the allegation of sexual assault, but then goes on to note various matters that might be characterised as being averse to her credit?

CMDR CHEW: Yes.

10 **MS LONGBOTTOM:** Underneath it, there is a reference:

"So what!"

Was that in reference to what immediately precedes it on page?

15 **CMDR CHEW:** No, it wasn't.

MS LONGBOTTOM: Okay. What was it in reference to?

20 **CMDR CHEW:** I can't recall the exact reference, but it's got "KPIs" written next to it, which is key performance indicators. So I can only assume we were talking about some key performance indicators. And my reference to that is so what does that mean for ACT Policing. But it doesn't relate to the entry above.

25 **MS LONGBOTTOM:** Now, the date of this diary note is the date of a second evidence-in-chief interview that was conducted with Ms Higgins. Do you recall if the briefing that Detective Superintendent Moller was giving you on that day concerned the second EICI?

30 **CMDR CHEW:** I can only assume that it was noted during the meeting, therefore Scott - I would assume Scott would have - Detective Superintendent Moller would have briefed me on that - results of the second EICI.

MS LONGBOTTOM: But you don't have a specific recollection about that?

35 **CMDR CHEW:** I don't have a specific recollection.

MS LONGBOTTOM: Now, the next day, on 27 May, you had another meeting with Detective Superintendent Moller. You don't have a diary note of that -

40 **CMDR CHEW:** No.

MS LONGBOTTOM: - but Detective Superintendent Moller does. Do you accept that during that meeting, Detective Superintendent Moller raised with you the possibility of obtaining independent legal advice with respect to the question of prosecution of the matter?

45 **CMDR CHEW:** Yes, I recall.

MS LONGBOTTOM: Had you had any discussions with Detective Superintendent Moller by this stage about referring a brief of evidence for legal advice on the question of prosecution?

50

CMDR CHEW: I don't recall any specific conversations, but certainly as part of the briefing process from Detective Superintendent Moller, we did discuss a variety of strategies throughout the investigation.

5 **MS LONGBOTTOM:** And did Detective Superintendent Moller explain to you why he was suggesting that independent legal advice be obtained?

CMDR CHEW: No, I can't recall.

10 **MS LONGBOTTOM:** And as at that time, do you recall whether or not Detective Superintendent Moller had expressed any views to you about the sufficiency of the evidence in the investigation to proceed to laying a summons?

15 **CMDR CHEW:** Certainly in relation to the evidence and information that was being gathered at the time, we had numerous conversations, almost on a daily basis, about the strengths and weaknesses of the case. And he - Scott informed - Detective Superintendent Moller informed me that the team and himself had a particular view on the strengths of that evidence and the sufficiency of that evidence in relation to a prosecution.

20 **MS LONGBOTTOM:** Now - could you please set out what that particular view as it was expressed to you at this time was?

CMDR CHEW: At this time was they didn't believe there was sufficient evidence to charge the alleged offender.

25 **MS LONGBOTTOM:** Now, insofar as it concerned the suggestion that independent legal advice be obtained, you rejected that proposal?

CMDR CHEW: Yes, I did.

30 **MS LONGBOTTOM:** Why was that?

CMDR CHEW: Because the appropriate place for ACT Policing to obtain legal advice in relation to prosecutions is the ACT DPP.

35 **MS LONGBOTTOM:** But at that meeting, you directed Detective Superintendent Moller to finalise the brief?

CMDR CHEW: Yes.

40 **MS LONGBOTTOM:** And am I right to understand that that was the brief of evidence that was proposed ultimately be provided to the DPP for the purposes of legal advice?

CMDR CHEW: Yes, it was.

45 **MS LONGBOTTOM:** Yes. Now, about five days later, on 1 June, you had another meeting with Detective Superintendent Moller. That is a meeting in respect of which you have a file note. Operator, can you please display AFP.0035.0001.0002. While that's coming up, 1 June was the date of a meeting that Detective Superintendent Moller attended with Mr Drumgold

of the DPP. Can you just have a look at this note and familiarise yourself with it - or refamiliarise yourself with it.

CMDR CHEW: Yes.

5

MS LONGBOTTOM: Am I right that the reference to "SUPT CI" is a reference to Detective Superintendent Moller?

CMDR CHEW: Yes, it is.

10

MS LONGBOTTOM: And then underneath the heading Scott, there is an overview of a discussion with Drumgold?

CMDR CHEW: Yes.

15

MS LONGBOTTOM: Then on the second page, there's a comment:

"Looks like he will go ahead."

20

What was that a reference to?

CMDR CHEW: That's a reference from Scott to me to say that the Director has indicated he will go ahead with the charge.

25

MS LONGBOTTOM: Did Detective Superintendent Moller discuss with you or raise with you at that time the DPP expressing that view having not yet received a brief of evidence?

CMDR CHEW: I can't recall.

30

MS LONGBOTTOM: Okay. The next comment is - or the next record is:

"All info will be put..."

I can't read what that last word is.

35

CMDR CHEW: Forward.

MS LONGBOTTOM: Forward. What did you mean by that?

40

CMDR CHEW: That's a reference to the brief of evidence going forward to the DPP.

MS LONGBOTTOM: And then you will see underneath that, there's a reference to an acronym, COPC. Is that in any way relevant to this aspect of the briefing?

45

CMDR CHEW: No, it's not.

MS LONGBOTTOM: Okay. What is it a reference to?

50

CMDR CHEW: It's an operational meeting for all the operational commanders within the AFP -

MS LONGBOTTOM: Okay.

CMDR CHEW: - to look at operational resourcing for investigations across the AFP.

5

MS LONGBOTTOM: Operator, can you go then to the next page. So two days later, you had another meeting with Detective Superintendent Moller in relation to the investigation. You will see in the top right-hand corner of the second page, there's a reference:

10 "Report with me."

What's that a reference to?

15 **CMDR CHEW:** That's a reference to as part of my conversations with Detective Superintendent Moller, I asked him to draft a report for me to allow me to make an assessment of the information that he had been providing during the briefings in relation to the investigation.

20 **MS LONGBOTTOM:** So we will come to that in due course. But just to make sure I understand the document you are referring to, there was an executive briefing dated 7 June from Detective Superintendent Moller? -

CMDR CHEW: Yes.

25 **MS LONGBOTTOM:** - that was provided to you. So that's the report you are referring to?

CMDR CHEW: Yes.

30 **MS LONGBOTTOM:** And I think there was another minute from Detective Inspector Boorman -

CMDR CHEW: Yes.

35 **MS LONGBOTTOM:** - that came together with that briefing?

CMDR CHEW: That's correct, yes.

40 **MS LONGBOTTOM:** So you had directed that those documents be prepared for the purposes of assisting you to reach a view about next steps?

CMDR CHEW: Yes, I did.

45 **MS LONGBOTTOM:** Okay. Now, underneath that, that's a reference to "Smithy". Am I right that Smithy is Commander Smith?

CMDR CHEW: Yes, it is.

MS LONGBOTTOM: And it says there:

50 "Ring Smithy to say it is on its way. DPP after that."

What was on its way to Smithy?

5 **CMDR CHEW:** That would have been the brief of evidence for Commander Smith to undertake the red team review.

MS LONGBOTTOM: What is a red team review?

10 **CMDR CHEW:** A red team review is an independent investigative review of an investigation that is conducted by a separate area outside of the owning area for the investigation, and they look at all the evidence and all the information that's been collected, make an assessment on the value and the sufficiency of evidence in that - in that investigation and also potentially can identify other avenues of inquiry that the investigators may have missed or not thought about.

15 **MS LONGBOTTOM:** So when you say "sufficiency of evidence", do you mean sufficiency of evidence to lay a summons?

20 **CMDR CHEW:** Yes.

MS LONGBOTTOM: Okay. Why had you directed that a red team review be undertaken with respect to this investigation?

25 **CMDR CHEW:** It's a - it's a practice within the AFP where we continually reassess and assess our significant complex investigations to make sure that the best evidence and the most thorough investigation is brought forward.

30 **MS LONGBOTTOM:** You said at the outset of your evidence - and this is reflected in some observations you make at paragraph 93 of your statement - that this investigation was, in some respects, unlike any others in part because of the intense media interest?

CMDR CHEW: Yes.

35 **MS LONGBOTTOM:** Can I ask: was that intense media interest or scrutiny something that bore on your decision-making with respect to asking for a red team review and seeking that the matter be referred to the DPP for legal advice?

CMDR CHEW: Yes, it did.

40 **MS LONGBOTTOM:** Why, and in what respects?

45 **CMDR CHEW:** Well, it was - it was quite a unique investigation and environment at the time. And the amount of external commentary in relation to this matter, because of where the alleged offence occurred, created a significant media interest and a significant political interest, because it did occur at Parliament House. It's the first time that I've seen, in my experience, media reporting to such a level in relation to a ACT sexual assault - or any investigation, let alone a sexual assault investigation. We had the Prime Minister commenting on it. We had senior government ministers making comment in the media on it. We had two government ministers who were witnesses within the investigation. There was also a significant movement at the time. The Me Too movement was gaining momentum. And the

alleged victim in this case became involved in that through very high profile journalists, which again created more of a media interest. And it just - it was that whole environment that created a situation where we needed to be thorough and transparent in our investigation but also ensure we had good decision-making processes.

5

MS LONGBOTTOM: So against the background of that media scrutiny, am I right to understand you to be saying you wanted these extra checks and balances - one an internal one within the AFP; the other an external one from the DPP - to ensure the rigour and transparency of the investigation?

10

CMDR CHEW: That's correct.

MS LONGBOTTOM: Were you also concerned to ensure that no adverse criticism could be made of your officers who were conducting the investigation?

15

CMDR CHEW: Certainly that was part of it as well. My role was to try and shield the investigating team from this intense media scrutiny to allow them the free space to perform their role that they had been asked to perform, ie, investigate the alleged offence.

20

MS LONGBOTTOM: Now, at the bottom of the page, there's a reference to SIOB. Am I right to understand that's an acronym referring to the Sensitive Investigations Oversight Board?

CMDR CHEW: Yes, it is.

25

MS LONGBOTTOM: Could you explain what that board is?

30

CMDR CHEW: Out of the Lawler review - that was a review into essentially how the AFP undertakes sensitive investigations, and part of that review was because of the nature of these investigations, it attracts significant media interest and - I am referencing here - disclosure of information or government information, conduct of ministers, conduct of members of Parliament. The AFP - one of the recommendations in the Lawler review was for this oversight board to be put in place with senior AFP members. It's chaired by the Deputy Commissioner - Deputy Commissioner in the AFP and has a number of other assistant commissioners from the various other portfolios of the AFP. And their role is to look at the investigation going forward, as in, a brief summation, and identify areas that may be of concern for the organisation or potentially affect the organisation.

35

40

MS LONGBOTTOM: And what are the character investigations - I think you referred to sensitive, and that's in the title. How is it determined whether or not a particular investigation will be - will come within the auspices of SIOB?

45

CMDR CHEW: If I recall correctly, under the Lawler review, there's a definition of what a sensitive investigation means. But, essentially, it's an investigation that potentially will affect the reputation of the AFP plus also provide intense scrutiny for the AFP.

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MS LONGBOTTOM: Now, the statement that's recorded there is:

"SIOB to be called in near future to put to bed any political interference or influence."

50

CMDR CHEW: Yes.

MS LONGBOTTOM: What did you mean by that?

5 **CMDR CHEW:** That's basically to let SIOB and the senior executive of the AFP - to allow them to understand that the political interference or influence had no bearing on this investigation.

10 **MS LONGBOTTOM:** And when you say "political interference or influence", what do you mean by those expressions?

15 **CMDR CHEW:** It's - it refers to - or my reference to that is the fact of the matter that it was - it was very intensely scrutinised. As I said earlier, we had the Prime Minister making comments on it. We had senior ministers making comments on it. The offence occurred at Parliament House. We had ministers who were involved as witnesses. And in my experience, that's an irregular occurrence.

20 **MS LONGBOTTOM:** So are you referring there - just to be sure I'm very clear, are you referring there to comments being made directly to the AFP about the investigation or comments being made by politicians in the media, as you referred to earlier?

CMDR CHEW: Comments made by politicians in the media.

25 **MS LONGBOTTOM:** And am I right that you were co-opted to SIOB, at least with respect to this investigation?

CMDR CHEW: Yes, I was.

30 **MS LONGBOTTOM:** So am I right to understand you to be saying here either you or someone has directed that a meeting of SIOB be called for the purposes of addressing the issues you refer to here?

CMDR CHEW: Yes.

35 **MS LONGBOTTOM:** And then you make a reference there:

"Then court case can progress."

40 What do you mean by that?

CMDR CHEW: Well, once - once the SIOB was briefed in - in relation to those issues we talked about, and the fact - part of that briefing was that the matter would progress to court.

45 **MS LONGBOTTOM:** Okay. But that obviously hadn't occurred as of 3 June?

CMDR CHEW: That hadn't occurred.

50 **MS LONGBOTTOM:** Now, I just want to take you then to the executive briefing that Scott Moller sent you. Operator, can you please display AFP.20003.0002.8469. So this is an email from Scott Moller sending to you various documents, which are attached. The first one is

referenced EB Operation COVINA. Operator, can you please turn to .8472 of that bundle. So this is the executive briefing that you were referring to earlier that you directed Detective Superintendent Moller to provide?

5 **CMDR CHEW:** Yes.

MS LONGBOTTOM: And it's addressed to DCPO-R. Am I right that's an acronym for your title as Deputy Chief Police Officer Response?

10 **CMDR CHEW:** Yes, it is.

MS LONGBOTTOM: Okay. And, operator, if you can please turn to .8474. Perhaps the previous page, please, Mr Operator. We might see - is it entirely redacted? I might read out to you what's said on .8474. There's a bold heading Recommendation, and it has three paragraphs. The first paragraph materially says:

"For decision/direction re progression of Operation COVINA."

20 **CMDR CHEW:** Yes.

MS LONGBOTTOM: On its face - but can you comment on this - you were being asked, on the basis of the executive briefing, to make a decision or direction about the progression of the investigation?

25 **CMDR CHEW:** Yes.

MS LONGBOTTOM: The third paragraph under Recommendations says:

30 "Should you believe the attached brief of evidence meets the threshold as set out in section 26 of the Magistrates Court Act, please forward to ACT DPP for their review."

CMDR CHEW: Yes.

35 **MS LONGBOTTOM:** So am I correct to interpret that as asking you to reach -

MR TEDESCHI: I object. Could I ask it to be led in non-leading form.

40 **THE CHAIRPERSON:** Yes. Do that, Ms Longbottom.

MS LONGBOTTOM: Okay. What did you understand that to be asking you to do?

CMDR CHEW: If I was satisfied, then it was to be referred to the DPP - ACT DPP.

45 **MS LONGBOTTOM:** Satisfied of what?

CMDR CHEW: Satisfied there was sufficient evidence to at least seek an advice from the ACT DPP.

MS LONGBOTTOM: And in terms of the threshold for satisfaction of sufficient evidence, what did you understand that to be?

CMDR CHEW: There was a reasonable prospect of conviction being obtained.

5

MS LONGBOTTOM: Okay. Operator, can you please turn to .8491 in the bundle. Again, we seem to be having some - we might - okay. Mr Chair, to overcome this - I might pull up another document, but I can indicate that on its face the two are the same - another copy of the document.

10

THE CHAIRPERSON: All right.

MS LONGBOTTOM: WIT.0031.0001.0192. Commander Chew, the covering email identifies the third document attached as Investigation Report Articulating Evidence Collected to Date. WIT.0031.0001.0192_R. Try this again. WIT.0031.0001.0003_0192_R. So, again, Commander Chew, this is a minute from Detective Inspector Marcus Boorman dated 4 June. If you look at the addressee, again, it is DCPO-R?

15

CMDR CHEW: Yes.

20

MS LONGBOTTOM: So that's a reference to you?

CMDR CHEW: Yes, it is.

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MS LONGBOTTOM: Under the -

CMDR CHEW: I - I think this may be the Moller executive briefing.

MS LONGBOTTOM: No, yes, this is Moller's executive briefing. I'm sorry. Could you go on a couple more pages, please. Okay. Back, please, to the - back another page. Another page back, please. And is there any more of that that can be displayed? On the previous page, I mean. The top bit. There seems to be some text that's obscured. I might - if that's impractical, I might just suggest to you what's in the document and ask you to comment on it. You received a minute from Detective Inspector Marcus Boorman. That minute was dated 4 June 2021. It was addressed to you as DCPO-R?

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35

CMDR CHEW: Yes.

MS LONGBOTTOM: Do you recollect that? It asked for you to make a decision?

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CMDR CHEW: Yes.

MS LONGBOTTOM: The subject matter of the decision was Operation COVINA?

45

CMDR CHEW: Yes.

MS LONGBOTTOM: Okay. If we can then please go, Mr Operator, to AFP.2003.0002.8469 and turn to .8470. Commander Chew, this was the covering document that was sent with the bundle under the cover of email 10 June 2021. And am I right to

construe this document as being one where you will record your decision with respect to the matters with which you've been briefed?

CMDR CHEW: Yes. Yes, it is.

5

MS LONGBOTTOM: Okay. And, in fact, you did that on 16 June. Operator, can you please display AFP.2003.0002.8605. So this is an email from Detective Superintendent Moller to a number of other officers within ACT Police, not including yourself. But if you turn to the next page, please, Mr Operator. You will see at the bottom box of the page, under the heading

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CMDR CHEW: Yes.

MS LONGBOTTOM: Is that your handwriting?

15

CMDR CHEW: Yes, it is.

MS LONGBOTTOM: Okay. So am I right to understand that this is the document where you record your directions with respect to the investigation having regard to the executive briefing?

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CMDR CHEW: Yes.

MS LONGBOTTOM: So the first of your directions is that the brief should be referred to the ACT DPP for assessment and consideration of prosecution?

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CMDR CHEW: Yes.

MS LONGBOTTOM: Secondly, you direct that the brief is forwarded to the ACT DPP?

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CMDR CHEW: Yes.

MS LONGBOTTOM: And then, thirdly, you direct that the brief - a copy of the report and associated documents be sent to Commander Smith for the purposes of a red team assessment?

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CMDR CHEW: Yes.

MS LONGBOTTOM: Now, Commander Chew, can I take you to paragraph 63 of your statement. Operator, if you can display this just alongside the document that's just up now. It is WIT.0058.0001.0001_0001. And if you could please turn to _0013 and highlight the sentence saying, "I instructed a preliminary brief of evidence be provided to the DPP."

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THE CHAIRPERSON: Two-thirds of the way down.

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MS LONGBOTTOM: Through to the end of the sentence three lines down ending "prosecution". Just a little bit further, please, Mr Operator. Thank you. And just expand that. So you will see there, you've said in your statement that you instructed that what was provided to the DPP include a comprehensive document that fully explained the issues that

had been identified and how this may influence any subsequent prosecution. But that doesn't, in fact, appear on the face of the actual direction you issued dated 6 June?

CMDR CHEW: No.

5

MS LONGBOTTOM: But you do ask for a copy of the report and associated documents to be sent to Commander Smith. What did you mean by "report and associated documents"?

CMDR CHEW: That was Detective Superintendent's Moller EB - executive briefing and the Boorman -

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MS LONGBOTTOM: So on the face of the direction, what you asked is for a brief of evidence to go to the DPP, but those two reports we just mentioned - the Moller report and the Boorman minute - to go to Commander Smith?

15

CMDR CHEW: And - yes. And the evidence matrix was attached to it.

MS LONGBOTTOM: Okay. Now, on 17 June - so that's the day after -

THE CHAIRPERSON: What paragraph was that of -

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MS LONGBOTTOM: Paragraph 63, Mr Sofronoff.

THE CHAIRPERSON: Thank you.

25

MS LONGBOTTOM: The following day, on 17 June, you met with Detective Superintendent Moller. Now, you don't have a file note of that meeting, but can I suggest to you Detective Superintendent Moller's recollection of what occurred based on his diary note and give you an opportunity to comment.

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CMDR CHEW: Yes.

MS LONGBOTTOM: During that meeting, Detective Superintendent Moller told you that there was insufficient evidence to proceed.

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CMDR CHEW: Yes.

MS LONGBOTTOM: Do you recollect that being -

CMDR CHEW: Yes, I do.

40

MS LONGBOTTOM: And you referred to a meeting you had had with the DPP. You recall saying that?

CMDR CHEW: Yes.

45

MS LONGBOTTOM: And you said to Detective Superintendent Moller that the DPP had stated that he would recommend prosecution or there was a reasonable prospect of a successful prosecution being achieved. Do you recollect that?

50

CMDR CHEW: I recall that, yes.

MS LONGBOTTOM: Can you tell me - do you recall when this meeting you had with the DPP was?

5

CMDR CHEW: No, I can't recall when the meeting was.

MS LONGBOTTOM: Was it common for you in your role as Deputy Chief Police Officer Response to meet with the DPP?

10

CMDR CHEW: No, it wasn't. The relationship with the DPP - or the ODPP and the DPP was the responsibility of the other commander in ACT Policing.

MS LONGBOTTOM: So -

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THE CHAIRPERSON: And who was that?

CMDR CHEW: At that time, it would have been - was Commander Elizabeth McDonald.

20

THE CHAIRPERSON: Thank you.

MS LONGBOTTOM: So in the ordinary course of your role, you wouldn't have cause to have meetings with the DPP?

25

CMDR CHEW: Not generally, no.

MS LONGBOTTOM: Okay. If not this specific meeting, in the course of the investigation did you have occasion to meet with the DPP in relation to this matter?

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CMDR CHEW: I - I may have met with him once with other - other members. And I can't recall whether that was specifically a meeting in relation to the investigation or it was a general meeting about issues for ACT Policing and the ACT Office of Director of Public Prosecutions.

35

MS LONGBOTTOM: Around this time when you were having meetings with Detective Superintendent Moller, did he express any views to you about the relationship between SACAT and the DPP?

CMDR CHEW: No, he didn't.

40

MS LONGBOTTOM: Okay. Now, if I can return to the file note of that meeting, am I correct that you went on to say to Detective Superintendent Moller:

"If it was my choice, I wouldn't proceed. But it is not my choice. There is too much political interference."

45

CMDR CHEW: I can't recall the exact words, but I accept that that's what Scott - Detective Superintendent Moller recorded.

50

MS LONGBOTTOM: And you don't have a file note of that meeting?

CMDR CHEW: I don't have a file note, no.

MS LONGBOTTOM: And you accept that it's possible that you said that?

5

CMDR CHEW: It's possible, yes.

MS LONGBOTTOM: Now, can we just unpack that. You said, "If it was my choice, I wouldn't proceed." Did you mean by that?

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CMDR CHEW: Well, having seen the evidence and being briefed extensively during the period of the investigation, my personal opinion was there may be insufficient evidence or a very weak case to go forward with the prosecution.

MS LONGBOTTOM: Now, how does that sit - we've gone just before to the executive minute from Detective Superintendent Moller, and I understand you to have accepted that you were asked to turn your mind to whether or not the brief of evidence meets the threshold as set out in section 26 of the Magistrates Court Act as a condition precedent to determining whether or not the brief be forwarded to the ACT DPP for their review. So had you formed a view that there was sufficient evidence to meet that statutory criteria?

20

CMDR CHEW: Yes.

MS LONGBOTTOM: Okay. So coming back then to your comment, "If it was my choice, I wouldn't proceed," how does that sit with a view you had reached about the threshold of evidence in the brief?

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CMDR CHEW: Did I think it was a strong case? Probably not. But when - when broken down to the issues of - or the issues of the investigation, the threshold was definitely there. Because we had an alleged victim who provided a version of events. We had an alleged offender who provided a version of events. We had limited - we had no forensic corroboration. We had limited corroboration in relation to the occurrence and the location and those type of things. So for a - the potential of a successful prosecution was there. And as I said, did I think it was a strong case? Probably not.

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MS LONGBOTTOM: Okay. And can you explain to me what you meant by your comment, "But it is not my choice. There is too much political interference"?

CMDR CHEW: That is a reference to the fact, as I previously stated, about the environment that we were in at the time. It would have been quite challenging to work through those issues from the media scrutiny and the environment we were in at the moment.

40

MS LONGBOTTOM: So when you say "political interference", you are referring there to media scrutiny, including comments being made by politicians in the media?

45

CMDR CHEW: Yes. It was a high profile - high profile investigation.

MS LONGBOTTOM: But am I right to understand you were not referring to - or had not received any direct political interference to ACT Police about the matter?

50

CMDR CHEW: No, I had no direct or indirect influence or interference from any external or internal sources.

5 **MS LONGBOTTOM:** And - but as we've touched on before, part of the overarching strategic direction you had to manage this investigation in the face of the media scrutiny was to obtain an advice from the DPP?

CMDR CHEW: Yes.

10 **MS LONGBOTTOM:** And then also the internal red team assessment from Commander Smith?

CMDR CHEW: Yes.

15 **MS LONGBOTTOM:** And am I right that the intention at least was that both those two processes be completed before a decision was made on the progress of the investigation and whether or not it would proceed to the laying of a summons against Mr Lehrmann?

20 **CMDR CHEW:** That - that would be the optimal intention, yes.

MS LONGBOTTOM: Now, on 29 July, you had a meeting with Detective Superintendent Moller where he informed you about a discussion he had had with Ms Higgins' partner. Operator, can you please display AFP.0035.0001.0001 at 0005. Now, as at 29 July, you had received the advice from the DPP?

25 **CMDR CHEW:** Yes, we had.

MS LONGBOTTOM: In fact, it had been with ACT Police for at least a month?

30 **CMDR CHEW:** Approximately, yes.

MS LONGBOTTOM: But you had not yet received the red team assessment from Commander Smith?

35 **CMDR CHEW:** That's correct.

MS LONGBOTTOM: That didn't come in till early August - I think possibly 3 August?

40 **CMDR CHEW:** Some time around then, yes.

MS LONGBOTTOM: Now, the reference to Scott, I take it, is a reference to Detective Superintendent Moller?

45 **CMDR CHEW:** Yes, it is.

MS LONGBOTTOM: There's a reference there:

"Threat to go out in response to ACT DPP commentary."

50 Can you explain to me what that is a reference to?

5 **CMDR CHEW:** That's a reference to - from my recollection, is that the complainant's boyfriend had contacted Scott - Detective Superintendent Moller and indicated that the alleged victim wasn't happy with some commentary made by the ACT DPP, and essentially that commentary was centred around comments made by the Director in relation to advising the media that he had done his adjudication on the brief, and it was back with ACT Policing. And this is a month after that advice was received.

10 **MS LONGBOTTOM:** Now, I can take you to it if needs be, but that day there had been a media report from Samantha Maiden in News.com in which there was a reference to some comments Commissioner Reece Kershaw had made at the National Press Club -

CMDR CHEW: Yes.

15 **MS LONGBOTTOM:** - on Wednesday that week. He had said that the matter was with the ACT DPP right now?

CMDR CHEW: Yes.

20 **MS LONGBOTTOM:** And in response, the report records that the Director of Public Prosecutions indicated that he had already provided his advice - in fact, he had done so on 28 June - and the matter currently rested with the AFP?

CMDR CHEW: Yes.

25 **MS LONGBOTTOM:** So when you say - when you have recorded that there was a threat to go out in response to ACT DPP commentary, this was a conflict playing out in the media as to who the decision rested with as to who had to make - as to whether - how the investigation would progress?

30 **CMDR CHEW:** Yes.

MS LONGBOTTOM: And that would understandably have been something that might have been causing Ms Higgins some distress?

35 **CMDR CHEW:** Certainly, yes.

MS LONGBOTTOM: Did you hold any concerns having regard to what you were told on this day that there may be a perception that ACT Police were dragging their feet with respect to the investigation?

40 **CMDR CHEW:** I didn't have that - that perception. It did concern me that we were a month down the track from the advice being received and - and these - these issues were being identified.

45 **MS LONGBOTTOM:** Okay. Now, on next day, you had another meeting with Detective Superintendent Moller where you issued the direction that he proceed to charge Mr Lehrmann by way of summons. Now, again, you don't have a file note of that meeting, but can I suggest to you that Detective Superintendent Moller's recollection - I ask you to comment on that - is that during the course of that meeting, there was another discussion

about Ms Higgins and a possible media engagement on her behalf in response to recent media attention by - a recent media statement, rather, by the Commissioner of the AFP and the DPP.

CMDR CHEW: I will accept that, yes.

5

MS LONGBOTTOM: So on 30 July, you haven't yet got the red team assessment?

CMDR CHEW: That's correct.

10 **MS LONGBOTTOM:** And as you said, the purpose of that assessment was in part to ensure that there was sufficient evidence to charge. But yet you went ahead and issued the direction that a summons be laid. Again, is one construction of what occurred was that the possibility of a media engagement was informing your decision that DS Moller be directed to charge on that date or proceed to direct to charge?

15

CMDR CHEW: It was - I can't recall exactly, but it was a concern, the ongoing media commentary being made, and - and the alleged victim in this matter had been in the media making commentary as well. It wasn't a big concern of mine that there was going to be further commentary in the media, but my main concern was we were a month on from the advice being received, and even though we hadn't received the red team review, you know, based on the Director's advice, we should have progressed by this stage.

20

MS LONGBOTTOM: And when you say, "We were a concern that we were a month on," were you concerned that the fact that it was a month on from receiving the advice that ACT Police might be the subject of adverse criticism for not having made a decision by that stage?

25

CMDR CHEW: Yes. Yes.

MS LONGBOTTOM: Do you accept that the decision to lay a charge ought properly be based on there being a satisfaction that there was sufficient evidence to proceed?

30

CMDR CHEW: Yes.

MS LONGBOTTOM: In hindsight at least, do you consider that you ought to have awaited the outcome of the red team review before that decision was made?

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CMDR CHEW: In hindsight, no. As I said, when you broke down the investigation outcomes at that stage and what went to the Director, we had an alleged - alleged victim with a version of events, an alleged offender with another version of events, some limited corroboration, no forensics evidence, but it was a matter that should quite rightly be tested in court.

40

MS LONGBOTTOM: Did you have any understanding at that stage based on discussions you were having with Commander Smith as to what the outcome of the red team assessment was or might be?

45

CMDR CHEW: I can't recall whether I had preliminary discussions with Commander Smith. I know, due to Commander Smith's calendar and some holidays that he had, the red team review was put off by a couple of weeks due to that - that particular restriction on his time.

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MS LONGBOTTOM: And I may just complete the record and indicate that it came on 3 August 2021. Operator, can you please display AFP.2003.0010.6804. This is the red team assessment from Commander Smith?

5 **CMDR CHEW:** Yes.

MS LONGBOTTOM: And, operator, if you can please turn to .6808 of that document. And you will see the effect of the recommendation there was that SACAT continue to liaise with the ACT DPP and then there were some recommendations made about follow-up line of inquiries?

CMDR CHEW: Yes.

15 **MS LONGBOTTOM:** But there is no conclusion reached in the red team assessment that there is insufficient evidence to proceed to lay a summons?

MR TEDESCHI: I object. It's quite the contrary.

20 **THE CHAIRPERSON:** Well, the witness can answer. He hasn't accepted everything that's been put to him. It's put to you that there's no conclusion reached.

CMDR CHEW: In the dot points at the bottom?

25 **THE CHAIRPERSON:** In the document.

MS LONGBOTTOM: In the document.

CMDR CHEW: In the document.

30 **MS LONGBOTTOM:** You can take an opportunity to review it -

CMDR CHEW: If I could read the -

35 **THE CHAIRPERSON:** Refresh your memory.

CMDR CHEW: Yes. Thank you.

MR TEDESCHI: I can identify the sentence -

40 **THE CHAIRPERSON:** He can do it.

CMDR CHEW: Is this the entire document? Isn't there a -

45 **THE CHAIRPERSON:** There is a preceding page.

CMDR CHEW: Could I have the preceding page?

MS LONGBOTTOM: There's a preceding couple of pages.

THE CHAIRPERSON: Go from the beginning and just say when you want the page turned over, Commander.

5 **CMDR CHEW:** Thank you. Yes. Next page, please. Yes. Next page. Yes. Is there another page? Yes. And next page.

10 **MS LONGBOTTOM:** And, Commander Chew, can I particularly draw your attention to that page - and if we could highlight the fourth substantive paragraph starting with the words, "Based upon the current draft," and the last sentence before the chapeau, "The review team acknowledges."

CMDR CHEW: Yes. Yes, I've read that.

15 **MS LONGBOTTOM:** Having now refreshed your memory about the document, what was your understanding of the recommendation, if any, Commander Smith (indistinct)?

CMDR CHEW: That the court is the proper authority to address the issues in relation to the - the red team review and the investigation.

20 **MS LONGBOTTOM:** On your reading of the document, had Commander Smith raised any evidence about a lack of sufficient evidence to proceed to lay a summons?

CMDR CHEW: Not in relation to a lack of sufficient evidence.

25 **MS LONGBOTTOM:** Okay. I want to shift topics and ask you about the service of the brief of evidence on the defence. Am I right to understand, Commander Chew, that you were responsible for issuing the direction that the brief be served directly on defence together with the summons?

30 **CMDR CHEW:** Yes, I was.

MS LONGBOTTOM: Can you talk me through what the ordinary process is for adjudication of a hearing brief?

35 **CMDR CHEW:** The normal process is the case officer compiles a brief of evidence, which goes to their sergeant or team leader for a review of the evidence presented and - or the evidence collected. That then goes to an adjudication position or sergeant who looks at it again from an evidentiary perspective and to ensure that all the statements and everything are there.

40

MS LONGBOTTOM: Can I just stop there. I just want to bring up a document. AFP.0015.0001.0706. Am I right that the adjudication process that you just referred to is documented?

45 **CMDR CHEW:** Yes, it is.

MS LONGBOTTOM: Okay. Is this the document or the form that is intended to record that adjudication process?

50 **CMDR CHEW:** It appears to be, yes.

MS LONGBOTTOM: Yes. Okay. Please go on.

5 **CMDR CHEW:** After the team leader makes an assessment - and you will see in that form, there is various sections of it that relate to the informant and then the sergeant. After it's adjudicated on, again, to check the sufficiency of evidence and the statements, etcetera, etcetera. Then it goes to Judicial Operations to essentially be checked for content and administrative purposes to make sure it's in line with the agreement - or the protocol document between ACT DPP and ACT Policing.

10 **MS LONGBOTTOM:** So I will just stop you there. Judicial Operations, that is a body within ACT Police?

15 **CMDR CHEW:** Yes, it is.

MS LONGBOTTOM: And you refer to it checking content. Is an aspect of that to ensure that material is not included in the brief that is either the subject of a privilege, such as legal professional privilege?

20 **CMDR CHEW:** That should be in disclosure statements.

MS LONGBOTTOM: So that's - the fact of that is recorded in the disclosure statements?

25 **CMDR CHEW:** I - I - I think so, yes.

MS LONGBOTTOM: But is your understanding that it is a function of Judicial Operations to ensure that such information is not actually included in the brief of evidence?

30 **CMDR CHEW:** Yes.

MS LONGBOTTOM: Now, another aspect of documents that might be included in the disclosure statement is material that's subject to statutory protections, such as counselling records?

35 **CMDR CHEW:** Yes.

MS LONGBOTTOM: And am I right to understand that an aspect of the function of Judicial Operations within ACT Police is to identify and ensure that material matching that description is not included in the brief of evidence?

40 **CMDR CHEW:** Yes.

MS LONGBOTTOM: Okay. So what happens from there?

45 **CMDR CHEW:** Then that - that document - or that brief is sent across to the ACT DPP for allocation to a prosecutor and then the prosecution commences.

MS LONGBOTTOM: And am I right to understand - there is a collaborative agreement between ACT Police and DPP?

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CMDR CHEW: Yes.

MS LONGBOTTOM: And an aspect of that collaborative agreement provides for a brief of evidence to be provided to the DPP within a particular period after a summons is laid?

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CMDR CHEW: Yes.

MS LONGBOTTOM: Is your understanding that an aspect of the function of the DPP with respect to the brief of evidence is, in effect, to be another check and balance regarding the content of the brief and to ensure that material that is subject to statutory protection or legal professional privilege is not included in the brief that is served on defence?

10

CMDR CHEW: Yes.

MS LONGBOTTOM: Now, if we can go to 3 August. On that day, you had a meeting with Detective Superintendent Moller. Now, again, you don't have a file note of this meeting, but I want to suggest to you and give you an opportunity to comment upon what Detective Superintendent Moller records of that conversation. He records that you said that, "There is no need for adjudication, that we have had it independently reviewed and have legal advice, so no need to have it adjudicated." Is that a correct -

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CMDR CHEW: Well, no need to have it adjudicated through the normal process.

MS LONGBOTTOM: And when you say "adjudicated", what do you mean by that?

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CMDR CHEW: Well, due to the nature of the investigation and the fact that it had a lot more oversight from various levels of detective sergeant, detective inspector and detective superintendent, the adjudication on the sufficiency of the brief to go forward had been done at those stages.

30

MS LONGBOTTOM: So when you say "sufficiency of the brief to go forward", are you talking about sufficiency of the evidence included in the brief or are you talking about an adjudication process to ensure that only the proper content that can go to the defence is included in the brief?

35

CMDR CHEW: The latter.

MS LONGBOTTOM: The latter. Can we just go back, though, to the direction you actually issued with respect to at least the DPP. Operator, can you please display AFP.20003.0002.8605 and turn to .8606. Would you accept, Commander Chew, that no part of your direction in relation to what was to occur - what was to be done by the ACT DPP included an adjudication of the content of the brief of evidence in terms of whether or not it included statutory protected material or material concerning legal professional privilege and the like?

45

CMDR CHEW: Yes, I accept that.

MS LONGBOTTOM: Okay. So would you accept, albeit with the benefit of hindsight, that when you said to Detective Superintendent Moller on 3 August, "The brief has already been

adjudicated," at least insofar as it concerned the DPP, it hadn't been adjudicated for its content?

5 **CMDR CHEW:** That would be acceptable, yes.

MS LONGBOTTOM: Okay. Now, two days later, on 5 August, you have another meeting with Detective Superintendent Moller. Again, you don't have a file note, but I will put to you what Detective Superintendent Moller records of that conversation. There was a discussion in relation to service of the summons on Mr Lehrmann.

10 **CMDR CHEW:** Yes.

MS LONGBOTTOM: Do you recollect that?

15 **CMDR CHEW:** Yes.

MS LONGBOTTOM: During the course of that discussion, Detective Superintendent Moller said to you - and this is with respect to service of the brief, I suggest - "this is outside our normal procedures. Normally, we go through the AP Sergeant for adjudication. I think we should still do this?" Do you -

20 **CMDR CHEW:** Yes.

MS LONGBOTTOM: Yes?

25 **CMDR CHEW:** I recall a conversation like that, yes.

MS LONGBOTTOM: And you said to Detective Superintendent Moller, "We can't, mate. No need. We have had it reviewed, and I'm comfortable with that. Let's just get it served and move on."

30 **CMDR CHEW:** That would be a reflection of that conversation, yes.

MS LONGBOTTOM: What was operating on your mind in terms of that statement, that you just wanted the matter to move on without an adjudication, in the face of Detective Superintendent Moller expressing concerns to you about that ordinary process not happening?

35 **CMDR CHEW:** My concerns at the - or my thinking at the time was that the matter had dragged on. We had the Director's advice that the matter should go to court - or should commence a prosecution. We had the intense media scrutiny and the environment that was occurring at the time. The brief - the brief of evidence had been compiled throughout the investigation. And the fact that we were operating in a COVID restrictive environment, which made a few normal practices quite challenging in relation to service of summons, adjudication of brief. And additionally, due to the commentary that was being held, the possibilities of a fair trial for the alleged offender with all the media commentary and the commentary surrounding it would be challenging.

MS LONGBOTTOM: Can I just unpack that with you. You say that, I think, in effect, you know, it had been looked at by various senior investigating officers. But you accept that it hadn't been adjudicated by those officers in terms of its content?

5 **CMDR CHEW:** Yes.

MS LONGBOTTOM: And you were directly informed by Detective Superintendent Moller that that was a matter of concern for him?

10 **CMDR CHEW:** Yes.

MS LONGBOTTOM: In terms of the COVID environment, what was it about the COVID environment that precluded an adjudication process happening?

15 **CMDR CHEW:** Well, the - the courts were operating on restrictive - restrictive operating hours. As I said, my intention was that the amount of oversight and adjudication progressing through the investigation was sufficient to provide the - the brief of evidence in relation to the sufficiency - the sufficiency of the evidence.

20 **MS LONGBOTTOM:** But how could you have been satisfied in the face of what Detective Superintendent Moller said to you that there was a sufficient adjudication of its contents in terms of the production of material that shouldn't be included in the briefing notes?

25 **CMDR CHEW:** I - I accepted that during the process of - as I - I wasn't directly involved in the compilation and the compiling of the brief, and I would have expected that those checks and balances would have been occurring along the way.

30 **THE CHAIRPERSON:** You must have - you are saying you probably assumed that this brief had been passing through many hands, including the Director's. And by that stage, surely, everything that should have been taken out had been taken out.

CMDR CHEW: That would be correct, yes.

35 **MS LONGBOTTOM:** You referred earlier to a concern about the matter dragging out. Was an aspect of what was playing on your mind in terms of issuing that direction adverse comment about the DPP with respect to dragging its feet to lay a charge?

CMDR CHEW: No, I wouldn't say that. No.

40 **MS LONGBOTTOM:** Coming back to the question about the COVID environment, you talked about how COVID could operate in terms of the court processes. But I'm just struggling to understand how COVID would have precluded an adjudication happening either internally within the ACT Police, as Detective Superintendent Moller was urging you to do, or otherwise having that done by the DPP.

45 **CMDR CHEW:** It wouldn't - wouldn't have precluded it. But as I said, the - the matter was dragging on and the commentary surrounding the matter was increasing.

MS LONGBOTTOM: So would it be fair to say that those two matters you've just mentioned, the matter dragging on and the media commentary increasing, was really what motivated you to issue the direction on that day?

5 **CMDR CHEW:** Yes.

MS LONGBOTTOM: And would you accept that in hindsight, albeit, that really shouldn't have occurred?

10 **CMDR CHEW:** Yes, in hindsight. Yes.

MS LONGBOTTOM: And that's because a proper adjudication process hadn't taken place?

CMDR CHEW: Yes.

15

MS LONGBOTTOM: Nothing further for me, Mr Sofronoff.

THE CHAIRPERSON: Thank you. Mr Tedeschi, for various reasons, we have to adjourn at 4 today. So you can start or you can - you are not going to finish in 20 minutes.

20

MR TEDESCHI: I might. I might.

THE CHAIRPERSON: All right.

25 **MR TEDESCHI:** I'm content to start.

THE CHAIRPERSON: All right. Go ahead.

<EXAMINATION BY MR TEDESCHI:

30

MR TEDESCHI: Commander, would it be fair to say that you and the other police involved in this case were under a lot of time pressure that led to your decision that there be no adjudication in this matter?

35 **CMDR CHEW:** Yes.

MR TEDESCHI: There was pressure from the media, pressure from Ms Higgins and her partner, and pressure from other sources as well?

40 **CMDR CHEW:** Yes.

MR TEDESCHI: Including pressure from the DPP?

CMDR CHEW: Yes.

45

MR TEDESCHI: Do you agree that it's very unusual not to have an adjudication of a brief that goes out?

CMDR CHEW: Yes, it is.

50

MR TEDESCHI: It is common?

CMDR CHEW: It is unusual.

5 **MR TEDESCHI:** It is unusual. And is it also very unusual for the brief to be served at the same time as the summons?

CMDR CHEW: Yes, it is.

10 **MR TEDESCHI:** Usually what happens, is it not, that police wait until they find out if there's a plea of not guilty and then they put the brief together and serve it?

CMDR CHEW: Generally, yes.

15 **MS LONGBOTTOM:** That saves a lot of time, because if there's a plea of guilty, you don't have to go to the same amount of effort to prepare the brief?

CMDR CHEW: That's correct.

20 **MR TEDESCHI:** So this case was very unusual from the point of view of the parties, that the brief was served at the same time as the summons. In order to save time, why didn't you just have the summons served as quickly as possible? Why did you decide to have the brief served as well?

25 **CMDR CHEW:** Again, to start the progression of the matter. So that - to expediate the potential of getting the matter before court at its first mention date, which would then allow us to seek suppression orders from the magistrate to limit, if not reduce, the external commentary that was occurring.

30 **MR TEDESCHI:** But you could have got that just with the summons being served without serving the brief at the same time?

CMDR CHEW: In hindsight, yes.

35 **MR TEDESCHI:** And, of course, the other thing that was very unusual was that the brief was served directly by the police on the defence rather than through the DPP?

CMDR CHEW: Yes.

40 **MR TEDESCHI:** I think it's the - the agreement between the police and the DPP is that the police provide the brief to the DPP, who then serve it on the defence?

CMDR CHEW: Yes, that's correct.

45 **MR TEDESCHI:** As you have explained to counsel assisting, that provides another level of checking?

CMDR CHEW: Yes, it does.

MR TEDESCHI: So from the point of view of the parties, this was also very unusual - would you agree - in terms of the service of the brief directly on the defence?

CMDR CHEW: Yes, it was.

5

MR TEDESCHI: Now, you subsequently found out that accidentally some counselling notes of Ms Higgins were included with the brief?

CMDR CHEW: Yes. Detective Superintendent Moller informed me of that, yes.

10

MR TEDESCHI: That should not have happened?

CMDR CHEW: It should not have happened.

15 **MR TEDESCHI:** And is this the only occasion that you are aware of where that's happened?

CMDR CHEW: It's the only occasion that I'm aware of, yes.

20 **MR TEDESCHI:** All right. And were you also informed that the audio of the complainant's EICI was also served with the brief and that that shouldn't have happened?

CMDR CHEW: I can't recall if I was informed that the EICI had been served, but definitely the counselling notes.

25 **MR TEDESCHI:** Yes. Did you find out - do know now that the audio or video of Ms Higgins' interview had been included with the brief and it shouldn't have been?

CMDR CHEW: Yes, I know now.

30 **MR TEDESCHI:** Okay. And did you also find out that there were some redactions of personal details of police officers and witnesses and the like that hadn't been applied properly and that they could easily be lifted so that people could see what was under the redactions?

CMDR CHEW: Now I do, yes.

35

MR TEDESCHI: All right. Now, do you - would you agree with this: that in terms of this matter resulting in the brief being served at the same time as the summons, the brief being served on the defence directly, the counselling notes being included with the brief, the audio of Ms Higgins' interview being included with the brief and the redactions being able to be lifted, that the combination of all of those events was completely unique to this case?

40

CMDR CHEW: Yes.

45 **MR TEDESCHI:** Could I take you, please, to the meeting that you had with Mr Moller on 17 June. You have been asked some questions about this, and Superintendent Moller's notes have been read to you. And you have agreed that you said, "If it was my choice, I wouldn't proceed. But it's not my choice. There is too much political interference." Now, you have explained to the court what you meant by "political interference". Do you think that the choice of those words was unfortunate?

50

CMDR CHEW: On reflection, yes, they were.

MR TEDESCHI: And why?

5 **CMDR CHEW:** Well, because of the nature of the investigation, where the offence occurred, the commentary being made by senior government ministers up to the Prime Minister, the fact that ministers were involved as witnesses, there could be an inference that there is political - there is definitely political interest. Whether that went to interference, I can't comment on. But as I said, it was about - the entire environment at the time really
10 created that significant scrutiny of the investigation.

MR TEDESCHI: So is this what you're saying: that in retrospect, you shouldn't have used those words because they could be misconstrued?

15 **CMDR CHEW:** Well, they could be misconstrued. But as well as political interference, it doesn't always necessarily refer to politics, the same as political correctness doesn't specifically refer to politics. So it's - it was an expression of the environment from myself.

MR TEDESCHI: All right. Now, I think you yourself - you were a member of a SACAT team for a period?
20

CMDR CHEW: I was, yes.

MR TEDESCHI: And you performed sexual assault investigations and child abuse investigations during that time?
25

CMDR CHEW: Yes, I did.

MR TEDESCHI: You did a significant number of cases yourself in this area?
30

CMDR CHEW: Yes. Yes.

MR TEDESCHI: So you are pretty familiar with the investigation of sexual assaults?

35 **CMDR CHEW:** Familiar with the investigation, but very dated in my experience.

MR TEDESCHI: I think you express in your statement your belief that there - that you don't believe that there's been any change in the way that sexual assault complaints are dealt with today compared to when you were working as a SACAT detective?
40

CMDR CHEW: Yes, I did say that in my statement. But when I was working as a SACAT detective - and I think as a way of a bit of - a history lesson, ACT Policing were one of the first jurisdictions to set up a dedicated sexual assault and child abuse team back in the late 1980s. I'm probably showing a bit of my time in the organisation now. But - and that was a new way of looking at investigating sexual assaults. And the premises that that team worked from were separate to police stations. So we took away the victim having to trudge through a police station as the identified victim of a sexual assault. Did a lot of work over that period of time -
45

50 **MR TEDESCHI:** There are a lot of differences. Is that what you are saying?

CMDR CHEW: There are, yes. Yes.

5 **MR TEDESCHI:** Okay. Now, you've described in answer to questions by counsel assisting that you had a lot of contact with Superintendent Moller about this case. He was reporting to you almost on a daily basis about what was happening?

CMDR CHEW: This case and others, yes.

10 **MR TEDESCHI:** Yes. Did you also speak regularly to Detective Inspector Boorman about the case?

CMDR CHEW: Not as regularly as Detective Superintendent Moller.

15 **MR TEDESCHI:** All right. Up until the time that you got the advice from the DPP, would it be fair to say that Superintendent Moller had a strong view that the evidence wasn't sufficient to charge?

CMDR CHEW: Yes, he expressed that on a number of occasions.

20

MR TEDESCHI: And he expressed it pretty strongly?

CMDR CHEW: Yes.

25 **MR TEDESCHI:** And was it unusual for Superintendent Moller to suggest to you that you go and get independent legal advice other than the DPP?

CMDR CHEW: It's not unusual to seek external legal advice for complex and serious matters. But my opinion was that it wasn't required in this case.

30

MR TEDESCHI: What I'm asking you is, was it unusual for somebody in Superintendent Moller's position to be suggesting that you go outside to somebody other than the DPP?

CMDR CHEW: Well, yes, it was unusual.

35

MR TEDESCHI: And at that stage, were you aware that - I think it was on 1 June 2021, that Superintendent Moller had actually been to see the Director?

CMDR CHEW: I accept that that was one of the meetings, yes.

40

MR TEDESCHI: Yes. And it was clear to you when you spoke to Moller that it was very clear to him that the DPP was probably going to press ahead with the prosecution?

CMDR CHEW: Yes.

45

MR TEDESCHI: And it was - was it clear to you that that's why Superintendent Moller wanted to get independent legal advice, because he didn't agree with the approach taken by the DPP?

50 **CMDR CHEW:** I wouldn't - I couldn't comment on what his thoughts were.

MR TEDESCHI: All right. And you were the one who took responsibility for saying charges should be laid?

5 **CMDR CHEW:** Yes, I was.

MR TEDESCHI: And Superintendent Moller was the one who actually signed the summons?

10 **CMDR CHEW:** Yes, he was.

MR TEDESCHI: Were you aware that Inspector Boorman had said that he was not going to sign the summons?

15 **CMDR CHEW:** I wasn't aware of that, no.

MR TEDESCHI: Were you aware that at a later stage during the trial, he said that if the jury convicted Mr Lehrmann that he would resign?

20 **CMDR CHEW:** I'm aware -

MS RICHARDSON: Well, I object to that - sorry, I object to that question. It was not during the trial; it was while the jury was out.

25 **MR TEDESCHI:** That's during the trial.

MS RICHARDSON: Well -

30 **THE CHAIRPERSON:** It doesn't matter. Just put the question.

MR TEDESCHI: Do you agree - did you know that -

CMDR CHEW: I wasn't aware of that.

35 **MR TEDESCHI:** Okay. Would you agree that it's very unusual for somebody of the rank of inspector to say something like that?

CMDR CHEW: Well, I - I can't - I can't comment on whether he said it or not. So -

40 **MR TEDESCHI:** Assuming he said it, do you agree it's unusual for somebody of the rank of inspector?

CMDR CHEW: Well, it would be unusual for anyone to make those sort of comments.

45 **MR TEDESCHI:** It shows a lack of objectivity, doesn't it?

CMDR CHEW: I wouldn't say that, no.

MR TEDESCHI: All right. And you have explained to us how originally you were of the view that the evidence was insufficient, but then you changed your view when you saw the DPP's advice?

5 **CMDR CHEW:** And prior to the - once - once the report came in, that was an indication to me that the matter was sufficient to progress to the DPP.

MR TEDESCHI: Which report are you referring to?

10 **CMDR CHEW:** The Moller executive briefing.

MR TEDESCHI: All right. So having read the Moller executive briefing, you were of the view that this matter had to go to trial?

15 **CMDR CHEW:** Had to go to DPP for an advice, yes.

MR TEDESCHI: And then when you saw the Director's advice, you agreed with him that it had to go to trial?

20 **CMDR CHEW:** Yes.

MR TEDESCHI: Is that because, in your view, there were real issues to be decided by a jury rather than by anybody else?

25 **CMDR CHEW:** Definitely the issues that had been identified should quite rightly be adjudicated on by the court.

MR TEDESCHI: Okay. And I suppose when you read the report of Commander Smith of the red team, it would appear - it appeared to you that he was of that view too?

30 **CMDR CHEW:** Yes, he was.

MR TEDESCHI: Thank you.

35 **THE CHAIRPERSON:** Ms Richardson, do you have any questions?

MS RICHARDSON: I don't have any questions. I just have been told that the original of Commander Chew's diary is here, and I don't think all of the notes were previously produced. So I just wanted to make that available to Mr Tedeschi in case -

40 **THE CHAIRPERSON:** Thanks. You can give it to Ms Longbottom.

MS RICHARDSON: We have flagged the references to this matter in the diary. Now, I'm sure that's not something Mr Tedeschi can do right now, but I should give those to counsel assisting first.

THE CHAIRPERSON: All right. We can -

50 **MS RICHARDSON:** Just - I'm not suggesting that that can be dealt with on the run, but I just wanted to make sure that people had access.

THE CHAIRPERSON: No, no, no. Yes. You will have to look at it, Mr Tedeschi, to see what you want to do.

5 **MR TEDESCHI:** Can I have five minutes to look at it now?

THE CHAIRPERSON: Yes.

MR TEDESCHI: Thank you.

10 **THE CHAIRPERSON:** We will adjourn for a few minutes.

<THE HEARING ADJOURNED AT 3.53 PM

15 **<THE HEARING RESUMED AT 3.58 PM**

THE CHAIRPERSON: Yes.

MR TEDESCHI: I have no further questions.

20 **THE CHAIRPERSON:** All right. So nobody has any further questions?

MS LONGBOTTOM: I just had one further quick question arising out of the diary notes, Mr Sofronoff.

25 **THE CHAIRPERSON:** Yes. Go ahead, Ms Longbottom.

<EXAMINATION BY MS LONGBOTTOM:

30 **MS LONGBOTTOM:** Can I just ask that a copy of this be provided to Commander Chew. You will see it's a diary entry of yours from 22 March 2021. On the second page of that diary entry under the heading Higgins, you will see a couple of lines down there's a reference to Fiona Brown and then a statement that says:

35 "DPP reaching out."

Do you recollect what that was in relation to?

40 **CMDR CHEW:** No. No, I don't have any - "DPP reaching out." No, I don't, sorry.

MS LONGBOTTOM: Nothing further, then. Thank you, Mr Sofronoff.

45 **THE CHAIRPERSON:** Thank you. Are you going to tender that diary? Or are you going to tender extracts from it and put them - and put the relevant pages onto our database? Is that what you are going to do?

MS LONGBOTTOM: We will. A portion of it has already or will be tendered -

50 **THE CHAIRPERSON:** Yes.

MS LONGBOTTOM: - but we will obtain some additional copies of the documents that haven't yet been produced (indistinct).

MS RICHARDSON: We will make copies of those and provide them.

5

THE CHAIRPERSON: Thank you, Ms Richardson. Thank you, Commander Chew, for your assistance. You are free to go.

CMDR CHEW: Thank you.

10

<THE WITNESS WAS RELEASED

THE CHAIRPERSON: Yes, Mr Tedeschi.

15 **MR TEDESCHI:** Chairman, I don't know if any arrangements have been made to change Mr Korn to Thursday, because he will literally be five minutes. And I think he's the only witness at this stage on Wednesday.

THE CHAIRPERSON: Yes.

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MS LONGBOTTOM: I can indicate that certainly we have conferred with Ms Yates' counsel, and we understand they have no difficulty with Mr Korn giving evidence on Thursday in terms of the availability of their counsel.

25 **THE CHAIRPERSON:** All right.

MS LONGBOTTOM: We are reaching out to Mr Korn just to confirm - no, we have confirmed he's available. So -

30 **THE CHAIRPERSON:** All right. So it will be Thursday. And if your examination is brief and you want to do it by video link, think about that. It's up to you.

MR TEDESCHI: Well, I'm going to be here.

35 **THE CHAIRPERSON:** All right. Good. So we will adjourn, then, till Thursday. Is that right, Ms Longbottom?

MS LONGBOTTOM: That's correct, Mr Sofronoff.

40 **THE CHAIRPERSON:** Yes. All right. Does anybody need to raise anything? No? Well then, adjourn till Thursday at 9.45. Thank you.

<THE HEARING ADJOURNED AT 4.00 PM TO THURSDAY, 1 JUNE 2022 AT 9.45 AM