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TRANSCRIPT OF PROCEEDINGS

ACT BOARD OF INQUIRY – CRIMINAL JUSTICE SYSTEM

CHAIRPERSON: MR W. SOFRONOFF KC

CANBERRA

THURSDAY, 25 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

<THE HEARING RESUMED AT 9.56 AM

THE CHAIRPERSON: Yes, Mr Jones.

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MR JONES: I call Emma Louise Frizzell, and Ms Frizzell will take an affirmation.

THE CHAIRPERSON: Senior Constable Frizzell, would you take the affirmation?

10 **<EMMA LOUISE FRIZZELL, AFFIRMED**

<EXAMINATION BY MR JONES:

THE CHAIRPERSON: Thank you. Mr Jones.

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MR JONES: You are Emma Louise Frizzell? You are a senior constable with the Australian Federal Police?

SNR CONST FRIZZELL: Yes.

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MR JONES: You work in the ACT Police?

SNR CONST FRIZZELL: Yes, I do.

25 **MR JONES:** You've provided a statement to the Board of Inquiry affirmed on 13 April 2023?

SNR CONST FRIZZELL: That's correct.

30 **MR JONES:** Are there any changes or additions you wish to make to that statement?

SNR CONST FRIZZELL: No.

MR JONES: Is everything in it true and correct?

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SNR CONST FRIZZELL: Yes.

MR JONES: You also provided another statement to the Board of Inquiry affirmed 23 May 2023; correct?

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SNR CONST FRIZZELL: Yes.

MR JONES: Could WIT.0044.0001.0004_R be put up on the screen, please. Is that that statement?

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SNR CONST FRIZZELL: Yes.

MR JONES: Are there any changes or additions you wish to make to that statement?

50 **SNR CONST FRIZZELL:** No.

MR JONES: Is everything in it true and correct?

SNR CONST FRIZZELL: Yes, it is.

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MR JONES: I tender that, Mr Chair.

THE CHAIRPERSON: Yes. Exhibit 120.

10 **<EXHIBIT 120 TENDERED AND MARKED**

MR JONES: You joined the Australian Federal Police as an unsworn employee in 2007?

SNR CONST FRIZZELL: I did.

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MR JONES: And you were sworn in as a sworn officer on or about 27 June 2014?

SNR CONST FRIZZELL: Yes.

20 **MR JONES:** Between April 2019 and September 2020, you served in the ACT arm of the AFP in the Sexual Assault and Child Abuse Team?

SNR CONST FRIZZELL: I did.

25 **MR JONES:** And that is referred to in the abbreviated form as SACAT?

SNR CONST FRIZZELL: Yes.

MR JONES: In June 2020, you became a senior constable?

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SNR CONST FRIZZELL: Yes.

MR JONES: And you have started but not yet completed your detectives training?

35 **SNR CONST FRIZZELL:** Correct.

MR JONES: You were assigned the investigation of Ms Higgins' complaint about Mr Lehrmann in February 2021?

40 **SNR CONST FRIZZELL:** Yes, I was.

MR JONES: And originally you were lead investigator but later detective leading constable, is it?

45 **SNR CONST FRIZZELL:** Senior constable.

MR JONES: Senior Constable Trent Madders became the lead?

SNR CONST FRIZZELL: Yes.

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MR JONES: Why was that?

SNR CONST FRIZZELL: At the time - so Trent Madders is a detective - he's a designated detective and was probably one of the most experienced investigators within SACAT.

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MR JONES: Okay. But you remained involved in the matter -

SNR CONST FRIZZELL: Correct. I was, yes.

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MR JONES: - as the -

SNR CONST FRIZZELL: Corroborator.

MR JONES: What police call the corroborator?

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SNR CONST FRIZZELL: Yes.

MR JONES: Okay. So you were just as involved in the investigation, but he's leading it and you go along with every other step with him?

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SNR CONST FRIZZELL: Yes.

MR JONES: Thank you. On 12 - and you can feel free to look at your statement on paragraph 340. On 12 July 2021, Detective Superintendent Moller, Detective Inspector Boorman flew to Brisbane and met with Ms Higgins and Ms Yates?

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SNR CONST FRIZZELL: Yes.

MR JONES: At 341, you say that you were provided information about that meeting?

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SNR CONST FRIZZELL: Yes.

MR JONES: At 344, you went on to send an email to Detective Superintendent Moller seeking approval to interview Ms Yates.

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SNR CONST FRIZZELL: Yes.

MR JONES: Do you see that?

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SNR CONST FRIZZELL: Yes.

MR JONES: In what format did you receive the information and what information did you receive that you refer to in 341? And by "what format", I mean was it a briefing, a meeting with someone or an email or a phone call?

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SNR CONST FRIZZELL: I - I don't recall specifically how it was that I was briefed. Yes. Sorry.

MR JONES: Okay. All right. Thank you. That can be taken down now. I want to just take you through the development of your second statement insofar as it touches on the evidence certificates and get you to step the Chair through -

5 **THE CHAIRPERSON:** The disclosure certificates.

MR JONES: Sorry, disclosure certificates, and get you to step the Chair through some correspondence and then those certificates, okay? And then Mr Tedeschi will cross-examine you, okay? Could AFP.2002.0001.0965 be brought up, please. Do you recognise that document, Senior Constable?

SNR CONST FRIZZELL: Yes, I do.

15 **MR JONES:** That's an email from you to David Fleming on 12 April 2022 at 11.25 am?

SNR CONST FRIZZELL: Yes. Sorry.

MR JONES: And it attaches a number of documents there. Would you - do you have any recollection of what each of those documents were?

20 **SNR CONST FRIZZELL:** From the best of my knowledge - so the first one refers to scan and AFP number. I believe that that is what has been referred to as the Moller report.

MR JONES: Okay. And is that the incorporated document, so the Moller executive briefing, the Boorman minute?

25 **SNR CONST FRIZZELL:** Yes.

MR JONES: Right.

30 **SNR CONST FRIZZELL:** And then you've got identified discrepancies and review doc. So there were some tables that were created. And then you've got a DPP copy and a defence copy of the disclosure statements completed on 28 February 2022.

35 **MR JONES:** And as at that date, were they in draft form, were they, the disclosure statements?

SNR CONST FRIZZELL: Those disclosure statements appear to be PDFs. So I would assume - apologies. I would assume, as PDFs, they were signed scanned copies.

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MR JONES: All right.

THE CHAIRPERSON: So just so we can follow it - so I can follow it, you are writing to Mr Fleming. What was Mr Fleming's role in this matter?

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SNR CONST FRIZZELL: He was a detective sergeant assigned to the team.

THE CHAIRPERSON: Right. And you are sending him some documents. The first attachment, Scan_AFP - and then there's a set of numbers - what was that, do you remember?

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SNR CONST FRIZZELL: I believe that that was what has been referred to as the Moller report.

5 **THE CHAIRPERSON:** The Moller report and the attached Boorman analysis of credit points -

SNR CONST FRIZZELL: Yes.

10 **THE CHAIRPERSON:** - and so on; is that right?

SNR CONST FRIZZELL: Yes.

15 **THE CHAIRPERSON:** And then the next one is Identified Discrepancies. Well, that's part of that bundle.

SNR CONST FRIZZELL: Yes.

20 **THE CHAIRPERSON:** And the next one, Review, that's another part of that bundle. And then we have two documents each called Disclosure Statement, one called DPP Copy and the other one called Defence Copy. So you have prepared these documents in -

SNR CONST FRIZZELL: Yes.

25 **THE CHAIRPERSON:** When they were drafts, you drafted them?

SNR CONST FRIZZELL: Yes. Yes.

THE CHAIRPERSON: And then Mr Moller signed them later?

30 **SNR CONST FRIZZELL:** Yes.

THE CHAIRPERSON: And so there are two disclosure statements prepared. Are you going to deal with the differences, Mr Jones?

35 **MR JONES:** I am. And I will develop it shortly, but -

THE CHAIRPERSON: Right.

40 **MR JONES:** - can I give, Senior Constable, you, this -

45 **THE CHAIRPERSON:** And just to remind everybody, these are the statements listing all of the documents that are potentially disclosable to the defence, some of which are going to be withheld because of legal professional privilege or public interest immunity or confidentiality reasons. But nevertheless all the documents that are relevant to be disclosed, whether they are disclosed or not, are listed in this disclosure statement.

SNR CONST FRIZZELL: Yes, that's right.

50 **THE CHAIRPERSON:** Thank you.

MR JONES: Just to give you this anchor point - I will come to the documents in a minute, but they were signed - that is, the certificates were signed by Detective Superintendent Moller on 28 April 2022, okay?

5 **SNR CONST FRIZZELL:** Not these ones in this email.

MR JONES: Not these ones?

SNR CONST FRIZZELL: Yes.

10

MR JONES: Right. Okay. Thank you. Next to that email, could we have DPP.005.008.5130 brought up, please. DPP.005.008.5130. Now, that's an email from David Fleming to Mr Drumgold of 12 April at 1518 - 3.18?

15 **SNR CONST FRIZZELL:** Yes.

MR JONES: That is, the document on the right-hand side of the screen.

SNR CONST FRIZZELL: Yes.

20

MR JONES: And it appears to be, by and large, a cut and copy of much of your text. Do you agree with that?

SNR CONST FRIZZELL: Yes.

25

MR JONES: From your email on the left-hand side of the screen?

SNR CONST FRIZZELL: Yes.

30 **MR JONES:** And in it, in the first paragraph after "sir", it says that:

"AFP Legal who have indicated the documents would fall under schedule 3."

SNR CONST FRIZZELL: Yes.

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MR JONES: Can you tell me what schedule 3 is, please?

SNR CONST FRIZZELL: Schedule 3 don't carry any immunities. The documents within schedule 3 don't.

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MR TEDESCHI: I'm having difficulty hearing you.

SNR CONST FRIZZELL: Sorry. The documents within schedule 3 don't carry any immunities to them.

45

MR JONES: So they are documents in police possession of which legal professional privilege or public interest immunity are not claimed over?

SNR CONST FRIZZELL: Correct.

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MR JONES: But may otherwise be irrelevant in police opinion?

SNR CONST FRIZZELL: Yes.

5 **MR JONES:** But are being told to the reader of the certificate that we have them?

SNR CONST FRIZZELL: Yes, that's right.

10 **MR JONES:** Okay. In the box that appears in your email and Mr Fleming's email, it says:

"Administrative correspondence and documentation in relation to Mr Lehrmann and Ms Higgins."

15 **SNR CONST FRIZZELL:** Yes.

15

MR JONES: What is that a reference to?

THE CHAIRPERSON: I think Senior Constable Frizzell said that. That's the - Mr Moller's document, Mr Boorman's document and the other - analysis document - review documents.

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MR JONES: Okay. You will see there that there are the same documents attached, but not as many documents attached to Fleming's email there?

25 **SNR CONST FRIZZELL:** That's right.

25

MR JONES: I just want to have these documents brought up so you can look at them and tell me if they are the documents that were attached to that email, that is, by reference to the name in the attachment section of the email. So perhaps bring it up on the left-hand side, please, Mr Operator. DPP.005.008.5171. Is that one of the documents attached to that email?

30

SNR CONST FRIZZELL: Yes, it is.

MR JONES: And what -

35 **SNR CONST FRIZZELL:** Identified Discrepancies.

MR JONES: And that's identified in the attachments as Identified Discrepancies?

40 **SNR CONST FRIZZELL:** Yes.

40

MR JONES: The next one is DPP.005.008.5175. Is that one of the documents attached to that email?

45 **SNR CONST FRIZZELL:** Yes, that's the review doc.

45

MR JONES: Thank you. And DPP.005.0008.5133. Sorry, 008 is on top of it. Now, have a look at that page and digest it and then I will ask the operator to go to 5138. The next page is 5154, but in this version - I think it's been redacted to death. Yes. So perhaps if you could bring up WIT.0031.0001.0003_0192. And then back to the other bundle of documents. And if you could go to page 5156, please. No, you can - I just want Senior Constable to have seen

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the documents before I ask her the question. Is that bundle of documents you've just seen attached to Mr Fleming's email?

SNR CONST FRIZZELL: Yes.

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MR JONES: And how is that described in Fleming's email - Detective Sergeant Fleming's email? In the attachment section -

SNR CONST FRIZZELL: Yes.

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MR JONES: - what's the title given to those documents?

SNR CONST FRIZZELL: So the report is called Scan_AFP18974 and then date.

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MR JONES: Thank you. All right. Those two documents can come down now. Could WIT.0050.0001.0028_0001 be brought up, please? And can we have the bottom part of that email and the next page over on the screen, please. Do you recognise that email of 20 April 2022 at 12.09 pm?

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SNR CONST FRIZZELL: Yes.

MR JONES: And it's an email from you to Erin Priestly and Skye Jerome?

SNR CONST FRIZZELL: Yes, it is. Yes.

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MR JONES: And who are they?

SNR CONST FRIZZELL: Members of the office of DPP.

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MR JONES: And what are you writing to them about there?

SNR CONST FRIZZELL: To arrange a meeting with Detective Sergeant Fleming, Detective Leading Senior Constable Madders and I. Just as due course to meet in the lead-up to the trial to see if there is any outstanding inquiries.

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THE CHAIRPERSON: At that point, the trial is going to be in June, I think; is that right?

SNR CONST FRIZZELL: That's right, yes.

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MR JONES: And if we then take - you can keep them on the screen, but if you can get rid of the little boxes, please. Above that, you get a response locking in the date, 2.30 pm on 27 April for that meeting, 2022?

SNR CONST FRIZZELL: Yes, that's correct.

45

MR JONES: Could we have WIT.0050.0001.0028_0003. This is a file note prepared by the DPP of that meeting that you had on 27 April 2022 with them, and it identifies you and Detective Sergeant Fleming attending with Ms Jerome and Ms Priestly?

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SNR CONST FRIZZELL: Yes, it is.

MR JONES: Did you take any diary notes of that meeting yourself?

SNR CONST FRIZZELL: I did.

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MR JONES: And feel free to open your diary to the relevant page and your notes. The DPP note has you - records there being a discussion about a number of things. Focusing in on the next page, which is 0004, there is the third dot point there:

10 "DPP asked what documents are internal documents from AFP and includes individual officers' assessment of strengths, weaknesses of case."

Do you want me to read that next dot point? Yes:

15 "AFP confirms does not introduce any new material."

Do you see that there?

SNR CONST FRIZZELL: Yes.

20

MR JONES: Looking at that and looking at your diary note and calling on your memory as best you can, what discussions were had about the disclosure certificates - sorry, let me come back. What discussions were had about the Boorman - sorry, let me start again. Were any discussions had about the Boorman minute and the Moller executive briefing?

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SNR CONST FRIZZELL: I don't recall specifically them being discussed. I do recall the discrepancy review documents being discussed, because I recall providing a - an explanation of them, essentially, being that, you know, they would outline evidence that Ms Higgins had provided us, alongside evidence that had been obtained throughout the investigation. I recall that. I don't recall specifically the Moller report being discussed.

30

MR JONES: And did the meeting conclude with Ms Jerome and Ms Priestly having to speak to Mr Drumgold about some things and they would get back to you?

35 **SNR CONST FRIZZELL:** Yes, that's right.

MR JONES: Thank you. All right. Could WIT.0050.0001.0029_0001 be brought up on the screen, please. _0001. I will give you - just let Mr Tedeschi see that number, can you please, Mr Operator. Can you see that there? That's okay. And page _0002, please. The date is cut off, but it's an email from Ms Priestly to yourself, 27 April 2022 at 1651 - 4.51 pm. And you will see there:

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"Hi Emma, thank you for meeting with us today."

45 That's obviously a reference to the meeting you had that I've just taken you to:

"We have spoken to Shane and confirm the following. The DPP is of the view that the internal AFP documents discussed today at the meeting are not disclosable. Could they please be placed on the updated disclosure certificate?"

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What documents do you understand that to be referring to and where are they to be placed?

SNR CONST FRIZZELL: From that email, I can't - I can't confirm what documents exactly that it's referring to or where on the disclosure certificate.

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MR JONES: All right. And refreshing your memory with your notes doesn't help you?

SNR CONST FRIZZELL: They are not specific.

10 **MR JONES:** Okay. All right. And then back over the page to page 1, you respond:

"Thanks for the advice . It's greatly appreciated."

15 And then you address some other matters to do with a notebook and some CCTV footage there?

SNR CONST FRIZZELL: That's right, yes.

20 **MR JONES:** Could two documents be brought up side by side, please, the first DPP.005.008.5356. And could DPP.005.008.5332 be brought up, please. What are these two documents?

25 **SNR CONST FRIZZELL:** So they are the disclosure certificates. The disclosure certificate on the left is the defence copy, and the disclosure certificate on the right is the DPP copy.

25

MR JONES: And how do you recognise one as defence and one as the DPP copy?

30 **SNR CONST FRIZZELL:** The DPP copy has the witness address and telephone numbers in it, whereas the defence copy does not have those details.

30

MR JONES: Okay. Now, both these documents were signed on 28 April 2022?

SNR CONST FRIZZELL: Yes.

35 **MR JONES:** Are they produced at the same time?

SNR CONST FRIZZELL: Yes, they are.

40 **MR JONES:** Okay. Can you take us through the process of how you produced them and -

40

SNR CONST FRIZZELL: How I create them?

45 **MR JONES:** Yes, how you create them and how - how you present them to be signed by Detective Superintendent Moller.

45

SNR CONST FRIZZELL: So I create two separate documents. To ensure that I don't inadvertently keep witness details within the defence disclosure certificate, I create two separate documents and I carry the information across between the two. So I've created these. And in this case, I believe I provided them to Detective Sergeant Fleming by email and

requested that Detective Superintendent Scott Moller sign the documents and provide them back to me.

5 **MR JONES:** And I'm not sure if I asked you this, but did you create these two documents?

SNR CONST FRIZZELL: Yes, I did.

10 **MR JONES:** If the - on the two - three-column document - so the one on the right-hand side - would you go to page 5346, please. Sorry, four-column one. And there it identifies what schedule 3 is?

SNR CONST FRIZZELL: Yes, it does.

15 **MR JONES:** And that's what you were telling us before; is that right?

SNR CONST FRIZZELL: That's right.

20 **MR JONES:** Did you become aware of an error whereby the DPP copy was served on the defence?

MR TEDESCHI: Could I ask my friend to ask her when that happened as well?

MR JONES: Sure. Did you become -

25 **THE CHAIRPERSON:** I think he will get there. I think he will get there.

MR JONES: Did you become aware of an error whereby the DPP copy was served on the legal representatives at the time, I think Legal Aid ACT, incorrectly?

30 **SNR CONST FRIZZELL:** I only became aware of that during these proceedings.

MR JONES: Okay.

35 **THE CHAIRPERSON:** But, in fact, at the time that these documents were being - after you produced these documents and after Superintendent Moller signed them, as you now know, the - by mistake, the DPP copy containing contact details had been served on Legal Aid?

SNR CONST FRIZZELL: Yes.

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

MR JONES: Could the one on the right-hand side be turned to page 5347. It should be the next page. See the - of the not redacted portions there, the third one starting with, "Administrative correspondence"?

45 **SNR CONST FRIZZELL:** Yes.

MR JONES: Down the bottom, sorry.

50 **SNR CONST FRIZZELL:** Yes.

MR JONES: Yes. What does that entry relate to?

5 **SNR CONST FRIZZELL:** That entry relates to, I guess, essentially what the description is beside it, the internal AFP briefing investigative material. So that relates to what has been referred to as the Moller report and some of the review documents.

10 **MR JONES:** And so when you say "Moller report", you are talking about the executive briefing -

SNR CONST FRIZZELL: Correct.

MR JONES: - by Detective Superintendent Moller?

15 **SNR CONST FRIZZELL:** Yes.

MR JONES: And the minute by Detective Inspector Boorman?

20 **SNR CONST FRIZZELL:** Yes.

MR JONES: And that is in - as we have just seen, in schedule 3 there of the DPP copy?

SNR CONST FRIZZELL: Yes.

25 **MR JONES:** Which is the area where there is no claim for privilege over it?

SNR CONST FRIZZELL: Correct.

30 **MR JONES:** And you put that in there?

SNR CONST FRIZZELL: Yes.

MR JONES: Did you put that in the defence copy of the document as well?

35 **SNR CONST FRIZZELL:** Yes.

MR JONES: Thank you. Over the page at 5348, you see the first entry there, "investigative review documents"?

40 **SNR CONST FRIZZELL:** Yes.

MR JONES: What are you referring to there?

45 **SNR CONST FRIZZELL:** It was a review document. And, again, the description of what the document is is to the right.

MR JONES: All right. Did that relate to Detective Superintendent Moller's executive briefing or Detective Inspector Boorman's minute?

50 **SNR CONST FRIZZELL:** No.

MR JONES: Did that entry exist in the defence copy?

SNR CONST FRIZZELL: No, it did not.

5

MR JONES: Why not?

SNR CONST FRIZZELL: It was an administrative error.

10 **MR JONES:** Okay.

THE CHAIRPERSON: That is, by you. You mistakenly left it out somehow?

SNR CONST FRIZZELL: Yes. Unintentionally.

15

THE CHAIRPERSON: This document we are looking at on the right-hand side of the screen, Mr Jones, what is it? It is the defence copy or the DPP copy?

MR JONES: It is the DPP copy, which I understand was incorrectly served on Legal Aid.

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THE CHAIRPERSON: Yes. Yes.

MR JONES: And when it was rectified, the defence copy on the left-hand side omitted this entry. We are about to hear why. But an administrative error -

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THE CHAIRPERSON: Well, I think we just heard. But, anyway, you go ahead.

MR JONES: How did that administrative error occur and when did you discover it occurring?

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THE CHAIRPERSON: Let's do it one at a time.

MR JONES: Sorry. How did that administrative error occur?

35 **SNR CONST FRIZZELL:** As I said before, I - I create two documents separately so as to not inadvertently carry material across from one to the other. And it is just by error that I have missed one row -

THE CHAIRPERSON: I take it -

40

SNR CONST FRIZZELL: - in creating -

THE CHAIRPERSON: - just as if you are copying line by line in handwriting, a line of print on a page and you are copying it on to a second page, your eye skips over, and instead of copying the second line, you then jump to the third line and you missed the second line. So here you are cutting and pasting, I take it, from document A to document B. Document A is the master copy, which is the DPP copy with contacts in.

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SNR CONST FRIZZELL: Yes.

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THE CHAIRPERSON: And you cut from - you copy from the DPP copy row by row, and you skipped a row?

SNR CONST FRIZZELL: Yes.

5

THE CHAIRPERSON: I understand.

MR JONES: When did you discover that error?

10 **SNR CONST FRIZZELL:** During these proceedings.

MR JONES: And -

MR TEDESCHI: Sorry, I missed that.

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SNR CONST FRIZZELL: During these proceedings.

MR TEDESCHI: Thank you.

20 **MR JONES:** And how were you able to verify that that's what happened, that was the error and the timing of the error?

SNR CONST FRIZZELL: Sorry, what do you mean?

25 **THE CHAIRPERSON:** How did you work out that you had made that mistake?

SNR CONST FRIZZELL: Just comparing the two and the - the Word documents. So my working copies.

30 **MR JONES:** All right. Did you look at some data - metadata?

SNR CONST FRIZZELL: Yes, I did.

MR JONES: And what did the metadata tell you?

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SNR CONST FRIZZELL: They were both created - I think it was 27 April at 5.50 something in the afternoon. But they were both edited at the same time.

40 **MR JONES:** Thank you. They can - actually, if you can take the document on the left-hand side down, please, which is the defence copy. And could you bring up DPP.005.003.1286. Now, this is a DPP file note of a conference of 16 June 2022. Do you recognise that?

SNR CONST FRIZZELL: Yes.

45 **MR JONES:** And you are identified as one of the people present?

SNR CONST FRIZZELL: Yes.

MR JONES: Do you have any diary notes of that meeting?

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SNR CONST FRIZZELL: I believe I do.

MR JONES: Feel free to turn to the diary note.

5 **SNR CONST FRIZZELL:** Sorry, what date did you say it was?

MR JONES: 16 June 2022.

SNR CONST FRIZZELL: Yes.

10

MR JONES: I will just give you a chance to refresh your memory. Have a read of it.

SNR CONST FRIZZELL: Yes.

15 **MR JONES:** Was this a meeting requested by the AFP or ACT Police?

SNR CONST FRIZZELL: I don't recall, sorry.

20 **MR JONES:** And do you recall whether, at the time of this meeting, requests had been made for disclosure and a subpoena received?

SNR CONST FRIZZELL: Yes.

MR JONES: Who was the serving party for the subpoena?

25

SNR CONST FRIZZELL: Sorry, what -

MR JONES: Who served the subpoena? Where did it come from?

30 **SNR CONST FRIZZELL:** Defence.

MR JONES: Defence?

SNR CONST FRIZZELL: Yes.

35

MR JONES: The fourth dot point there refers to "investigative review documents"?

SNR CONST FRIZZELL: Yes.

40 **MR JONES:** What documents were being discussed during this meeting relevant to the investigative review documents?

MR TEDESCHI: I object.

45 **MR JONES:** Why is that?

THE CHAIRPERSON: Sorry? Yes.

MR TEDESCHI: Can I make a submission in the absence of the witness?

50

THE CHAIRPERSON: Yes. Would you excuse us, Senior Constable?

<THE WITNESS STOOD DOWN

5 **THE CHAIRPERSON:** Just excuse me, Mr Tedeschi. What was your question?

MR JONES: "What documents were being discussed during this" -

10 **THE CHAIRPERSON:** This point that's recorded. Yes. Thank you. Yes, Mr Tedeschi.

MR TEDESCHI: It would seem to us, Chairman, that she's given evidence that her use of that term "investigative review documents" in the disclosure certificate did not relate to the Moller report and the Boorman minute. They were described in another section of the disclosure certificate.

15 **THE CHAIRPERSON:** No, I thought she said - in any event, so what? She's being asked what was discussed in relation to the bullet point that's in blue on the screen at the moment.

20 **MR TEDESCHI:** Yes. And it would appear to us that by this stage when there's discussions about the investigative review documents, it does include the Moller report and the Boorman minute. So she can be asked what she understood the discussions were about. She can't be asked -

25 **THE CHAIRPERSON:** No. She was present, wasn't she?

MR TEDESCHI: Yes, she was present, but -

30 **THE CHAIRPERSON:** And she's got her own notes she's looking at. And she's asked what was said about those documents.

MR TEDESCHI: What she can't say is what other people thought was referred to by the investigative review -

35 **THE CHAIRPERSON:** She wasn't asked that. She was asked what was said about it.

MR TEDESCHI: She was asked what the discussion - which documents the discussion was about.

40 **THE CHAIRPERSON:** Yes. Well, she was there, and she can tell us what documents. I'm against you. Go ahead, Mr Jones. Call her back.

<EMMA LOUISE FRIZZELL, CONTINUING

<EXAMINATION BY MR JONES:

45 **THE CHAIRPERSON:** Repeat the question, please.

50 **MR JONES:** Which documents were discussed at that meeting of 16 June 2022 that related to the "investigative review documents" entry?

THE CHAIRPERSON: Do you have notes of what was discussed, Senior Constable?
Would that assist you?

5 **SNR CONST FRIZZELL:** I do, but not specific documents.

THE CHAIRPERSON: Well, you are being asked to recall, then -

MR JONES: Yes. Do you have any memory?

10 **THE CHAIRPERSON:** - what documents were being discussed.

SNR CONST FRIZZELL: Not - not specifically.

15 **MR JONES:** Okay. They can be taken down, please. Can you bring up DPP.005.008.5239,
please, and turn to page 5240. Then go down to the bottom. And could you bring up next to
that, over the next page, please. Can you include the "from" and "sent" and dates and things
on the left-hand side, please. Thanks. Just have a look at that email there, please. Have a read
of the left-hand side, and then it runs on to the right-hand side.

20 **SNR CONST FRIZZELL:** Yes.

MR JONES: That's an email from a person called Stephanie?

25 **SNR CONST FRIZZELL:** Mmm.

MR JONES: Who is Stephanie?

SNR CONST FRIZZELL: She's a member of AFP Legal.

30 **MR JONES:** Thank you. It's sent on 20 June 2022 at 7.10 pm?

SNR CONST FRIZZELL: Yes.

35 **MR JONES:** And you are reading in copy there. Can you see your email address?

SNR CONST FRIZZELL: Yes.

MR JONES: Do you remember this email?

40 **SNR CONST FRIZZELL:** Vaguely.

MR JONES: Do you understand the first opening paragraph there:

45 "Further to our meeting last week..."

Do you understand which meeting that is referring to?

SNR CONST FRIZZELL: The meeting on 16 June.

MR JONES: Thank you. And a number - you will see there in that same paragraph, it refers to "investigative review documents"?

SNR CONST FRIZZELL: Yes.

5

MR JONES: And then it identifies a number of documents in the following paragraphs by reference to dates?

SNR CONST FRIZZELL: Yes, it does.

10

MR JONES: And the first two make reference to Mr Boorman's minute and Mr Moller's executive briefing?

SNR CONST FRIZZELL: Yes, it does.

15

MR JONES: And that is connected there in that email to investigative review documents. Do you see that?

SNR CONST FRIZZELL: Yes.

20

MR JONES: Earlier, you had described the investigative review documents in the certificate as not including those documents? If you want to have it brought up, but this is - you've got here investigative review documents on the right-hand side:

25

"This document outlines a version of events as supplied by Ms Higgins during the course of her engagements with police since 2019 against the available evidence and subsequent discrepancies available."

Do you know what I mean?

30

SNR CONST FRIZZELL: Yes.

MR JONES: Yes. Is that right?

35

SNR CONST FRIZZELL: Yes.

MR JONES: Yes. Thank you.

40

THE CHAIRPERSON: So the DPP's office had - I'm looking at the second page, the paragraph beginning, "We understand." So the document that Mr Boorman prepared and the document that Mr Moller prepared, they had previously been sent to the DPP. And the 2 August document had been prepared by another officer. That was part of the red team review, was it?

45

MR JONES: Beg your pardon?

THE CHAIRPERSON: Was that part of the red team review? The red team review -

50

MR JONES: The investigative review document, sorry?

SNR CONST FRIZZELL: Yes.

THE CHAIRPERSON: I'm looking at the 2 August document in the foot of the left-hand page.

5

MR JONES: Yes, I suspect that says -

THE CHAIRPERSON: Yes. So that's -

10 **MR JONES:** A person we have heard of.

THE CHAIRPERSON: That was prepared two months later. And the documents at the top of the right-hand page are ones you have referred to earlier, Senior Constable. They were PDFs in that list?

15

SNR CONST FRIZZELL: Yes.

THE CHAIRPERSON: So we have got a new document, the 2 August document, to which you have not made reference previously. But otherwise some of those documents had been shown to the Director previously. All right. Thanks. I understand. Go on, Mr Jones.

20

MR JONES: And it concludes there, you, that is, Frizzell's email:

"ACT Policing will provide you with the other documents captured by the disclosure request."

25

Do you see that in the second-last paragraph there?

SNR CONST FRIZZELL: Yes. Yes.

30

MR JONES: That's a reference to the disclosure request made by the legal representatives for Mr Lehrmann. Thank you. And they can be taken down. Could DPP.005 -

THE CHAIRPERSON: I'm sorry. Could you go back to that again?

35

MR JONES: Sorry. We will bring those two documents up. Thank you.

THE CHAIRPERSON: So in the middle of the right-hand page, the legal officer AFP is writing that they had not previously provided the 2 August document or the two other documents at the top of that page?

40

MR JONES: No. My understanding is that in the smaller paragraph on the right-hand side towards the top:

"We understand the Director has previously received the documents..."

45

THE CHAIRPERSON: I know, but she's saying that they hadn't in the middle of the page.

MR JONES: Assuming at this stage the Director's position is that the first two documents should -

50

THE CHAIRPERSON: No, the next paragraph.

MR JONES:

5

"We do not believe you have previously been provided with the third and fourth documents, being the identified..."

10 The commander - the red team review is the third document that they haven't been provided with. And the fourth, being the identified discrepancies, and the fifth document, being the review doc, but the DPP had previously been provided with -

THE CHAIRPERSON: Yes, yes. I'm saying she's saying that those are the three documents that she believed had not been provided.

15

MR JONES: Yes. Yes.

THE CHAIRPERSON: And she's saying that it looks to her like they are disclosable -

20

MR JONES: Yes.

THE CHAIRPERSON: - but is inviting the DPP's view about those three documents. And we know that the 2 August document is one that the DPP had not seen before, at least we haven't seen - that looks like that's so.

25

MR JONES: That's right.

THE CHAIRPERSON: And so a view is being sought about those documents. All right. I understand it now.

30

MR JONES: DPP.005.0050468. Just before the email you are looking at at the moment - can we have the two pages up again, please. The bottom email there is the email you have just been taken through. Do you accept that?

35

SNR CONST FRIZZELL: Yes.

MR JONES: That is, from Stephanie, 20 June, and your reading in copy?

SNR CONST FRIZZELL: Yes.

40

MR JONES: And then above it is an email from the Director's office from Erin Priestly?

SNR CONST FRIZZELL: Yes.

45

MR JONES: You are reading in copied?

SNR CONST FRIZZELL: Yes.

MR JONES: And it is 21 June 2022?

50

SNR CONST FRIZZELL: Yes.

5 **MR JONES:** And it's indicated the Director has reviewed that material and is of the view that the documents are preparatory to confidential communications between the DPP and AFP for the dominant purpose of providing legal advice and are not disclosable. Further, where the documents amount to inadmissible opinion evidence, it would not seem to be relevant or possible - possibly relevant to an issue in the case?

10 **SNR CONST FRIZZELL:** Yes.

MR JONES: Thank you. They can be taken down. You conducted a meet and greet with Ms Higgins?

15 **SNR CONST FRIZZELL:** Yes, I did.

MR JONES: During that meet and greet, you made a referral to SupportLink?

SNR CONST FRIZZELL: Yes, I did.

20 **MR JONES:** Can you tell us what SupportLink is and what the process for making the referrals is, please?

25 **SNR CONST FRIZZELL:** Yes. So SupportLink is an external agency from the AFP where we make - so we make online referrals, generally. So, for example, you would say a person's name and what it - specifically what it is that you are after for that person. That goes across to SupportLink, and then there's numerous agencies that operate under them that they will essentially dish out to the relevant agency.

30 **MR JONES:** And are you notified when a complainant accepts or rejects the service - the referral?

SNR CONST FRIZZELL: Yes.

35 **MR JONES:** In your investigation in this matter, you obtained - you took possession of Ms Higgins' counselling records?

SNR CONST FRIZZELL: Yes.

40 **MR JONES:** That was you personally who did that?

SNR CONST FRIZZELL: Yes.

MR JONES: Can you step us through why you did that and how did you it, please?

45 **SNR CONST FRIZZELL:** How I obtained her counselling records? I sought Ms Higgins' consent - written consent to obtain her counselling records, requested them and received them. And why I did that was she had listed them out as being part of people that she had disclosed the incident to.

MR JONES: Right. And so is this an attempt by police to gather what's called - I think you call it complainant evidence or preliminary complainant evidence?

SNR CONST FRIZZELL: Yes.

5

MR JONES: Thank you. Thank you. They are the evidence-in-chief.

THE CHAIRPERSON: Thank you. Mr Tedeschi, do you go first?

10 **<EXAMINATION BY MR TEDESCHI:**

MR TEDESCHI: Yes. Thank you. Senior Constable, I would like to take you to parts of your statement. Do you have a copy with you?

15 **SNR CONST FRIZZELL:** Yes, I do.

MR TEDESCHI: Can I take to you paragraph 60, please.

THE CHAIRPERSON: Shall we have it up on the screen, Mr Tedeschi?

20

MR TEDESCHI: I don't think it's necessary. In paragraph 60, you say that during your tenure at SACAT that you had not been involved in an investigation where your superintendent had been actively involved. That's the case, is it?

25 **SNR CONST FRIZZELL:** That is the case.

MR TEDESCHI: And I think you were in SACAT for something like three and a half years?

SNR CONST FRIZZELL: That's right.

30

MR TEDESCHI: And you say how many investigations you did - you estimated it at 40 to 50 different complaints of sexual assault?

SNR CONST FRIZZELL: Yes.

35

MR TEDESCHI: Can I take you now, please, to paragraph 80.

SNR CONST FRIZZELL: Yes.

40 **MR TEDESCHI:** You describe there what you viewed as being the test for charging of a suspect; is that right?

SNR CONST FRIZZELL: Yes.

45 **MR TEDESCHI:** You say:

"I must have a reasonable belief that the evidence supports a person being successfully convicted. What has complicated this threshold in recent times is the views being expressed by the ODPP that police only require a reasonable suspicion."

50

Is this the case: that there is, even today, some confusion amongst police officers as to what the correct test is for charging a person?

SNR CONST FRIZZELL: Sorry?

5

MR TEDESCHI: Do you agree that even today there's some confusion or some disagreement amongst police about what the test is for charging a suspect?

SNR CONST FRIZZELL: Yes, I would say that there is.

10

MR TEDESCHI: And so far as you are concerned, you say that your test is that you must have a reasonable belief that the evidence supports a person being successfully convicted. Does that entail you trying to assess how likely a conviction is based on the evidence?

SNR CONST FRIZZELL: Yes, that's what it says.

MR TEDESCHI: Is that your understanding of the test?

SNR CONST FRIZZELL: I think having watched these proceedings for the last week and a half that I would concede that I don't have it right.

20

MR TEDESCHI: That - sorry?

SNR CONST FRIZZELL: It's not right - what I've written there is not right.

25

MR TEDESCHI: Right. And do you know about section 26 of the Magistrates Court Act?

SNR CONST FRIZZELL: Not specifically, no.

THE CHAIRPERSON: It's the provision that says a police officer may commence proceedings in the Magistrates Court if an offence has been committed or an officer suspects that an offence has been committed. It's the one which gives you the power to charge.

30

MR JONES: Well - and also 216 and 219 of the Crimes Act has the reasonable belief -

35

THE CHAIRPERSON: Correct. That's different.

MR JONES: That's right.

THE CHAIRPERSON: That's not what Mr Tedeschi was asking about. Go ahead, Mr Tedeschi.

40

MR TEDESCHI: Thank you. Could I take you now to paragraph 87 where you refer to a committee known as the Criminal Investigations Management Committee. And you say that:

45

"In sexual assault investigations, a member's decision not to charge must be endorsed by that committee."

Is that the situation now?

50

SNR CONST FRIZZELL: Yes, that's right.

MR TEDESCHI: And is that a situation that changed either in late 2021 or early 2022?

5 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And this committee, does that consist of three superintendents?

10 **SNR CONST FRIZZELL:** I'm unaware of the rank of the people that sit in the committee.

MR TEDESCHI: All right. But the situation previously was that the case manager, often a sergeant who was in charge of particular investigations, would make that decision whether somebody was not going to be charged?

15 **SNR CONST FRIZZELL:** Well, the case officer or the informant of the matter will make that decision - or the recommendation. And then their team leader, being the detective sergeant, would review and either support it or not support it.

20 **MR TEDESCHI:** So generally it was decided at sergeant level, that decision?

SNR CONST FRIZZELL: They ultimately finalise the matter, yes.

25 **MR TEDESCHI:** Whereas now, this committee reviews the decision and either says "yes" or "no"?

SNR CONST FRIZZELL: That's right.

30 **MR TEDESCHI:** And I think you say that that change was made some time in 2022? This is paragraph 90.

SNR CONST FRIZZELL: Yes.

35 **MR TEDESCHI:** And what you say is that the practical effect is that if there's insufficient evidence, it must be approved by that committee. And the practical effect is that you can be directed to charge a person by that committee?

SNR CONST FRIZZELL: Yes.

40 **MR TEDESCHI:** In paragraph 92, you say that around the time the Sexual Assault Prevention and Response Steering Committee - known as SAPR Committee - released a final report, that you observed a shift in members' views of sexual assault complaints and the threshold required to charge an alleged offender. When you say "members", do you mean police officers?

45 **SNR CONST FRIZZELL:** Yes.

50 **MR TEDESCHI:** And if I could take you to paragraph 102. You say that around the time of the SAPR Committee's final report, again, you say you observed a shift in views in relation to complaints and the threshold to charge. You also say:

"I also noted the external input of other agencies was strong within the area, which I believe shifts the focus away from investigative skills and towards welfare and support of complainants and their families."

5 By "external input of other agencies", were you specifically thinking of the ODPP?

SNR CONST FRIZZELL: Not just the ODPP.

MR TEDESCHI: Which organisations were you thinking of?

10

SNR CONST FRIZZELL: Some of the support agencies that we work closely with.

MR TEDESCHI: Sorry?

15 **SNR CONST FRIZZELL:** Some of the support agencies that we work closely with.

MR TEDESCHI: Like the VCC?

SNR CONST FRIZZELL: Yes.

20

MR TEDESCHI: Pardon me. Which other agencies were you thinking of?

SNR CONST FRIZZELL: Victims of Crime, Victim Support, Canberra Rape Crisis Centre.

25 **MR TEDESCHI:** Support organisations of victims?

SNR CONST FRIZZELL: Yes. Yes.

MR TEDESCHI: In paragraph 104, you say that:

30

"As a result of the review, there was an internal review of historical and current SACAT investigations commenced."

35 Is that a review that looked at, and is still looking at, several hundred cases in 2020 and 2021 where there had been no charge preferred after a complaint of sexual assault?

SNR CONST FRIZZELL: I couldn't tell you specifically about the reviews. I'm aware, just as a member in SACAT, that jobs were being reviewed.

40 **MR TEDESCHI:** Decisions that had been made previously by SACAT members were being reviewed?

SNR CONST FRIZZELL: Yes. As part of the jobs.

45 **MR TEDESCHI:** All right. And you say you observed an increase in complaints made about investigators by complainants, either directly or via support agencies. What are you referring to there?

SNR CONST FRIZZELL: Just generally there had been complaints made.

50

MR TEDESCHI: Complaints about a decision not to charge?

SNR CONST FRIZZELL: Potentially. I couldn't tell you the ins and outs of them.

5 **MR TEDESCHI:** All right. And you then say:

"As a result, members..."

That's members of SACAT?

10

SNR CONST FRIZZELL: Yes.

MR TEDESCHI:

15 "...were becoming increasingly wary of finalising investigations without action being taken, and members lost confidence in their decision-making. This was exacerbated by the implementation of the overview committee."

SNR CONST FRIZZELL: Yes.

20

MR TEDESCHI: So would it be fair to say that the implementation of that committee and the changes that were brought about in early 2022 resulted in a serious loss of morale amongst SACAT officers?

25 **SNR CONST FRIZZELL:** I wouldn't say a serious lot of morale. But there was - as I've stated in my statement, there was a shift. Yes.

MR TEDESCHI: And a loss of confidence?

30 **SNR CONST FRIZZELL:** Somewhat, yes.

MR TEDESCHI: And would it be fair to say that the primary source of these changes was viewed by SACAT members as being the Director of Public Prosecutions?

35 **SNR CONST FRIZZELL:** Sorry?

MR TEDESCHI: Did SACAT members consider that these changes had primarily been because of the actions of the DPP?

40 **SNR CONST FRIZZELL:** No.

MR TEDESCHI: Going back to November 2021 - paragraph 106 - you say that you attended a SACAT training day where Crown prosecutor Skye Jerome and DPP solicitor Andrew Chatterton attended as speakers to discuss changes to sexual offence charging?

45

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: During the presentation, was there discussion about the standard of proof required of the police to charge suspects in sex cases?

50

SNR CONST FRIZZELL: So the following paragraph says what that advice regarded, and that was that the office of the DPP were advising - or providing advice that a person providing an evidence-in-chief interview was sufficient evidence to put a charge before the court.

5

MR TEDESCHI: Well, they weren't saying that in every case an EICI interview would be sufficient, but were they saying that an EICI could in some cases be sufficient to result in charging?

10 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And I take it that in the 40 to 50 cases that you were involved in in SACAT, there must have been some of them where it was just word on word, a complainant versus an accused person?

15

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: So did what Ms Jerome and Mr Chatterton suggest at this meeting - was that anything new?

20

SNR CONST FRIZZELL: I'm not sure that in the 40 to 50 complaints that I investigated that there was one that was a person's complaint only. I think there's always avenues of inquiries that have been able to be made, in my experience.

25 **MR TEDESCHI:** Did you do any historical child sex cases?

SNR CONST FRIZZELL: Yes.

30 **MR TEDESCHI:** Is it quite common in historical child sex cases for there to be just the evidence of the alleged victim and nothing in support because it happened so many years earlier?

SNR CONST FRIZZELL: As I just said, I can't think of a specific matter where that would be the case, in my experience.

35

MR TEDESCHI: Essentially, in this meeting that I'm asking you about, was Ms Jerome and Mr Chatterton - did they seem to be attempting to explain that there was a different test for police to charge versus the test for prosecutors to take a matter to trial?

40 **SNR CONST FRIZZELL:** Yes, I agree with that.

MR TEDESCHI: And were they attempting to explain that the test for police to charge was a lower test - an easier test to the decision to take a matter to trial?

45 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And was there some pushback at the meeting by any of the police there at their attempts to explain these different tests?

SNR CONST FRIZZELL: I wouldn't say that there was pushback. There were certainly discussions.

5 **MR TEDESCHI:** All right. Was there - did you perceive there to be any hostility towards the DPP officers?

SNR CONST FRIZZELL: No. No.

10 **MR TEDESCHI:** In the next paragraph, paragraph 109, you say that the DPP's position at the meeting raised your concerns for a number of reasons -

THE CHAIRPERSON: What paragraph number is that, Mr Tedeschi?

15 **MR TEDESCHI:** Paragraph 109.

THE CHAIRPERSON: Thank you.

20 **MR TEDESCHI:** And one of the reasons that you state is that you've had cases which have resulted in not guilty verdicts where there was corroborative evidence, and you were concerned that what they seemed to be suggesting is that matters could go to trial even if there was no corroborative evidence. Does that summarise your position?

25 **SNR CONST FRIZZELL:** No, that - that paragraph relates to that, in my experience, I've had matters with more evidence than just a interview result in not guilty pleas in a court and seeing the effect that that has on a person's welfare. It concerned me to put something with less evidence to support the allegations would result - potentially result - have the same result and how that would impact complainants and their welfare. That's what that paragraph is relating to.

30 **THE CHAIRPERSON:** Was your concern - am I understanding this - you have seen cases in which, whatever the evidence, there was an acquittal and that has - the acquittal has had a devastating effect on the complainant. Is that what you are saying?

35 **SNR CONST FRIZZELL:** Absolutely.

40 **THE CHAIRPERSON:** And do I understand you to be saying that you became sensitive to that risk of the devastating effect of an acquittal upon a complainant and, therefore, you became - in your mind, you became more sensitive to the question, "How much evidence do I have and what is the prospect of a conviction," when considering the fate - the future of a case, or what? You mentioned that you became conscious of the effect upon complainants of acquittals. Why did you mention that? Did that have an effect on your thinking as a police officer in some way?

45 **SNR CONST FRIZZELL:** The welfare of them absolutely does.

THE CHAIRPERSON: Yes.

50 **SNR CONST FRIZZELL:** I think what I was trying to highlight here is I've had matters that have more than just a statement -

THE CHAIRPERSON: Yes.

SNR CONST FRIZZELL: - before the court and not been successful with that.

5 **THE CHAIRPERSON:** Yes.

SNR CONST FRIZZELL: So to then put a matter before court with less evidence than that -

10 **THE CHAIRPERSON:** Yes.

SNR CONST FRIZZELL: Like, if - if I'm not having success on one hand with evidence -

THE CHAIRPERSON: Yes.

15

SNR CONST FRIZZELL: I'm not sure that that makes much sense.

THE CHAIRPERSON: Yes. You became aware that even if you have an apparently reasonably strong case and you don't get a conviction, then you became worried about the running of weaker cases.

20

SNR CONST FRIZZELL: Yes. And then I guess noting - side-noting to that the effect that it does have on the complainants.

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

MR TEDESCHI: That doesn't mean, does it, that you would never charge somebody where there was no corroboration?

30 **SNR CONST FRIZZELL:** Not necessarily.

MR TEDESCHI: One way of dealing with the issue that you've just mentioned would be to advise the complainant about the risk of an acquittal and how difficult it is to prove a case without some corroboration?

35

SNR CONST FRIZZELL: Yes, absolutely.

MR TEDESCHI: And is that something which you have, in fact, adopted in your activity as a SACAT officer?

40

SNR CONST FRIZZELL: Do I provide that explanation?

MR TEDESCHI: Have you, in fact, provided that explanation to complainants?

45 **SNR CONST FRIZZELL:** Absolutely.

MR TEDESCHI: And you've left it up to them, essentially, to make a decision whether they want to proceed with the case or not?

SNR CONST FRIZZELL: Yes. But as I said before, I - in my experience, I haven't had a matter such as that where I've only had complaint evidence.

5 **MR TEDESCHI:** Now, could I take you, please, to page 40 at paragraph 199 of your first statement.

SNR CONST FRIZZELL: Yes.

10 **MR TEDESCHI:** Perhaps if I go to 197. First, you say that up until 31 March 2021, you engaged with the following members during the course of the investigation. You have a list there of the officers. You mention in the next paragraph that you were taking leave, but you were involved prior to 31 March 2021 with the investigation of the complaint by Ms Higgins?

15 **SNR CONST FRIZZELL:** Yes, I was.

MR TEDESCHI: And by 31 March 2021, were you substantially aware of what the evidence was in the case?

20 **SNR CONST FRIZZELL:** At that point, yes.

MR TEDESCHI: And do you agree with this summation: that there was corroboration in that case?

25 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: Corroboration in a number of respects?

30 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: Now, with an allegation of sexual assault, there are three elements. The first element is sexual intercourse. Was there corroboration of that?

35 **SNR CONST FRIZZELL:** That sexual intercourse took place?

MR TEDESCHI: Yes.

SNR CONST FRIZZELL: No.

40 **MR TEDESCHI:** No. I want to suggest to you there was corroboration of that.

THE CHAIRPERSON: Why don't you say what it was so that we -

45 **MR TEDESCHI:** Well, Ms Higgins was seen in the complete nude in a minister's office asleep and then a security officer or Parliament House officer comes in to the office at about 2, 2.30 in the morning and sees her in the complete nude asleep. Ms Higgins wakes up very briefly and then basically rolls over and goes back to sleep.

50 **SNR CONST FRIZZELL:** I recall.

MR TEDESCHI: Do you agree that that amounts to corroboration of sexual intercourse?

5 **THE CHAIRPERSON:** Well, it's support. I mean, corroboration, support - you know, corroboration is difficult - a difficult subject. So why don't we call it support, which doesn't take away from the strength of what you are putting to her.

MR TEDESCHI: Yes. Do agree that that's some evidentiary support for the fact that sexual intercourse took place?

10 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: The second element is that the complainant did not consent, right?

15 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: There was extensive evidence about Ms Higgins being in a state of intoxication when she arrived at Parliament House. There was evidence of her being asleep in the minister's office and only waking up momentarily in the minister's office, and then being asleep to some stage much later in the morning. Do you agree that her state of intoxication was some supportive evidence of a lack of capacity to consent?

20 **SNR CONST FRIZZELL:** Some supportive evidence, yes.

MR TEDESCHI: And the third element is that the suspect either knew that there was a lack of consent or was reckless as to a lack of consent. Do you agree?

25 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: In this case, Mr Lehrmann had given four different reasons why he had gone to Parliament House?

30 **MR MITCHELL:** I object.

THE CHAIRPERSON: Mr Tedeschi, there is an objection. Let me hear it.

35 **MR MITCHELL:** There is a timing difficulty with that question. We are talking about the 31 March meeting. Mr Chair, you know when Mr Lehrmann was interviewed. It wasn't until after that. So there is a difficulty in the question.

40 **MR TEDESCHI:** That's quite - I accept that.

THE CHAIRPERSON: Yes.

45 **MR TEDESCHI:** Could I not limit you to 31 March but extend it past that. Were you aware at some stage that Mr Lehrmann had given four different reasons for why he had gone to Parliament House?

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And was this the case: that he had given an account of getting an Uber together with Ms Higgins to Parliament House?

SNR CONST FRIZZELL: Yes.

5

MR TEDESCHI: Both of them being on their way home?

SNR CONST FRIZZELL: Yes.

10 **MR TEDESCHI:** And that he had left Parliament House on his own, claiming not to have been in contact with Ms Higgins after they went to separate rooms at Parliament House?

SNR CONST FRIZZELL: That's right.

15 **MR TEDESCHI:** Do you agree that that's some supportive evidence of either a knowledge of lack of consent or a knowledge of recklessness?

SNR CONST FRIZZELL: No.

20 **MR TEDESCHI:** Can I take you now, please, to the meeting of 31 March 2021. Paragraph 199. You went with Detective Inspector Boorman and a number of other police officers to the Belconnen Police Station where you met with the DPP, Mr Drumgold, and other members of the ODPP, Ms Jerome and Mr Chatterton?

25 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: Were you present right through that meeting?

SNR CONST FRIZZELL: Yes, I was.

30

MR TEDESCHI: You state in paragraph 200 that you and the others provided the ODPP with a briefing of the investigation and then there was discussion about various issues. Did it appear to you during that meeting that Inspector Boorman was placing importance or significance or stressing the difficulties in the prosecution case and discrepancies in the evidence of Ms Higgins?

35

SNR CONST FRIZZELL: No, that's - no, it was not my impression. I note there that we provided a briefing of the investigation to date, and that was running through everything that we had done up until that date. I think there's a paragraph a few paragraphs down where I say that my impression of the meeting was quite neutral. Like, I don't think that there was opinions either way.

40

MR TEDESCHI: Did it appear to you that Inspector Boorman had already formed a view about the case?

45

SNR CONST FRIZZELL: No.

MR TEDESCHI: Okay. There was a video that was shown to the DPP people?

50 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And there was a discussion about whether or not an expert witness could give evidence about intoxication?

5 **SNR CONST FRIZZELL:** That's right, yes.

MR TEDESCHI: And what I want to suggest to you in relation to paragraph 203 is that when the DPP was advised that Mr Lehrmann had yet to be interviewed, he said something to the effect that that would not necessarily mean that Mr Lehrmann would not be charged.

10 **SNR CONST FRIZZELL:** No. That's not my recollection.

MR TEDESCHI: I suggest to you that what he said was that - something along the lines of that a denial by Mr Lehrmann was commonly seen in cases.

15 **SNR CONST FRIZZELL:** That's not my recollection.

MR TEDESCHI: Did the DPP explain the two different tests, being the test for charging and the test for taking a matter to trial?

20 **SNR CONST FRIZZELL:** I don't recall.

MR TEDESCHI: Can I take you, please, to paragraph 222, page 44. That refers to a meeting on 21 April which you attended with Superintendent Moller, Inspector Boorman and other police officers?

25 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And did Detective Superintendent Moller describe a review process and documents that were required for him to provide to Commander Chew?

30 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And there is then a list of all of the tasks that needed to be completed?

35 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And item number 3 was a comparison of evidence against the complainant's statement and an evidence matrix?

40 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: Have you seen a document like that in other investigations in SACAT?

45 **SNR CONST FRIZZELL:** An evidence matrix?

MR TEDESCHI: Yes.

SNR CONST FRIZZELL: Yes.

50

MR TEDESCHI: And a comparison of the complainant's statement with other evidence?

SNR CONST FRIZZELL: Yes.

5 **MR TEDESCHI:** Is that quite common?

SNR CONST FRIZZELL: I don't know if it's common, but I've certainly seen it, yes.

MR TEDESCHI: What's the purpose of a document like that?

10

SNR CONST FRIZZELL: It's for our - investigators' benefit, to recognise what it is that a complainant or a witness has told us and pull out specific parts and then what either corroborates it, what doesn't corroborate it and where can we go from there potentially or have we met what they are saying. So it's just breaking it down. It's giving us a bit of a guide.

15

MR TEDESCHI: So it's looking at both the strengths and the weaknesses of the case?

SNR CONST FRIZZELL: Yes.

20 **MR TEDESCHI:** As you say, if there's corroboration, that's important to be listed in a document like that?

SNR CONST FRIZZELL: Yes.

25 **MR TEDESCHI:** And if there are discrepancies, that's also important to be listed?

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: There is also mention at number 10:

30

"Discuss the sentiment in the community, both politically and ODPP's views."

Can you tell us what that was about?

35 **SNR CONST FRIZZELL:** I can't expand on that any further. I've listed this out based on my notes.

MR TEDESCHI: Was it about the fact that there was a tremendous amount of community interest in the case?

40

SNR CONST FRIZZELL: I don't recall.

MR TEDESCHI: Do you know what views the DPP stated?

45 **SNR CONST FRIZZELL:** I don't recall.

MR TEDESCHI: Can I take you to page 46. You refer at paragraph 227 that you were advised on 5 May 2021 for police to cease contact with Ms Higgins because Ms Yates, the Victims of Crime Commissioner, would now be acting as an intermediary?

50

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: In paragraph 228, you say that you had not had an external agency assume a responsibility for communications like that previously?

5

SNR CONST FRIZZELL: For all communications? That's right.

MR TEDESCHI: Yes, for all communications. And you say:

10

"This was not and is not common practice and, in my opinion, assisted in the breakdown of the relationship between Ms Higgins and police."

SNR CONST FRIZZELL: Yes.

15

MR TEDESCHI: Were the police resentful of the fact that Ms Higgins had required an intermediary for all communications?

SNR CONST FRIZZELL: No.

20

MR TEDESCHI: Could you explain why that assisted in the breakdown of the relationship between Ms Higgins and police?

SNR CONST FRIZZELL: Well, it allowed no communication - no contact. You can't build rapport or build a relationship with someone you can't speak to.

25

MR TEDESCHI: But we've seen from other evidence that Ms Yates was a very effective communicator between the police and Ms Higgins and facilitated every communication that the police wanted and, in fact, encouraged Ms Higgins to surrender her phone to the police. Why would this intermediary assist in the breakdown of the relationship between Ms Higgins and the police?

30

SNR CONST FRIZZELL: Well, as I just said, it's - I, for example, can't communicate with her and I can't build that relationship that I ordinarily would.

35

MR TEDESCHI: Was there a breakdown in the relationship?

SNR CONST FRIZZELL: Well, there was no relationship at that point.

MR TEDESCHI: Well, there was a relationship through an intermediary, wasn't there?

40

SNR CONST FRIZZELL: Yes, but not with me or my investigating -

MR TEDESCHI: Was there resentment by the police that she had removed this ability to deal with her directly?

45

SNR CONST FRIZZELL: No, absolutely not.

MR TEDESCHI: Can I take you, please, to paragraph 245.

50

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: That refers to a meeting on 26 May 2021, which you attended with Superintendent Moller, Inspector Boorman and a number of other police?

5 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And on that day, an arrangement had been made for Ms Higgins' second electronic interview?

10 **SNR CONST FRIZZELL:** That's right.

MR TEDESCHI: And paragraph 251 refers to that actual meeting with Ms Higgins and Mrs Yates and those police officers, including yourself. And what you say is that:

15 "During this meeting, Superintendent Moller and Inspector Boorman had a conversation with Ms Higgins and Ms Yates. During this conversation, I recall Superintendent Moller requested Ms Higgins refrain from her continued engagement with the media in relation to the allegations while the investigation continued. Ms Higgins agreed to stay out of the media."

20

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: This was a conversation after the second interview?

25 **SNR CONST FRIZZELL:** Yes. I'm incorrect in my statement stating that it was before.

MR JONES: I think we have just lost the audio again.

30 **THE CHAIRPERSON:** Just while that's being done, Mr Tedeschi, what page were you on?

MR TEDESCHI: I was on page 51. I'm going now to page 52.

THE CHAIRPERSON: Thank you. Yes, go on.

35 **MR TEDESCHI:** Senior Constable, paragraph 254, you refer to a meeting the following day, 27 May. You attended a meeting with, again, Superintendent Moller, Inspector Boorman and other police officers?

40 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And if I could take you, please, to page 54, paragraph 259(f).

SNR CONST FRIZZELL: Yes.

45 **MR TEDESCHI:** There was a discussion, was there, about concerns regarding the evidence?

SNR CONST FRIZZELL: Mmm.

50 **MR TEDESCHI:** Could you tell us anything about that, who raised those concerns and what they were?

SNR CONST FRIZZELL: I - I can't speak to who specifically, as I didn't note specifically who spoke about these things.

5 **MR TEDESCHI:** Was that a discussion -

SNR CONST FRIZZELL: Just general discussion.

MR TEDESCHI: - between the police only?

10

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: By this stage - nobody else was present?

15 **SNR CONST FRIZZELL:** No.

MR TEDESCHI: Just police?

SNR CONST FRIZZELL: That's right.

20

MR TEDESCHI: And there were concerns that were raised regarding the evidence by the senior police, Moller and Boorman?

25 **SNR CONST FRIZZELL:** Well, as I just said, I can't recall who specifically. It was a general conversation -

MR TEDESCHI: All right.

SNR CONST FRIZZELL: - I would suggest.

30

MR TEDESCHI: And then you say:

"...advised the decision is not up to the investigation team, but rather the executive levels and the DPP."

35

SNR CONST FRIZZELL: That's right.

MR TEDESCHI: Now, by the term "the decision", do you mean the decision to charge?

40 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And it was not up to the investigation team, being the team that was in that meeting?

45 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: Including Moller and Boorman?

SNR CONST FRIZZELL: Potentially, yes.

50

MR TEDESCHI: But rather the executive levels. Who does that refer to?

SNR CONST FRIZZELL: Well, the executive levels is from superintendent upwards.

5 **MR TEDESCHI:** Paragraph 266, you say:

"I recall having a conversation within the investigation team about outsourcing independent legal advice. However, the executive declined this suggestion."

10 Was that a conversation again that involved Moller, Boorman and the other police in the team?

SNR CONST FRIZZELL: I don't recall, and that would be why it's not specified in there.

15 **MR TEDESCHI:** And outsourcing independent legal advice, was that advice about whether or not to charge?

SNR CONST FRIZZELL: That's my understanding.

20 **MR TEDESCHI:** And that the executive had declined that suggestion?

SNR CONST FRIZZELL: Yes.

25 **MR TEDESCHI:** Without being able to say who was present at that meeting, did it appear to you that Superintendent Moller and Inspector Boorman were in disagreement with the approach of the executive?

SNR CONST FRIZZELL: I couldn't comment on that.

30 **MR TEDESCHI:** You didn't get that impression from what they said?

SNR CONST FRIZZELL: Well, I just said I can't recall who the conversations were with.

35 **MR TEDESCHI:** What you do say in the next paragraph is that you did observe a breakdown in the relationship between DPP/ODPP on the one hand and the investigation team on the other hand; is that correct?

SNR CONST FRIZZELL: Yes.

40 **MR TEDESCHI:** And you said that that became evident to you when the DPP and the ODPP attempted to source some CCTV which did not exist from APH?

SNR CONST FRIZZELL: Yes.

45 **MR TEDESCHI:** Australian Parliament House?

SNR CONST FRIZZELL: Yes.

50 **MR TEDESCHI:** Did it appear to you that the relationship had broken down over a period of time?

SNR CONST FRIZZELL: I can only speak to my engagements with the ODPP and the DPP. And my engagements and my feelings was that it was around that time with the CCTV.

5 **MR TEDESCHI:** And did it appear to you that there was a major difference of opinion between the two senior officers in the investigation team, Moller and Boorman on the one hand, and the DPP on the other hand about the future progress of the matter?

SNR CONST FRIZZELL: I didn't have insight to that.

10 **MR TEDESCHI:** But it certainly appeared to you that there was resentment about the DPP attempting to get some CCTV which couldn't be found?

SNR CONST FRIZZELL: I wouldn't call it resentment, but it became an issue.

15 **THE CHAIRPERSON:** Is that a good spot at which to have morning tea?

MR TEDESCHI: A suitable time.

20 **THE CHAIRPERSON:** Thank you. We will break for 20 minutes.

<**THE HEARING ADJOURNED AT 11.23 AM**

<**THE HEARING RESUMED AT 11.54 AM**

25 **THE CHAIRPERSON:** Yes, Mr Tedeschi.

MR TEDESCHI: Thank you, Chairman. Paragraph 263 of your statement, on page 54, you say that you read the advice provided by the DPP addressed to Superintendent Moller, referred to as the DPP advice?

SNR CONST FRIZZELL: Yes.

35 **MR TEDESCHI:** In paragraph 266, you say:

"I recall having a conversation within the investigation team about outsourcing independent legal advice. However, the executive declined this suggestion."

SNR CONST FRIZZELL: Mmm.

40 **MR TEDESCHI:** Was that conversation after the receipt of the DPP's advice?

SNR CONST FRIZZELL: Not necessarily. It's not - like, I haven't put a timeframe to it. It was just in the context of the brief.

45 **MR TEDESCHI:** Can I suggest to you that there were conversations about getting outsourced independent legal advice both before and after the DPP advice.

SNR CONST FRIZZELL: Well, it's not dated. Sorry.

50

MR TEDESCHI: You are not able to say when that was?

SNR CONST FRIZZELL: No, I'm not.

5 **MR TEDESCHI:** Now, at paragraph 284 on page 57, you describe that you had personal concerns about Ms Higgins' evidence?

SNR CONST FRIZZELL: Yes.

10 **MR TEDESCHI:** And in paragraph 287, you say that:

"Upon Mr Lehrmann being charged..."

You say this:

15

"...my views and attitude towards the prosecution were unchanged."

Do you mean by that your views towards the charging of Mr Lehrmann or your views towards the people in the DPP?

20

SNR CONST FRIZZELL: No, my views and attitude towards the prosecution were unchanged in terms of the - it says above that regardless, I keep - my role is corroborating case member, and I keep investigating it.

25 **MR TEDESCHI:** So by that, did you mean -

SNR CONST FRIZZELL: So by that time - whatever my thoughts were were irrelevant.

30 **MR TEDESCHI:** Is this what you are saying: that your approach to working with the DPP after the decision to charge Mr Lehrmann was unchanged?

SNR CONST FRIZZELL: That line there where it says prosecution is not - that doesn't - I'm not referring to DPP or the ODPP.

35 **MR TEDESCHI:** What are you referring to?

SNR CONST FRIZZELL: The prosecution - that the charge is before the court - the matter before the court generally.

40 **MR TEDESCHI:** So what you're saying is that your view towards the prosecution of Mr Lehrmann remained unchanged?

45 **SNR CONST FRIZZELL:** Above, it's saying that the decision wasn't my charge - I mean, the decision to charge was not my role. My role was the corroborator - an investigating member of this matter. The matter proceeds to court and that - I just continue with that. I keep investigating the matter, and that doesn't change. That's what I'm referring to. My views in that regard don't change.

50 **MR TEDESCHI:** Your views about your role as an investigator didn't change. Is that what you are saying?

SNR CONST FRIZZELL: And - and to continue investigating the matter and pursuing it.

5 **MR TEDESCHI:** Yes. And, in fact, you continued to assist the DPP during the course of the trial?

SNR CONST FRIZZELL: Absolutely, yes.

10 **MR TEDESCHI:** And did you have any reluctance about doing that?

SNR CONST FRIZZELL: No, not at all. I had a good working relationship with the likes of Mr Greig.

15 **MR TEDESCHI:** Did you become concerned at a certain stage about being asked to perform tasks by the defence?

SNR CONST FRIZZELL: Did I - pardon me?

20 **MR TEDESCHI:** Did you have concerns at some stage during the trial about the defence asking you directly to do things for them rather than going through the DPP?

SNR CONST FRIZZELL: I wouldn't say I had concerns, but I let everyone know that -

25 **MR TEDESCHI:** What did you let them know?

SNR CONST FRIZZELL: Well, if there was any engagements or requests by defence - from defence, I would let DPP know. I would brief within my area.

30 **MR TEDESCHI:** At some stage, did you tell the defence that if they had any requests, that they should do it through the DPP -

SNR CONST FRIZZELL: Yes.

35 **MR TEDESCHI:** - and that you would then cooperate?

SNR CONST FRIZZELL: Yes. I did.

40 **MR TEDESCHI:** Because did you think that that was the proper way of going about it, that requests from the defence should be done through the DPP?

SNR CONST FRIZZELL: I had been provided advice by Mr Greig, whether it was that same week or - it was in the context of engaging with defence. The advice from his - him was that it would - should be all going through the DPP.

45 **MR TEDESCHI:** And did that accord with your usual practice as a police officer?

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And is this the case: that you also at some stage received a direction from Commander Cameron that you were not to receive requests directly from the defence but to go through the DPP?

5 **SNR CONST FRIZZELL:** I don't recall receiving that personally.

MR TEDESCHI: Now, I would like to ask you some questions about the disclosure issues, and I would like to begin by asking you some general questions. Is it correct that you started drafting the disclosure certificate in October 2021?

10 **SNR CONST FRIZZELL:** That could be correct.

MR TEDESCHI: And is this the case: that you identify in your first statement that this was not something that you were highly experienced about?

15 **SNR CONST FRIZZELL:** That's right.

MR TEDESCHI: Was this your first disclosure certificate that you had completed?

20 **SNR CONST FRIZZELL:** I don't know if it was my first, but it was certainly one of them.

MR TEDESCHI: All right. And, of course, this was a complex, high-profile case, and it must have been a bit intimidating for you to have one of your first disclosure certificates being - involving a case of this nature?

25 **SNR CONST FRIZZELL:** It wasn't that the case was intimidating; it was the sheer volume of the investigation.

MR TEDESCHI: And the sheer volume of material that you had to go through -

30 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: - to make sure that disclosure was appropriate?

35 **SNR CONST FRIZZELL:** Yes, absolutely.

MR TEDESCHI: All right. Now, let me ask you these general questions first and then we will go to the particulars. You've said in your second statement that there were two disclosure certificates prepared at the same time in April '22, one for the prosecution, one for the defence?

40

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: The one for the prosecution contained all the personal details of witnesses; the one for the defence didn't?

45

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: The one for the prosecution included an entry in schedule 3 for investigative review documents; the one for the defence did not?

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SNR CONST FRIZZELL: The last - was that the last column?

MR TEDESCHI: Yes.

5

SNR CONST FRIZZELL: Then yes.

MR TEDESCHI: And you have explained how that was a mistake on your part in cutting and pasting?

10

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: The defence document did not have that entry?

15

SNR CONST FRIZZELL: That's right.

MR TEDESCHI: Now, do you know how the defence were provided with, or got hold of a copy of, the disclosure certificate that included that entry of the investigative review documents?

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SNR CONST FRIZZELL: No, I assume from DPP.

MR TEDESCHI: But you don't know if -

25

SNR CONST FRIZZELL: No, absolutely I do not know.

MR TEDESCHI: Do you agree - you've told the inquiry that when you first made that entry in the prosecution copy of the disclosure certificate, investigative review documents and the description, that you were not intending to include in that category the Moller report and the Boorman minute; correct?

30

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: Do you agree that later on in 2022, particularly around August/September, during the various meetings and the emails that flowed between parties, that everybody assumed -

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THE CHAIRPERSON: You can't ask her what other people thought.

40

MR TEDESCHI: Okay. Did it appear that that term "investigative review documents" -

THE CHAIRPERSON: Same question. You are really just trying to get her to - but I understand the point you're going to make, that you will be making a submission in due course that the way those two documents appeared, without knowing how they came to be created, led people to think things. And we know, for example, that Mr Kamy, the solicitor for Mr Lehrmann, took a particular - inferred some things that we know now were wrong.

45

MR TEDESCHI: Yes.

THE CHAIRPERSON: And no doubt your client inferred some things, and you are going to submit to me that he did. So -

MR TEDESCHI: I understand.

5

THE CHAIRPERSON: But Senior Constable Frizzell isn't going to help me with that, I think.

MR TEDESCHI: All right. Do you understand the difference between a claim of legal professional privilege and a claim that a document is not disclosable?

10

SNR CONST FRIZZELL: Sorry, can you say it another way maybe or say it again?

MR TEDESCHI: Do you understand what is meant by the term - that a document is not disclosable?

15

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: What does it mean -

20

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: - in your mind?

SNR CONST FRIZZELL: Not disclosable - that it's something that's not disclosable to defence, that whether it's - has -

25

THE CHAIRPERSON: I guess you could approach it the other way. You formed a schedule of disclosable documents, so you apply a test in your mind to what's disclosable.

30

SNR CONST FRIZZELL: Yes.

THE CHAIRPERSON: So what's your test for what's disclosable?

SNR CONST FRIZZELL: What's relevant to the matters and what's not relevant, or what has, I guess - if you look at schedule 1, immunities - I mean, if something has got immunities, they are not disclosable to defence.

35

MR TEDESCHI: Is it your understanding that essentially what's disclosable is evidence either for or against -

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SNR CONST FRIZZELL: Yes.

MR TEDESCHI: - the prosecution case, and evidence that might affect credibility of witnesses?

45

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: Either for or against them?

50

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And material that - evidence that might assist the defence?

5 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: Okay. That's all disclosable?

SNR CONST FRIZZELL: Yes.

10

MR TEDESCHI: Legal professional privilege is a different issue. Do you agree? Legal professional privilege protects communications between legal advisors and their clients?

SNR CONST FRIZZELL: Yes.

15

MR TEDESCHI: Including the police?

SNR CONST FRIZZELL: Yes.

20

MR TEDESCHI: Okay. Now, if I could take you to paragraph 309 of your statement. Do you agree that on 1 September 2021, you sought advice from AFP Legal about disclosure generally?

SNR CONST FRIZZELL: Yes.

25

MR TEDESCHI: Would you pause before you answer this question: what was the advice that you were given?

MR MITCHELL: Sorry. I object.

30

THE CHAIRPERSON: Yes. Because it's privileged? Sorry?

MR MITCHELL: Yes.

35

THE CHAIRPERSON: Well, it is privileged, but we might come back to it because it might be something your client wants to waive privilege over. I don't know. But you can think about it. But we can come back to it, and you can let me know if anything changes.

MR MITCHELL: I will.

40

THE CHAIRPERSON: Yes.

MR TEDESCHI: On 15 September 2021 - and I refer you to paragraph 311 of your statement - did you send Detective Madders a draft disclosure certificate for his review?

45

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: Chairman, we have not been provided with that draft disclosure certificate. I just note that.

50

THE CHAIRPERSON: I see. Well, we had better make a search for it and see whether we've got it. Well, you want to see it, do you, if we have got it?

5 **MR TEDESCHI:** Sorry, it's unaccessible. Perhaps - there's an email that I have a reference to, and I'm told that this draft disclosure certificate is unable to be -

THE CHAIRPERSON: Opened.

10 **MR TEDESCHI:** - accessed. Yes.

THE CHAIRPERSON: I see. All right. Well, we will see what we can do.

MR TEDESCHI: Thank you. Could I direct your attention to paragraph 314. On 8 October 2021, you attended a meeting with Ms Jerome and Ms Priestly of the DPP office?

15 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And afterwards, did Ms Jerome send you an email saying this: she had spoken to Mr Drumgold and that his view was the same as hers regarding any legal advice provided by DPP to AFP is subject to legal professional privilege and that AFP Legal is responsible for deciding what is subject to the police LPP?

SNR CONST FRIZZELL: Yes.

25 **MR TEDESCHI:** The decision rests with AFP Legal?

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: On 8 October - and I direct you to the next paragraph -

30 **THE CHAIRPERSON:** What number is that?

MR TEDESCHI: 315.

35 **THE CHAIRPERSON:** Thank you.

MR TEDESCHI: On 8 October, did you send a draft disclosure certificate to AFP Legal for advice?

40 **SNR CONST FRIZZELL:** I don't know that - sorry, 315 doesn't state that there's a draft disclosure attached to that email.

MR TEDESCHI: And can we bring up that draft disclosure certificate, AFP.2003.0021.0065. Can we go, please, to the that first email. It's an email from you to somebody at AFP Legal; is that right?

45 **SNR CONST FRIZZELL:** Yes.

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And were you seeking advice from AFP Legal about the disclosure -

50

THE CHAIRPERSON: Yes, there's an objection, I'm sorry. What's - sorry, behind you. You can't see, but -

5 **MR MITCHELL:** Mr Sofronoff, the content of the advice is equal - or what advice was being sought on is privileged. So the question that was being asked is privileged, in my submission.

10 **THE CHAIRPERSON:** I think all that he's asked is that advice was being sought at this moment.

MR TEDESCHI: About a topic.

MR MITCHELL: About a topic. And Mr Tedeschi was about to -

15 **THE CHAIRPERSON:** I see. He can't ask what was being - the subject matter of the advice.

MR MITCHELL: Correct.

20 **THE CHAIRPERSON:** There you go.

MR TEDESCHI: Chairman, could I indicate that what I'm intending to do is to go through a whole lot of documents in which privilege has been claimed -

25 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: - to seek to ask the questions - and I acknowledge that the AFP are entitled to their privilege.

30 **THE CHAIRPERSON:** But, you know, I'm not sure why the AFP is taking that approach. Because if you look at paragraph 317 of Senior Constable Frizzell's statement, Mr - the gentlemen, I guess, in AFP Legal provided further advice regarding the draft disclosure certificate. We know what's being asked, "Should we disclose this or shouldn't we disclose it?"

35 **MR MITCHELL:** With respect, Mr Sofronoff -

THE CHAIRPERSON: I'm inferring it, is what I'm saying.

40 **MR MITCHELL:** Yes, but -

THE CHAIRPERSON: I'm allowed to infer it even if it's privileged. I mean, I'm inferring it. But what is your concern?

45 **MR MITCHELL:** The concern is privilege has been claimed. I don't have instructions to waive it. I can certainly seek instructions.

THE CHAIRPERSON: No, I understand that.

MR MITCHELL: But at that point in time, I will object to any questions that seek to go behind the actual questions or the advice given.

5 **THE CHAIRPERSON:** But it's not a secret that - paragraph 317 - somebody provided advice - it doesn't say "legal advice", but I will infer it's legal advice because that's why you rise to object - about the disclosure certificate.

MR MITCHELL: Yes, but -

10 **THE CHAIRPERSON:** That's not a secret.

MR MITCHELL: No, the fact that advice was sought. But, Mr Sofronoff, it doesn't tell you what the advice was -

15 **THE CHAIRPERSON:** No.

MR MITCHELL: - or what it was received, and that is what the claim is over.

20 **THE CHAIRPERSON:** Yes. Yes.

MR MITCHELL: But the fact that advice was sought is not a secret.

25 **THE CHAIRPERSON:** Yes. Well - so Mr Somebody provided advice about the draft disclosure certificate. Senior Constable Frizzell exhibits the email. But we are not going to look at the email. It's undoubtedly redacted, if - unless privilege was waived. So what's the concern? We are not going to look at the advice, but we are going to look at what Senior Constable Frizzell did afterwards.

30 **MR MITCHELL:** Yes. My concern was - and why I objected was because Mr Tedeschi asked beyond, "You sought advice." He asked, "What you sought advice on." So he was going the next step and effectively eliciting the evidence of what has been redacted, that is, the content of the request.

35 **THE CHAIRPERSON:** But we know what it was about, because what hasn't been redacted by your client, who - and it is the AFP through the Australian Government Solicitor who wanted these things redacted. What has not been redacted is the subject matter of the advice, which is the draft disclosure certificate. So what's the problem?

40 **MR MITCHELL:** If it goes no further than, "Did you seek advice in relation to the draft disclosure certificate" -

THE CHAIRPERSON: Yes. Yes.

45 **MR MITCHELL:** - I don't object. If it is, "What was the advice you sought in relation to it," we do object.

THE CHAIRPERSON: Yes. Of course. That's right. At the moment, you object to that -

50 **MR MITCHELL:** Yes.

THE CHAIRPERSON: - and that may be maintained, and there's no problem with that. Yes.

5 **MR MITCHELL:** But that is what I understood the question to be, to be asking the next step.

THE CHAIRPERSON: Yes. Mr Tedeschi, you can't ask what the advice was. So - but you say you weren't asking that?

10 **MR TEDESCHI:** Can I suggest, Chairman, I can ask it. But if there's an objection -

THE CHAIRPERSON: Well, there has been an objection, so now there's no point unless it's waived.

15 **MR TEDESCHI:** Can I suggest a shorthand way of doing this, that I ask the questions, my friend objects and we take it that he's objecting on the basis of legal professional privilege.

THE CHAIRPERSON: All right. Ask your question. Don't answer the question, Senior Constable.

20

MR TEDESCHI: What was the advice that you got from AFP Legal on 8 October 2021?

MR MITCHELL: I object.

25 **THE CHAIRPERSON:** All right. Objection is taken, so don't answer the question.

MR TEDESCHI: On 22 October, did you receive further advice from AFP Legal about -

THE CHAIRPERSON: Well, we can see that from 317.

30

MR TEDESCHI: The draft disclosure certificate, yes.

THE CHAIRPERSON: Yes.

35 **MR TEDESCHI:** Moving now to January of 2022, can I take you to paragraph 318. On that date, 27 January '22, did you send Detectives Hughes and Fleming a draft disclosure certificate?

SNR CONST FRIZZELL: Yes.

40

MR TEDESCHI: Can we have a look, please, at AFP.2003.0012.8871. Is that the draft that you sent to Mr Hughes and Mr Fleming?

SNR CONST FRIZZELL: It could be, yes.

45

MR TEDESCHI: Perhaps if we could - that appears to be a prosecution version of a disclosure certificate because it has personal details in it?

SNR CONST FRIZZELL: Yes, it is. Yes.

50

MR TEDESCHI: Can we go down the page to where the signature provision is.

SNR CONST FRIZZELL: The draft won't have a signature.

5 **THE CHAIRPERSON:** It's a draft, so it won't be signed, Mr Tedeschi.

MR TEDESCHI: The signature page is not in that version?

SNR CONST FRIZZELL: Unless it was to be scrolled through, I can't tell you that.

10

MR TEDESCHI: All right. And have you had an opportunity to look at that draft recently? I want to suggest to you that there's no entry in schedule 3 for administrative correspondence or for an investigative review document?

15 **SNR CONST FRIZZELL:** Yes, that may be the case.

MR TEDESCHI: You agree with that?

SNR CONST FRIZZELL: It may be the case.

20

MR TEDESCHI: Accept from me that it's not there. Would it be correct to say that at that stage, you weren't concerned about the documents that were later the subject of a lot of controversy concerning those entries? Do you understand -

25 **THE CHAIRPERSON:** Sorry, what do you mean? I'm sorry, I don't understand what "you weren't concerned with" means.

MR TEDESCHI: It was a very badly phrased question. Do you agree at this stage, you were not aware of any concerns about the inclusion in schedule 3 of the documents that you later included in April of 2022? Can we go, please, to 8882. That's schedule 3?

30

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And if we - you see there's nothing on that page about those -

35

THE CHAIRPERSON: Well, we had better look at - I don't know why that's been redacted. So we would really need to look at the unredacted one to see if something was or was not included.

40 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: Do you have an unredacted version, Mr Jones, that Mr Tedeschi can look at?

45 **MR JONES:** I had a version - just one second.

MR TEDESCHI: One wonders why it's been redacted.

THE CHAIRPERSON: I don't know. I don't know. No idea. But we will find out and get to the bottom of it.

50

MR TEDESCHI: Chairman, I'm content to suggest that there's neither of those two entries -

THE CHAIRPERSON: All right. You put it, and if that's falsified later -

5

MR TEDESCHI: We can correct it.

THE CHAIRPERSON: Go on.

10 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: Yes. You can accept that the Moller review documents, Boorman and that group of documents, was not included by you - was not referred by you in this draft that was prepared in early 2022, although in the versions that you later prepared for signature it was. (Indistinct) about that fact.

15

MR TEDESCHI: Now, paragraph 319, Detective Sergeant Fleming responded to your email on the same day, providing advice following his review of the disclosure certificate that you had sent him; is that correct?

20

SNR CONST FRIZZELL: Sorry, what number is that?

MR TEDESCHI: 319.

25 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And, again, attached and marked exhibit 61 is a copy of the email from Sergeant Fleming -

30 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: - which also contained a draft disclosure certificate which, again, I suggest to you, had neither of the two entries in schedule 3. And if that's incorrect - I don't expect that you've had an opportunity to check this. If it's incorrect -

35

THE CHAIRPERSON: You are being told that that's so. And no doubt at the end, you will be asked something about the significance of their absence from earlier drafts and how that came to be.

40 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: Yes.

THE CHAIRPERSON: How they came to be included, I guess. You will be asked about that. So you are just being taken through the historical train. So take this as the foundation for a question.

45

MR TEDESCHI: Can I take you now to paragraph 323. On 24 February 2022, did you update the draft disclosure certificate and send it to AFP Legal for advice?

50

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: Would you - exhibit 64 is a copy of an email that you sent to a member of AFP Legal?

5

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: Pause before you answer this: what was in your request for advice?

10 **THE CHAIRPERSON:** Why are you asking a question to which objection is going to be taken? There's no appeal coming from this, no factual appeal. Why are you doing it?

MR TEDESCHI: Because we are restricted in the material that we can show in terms of what advice she got from AFP Legal -

15

THE CHAIRPERSON: Yes, I understand that.

MR TEDESCHI: - over an extended period of time.

20 **THE CHAIRPERSON:** No, I understand. But you are restricted unless they waive privilege.

MR TEDESCHI: Yes.

25 **THE CHAIRPERSON:** But why ask a question when you know an objection is going to be taken? You may have a purpose. I just want to know what it is.

MR TEDESCHI: I want to put on the record that the AFP are maintaining their privilege and not waiving it.

30 **MR TEDESCHI:** But we know that. So is it that you want to put on the record the particular questions that you asked to which you didn't get an answer?

MR TEDESCHI: Yes, because of principle.

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

MR MITCHELL: Mr Sofronoff -

THE CHAIRPERSON: Yes.

40

MR MITCHELL: - can I make clear that the advice that's identified at the next paragraph, 324 - that has been waived. That was provided to the Board this morning, and my understanding is from that, thereon, privilege has not been claimed in relation to this issue.

45 **THE CHAIRPERSON:** Thank you. So -

MR MITCHELL: But on and from the advice received on 28 February -

THE CHAIRPERSON: All right. Thank you for that. Now -

50

MR TEDESCHI: I wasn't aware of (indistinct) waiver.

THE CHAIRPERSON: No, I was going to ask you that. I was going to ask you that. So you might need to look at some things before you pursue this line?

5

MR TEDESCHI: No, I would like to pursue it, but if you could excuse me if I think that some things are redacted and they are not.

THE CHAIRPERSON: Yes.

10

MR TEDESCHI: Because I've been acting on the assumption - pardon me. My junior thinks I should look at it.

THE CHAIRPERSON: So do you want to have a - it's -

15

MR TEDESCHI: Perhaps I might have a look at it.

THE CHAIRPERSON: All right. Well, it's almost 12.30, so we could stop for lunch now and -

20

MR TEDESCHI: Thank you.

THE CHAIRPERSON: How long do you think you will be with Senior Constable Frizzell?

25

MR TEDESCHI: About another half hour.

THE CHAIRPERSON: All right. Well, we will resume at 2 o'clock, then. And you will have time before then to look at - you should have enough time to look at the documents before then.

30

MR TEDESCHI: Thank you.

THE CHAIRPERSON: We will come back then.

35

MR TEDESCHI: Thank you.

THE CHAIRPERSON: And who else is wanting to question Senior Constable Frizzell?

MS EDWARDS: Just briefly, Mr Chair.

40

THE CHAIRPERSON: Yes. All right. So it looks like you will be finished mid-afternoon.

SNR CONST FRIZZELL: Thank you.

45

THE CHAIRPERSON: Mr Jones, is something happening?

MR JONES: No, just working out Lexel.

THE CHAIRPERSON: All right. Good. Adjourn till 2 o'clock, then.

50

MR TEDESCHI: Could I -

THE CHAIRPERSON: Yes.

5 **MR TEDESCHI:** - raise one thing for your consideration as to the program for next week.

THE CHAIRPERSON: Yes.

MR TEDESCHI: I have had some discussions -

10

THE CHAIRPERSON: Well, you can go about your business, Senior Constable, if you wish, or stay there if you are so interested you want to hear this. Go ahead.

15 **MR TEDESCHI:** I have had some discussions with Mr Jones. We've got Commander Cameron after this witness; Mr Chew to follow - Commander Chew to follow. And as I understand it, there are no witnesses on Tuesday. There's only one very short witness on Wednesday -

THE CHAIRPERSON: Mr Korn.

20

MR TEDESCHI: - Ms Smithies.

THE CHAIRPERSON: Ms Smithies, and we are trying to get Mr Korn.

25 **MR TEDESCHI:** Mr Korn, I think -

MR JONES: Ms Smithies on Friday -

THE CHAIRPERSON: Right.

30

MR JONES: - this week - Friday, first witness. And Mr Korn is unavailable on Friday because he's in Griffiths, I think. And so we are trying to make arrangements for him for Wednesday, but -

35 **MR TEDESCHI:** Mr Korn is the only witness, I think, on Wednesday, and I will literally be five minutes or less.

THE CHAIRPERSON: I see.

40 **MR JONES:** I've spoken with Ms Longbottom and suggested that before we start Ms Yates, we have Mr Korn if there's only one witness - one question. And I understand arrangements are trying to be made because he's only very recently been subpoenaed.

THE CHAIRPERSON: Yes, yes. All right.

45

MR JONES: So it might be that he is on Thursday morning before Ms Yates for five minutes for Mr Tedeschi to ask the question he needs to and then we go straight into Ms Yates for Thursday and Friday.

50 **THE CHAIRPERSON:** So we've got -

MR TEDESCHI: What that would mean is Tuesday and Wednesday, there is no hearing.

5 **THE CHAIRPERSON:** Sounds like it, because Mr Korn will be called on Thursday, assuming he can make it on Thursday. And otherwise, what's the schedule for this week, then?

10 **MR JONES:** So when Senior Constable Frizzell has finished, Commander Cameron. And if Commander Cameron is finished today, then Commander Chew. But I think it's unlikely from what I feel from Mr Tedeschi. So Commander Chew will be Friday, and Ms Smithies will be Friday.

THE CHAIRPERSON: All right. Thank you.

15 **MR JONES:** And then, of course, if Mr Drumgold is available next week, then that might take some days. But we are waiting to hear about that.

20 **THE CHAIRPERSON:** Hear about that. All right. Thank you. Is that all clear, Mr Tedeschi?

MR TEDESCHI: Thank you.

THE CHAIRPERSON: Adjourn till 2 o'clock, please.

25 <**THE HEARING ADJOURNED AT 12.26 PM**

<**THE HEARING RESUMED AT 2.19 PM**

30 **THE CHAIRPERSON:** Yes, Mr Tedeschi.

MR TEDESCHI: Thank you. Senior Constable, I will go through this as quickly as I can. On around 1 March, did Detective Fleming send you an email attaching a draft disclosure certificate?

35 **SNR CONST FRIZZELL:** He may have.

MR TEDESCHI: Could I ask if this document could be brought up. It's DPP.005.009.1867. The number again? DPP.005.009.1867. Now, at the top of the page, you will see that this is a disclosure certificate in relation to Mr Lehrmann's case?

40 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: I won't ask you to read the whole document because it's about 15 or 20 pages long, but if you could go, please, to page 1878.

45 **SNR CONST FRIZZELL:** Sorry.

MR TEDESCHI: Now, that is the page of the disclosure certificate for the signatures of the relevant officers, and you can see there that it's signed by Superintendent Moller and
50 Inspector Hughes -

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: - on 1 March '22?

5

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And this was sent to you by Detective Fleming around about the time that it was signed. Now, do you know if this document was ever provided to either the prosecution or the defence?

10

SNR CONST FRIZZELL: I'm unaware. I would assume so.

MR TEDESCHI: Why would you assume so?

15

SNR CONST FRIZZELL: It was created for that purpose.

MR TEDESCHI: All right. And the fact that it's signed, does that make it more likely or less likely?

20

SNR CONST FRIZZELL: More likely.

MR TEDESCHI: All right. And if you accept from me that in this document, there is neither of the two entries that you've referred to in the disclosure certificate that you prepared, namely, about administrative correspondence or investigative review documents.

25

SNR CONST FRIZZELL: That those specific entries are not in this one?

MR TEDESCHI: They're not. Yes, that's right. Neither entry is there -

30

SNR CONST FRIZZELL: I will accept that.

MR TEDESCHI: - in any of the schedules. Now, on 27 April, I think you have told us that you were present at a meeting that took place between yourself, Fleming, Skye Jerome and Erin Priestly?

35

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And did you on that same day receive an email from Ms Priestly, that I think you have already identified, to say that the DPP had been spoken to?

40

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And was it the view of the DPP conveyed to you that the documents that you were concerned about were not disclosable? In the email - I think you have already identified it in answer to questions by counsel assisting. What was emailed to you by Ms Priestly was:

45

"The DPP is of the view that the internal AFP documents discussed today at the meeting are not disclosable."

50

SNR CONST FRIZZELL: Yes.

5 **MR TEDESCHI:** Would that - did you understand that to mean that they didn't - they did not need to be included in the disclosure -

MR MITCHELL: I object. The email needs to be brought up. The question is -

10 **MR TEDESCHI:** I will take her to next sentence in a moment.

THE CHAIRPERSON: Well, are you cross-examining on the email, are you?

MR TEDESCHI: Yes - no - yes, on the email. Yes.

15 **THE CHAIRPERSON:** Well, let's have a look at it.

MR TEDESCHI: It's 0050.0001.0029_0001. WIT.0050.0001.0029_0001. And it is 27 April. And it's the one from Priestly. Could we go to the next one, please. Second one. Can you see there that paragraph 1 - you were asked some questions about that today. Paragraph 1 says:

20 "The DPP is of the view that the internal AFP documents discussed today at the meeting are not disclosable."

25 Would that normally convey to you that it doesn't need to be put on to the schedule?

SNR CONST FRIZZELL: Yes, but the next line says -

30 **MR TEDESCHI:** Yes, I will take to you that. But the first sentence, would that ordinarily cause you to think, "I don't need to include it in the document"?

SNR CONST FRIZZELL: Not disclosable, yes.

MR TEDESCHI: Yes but then it goes on to say:

35 "Could they please be placed on the updated disclosure certificate?"

So do you agree that that appears to be a bit contradictory?

40 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: On the one hand, it's not disclosable, so it doesn't have to be in. On the other hand, please put it in. And did you query at all that ambiguity - the reason for including it when it was not disclosable?

45 **SNR CONST FRIZZELL:** I don't believe that's in my response there.

MR TEDESCHI: I accept that. All right. Then on 27 April, you sent Fleming two disclosure certificates that I think were, in fact, signed the following day; is that right?

50 **SNR CONST FRIZZELL:** I may have, yes.

MR TEDESCHI: Sorry?

SNR CONST FRIZZELL: Yes.

5

MR TEDESCHI: Yes. And what you say in your email to Sergeant Fleming was:

"Based on the advice from DPP in relation to the attached internal documents and their disclosure, please see the below link for the updated disclosure certificates."

10

So do I take it from that that you had accepted the advice that you had received from Ms Priestly that day, that although the documents were not disclosable, that it was still considered to be advisable to include them in one of the schedules of the disclosure certificate?

15

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And then the following day, 28 April, we've got the two final disclosure statements that were signed Sergeant Moller and Inspector Hughes, I think it was, the ones that you have identified where the mistake was made. And did you - were they the same as the ones that you had sent to Fleming the previous day?

20

SNR CONST FRIZZELL: Without seeing them, I couldn't say. But I would say so.

MR TEDESCHI: Do you recall whether you sent the defence the defence copy on that day or whether it was - they were both sent to the DPP for one of them to be forwarded to the defence?

25

SNR CONST FRIZZELL: Sorry, was your question did I send them to defence?

30

MR TEDESCHI: Yes. Did you send one to the prosecution and one to the defence, or did you send them both to the prosecution?

SNR CONST FRIZZELL: I sent nothing to defence. They - they were provided to DPP.

35

MR TEDESCHI: Now - pardon me. Can we please have WIT.0001.00028_0003. Senior Constable, this is a file note that, again, you were shown this morning by counsel assisting. It's a file note made by Ms Priestly of a meeting on 27 April 2022. WIT.0050.0001.0028_0003. This is a file note that you were shown earlier today?

40

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: I think you also identified a diary entry that you had for the same meeting?

45

SNR CONST FRIZZELL: That's right.

MR TEDESCHI: And this was an important document from your - sorry, this was an important meeting for your point of view in relation to the two disclosure certificates that were signed the next day by Superintendent Moller?

50

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: Over the page, at the top of the page, it says:

5 "Further evidence identified by investigators during - AFP Legal want DPP to look at and determine whether want disclosure or put on disclosure certificate."

And:

10 "DPP need to talk to Director. AFP asked whether want to look at them to determine disclosure. DPP asked what documents are..."

And presumably they are told internal documents from AFP:

15 "...and includes individual officers' assessment of strengths/weaknesses of case."

That's a description of the Moller report and the Boorman minute and the discrepancies document?

20 **SNR CONST FRIZZELL:** Well, no, not necessarily. I think I said earlier that I don't recall whether the Boorman and Moller reports were discussed. But I definitely do recall at least explaining the discrepancies or review documents.

25 **MR TEDESCHI:** All right. But it refers to individual officers' - plural - assessment of strengths/weakness of case. It could include the Moller and the Boorman documents?

SNR CONST FRIZZELL: It could, but I cannot confirm.

MR TEDESCHI: No. And then it says:

30 "AFP confirm does not introduce any new material."

Can you tell us what was said about that?

35 **SNR CONST FRIZZELL:** I don't recall.

MR TEDESCHI: Is it possible that somebody from the AFP said at the meeting that there was no new evidentiary material disclosed in those internal AFP documents?

40 **SNR CONST FRIZZELL:** That's possible.

MR TEDESCHI: And do you agree that that's consistent with your knowledge of those documents? Those documents were merely summaries of evidence rather than being evidence themselves?

45 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: And Ms Priestly in her statement at paragraph 37(c) has said this:

"Following from a meeting with the AFP on 27 April 2022, the DPP advised that the internal AFP documents discussed were not disclosable and requested they instead..."

THE CHAIRPERSON: Sorry. What are you reading from, Mr Tedeschi?

5

MR TEDESCHI: Ms Priestly's statement.

THE CHAIRPERSON: This one? The one on the screen?

10

MR TEDESCHI: No.

THE CHAIRPERSON: A different one?

MR TEDESCHI: It's Ms Priestly's statement, not the -

15

THE CHAIRPERSON: I see. Thank you. Yes.

MR TEDESCHI: It's just a short -

20

THE CHAIRPERSON: No, go ahead. Yes, I understand. Go ahead.

MR TEDESCHI:

"...on 27 April, the DPP advised that the internal AFP documents discussed were not disclosable and requested they instead be placed on the updated disclosure certificate."

25

Do you remember that being said at the meeting?

SNR CONST FRIZZELL: I don't recall, but that's similar to her email.

30

MR TEDESCHI: Okay. Could we have, please, AFP.2003.0010.8821. Could we go to page 8823, please. Now, at the top of the page is an email from Stephanie (indistinct) of AFP Legal to yourself and a large number of others -

35

THE CHAIRPERSON: Yes. Sorry. There is somebody standing up behind you, Mr Tedeschi.

MR MITCHELL: I'm sorry, Mr Tedeschi and Mr Sofronoff. This copy of the document shouldn't be broadcast. It's got email addresses, mobile numbers -

40

THE CHAIRPERSON: I see. Could you take that down, please. Could you take that down. Yes, it's got personal matters on it. Just excuse me a moment.

MR TEDESCHI: I can read it out.

45

THE CHAIRPERSON: Yes, you can do that. That might be better.

MR TEDESCHI: Yes.

THE CHAIRPERSON: But I'm told that when an unredacted document is called for and goes on the screen, we see it in here and they see it in the viewing room next door, but it doesn't go on the livestream. So there's no real risk of publication of personal data. But - proceed as you wish, but now you know that. So if you want to put it on the screen and it's unredacted in those respects, then it should be safe.

MR TEDESCHI: I'm content -

THE CHAIRPERSON: Is that right or -

MR MITCHELL: Well, Mr Sofronoff, with that assurance, we are content for it to be put on the screen, on the understanding -

THE CHAIRPERSON: All right. Thanks. That's what I understand is happening.

MR MITCHELL: Yes. Thank you.

THE CHAIRPERSON: Thank you. You can put it on the screen, then.

MR TEDESCHI: Thank you. Stephanie of AFP Legal on 1 March has written to you and a large number of police and AFP Legal people?

SNR CONST FRIZZELL: Yes. Yes.

MR TEDESCHI: And she's written:

"Hi Emma, thank you for your email. If you and/or the DPP consider the attached internal briefing documents disclosable, in our view the documents would fall under schedule 3 of the disclosure certificate and would be captured by the following item."

And then there's a description that she has given of how they should appear in the disclosure schedule?

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And is that where you got your description of these documents, from her advice, how to describe them?

SNR CONST FRIZZELL: In the first disclosure certificates, I believe so.

MR TEDESCHI: When you say "the first one" -

SNR CONST FRIZZELL: The - 1 March - signed 1 March, I think they are.

MR TEDESCHI: What I suggest is that that's how you described the Moller and Boorman documents in the disclosure certificates of 28 April.

SNR CONST FRIZZELL: No, I have explained this morning what they were captured under.

MR TEDESCHI: But the description, administrative documents and results in relation to the request and response, isn't that how you describe them in the certificate?

5 **SNR CONST FRIZZELL:** I this morning explained on the second lot of certificates signed in April where they fit in in there.

MR TEDESCHI: Yes.

10 **SNR CONST FRIZZELL:** And I believe that there's correspondence between myself and Detective Sergeant David Fleming between this one and that one about this description doesn't really identify what it captures, therefore it was made a little bit clearer in the second copy.

15 **MR TEDESCHI:** All right. Now, on page 8821, the first page of this series of emails, the bottom half of the page is an email from you to Sergeant Fleming dated 27 April:

20 "Based on the advice from DPP in relation to the attached internal documents and their disclosure, please see the below link for the updated disclosure certificates, the additional information to be found on page 2 of schedule 3."

So do we take it from that that you accepted the advice of the DPP office that they were not disclosable but that they should be included in schedule 3?

25 **SNR CONST FRIZZELL:** That they should be on the disclosure certificate, yes.

MR TEDESCHI: Even though they were non-disclosable?

SNR CONST FRIZZELL: With the advice to put them on there, yes.

30 **MR TEDESCHI:** And at the top of the page, there's a further email from David Fleming to yourself and some other police dated 28 April, and you've identified the attachments. And he has written to Callum Hughes.

35 "Please see attached disclosure statements and additional material."

And he requests for Sergeant Moller to sign and forward to the DPP?

SNR CONST FRIZZELL: Yes.

40 **MR TEDESCHI:** Could we please have DPP.005.008.5353. If we go, please, to page 5354. There's a paralegal there, whose name I won't mention, who has sent an email to the DPP, with a copy to Rachel Fisher:

45 "May you please provide us with the most up-to-date version of the disclosure statement for the matter of Bruce Lehrmann."

50 And then at the top of the first page, page 5353, Ms Priestly has attached a document. And there's a copy of that document that's been provided. Could we have 005.008.5363. That's the signed page of the disclosure certificate that was forwarded to the defence. And then if we could go to 5367, there's a reference there in the third bottom entry:

"Administrative correspondence and documentation in relation to Mr Lehrmann and Ms Higgins; internal AFP briefing and investigative material, inclusive of situation, evidentiary reviews, inquiries; and identified issues and/or discrepancies."

5

That's the description that you say you meant to describe the Moller report and the Boorman minute?

SNR CONST FRIZZELL: Yes.

10

MR TEDESCHI: Correct?

SNR CONST FRIZZELL: Yes.

15 **MR TEDESCHI:** Over on the next page, just before "unused material", there is no entry for the investigative review documents?

SNR CONST FRIZZELL: No.

20 **MR TEDESCHI:** So it would appear that what's been provided is the prosecution - is the defence copy of the document you prepared, not the prosecution copy?

SNR CONST FRIZZELL: I don't recall which was which.

25 **MR TEDESCHI:** Well, the prosecution copy had the investigative review documents in it; the defence copy did not.

SNR CONST FRIZZELL: Right.

30 **MR TEDESCHI:** Senior Constable, do you agree that for various reasons, there's been a tremendous amount of confusion in relation to the disclosure certificates?

SNR CONST FRIZZELL: Confusion in what respect?

35 **MR TEDESCHI:** Well, firstly, in relation to the difference between the prosecution version and the defence version because of the error that you've told us about?

SNR CONST FRIZZELL: I don't think the confusion between the two documents is because there's an error that I made.

40

MR TEDESCHI: Yes. Do you agree that that has created some confusion in terms of what was or should have been included in the disclosure certificate?

SNR CONST FRIZZELL: Potentially, yes.

45

MR TEDESCHI: And do you agree that you were getting a variety of sources of advice about what should or shouldn't be included from both the AFP Legal and from the DPP?

SNR CONST FRIZZELL: Yes.

50

MR TEDESCHI: And do you agree that the position for most of the time from the DPP was that the documents in question, being internal review documents, were not disclosable?

THE CHAIRPERSON: I'm sorry. You are asking her what?

5

MR TEDESCHI: By and large, the consistent advice that you got from the DPP office was that the internal review documents were not disclosable?

SNR CONST FRIZZELL: Well, I think -

10

MR TEDESCHI: Perhaps I will revise that. Were not disclosable, but for abundant caution should be included in the disclosure certificate?

SNR CONST FRIZZELL: Yes, that would be fair.

15

MR TEDESCHI: Now, in your statement, you've described how you came to interview Ms Heidi Yates, the Victims of Crime Commissioner?

SNR CONST FRIZZELL: Yes.

20

MR TEDESCHI: Were you aware that at the time she was interviewed that she had been acting as a support person for Brittany Higgins for some time already?

SNR CONST FRIZZELL: Yes, I was aware.

25

MR TEDESCHI: Did you consider that there was any risk from this interview of her having to step aside as the support person for Brittany Higgins?

SNR CONST FRIZZELL: No. It was - the fact that Ms Yates was Ms Higgins' support person was a consideration and was a conversation that was had, but we believed that she wouldn't have to stand aside as being a support person. It just may delay her ability to be within the court during the trial.

30

MR TEDESCHI: You didn't think that she might have to find somebody else to act as a support person for Ms Higgins?

35

SNR CONST FRIZZELL: No. Absolutely not.

MR TEDESCHI: All right. And were you told by any of your superiors any reasons why it was considered desirable to interview her?

40

SNR CONST FRIZZELL: Sorry?

MR TEDESCHI: Were you given any reasons by your superiors as to why they thought Ms Yates should be interviewed?

45

SNR CONST FRIZZELL: I requested to interview Ms Yates.

MR TEDESCHI: Why did you request it?

50

5 **SNR CONST FRIZZELL:** For - we had - there was evidence that there was - or may have been a number of images on Ms Higgins' phone. We had conducted a review on the phone. The images weren't there. My understanding was Mr Moller and Mr Boorman had met with Ms Higgins and Ms Yates and raised the fact that these images weren't there. Ms Higgins showed Mr Moller and Mr Boorman an image on her phone and said that that image was from the night of the alleged incident. From there, she said that they weren't on the device itself; they were within - it was either the Google Drive or the iCloud accounts of hers. So we then got access to that, and I've conducted a review of them, and the images aren't there. So - from the alleged - the date of the alleged incident. So my thought was to capture - Ms Yates was independent from the police that were there, and from Ms Higgins, that she had viewed the image that had been said to have been shown. So I was just trying to capture support of what Ms Higgins has told police.

15 **MR TEDESCHI:** Did you at any time have a copy of that image?

SNR CONST FRIZZELL: No.

MR TEDESCHI: Did you know what was on the image?

20 **SNR CONST FRIZZELL:** Mr Moller and Mr Boorman did. They provided -

MR TEDESCHI: What did they tell you was on the image?

SNR CONST FRIZZELL: That there was a drink and things in the background.

25 **MR TEDESCHI:** Did you think a photograph of a drink might be relevant to the prosecution case?

SNR CONST FRIZZELL: I couldn't tell you without seeing it.

30 **MR TEDESCHI:** What was it that was sufficiently important to interview the Commissioner of VCC about a photograph of a drink?

SNR CONST FRIZZELL: It's -

35 **THE CHAIRPERSON:** Well, when you say "sufficiently important", that's an assumption that some sort of hurdle has to be crossed. I understand the tendency of your questions in that respect. I'm not sure the witness has accepted that tendency.

40 **MR TEDESCHI:** Perhaps I will rephrase it. Were you trying to get some evidence about Ms Higgins' presence in a bar?

SNR CONST FRIZZELL: Yes. And that there were images that were no longer there, that had - had been there.

45 **MR TEDESCHI:** Why was it important to get evidence of those images having been seen by Ms Yates?

SNR CONST FRIZZELL: Well, because they weren't - we didn't have them as evidence.

50

MR TEDESCHI: Well, Superintendent Boorman had seen them?

SNR CONST FRIZZELL: Yes.

5 **MR TEDESCHI:** Sorry, Inspector Boorman had seen them. Did you get a statement from him?

SNR CONST FRIZZELL: Yes.

10 **MR TEDESCHI:** Superintendent Moller had seen them?

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: Did you get a statement from him?

15

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: And what was the reason for wanting to get further evidence about a photograph of a drink?

20

SNR CONST FRIZZELL: It was that Ms Yates was independent from police and from Ms Higgins.

MR TEDESCHI: What was the significance of having a photograph of a drink?

25

SNR CONST FRIZZELL: They are my reasons.

MR TEDESCHI: What would that - what possible use could a photograph of a drink play in the prosecution of Mr Lehrmann?

30

SNR CONST FRIZZELL: It's not so much of the fact that it was an image of a drink; it's a - it's corroborating that there were images there, that when I've done downloads, there are no images. So the evidence is saying that there are no images. Ms Yates is corroborating that, yes, they were there. They were in existence.

35

MR TEDESCHI: There was no dispute at all, was there, that they had been drinking - Ms Higgins and Mr Lehrmann had been drinking together at two bars on the night in question?

40

SNR CONST FRIZZELL: No.

MR TEDESCHI: Mr Lehrmann had been interviewed. He admitted that they had been drinking together?

45

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: That there were a large number of - or a number of civilian witnesses who had been with them in both bars?

50

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: They had all provided statements -

SNR CONST FRIZZELL: Yes.

5

MR TEDESCHI: - about drinking at these two bars?

SNR CONST FRIZZELL: Yes.

10 **MR TEDESCHI:** Was there any other reason why you wanted to have Ms Yates interviewed?

SNR CONST FRIZZELL: No, they are the reasons why.

15 **MR TEDESCHI:** Any other reason at all?

SNR CONST FRIZZELL: No.

MR TEDESCHI: Was there any question about the continuity of Ms Higgins' phone?

20

SNR CONST FRIZZELL: I don't recall that being a request.

MR TEDESCHI: Was there any question about finding out if Ms Higgins had said anything of any evidentiary value to Ms Yates?

25

SNR CONST FRIZZELL: Whether she had made any complaint to Ms Yates?

MR TEDESCHI: Yes.

30 **SNR CONST FRIZZELL:** There was that consideration. The main purpose is what I've described to you about the images.

MR TEDESCHI: Now, could you have a look, please, at this document, AFP.2003.0005.0043. Is that an email from you to Scott Moller, copied to some other police, on 8 September 2021, seeking permission for Ms Yates to be interviewed?

35

SNR CONST FRIZZELL: Yes.

MR TEDESCHI: Now, the reason that you give for wanting to interview her in this email is you refer to a meeting in which yourself, that is, Mr Moller, and Inspector Boorman met with Ms Higgins, at which time she provided information that's relevant to the matter currently before court:

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"Ms Yates will be able to offer corroborative and independent evidence in relation to this meeting, as well as any relevant disclosures Ms Higgins may have made to Ms Yates over the past several months."

45

Do you see that?

50 **SNR CONST FRIZZELL:** Yes.

MR TEDESCHI: There is no mention of Ms Higgins' phone, is there?

SNR CONST FRIZZELL: No.

5

MR TEDESCHI: No mention of any photographs that have been shown?

SNR CONST FRIZZELL: No. I think you will note, though, it says "as discussed". I've had a conversation with Mr Moller about this.

10

MR TEDESCHI:

"As discussed, the investigation team continue to review material obtained during Operation COVINA and wish to seek your consideration for a witness statement to be obtained from Ms Heidi Yates."

15

See, what I want to ask you is this: did you want to interview Ms Yates with the possible view that it might make it more difficult for her to be a support person for Ms Higgins?

SNR CONST FRIZZELL: No, absolutely not. I said that I don't think it would remove her ability to be her support person.

20

THE CHAIRPERSON: I'm sorry, what did you say?

SNR CONST FRIZZELL: I didn't believe that it would remove her ability to be the support person.

25

MR TEDESCHI: Pardon me.

THE CHAIRPERSON: Yes.

30

MR TEDESCHI: Yes, those are the questions.

THE CHAIRPERSON: Thank you. Yes. Go ahead. Ms Edwards. Did you want to come to the front?

35

MS EDWARDS: Is that all right, Mr Chair, if I do that?

THE CHAIRPERSON: Yes. Somebody can (indistinct).

40

<EXAMINATION BY MS EDWARDS:

MS EDWARDS: Senior Constable Frizzell, my name is Edwards. As you know, I appear for Ms Yates.

45

THE CHAIRPERSON: Just before you go on, can you hear - are you getting that on the microphone?

MS EDWARDS: Senior Constable Frizzell, in early 2021 you had developed a good, professional and cordial relationship with Ms Higgins during the investigation?

50

SNR CONST FRIZZELL: Yes.

5 **MS EDWARDS:** And you had taken some care to develop that relationship, that is, to be professional but also to develop a rapport with her?

SNR CONST FRIZZELL: Yes.

10 **MS EDWARDS:** And that's because an important part of dealing with complainants in sexual assault matters in particular is developing that type of rapport?

SNR CONST FRIZZELL: Yes, absolutely.

15 **MS EDWARDS:** You had liaisons with her in relation to various evidential matters during that time?

SNR CONST FRIZZELL: Yes.

20 **MS EDWARDS:** But you also had interactions with Ms Higgins to check on her general welfare and her mental health. Would that be fair to say?

SNR CONST FRIZZELL: Yes.

25 **MS EDWARDS:** And, partly, you did that because you see it as part of your duties as a police officer?

SNR CONST FRIZZELL: Absolutely.

30 **MS EDWARDS:** But it is more than that, in the sense that as a compassionate person who has an understanding of the trauma of someone going through that experience, you also think it's the right thing to do?

SNR CONST FRIZZELL: Yes, I agree with that.

35 **MS EDWARDS:** And you support a victim-centric, trauma-informed approach to complainants in these cases?

SNR CONST FRIZZELL: Absolutely. Yes.

40 **MS EDWARDS:** As part of that, you understand the importance of supportive, safe environments for complainants?

SNR CONST FRIZZELL: Yes.

45 **MS EDWARDS:** And that can mean complainants having trusted supports in place?

SNR CONST FRIZZELL: Yes.

50 **MS EDWARDS:** And, in fact, we heard this morning that you made efforts in February 2021 to link up Ms Higgins through SupportLink with external, outside support providers?

SNR CONST FRIZZELL: Yes.

5 **MS EDWARDS:** Because that could be an additional and worthwhile aspect of having additional support for her?

SNR CONST FRIZZELL: Yes.

10 **MS EDWARDS:** From February '21 to early May, there had, however, been some challenges in maintaining ongoing contact with Ms Higgins?

SNR CONST FRIZZELL: Yes, that's right.

15 **MS EDWARDS:** And you have outlined some of this in your statement, and that included there was some anxiety and delay about providing a phone?

SNR CONST FRIZZELL: Yes.

20 **MS EDWARDS:** And there were also delays and frustrations in getting her to contact, cancelled appointments, returning calls; things of that nature?

SNR CONST FRIZZELL: Yes.

25 **MS EDWARDS:** And you are, of course, aware - and this is not being critical of Ms Higgins, but she had some significant mental health challenges during that time?

SNR CONST FRIZZELL: Yes.

30 **MS EDWARDS:** There was also extraordinary publicity, media interest, political focus that led to pressure on her?

SNR CONST FRIZZELL: Yes.

35 **MS EDWARDS:** And, in fact, on everyone?

SNR CONST FRIZZELL: Yes.

40 **MS EDWARDS:** And, of course, that in turn exacerbated the mental health pressure that she was undergoing?

SNR CONST FRIZZELL: I have no doubt.

45 **MS EDWARDS:** And then on 5 May 2021, you were advised to cease contact with Ms Higgins?

SNR CONST FRIZZELL: Yes, I was.

50 **MS EDWARDS:** Now, you haven't had an opportunity until very recently to have access to Ms Yates' statement; is that right?

SNR CONST FRIZZELL: That's right.

MS EDWARDS: You had a brief opportunity this morning to have access to that and to read some parts of that; is that right?

5

SNR CONST FRIZZELL: Yes, that's right.

MS EDWARDS: Is it fair to say that that gave you, perhaps for the first time, a deeper understanding of Ms Higgins' perspective of that period in May and what led up to that cessation of contact?

10

SNR CONST FRIZZELL: Yes.

MS EDWARDS: And if we could sort of unpack that a little bit. Ms Higgins singled you out in particular as a person she had a good relationship with?

15

SNR CONST FRIZZELL: Yes.

MS EDWARDS: But she was having a great deal of difficulty in managing direct contact with the police?

20

SNR CONST FRIZZELL: Yes.

MS EDWARDS: And without being critical of you or any of the police, it was having an impact on her mental health?

25

SNR CONST FRIZZELL: Yes.

MS EDWARDS: She had asked Ms Yates to act as a liaison or as a support person for her? You didn't, I think, know that when you wrote your statement, did you?

30

SNR CONST FRIZZELL: No.

MS EDWARDS: And so you didn't know that it wasn't Ms Yates, in effect, inserting herself but, in fact, something that Ms Higgins had requested?

35

SNR CONST FRIZZELL: Yes.

MS EDWARDS: And you, of course, know that Ms Higgins had a right to do that, to make that request?

40

SNR CONST FRIZZELL: Of course.

MS EDWARDS: And you, of course, know from your experience and even sometimes when there's a good rapport between a complainant and an officer, they do sometimes want to invoke that right and to have an additional support person there, even as - to act as a liaison?

45

SNR CONST FRIZZELL: Yes.

MS EDWARDS: And you don't have an issue with that, I take it, from your victim-informed, trauma-centric - sorry, I have got that the wrong way around, but that's the sort of approach that you have supported and continued to support?

5 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: And - but this case in particular, it was a really unique and challenging case.

10 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: And so having someone that Ms Higgins knew and trusted was helpful. And having someone with experience and training in trauma-informed care probably in this case, perhaps than many others, was really critical as well. And - you nodded. Just -

15 **SNR CONST FRIZZELL:** Sorry. Yes.

MS EDWARDS: And as someone who understands that aspect, you would embrace that as something, that if someone is undergoing those sorts of challenges, you would embrace something that made the criminal justice system more bearable and more comfortable for them?

SNR CONST FRIZZELL: Absolutely.

25 **MS EDWARDS:** Of course what was lost from that, as you observed this morning, was that direct relationship - your rapport?

SNR CONST FRIZZELL: Yes.

30 **MS EDWARDS:** And optimally you have that too. You have the support person, but optimally you also have a direct line of contact. But now having had a bit more perspective - I think you are also aware of Superintendent Moller's evidence yesterday; is that right?

35 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: And he was taken - and I'm not going to do it to you, but he was taken through quite a detailed chronology of all the aspects of Ms Yates' involvement, and I think you are now aware of quite a deal of that; is that right?

40 **SNR CONST FRIZZELL:** Yes. Yes.

MS EDWARDS: And he wasn't aware until that time of all the assistance that Ms Yates had given in arranging interviews, accommodation, flights, making sure those things happened?

45 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: And also exhibits, phones, iCloud passwords, material from The Project - there was a whole range of material that she was able to facilitate police having access to?

50

SNR CONST FRIZZELL: Yes.

5 **MS EDWARDS:** And I think you didn't know when you wrote your statement that on 5 May when you were told to cease contact that, in fact, there had been to and fro between Inspector Boorman and Ms Yates about that process. There were emails and phone calls. And you hadn't been part of that at that time?

10 **SNR CONST FRIZZELL:** That's right.

MS EDWARDS: And you didn't know - you conducted the 26 May second EICI, but you didn't actually know that Ms Yates had checked in and said, "I'm going to attend if that's suitable," after Inspector Boorman had reached out to try and get some support for Ms Higgins?

15 **SNR CONST FRIZZELL:** That's right.

MS EDWARDS: So to try and cut it short, Superintendent Moller accepted yesterday that when that entire chronology was known, Ms Yates had really played an important role in facilitating contact and engagement?

20 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: You are aware of that?

25 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: What had seemed from the outside to be cumbersome was, in fact, effective and facilitating. Do you agree with that also?

30 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: And you would agree now that she actually did play a role of quite significant assistance in the investigation?

35 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: Would you also agree now, knowing what you now know, that Ms Yates had actually played an important role in working with police to protect Ms Higgins' mental health?

40 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: And that included facilitating welfare checks?

45 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: And I think that you, on 27 May, had started a chain -

50 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: - which led to that, but you didn't actually know how it ended up -

SNR CONST FRIZZELL: That's right.

5

MS EDWARDS: - after you started the chain?

THE CHAIRPERSON: What chain is that?

10 **MS EDWARDS:** A chain where Ms - Senior Constable Frizzell raised a concern with Superintendent Moller about something that she had read.

THE CHAIRPERSON: I see. Right. Thank you.

15 **MS EDWARDS:** And then that led up the chain of command to reaching out to Ms Yates. And then all the interaction was then between Superintendent Moller and Ms Yates.

SNR CONST FRIZZELL: Yes.

20 **MS EDWARDS:** So in that respect, while that direct contact was lost, Ms Yates was, in fact, facilitating and making possible welfare checks. So in that sense, it's possible that both with respect to interviews, exhibits and also welfare checks, that may not have even happened without her involvement. Would you agree with that?

25 **SNR CONST FRIZZELL:** Yes.

MS EDWARDS: With that in mind - Mr Tedeschi took you to paragraph 228 this morning. I don't need to take you to that now unless you want to go see it as I do, but can I suggest a more accurate way of stating it would be that Ms Yates was acting as a liaison which prevented direct police contact with Ms Higgins but facilitated ongoing engagement and indirect welfare checks with Ms Higgins?

30

SNR CONST FRIZZELL: Yes.

35 **MS EDWARDS:** And you would agree ultimately Ms Yates' involvement as a support person was of real assistance to police?

SNR CONST FRIZZELL: Yes.

40 **MS EDWARDS:** One more topic. You have already given evidence about the second EICI on 26 May.

SNR CONST FRIZZELL: Yes.

45 **MS EDWARDS:** You don't have a perfect recollection of everything that happened that day, but I suggest to you that when Ms Yates attended as support person, she introduced herself as Heidi. Do you recall that?

SNR CONST FRIZZELL: I don't recall that.

50

MS EDWARDS: Do you agree that during the interview that you and Detective Madders conducted, she acted appropriately as a support person?

SNR CONST FRIZZELL: Yes.

5

MS EDWARDS: You would agree she didn't speak up or intervene in the interview at any time?

SNR CONST FRIZZELL: No.

10

MS EDWARDS: And she didn't try to answer on Ms Higgins' behalf?

SNR CONST FRIZZELL: No.

15 **MS EDWARDS:** I think at one stage she brought in some homemade biscuits for you; is that right?

SNR CONST FRIZZELL: I recall that, yes.

20 **MS EDWARDS:** You, of course, and Detective Madders were conducting that interview to best of your ability as professionals?

SNR CONST FRIZZELL: Yes.

25 **MS EDWARDS:** It was a - there was pressure because of the huge focus on the fact that it was a relatively unusual engagement. You would agree with that?

SNR CONST FRIZZELL: Yes.

30 **MS EDWARDS:** You had previously, in fact, had a retired magistrate act as a support person for Ms Higgins as well; is that right?

SNR CONST FRIZZELL: Yes.

35 **MS EDWARDS:** Support people can be people from all walks of life and can present in many different forms?

SNR CONST FRIZZELL: Yes, absolutely.

40 **MS EDWARDS:** You would know from your training that it's important, but particularly with vulnerable witnesses, not to be distracted by the support person but to focus on your professional role and do your part?

SNR CONST FRIZZELL: Yes.

45

MS EDWARDS: And that is what you did?

SNR CONST FRIZZELL: Yes.

50 **MS EDWARDS:** And she didn't get in the way of that, did she?

SNR CONST FRIZZELL: No, at all.

5 **MS EDWARDS:** Superintendent Moller gave some evidence yesterday of the role of Commissioner, that actual rank in police. He gave some evidence to the effect that it's a hierarchical organisation, and there's real baggage with that. There is gravitas. There is cachet with that title. Do you agree with that?

10 **SNR CONST FRIZZELL:** Yes, absolutely.

MS EDWARDS: And you have been in the police effectively your whole adult life?

SNR CONST FRIZZELL: Yes.

15 **MS EDWARDS:** And so I take it that the title "Commissioner" means a lot to you?

SNR CONST FRIZZELL: Yes, of course.

20 **MS EDWARDS:** And you really only know it in that context?

SNR CONST FRIZZELL: Yes.

25 **MS EDWARDS:** Did that have an impact - that title of "Commissioner", did that have an impact of your perception of Ms Yates at the time acting as support person?

SNR CONST FRIZZELL: At the time, yes.

30 **MS EDWARDS:** But you don't suggest she was pulling rank; she was just acting like any other support person?

SNR CONST FRIZZELL: Yes.

35 **MS EDWARDS:** At that time, you had limited prior dealings with Ms Yates. Do you think knowing her better just personally, face to face, would have assisted with your feelings about her rank in that regard?

SNR CONST FRIZZELL: Yes, I think since my engagements with Ms Yates in relation to this matter, I am able to engage with her and not feel as I had described.

40 **MS EDWARDS:** Yes. Because you felt imbalanced -

SNR CONST FRIZZELL: Yes. Absolutely.

45 **MS EDWARDS:** - and daunted by her role?

SNR CONST FRIZZELL: Yes.

MS EDWARDS: But that wasn't due to her personality -

50 **SNR CONST FRIZZELL:** No.

MS EDWARDS: - or her behaviour.

SNR CONST FRIZZELL: No. Her role.

5

MS EDWARDS: It was the title.

SNR CONST FRIZZELL: Yes.

10 **MS EDWARDS:** Superintendent Moller indicated that one worthwhile initiative would be that if officers, but particularly SACAT officers, had more understanding of the VOCC in general and the Commissioner in particular and what that role was, that that would be of real assistance. Would you agree with that?

15 **SNR CONST FRIZZELL:** Yes, absolutely.

MS EDWARDS: And, in fact, do I take it from your comments on the sexual offences investigation program and your experience, you would generally support more training on processes, procedures and laws surrounding sexual assault investigations all together?

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SNR CONST FRIZZELL: Absolutely, yes.

MS EDWARDS: Those are my questions, Mr Chair.

25 **THE CHAIRPERSON:** Thank you.

MS EDWARDS: Thank you.

30 **THE CHAIRPERSON:** Does anybody else have any questions for Senior Constable Frizzell? No?

MR MITCHELL: I don't have anything.

35 **THE CHAIRPERSON:** No? Thank you, Senior Constable. Thank you for your assistance. You are free to go.

SNR CONST FRIZZELL: Thank you.

40 <**THE WITNESS WAS RELEASED**

THE CHAIRPERSON: Mr Jones.

MR JONES: We just need to stand down for five minutes or so, please, Mr Chair.

45 **THE CHAIRPERSON:** Yes.

<**THE HEARING ADJOURNED AT 3.11 PM**

<**THE HEARING RESUMED AT 3.22 PM**

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THE CHAIRPERSON: Yes.

MS LYNCH: Mr Chair, I call Acting Assistant Commissioner Joanne Lee Cameron.

5 **THE CHAIRPERSON:** Yes. Ms Cameron, will you take an oath or make an affirmation?

CMDR CAMERON: I would like to take an oath. Thank you.

THE CHAIRPERSON: Yes. Is there a card in front of you? On the other side?

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CMDR CAMERON: I have the affirmation on the other side.

THE CHAIRPERSON: Is that - yes. Thank you.

15 **<JOANNE LEE CAMERON, SWORN**

<EXAMINATION BY MS LYNCH:

THE CHAIRPERSON: Thank you, Commissioner. Ms Lynch.

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MS LYNCH: Now, you are Joanne Lee Cameron?

CMDR CAMERON: That's correct.

25 **MS LYNCH:** And you provided a statement to the Board of Inquiry which was sworn on 10 April 2023?

CMDR CAMERON: Yes, that's correct.

30 **MS LYNCH:** Do you have your statement with you?

CMDR CAMERON: I have a copy.

35 **MS LYNCH:** Okay. You are welcome to refer to it, if you like, throughout the course of this. Is there anything in the statement that you wish to correct or amend?

CMDR CAMERON: I don't believe so, no.

40 **MS LYNCH:** Now, you are currently the Acting Assistant Commissioner, Chief of Staff to the Commissioner of Australian Federal Police; is that right?

CMDR CAMERON: That's correct.

45 **MS LYNCH:** And you first joined the AFP in March 1997?

CMDR CAMERON: That's correct.

50 **MS LYNCH:** Prior to your current position, you were in the role of Commander, Investigations?

CMDR CAMERON: That's correct. In ACT Policing.

MS LYNCH: And you were in that role from December 2021 until February 2023?

5 **CMDR CAMERON:** Yes, that's correct.

MS LYNCH: And your primary responsibility as commander was the strategic guidance of the ACT Criminal Investigations Unit?

10 **CMDR CAMERON:** Yes, that's correct.

MS LYNCH: And that involved, as part of it, establishing and maintaining effective working relationships with the Office of the Director of Public Prosecutions?

15 **CMDR CAMERON:** Yes, it included that.

MS LYNCH: Now, you mention in your statement at paragraph 122(a) that when you returned to ACT Policing in December 2021 in the role of commander, you observed that the professional trust and rapport between the ACT Policing (indistinct) had diminished following the preparation of the SAPR report. What did you observe that led you to think that?

20 **CMDR CAMERON:** During the course of my conversations with staff and other colleagues, I formed that view. It was a comparison that I could draw from my time previous in ACT Policing where I had spent 20 of my 25-year career. And to come back in my 24th, if my maths is correct, I could draw an observation about the working relationships that myself and others, of course, across ACT Policing had when I performed my duties at different ranks. And I drew that observation based on the commentary I was receiving as Commander, Investigation when I returned. I formed a view that that relationship had diminished.

25 **MS LYNCH:** And so you say - was that mainly from things that your staff were telling you?

CMDR CAMERON: It was not just staff of ACT Policing. In my role, I was obviously building those strategic relationships with other directorates of ACT Government, the Office of Director of Public Prosecutions, the Victims of Crime Commissioner. And it was in those - re-establishment of those working relationship at the commander level that I was given information that suggested that relationship had diminished.

30 **MS LYNCH:** So that came from both your staff and -

35 **CMDR CAMERON:** And others.

MS LYNCH: - ODPP.

40 **CMDR CAMERON:** Other - other interactions that I would naturally have with external stakeholders.

MS LYNCH: Ordinarily, in your role as commander, you weren't involved in day-to-day investigation, were you?

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CMDR CAMERON: That's a correct observation.

MS LYNCH: But you did become involved in the investigation and prosecution of Ms Higgins' complaint?

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CMDR CAMERON: I did not become involved in the prosecution. The prosecution had commenced. I became involved from the - from December 2021, I became involved in the prosecution that had commenced -

10 **MS LYNCH:** Yes.

CMDR CAMERON: - prior to my return to ACT Policing.

MS LYNCH: And why did you become involved in that matter?

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CMDR CAMERON: The case officer of the team - the supervision of that investigation led to me in terms of chain of command. So the criminal investigations team that conducted this investigation and - and this prosecution were my direct reports.

20 **MS LYNCH:** Okay.

THE CHAIRPERSON: But why did this particular matter out of all the matters that - where there were officers that report to you, why did this particular matter become one in which you took a particular role in?

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CMDR CAMERON: Mr Chair, it was one that was briefed to me given the sensitivities, the complexities that had already been known - well-known - well-known in the public domain of December 2021, and I was briefed to that.

30 **THE CHAIRPERSON:** I see. Because of its - the significance that everybody knows became attached to it -

CMDR CAMERON: Correct.

35 **THE CHAIRPERSON:** - it was briefed to you as a matter of course because that's the kinds of things that are briefed to you?

CMDR CAMERON: That's correct.

40 **THE CHAIRPERSON:** I see.

MS LYNCH: Was your involvement limited to briefings or did it go further than that?

45 **CMDR CAMERON:** My involvement was in relation to briefings that were relevant to my role, relevant to the interactions that I was having with external stakeholders, relevant to the need for me to brief further beyond my rank - my position, to the Deputy Chief Police Officer, to the Chief Police Officer, and further into the AFP executive.

50 **MS LYNCH:** And when you had commenced as commander, Mr Lehrmann had already been charged and the matter was before the courts?

CMDR CAMERON: That's correct.

5 **MS LYNCH:** Is it fair to say that there were some difficulties in communication between the staff at the DPP and the police involved in the case?

CMDR CAMERON: It is fair to say that. I became aware of those difficulties.

10 **MS LYNCH:** And how did you become aware of that?

CMDR CAMERON: During the course of - of events, particularly throughout the year of 2022 as we led towards the trial, there was a number of interactions and developments in the prosecution that - that I became aware of and I became involved in.

15 **MS LYNCH:** And so it wasn't just briefings up to you; it was interactions that you were also involved in that you observed some difficulties with. Is that correct?

CMDR CAMERON: That's correct.

20 **MS LYNCH:** Is it fair to say that the relationship was tense?

CMDR CAMERON: With whom's relationship do you refer?

25 **MS LYNCH:** With the staff - with the police officers involved in the case and the staff at the offices of the Director of Public Prosecutions?

30 **CMDR CAMERON:** I - I can strongly talk to my relationships with others. For - for me to pass a comment about the interactions of my staff, particularly if I wasn't there myself, I find that a bit of a stretch, but -

THE CHAIRPERSON: Well, you can talk about your own relationship.

35 **CMDR CAMERON:** My own relationships were - were well trodden. I was developing relationships with those I hadn't worked with before. Was there broadly tension? Yes, there was. I can't give any specifics to those other than with myself. I - I wouldn't describe the relationships I was personally having as tense.

40 **MS LYNCH:** What about what was being reported to you in those regular briefings that you were having?

CMDR CAMERON: Yes. And that's the tension, I guess, that you are referring to. That was fair to say there was tension.

45 **MS LYNCH:** Now, I want to ask you some questions about the approaches from defence counsel to the AFP Policing officers. On 12 October 2022, you received a phone call Scott Moller, who advised that Mr Whybrow had called him. I might bring up a document that might help you recall this. Mr Operator, would you please bring up AFP.2002.0001.0007. And I will just go to page 0016. Sorry, .0016. Now, this is a file note. I will just let you read it. I might actually get to you read the phone call from Scott M aloud so that we can make
50 sure - just to - so we can make sure that we follow your handwriting.

CMDR CAMERON: Would you like me to read it as if -

THE CHAIRPERSON: Yes. Read it out loud so that we - and -

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CMDR CAMERON: My understanding of the notes? Is that appropriate?

THE CHAIRPERSON: Yes. Yes. Yes, please.

10 **CMDR CAMERON:**

"Phone call from Scott Moller regarding an approach from Mr Whybrow. This is my view. It's not appropriate at the very least from perceptions. I formed a view that that sort of interaction would be through the DPP only. I made a phone call to Chief Police Officer Neil Gaughan who agreed..."

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MS LYNCH: I might just stop you there, because I will come to those, if you don't mind. When did you take this note?

20 **CMDR CAMERON:** I would have taken those notes possibly the next morning or it could have been at the time. So whether - whether I had my diary with me there at exactly 1730, I can't recall. I - if I had not, I would have been contemporaneously taking those notes next time I had the diary available to me.

25 **CMDR CAMERON:** It was either contemporaneous or soon after. Is that what you're saying?

CMDR CAMERON: Yes. That's my recollection.

30 **MS LYNCH:** And what was the approach from Whybrow?

CMDR CAMERON: From memory, I recall being in the car and driving in my - I received a phone call from - from Scott. He shared with me that he had been approached through a phone call from Mr Whybrow. I don't recall the specifics of what that conversation was between those two gentlemen, but I recall - given the fact that we were mid trial, given the sensitivities and the complexities that had already played out in this prosecution, given the intense interest from externals, including media outlets, with respect to the interactions that police and the DPP and the defence had been having, it led me to make those notes because I did not consider it at the very least the perceptions that others would make of our police officers.

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MS LYNCH: So - sorry, Mr Chair.

THE CHAIRPERSON: No, go ahead.

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MS LYNCH: Where you say - and you have said it was your view that it was not appropriate at the very least from perceptions. Is - did you express that to Mr Moller?

CMDR CAMERON: Yes.

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THE CHAIRPERSON: Just so I understand the circumstances at the time, I know that there was a lot of material being written and broadcast about the case and about what people were doing. Because you use the word "perceptions", I would like to understand the particular things that concerned you about the perception the public might have of AFP. What was it that - what were the publications or what was the material or what were the things that were being said that were the background to your reaction to this?

CMDR CAMERON: Top of mind is the perception that police were somehow colluding with the defence to bring favour to their approach to the prosecution.

THE CHAIRPERSON: I see. Yes, I understand. Yes. Go ahead, Ms Lynch.

MS LYNCH: Who held that perception?

CMDR CAMERON: I held that perception.

MS LYNCH: That police -

CMDR CAMERON: I - I held the concern that at the very least, whenever these sorts of interactions were occurring, if they become known to others, there would be judgments made. Not even knowing what the conversation was about, be it legitimate or otherwise, others would make a judgment unfairly against my officers.

THE CHAIRPERSON: Yes. The proposition was that - tell me if this is right: that stories were circulating that police were improperly helping the defence, and you wanted to ensure that nothing was done to feed that kind of a false belief.

CMDR CAMERON: That is correct.

THE CHAIRPERSON: That is to say, I take it you understand that defence are entitled to engage with police, but that wasn't the problem. The problem was this falsehood about improper conduct on the part of police.

CMDR CAMERON: Yes.

THE CHAIRPERSON: Yes, I understand.

CMDR CAMERON: I agree.

MS LYNCH: And what was the basis for your concern about that?

CMDR CAMERON: We had been through, in my experience now, noting this was in October, 11 months in my experience back in ACT Policing, of criticism, of alleged unfair or inappropriate behaviour by ACT Policing with respect to the prosecution. And these sorts of interactions, each time they happened, be it phone calls or two people standing near each other at court or otherwise, was potentially building these conspiratorial ideas that police were not conducting themselves with the very based core values that we all held ourselves too. And that concerned me.

MS LYNCH: And just so I'm perfectly clear, there were criticisms - and who were those criticisms coming from?

5 **CMDR CAMERON:** Those criticisms were in the - in the conversations that may have been floating around media outlets, conversations that may have been floating around the halls of - outside the court. It was this sort of general tone that was building over the course of months in the lead-up to the trial. For example, information was being used and put out in the - in media reporting. Questions would be asked, "Where did it come from?" People were
10 arguably saying, "Well, in the absence of not knowing where it's come from, maybe it was the police." It was that sort of environment that was being built up. And it was that sort of environment I was trying to counter by then, you know, giving - holding a view that it would not be appropriate for police to be actively, singularly involved and engaged with defence.

15 **THE CHAIRPERSON:** Well, at least informally.

CMDR CAMERON: Informally, Mr Chair, yes.

20 **THE CHAIRPERSON:** And you believed that if communications to particular police officers were relayed through the DPP's office, well, that would formalise matters so that it would be impregnable to criticism; is that right?

CMDR CAMERON: That is absolutely right.

25 **THE CHAIRPERSON:** Yes. I see.

MS LYNCH: Your note then seems to record that you then called the - it says "CPO", and I understand that to be a reference to the Chief Police Officer; is that right?

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

MS LYNCH: Who agreed - who agreed with what?

35 **CMDR CAMERON:** Agreed with the sentiment of the conversation and the concerns that I raised with him.

MS LYNCH: Agreed that not appropriate at the very least from perceptions?

CMDR CAMERON: Correct.

40 **MS LYNCH:** And then it looks like there is a phone call back to Mr Scott Moller to update?

CMDR CAMERON: That's correct.

45 **MS LYNCH:** And what was that update?

CMDR CAMERON: That I had spoken with the Chief Police Officer, that there was an agreement about the position. That's all I recall about the phone call at the time.

50 **MS LYNCH:** And then it records over in the corner:

"A phone call to Shane DPP."

CMDR CAMERON: That's correct.

5 **MS LYNCH:** Is that Mr Drumgold?

CMDR CAMERON: Yes, that is.

MS LYNCH: What was the purpose of that call?

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CMDR CAMERON: It was to relay to him my concerns about the direct approach to our police officers, some of which were still potentially witnesses for a trial that was midway through its course. I had concerns, and I shared with him that I had concerns from the very least the perception that this sort of engagement creates. And I would much prefer that any of these sorts of interactions, if they are required from the defence, that they be channelled through his office.

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MS LYNCH: And that's the reference to the "through DPP only" note. And is that what you told Mr Moller as well?

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CMDR CAMERON: That's my recollection.

MS LYNCH: And in that call with Mr Drumgold, you expressed those concerns. Do you recall whether or not he agreed with those concerns that you were raising?

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CMDR CAMERON: My memory serves me that he accepted my position. Whether - I don't - that's my recollection.

MS LYNCH: Okay. Well, if he had have disagreed with your concerns, would you have taken the next steps that you did?

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CMDR CAMERON: Yes, but I don't recall that there was vehement disagreement with anything I was putting to him. So he understood my view.

MS LYNCH: And later that day, in fact, you sent an email to Mr Drumgold regarding the approaches to ACT Policing witnesses by defence. And I will have Mr Operator bring up that email. It's AFP.0007.0001.0210. If you wouldn't mind just having a read of that.

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CMDR CAMERON: Thank you.

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THE CHAIRPERSON: Commissioner, could I just ask you - that letter to Mr Drumgold - I understand what you've said about what you were concerned about. But that letter to Mr Drumgold, if we didn't have the background that you've given us, looks very much like a direction to police not to talk to defence counsel, which I understand from the evidence you've just given isn't something you intended. Rather, you intended that because of the peculiarities of this case, you wanted it to be done in a perfectly formal way so that if any question was ever raised, it could all be laid out and shown without any dispute about what was said or how approaches were made. But the letter looks like a direction that you mustn't talk to defence, which is another thing entirely. So could you just tell me why you wrote it in those terms?

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CMDR CAMERON: I accept the very black and white approach that that -

THE CHAIRPERSON: You can see how it looks.

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CMDR CAMERON: I do. And I accept that without the context that I've earlier provided, it would look like it's withholding the opportunity for defence to engage.

THE CHAIRPERSON: Yes, yes. But that's not what you meant, you're telling me.

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CMDR CAMERON: That - that is not what I meant. And I - on reflection of that evening in particular -

THE CHAIRPERSON: I see. It's 9.22 pm. Yes.

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CMDR CAMERON: I will - I will offer the frustrations I was beginning to feel as the commander in charge of these people, their welfare, my agency's reputation -

THE CHAIRPERSON: Yes.

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CMDR CAMERON: - ACT Policing's reputation -

THE CHAIRPERSON: Yes.

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CMDR CAMERON: - the professionalism with which I uphold my own office, as well as leading my - my officers. I would offer that my frustrations were being played out in -

THE CHAIRPERSON: No, I can see - yes.

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CMDR CAMERON: - the harshness with which I crafted that email.

THE CHAIRPERSON: Yes. Yes. Let's have a break for 15 minutes, please.

<THE HEARING ADJOURNED AT 3.44 PM

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<THE HEARING RESUMED AT 4.03 PM

THE CHAIRPERSON: Yes, Ms Lynch.

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MS LYNCH: Acting Assistant Commissioner Cameron, you said before we adjourned - I'm going to paraphrase, and I may do it incorrectly because I'm relying on my memory, but that this email - I might just bring it back up, operator. Thank you. It contains some bold statements that you might not say if you had some time to reflect on it. Is that fair?

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CMDR CAMERON: I - I reflect now that I may have phrased it in a - perhaps a softer approach -

MS LYNCH: That was probably what you said -

CMDR CAMERON: - to the situation or maybe - I'm now paraphrasing myself, but a softer approach than - than crafted there.

5 **MS LYNCH:** And I just want to understand what you meant at the time that you wrote this email by a couple of things that you said. In the second paragraph, you say "the perspective of affecting the prosecution". What do you mean by "affecting the prosecution" there? What did you mean, sorry?

10 **CMDR CAMERON:** I think what I meant was - was affecting the proceedings that were before court - other factors that affected the proceedings to date. I didn't want any actions or perceptions of actions or - or judgments from others being made about what police were or weren't doing, who police were or weren't talking to at the time, noting that some of these - those members were still potential witnesses for the trial. I didn't want any actions that we take to affect the proceedings that were before court.

15 **MS LYNCH:** And you then go on to say "an attempt to influence the giving of any future evidence". What do you mean by that?

20 **CMDR CAMERON:** I - I reflect to the emotions that - the frustrations I was experiencing when this email was crafted. I reflect that I could have softened the - the message I was attempting to convey to the Director. It plays to the perceptions that I earlier described, which - which were others judging that we were somehow colluding or taking actions that might affect the proper course of - of the judicial process.

25 **MS LYNCH:** So you're not suggesting there a concern that defence counsel would attempt -

CMDR CAMERON: I'm not suggesting that was happening. I'm not suggesting it - it - it happened. I'm suggesting - I'm perhaps unpacking there what I was concerned that others might think is at play.

30 **THE CHAIRPERSON:** You were concerned about a wrong perception that people - wrong perception that police and defence might be getting together to affect the evidence in some way?

35 **CMDR CAMERON:** Correct. As - as -

THE CHAIRPERSON: Baselessly, but -

40 **CMDR CAMERON:** Baselessly. Correct.

THE CHAIRPERSON: Yes.

CMDR CAMERON: The - the - the conspiratorial idea that somehow police were taking actions to favour the defence -

45 **THE CHAIRPERSON:** Yes.

CMDR CAMERON: - that would not let the court proceed as it should, in fairness and transparent accountable manner.

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THE CHAIRPERSON: Yes.

CMDR CAMERON: It was me - and as I reflect, I could have added greater value to the message I was trying to convey there.

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MS LYNCH: And who were you concerned about those perceptions generating - being generated?

CMDR CAMERON: I was concerned that those perceptions may have been already out in the public domain. I was concerned that this interaction might add to it further.

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MS LYNCH: Were you concerned that police witnesses' actions might be called into question in the trial?

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CMDR CAMERON: That was quite possible.

MS LYNCH: Was your primary concern adverse media comment?

CMDR CAMERON: My primary concern was the ongoing suggestion that police were not conducting themselves in a fair and transparent and professional manner.

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MS LYNCH: And in the email to Mr Drumgold, you say that you advised - "I have advised my staff." And when you say that, are you referring to the conversation that you had with Mr Moller that day?

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CMDR CAMERON: That would be correct.

MS LYNCH: And the next day, you sent an email to Mr Moller about this matter - the next morning. It's - Mr Operator, if you wouldn't mind bringing it up. It's AFP.0007.0001.0211. You've read that email?

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CMDR CAMERON: Thank you. Yes.

MS LYNCH: So this was the next day at about - just before 9 am. And in the final paragraph of this email, you again talk about the perceptions that this creates. And given the history and sensitivity of this case, is that - can you just explain what you meant by that when you were sending this email to Mr Moller?

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MS LYNCH: I reflect back to those perceptions as earlier described, that police may have somehow conducted themselves in a manner that was inconsistent with supporting the prosecution of the matter, that was somehow supporting the defence - the defence's position.

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MS LYNCH: And - but you then go on to say that:

"It really stands true in any matter at court."

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I just want to understand what you meant by that.

CMDR CAMERON: I reflect, again, my frustration as I crafted these emails. I reflect that I may have been able to soften the - the views I put forward in this email. I accept from a legal

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perspective that that in and of itself could be viewed erroneously, that - that, of course, defence has available themselves - should be made available witnesses to the matter. It's not through that lens that I wrote - that I made those statements. It's through the lens of the suggestion that police would be conducting themselves in a manner that does not support the prosecution of a case that they are a witness to.

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THE CHAIRPERSON: Yes. And were you conscious of any beliefs on the part of any staff of the Office of Director of Public Prosecutions who thought that police were getting too cozy with the defence?

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CMDR CAMERON: Yes, that would be correct.

THE CHAIRPERSON: Yes. Thank you.

15 **MS LYNCH:** And in the last line of this email, you very express your opinion at that time that it's never really appropriate for this to occur, being approached by defence to police witnesses. Do still hold that view?

20 **CMDR CAMERON:** I hold the view that there will be occasions where a witness will be approached by either - either party in a matter that's before the court. I hold - I hold true, and I reflect that as a witness, I am - I am - it is my evidence, and I take actions to preserve that evidence, in the same vein that as a police officer and an investigator, I seek to preserve the evidence that each witness can give in - in a - in a matter. And the example I draw is on arrival at a scene. If there are three eye witnesses to a situation, the first thing police seek to do is separate them in order to preserve the evidence that they will be offering any - any prosecution. It's through that lens that - that I conduct my own behaviour, and it's through that lens I was asserting to my staff, "You are better placed to remain preserved - particularly if you're still to give your evidence to a court, to maintain that professionalism and that transparency so that none of these perceptions can build to being some sort of conspiratorial idea that we are not acting properly."

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THE CHAIRPERSON: I see then, against that background, you are speaking about witnesses not talking before they give evidence, not investigators not talking. Yes. I see.

35 **MS LYNCH:** I understand what you're saying about witnesses not speaking to each other, and you talk about preserving your evidence. How - what do you mean by "preserve" in the context of, say, a witness's contact with defence?

40 **CMDR CAMERON:** I reflect on "preserve" with respect to what a person knows that they are to give their evidence about, whether it's talking to defence, whether it's talking to their neighbour, whether it's talking to their - the prosecution or a police officer. I do accept - I think I have already stated this. I do accept that access to witnesses by defence is a proper course of action. I do reflect the complexities and the sensitivities of this unique situation that we find ourselves in. And the - the tension and the pressure and the - the sensitivities that this case had attracted led me to craft this email. I also accept I could have softened the approaches - or the - or the - the issue I raise here with my staff about access between a witness and - and the defence.

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50 **MS LYNCH:** And so sitting here now with that hindsight, you accept the problem with this email?

CMDR CAMERON: I - I do accept the issue that it can raise, yes.

MS LYNCH: I have no further questions.

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THE CHAIRPERSON: Thank you, Ms Lynch. Mr Tedeschi, do you have any questions?

MR TEDESCHI: Ms Anniwell is going to take this witness.

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THE CHAIRPERSON: Sorry?

MR TEDESCHI: Ms Anniwell is going to take this witness.

THE CHAIRPERSON: Yes. Yes, Ms Anniwell.

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<EXAMINATION BY MS ANNIWELL:

MS ANNIWELL: The Chairman pleases. Acting Assistant Commissioner Cameron, before you commenced your evidence, you kindly gave me permission to excuse your rank and refer to you as Ms Cameron; is that correct?

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CMDR CAMERON: That's perfectly fine. Thank you.

MS ANNIWELL: Thank you. I see the time, but I might start on one topic for the rest of the afternoon, and we will continue tomorrow. I would first like to ask you some questions about the brief adjudication process that you have given some evidence about in your statement. Could we please turn up paragraph 84 of your statement, which is document WIT.0033.0001.0001_0014. If paragraph 84 could be highlighted, please. So in that paragraph, you address the adjudication process and you say, broadly speaking, it's a quality assurance process aimed at ensuring there is sufficient evidence that is relevant and admissible to charges laid in the correct format and submitted within the correct timeframes that support a successful prosecution; is that correct?

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CMDR CAMERON: That's correct.

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MS ANNIWELL: And you also attach to your statement some screenshots of some web pages that are available to investigators to assist them with the adjudication process?

CMDR CAMERON: That's correct.

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MS ANNIWELL: In addition to how you have characterised the adjudication process in paragraph 84, would you agree that in general terms the adjudication process acts as a check and balance to make sure that only the material that should be contained in the brief for service is included in the brief?

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CMDR CAMERON: Yes, I would agree to that.

MS ANNIWELL: And, again, to ensure that investigators are given some assistance in determining what should and what shouldn't go in a brief for service, that's why there are guidelines available to those investigators that you have attached to your statement?

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CMDR CAMERON: Yes, that's correct.

5 **MS ANNIWELL:** And one reason why the brief adjudication process is a quality assurance process is because you want to make sure that there's nothing contained in the brief of evidence that shouldn't be disclosed - rather, shouldn't be served on an accused person; is that right?

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

MS ANNIWELL: And would you agree that that check and balance is particularly important in sex offences?

15 **CMDR CAMERON:** I would assert that that check and balance is important on every matter that goes before the court, of course including sexual assault matters.

MS ANNIWELL: Including sex offences?

20 **CMDR CAMERON:** Of course.

MS ANNIWELL: And that is because, in sex offences, an investigation might gather material that is of a particularly sensitive nature not just to a complainant but also to an accused person; is that correct?

25 **CMDR CAMERON:** Yes, that's correct.

MS ANNIWELL: And two examples of such sensitive information would include counselling notes, for example?

30 **CMDR CAMERON:** They may, yes.

MS ANNIWELL: That are referred to under a piece of legislation, depending on their characterisation at a particular time, as protected confidence material?

35 **CMDR CAMERON:** Yes, I accept that.

MS ANNIWELL: And another type of sensitive evidence would be, for example, the video recording or audio recording of a complainant's evidence-in-chief interview conducted by police?

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

MS ANNIWELL: And -

45 **THE CHAIRPERSON:** Ms Anniwell, is there a particular statute that covers the recording of evidence-in-chief interviews that restricts their publication?

MS ANNIWELL: I understand that there is.

50 **THE CHAIRPERSON:** Well, somebody can tell me later.

MS ANNIWELL: If I could take that on notice -

THE CHAIRPERSON: Yes. Thanks. Thank you.

5

MS ANNIWELL: - and address you on that tomorrow. Thank you.

THE CHAIRPERSON: Thanks.

10 **MS ANNIWELL:** And is it the case that you understand it that when the brief of evidence in this particular matter was served on defence, it did, in fact, contain such sensitive material that it shouldn't have contained?

15 **CMDR CAMERON:** When I recommenced my tenure in ACT Policing, that was after the service of the brief. I was - so, yes, I accept that it was - that was advised to me after the event.

THE CHAIRPERSON: What you are being asked is you know now -

20 **CMDR CAMERON:** I now know -

THE CHAIRPERSON: - that the counselling notes were given to the defence?

CMDR CAMERON: Correct.

25

MS ANNIWELL: You would agree that was a serious error?

CMDR CAMERON: I would agree that that was an error.

30 **MS ANNIWELL:** And as you have just indicated, one of the things that you became involved in when you became involved in the Brittany Higgins investigation was looking into the timeline events that led to the brief of evidence being served directly on defence in August of 2021; is that right?

35 **CMDR CAMERON:** I - I would have had access to a timeline that had been prepared -

MS ANNIWELL: Yes.

CMDR CAMERON: - noting I commenced in December 2021.

40

MS ANNIWELL: Yes, that's correct. And to be fair, that timeline had been prepared by other investigators based on inquiries that they had made in relation to the circumstances surrounding the brief -

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

MS ANNIWELL: - of evidence being served on defence?

CMDR CAMERON: That's correct.

50

MS ANNIWELL: And that was the first defence team that assisted Mr Lehrmann?

CMDR CAMERON: That's my understanding, yes.

5 **MS ANNIWELL:** And you - in April 2022, you wrote an email to Chief Police Officer Gaughan about the service of the brief?

CMDR CAMERON: That's correct.

10 **MS ANNIWELL:** And you set out in that email - and I will take you to it in a moment. I'm not trying to test memory. But just in general terms, you set out in that email what you understood the timeline of events to be and your observations as to what you think happened or what caused the error. Is that fair to say?

15 **CMDR CAMERON:** From memory, yes, I believe so.

MS ANNIWELL: I will take you to that email. I'm sorry. Please excuse my back, Chairman, and please tell me if there is an appropriate time when you would like me to finish, but I will continue -

20

THE CHAIRPERSON: Well, we will aim for 4.30 and just let me know when it's a convenient moment to interrupt your cross-examination.

25 **MS ANNIWELL:** Thank you. Ms Cameron, I'm going to take you now to a document that I would ask be put on the display, which is AFP.2003.0003.5577. So this is the email I'm referring to that you wrote to the Chief Police Officer on 29 April 2022. Now, under the main body of your email, you see the heading Timeline?

CMDR CAMERON: Yes.

30

MS ANNIWELL: And if we can just scroll down the page, you set out a timeline on that page, and on the next page, and on the next page, collating what you understood to be the chronology of relevant events concerning the service of the brief in August 2021; is that correct?

35

CMDR CAMERON: That's correct. Based on information my staff had given me.

MS ANNIWELL: Yes. Because, again you weren't working in the team at the time, were you?

40

CMDR CAMERON: No, I wasn't.

MS ANNIWELL: And you joined investigations in December 2021?

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

MS ANNIWELL: So if we can go back to page 1, please, in the body of your email. And if we could highlight the second substantive paragraph of that email. You say:

50 "A key issue emerging here is whilst further review of the BOE..."

Brief of evidence; is that right?

CMDR CAMERON: I believe so, yes.

5

MS ANNIWELL:

10 "...for 'sufficiency of evidence' was not necessarily needed due to the red team efforts of Detective Superintendent Smith, etcetera, the decision to not adjudicate the brief of evidence any further, therefore, then meant that other adjudication actions, such as redactions and removal of material in the defence copy, were not attended to."

And in the next paragraph, you say:

15 "It would appear that whilst our existing systems of adjudication and brief of evidence service sufficiently ensure such errors are minimised or excluded completely, but in this instance, the established routine processes were not followed, thereby creating the opportunity for such routine issues (example, redaction and removal of legally excluded material) to be overlooked or forgotten, thereby creating the mistake of serving an unredacted
20 brief to the defence on 6 August 2021."

Does this email set out your view, which was based on the information you had received, because the brief was served directly on the first defence team, it circumvented the usual brief adjudication process that was typically in place; is that right?

25

CMDR CAMERON: This information provided by me in this email was based on information that the investigators had provided to me. I - not being part of the original service process, all of this was - these actions had occurred prior to my arrival. And I've displayed - or attempted there to provide a briefing to the CPO about my overall observations
30 of what had happened prior to my arrival.

MS ANNIWELL: And your overall impression was that the brief adjudication process usually employed by police was skipped?

35 **CMDR CAMERON:** Correct.

THE CHAIRPERSON: And do I understand the adjudication process to be one in which the proposed brief of evidence is vetted to ensure that everything is there that should be there and nothing is there that shouldn't be there, or is there also an additional task conducted by the
40 adjudication team to assess the weight of the evidence and the sufficiency of the case? Is it both things or just the first thing?

CMDR CAMERON: I would assert that it's both things.

45 **THE CHAIRPERSON:** Both things. Yes. Thank you.

MS ANNIWELL: Were you -

THE CHAIRPERSON: And that's why you said because the red team had done that - their work, it wasn't necessary to do that part of the adjudication process. But the other part should still have been done.

5 **CMDR CAMERON:** Correct.

THE CHAIRPERSON: And both steps were omitted probably - anyway, it doesn't matter why. We will get to the bottom of why, but I understand. Go on, Ms Anniwell.

10 **MS ANNIWELL:** And that's why, in your email, you give the examples of the routine issues that have been skipped, eg, redaction and removal of legally excluded material?

CMDR CAMERON: That's correct.

15 **MS ANNIWELL:** You - are you aware of a collaborative agreement that exists between the Australian Federal Police and the ACT DPP?

CMDR CAMERON: Yes.

20 **MS ANNIWELL:** And that collaborative agreement was in force at the time that the brief of evidence was served on defence?

CMDR CAMERON: Yes, that would be correct.

25 **MS ANNIWELL:** Are you aware of a clause in that agreement which requires that the AFP provides a brief of evidence to the DPP within six weeks from a plea of guilty not being entered?

CMDR CAMERON: That would be correct, from my recollection.

30 **MS ANNIWELL:** At the time that the brief of evidence was served directly on the first defence team in August 2021, there was no plea of guilty - sorry, plea of not guilty that had been entered at that time, was there?

35 **CMDR CAMERON:** I wasn't working in ACT Policing at the time. I don't recall the timelines.

MS ANNIWELL: Were you aware that when the brief of evidence was served on the defence team in August 2021, it was served the same time that the summons was served on Mr Lehrmann's counsel?

40

CMDR CAMERON: I - I am aware of that. I was briefed of that, yes.

45 **MS ANNIWELL:** And based on that, would you accept that as a matter of course, then, that a plea of not guilty had not been entered with respect to that summons at the time the brief was served?

CMDR CAMERON: Logic would suggest that's -

50 **MS ANNIWELL:** Logic would suggest.

CMDR CAMERON: - absolutely the case.

5 **MS ANNIWELL:** So in circumstances where the brief of evidence - I withdraw that. In circumstances where a plea of not guilty hadn't been entered yet, the collaborative agreement required the brief of evidence to go through the DPP office as well, didn't it?

10 **MR MITCHELL:** I object. Mr Chair, this might need to be done in the absence of the witness.

THE CHAIRPERSON: Well, why don't we excuse Commissioner Cameron and come back - we will need you tomorrow morning at 9.45. We will deal with this legal issue now, and you can go about your business.

15 **CMDR CAMERON:** Thank you very much.

THE CHAIRPERSON: Thank you.

<**THE WITNESS STOOD DOWN**

20 **MR MITCHELL:** Mr Sofronoff, my objection is under the collaborative agreement, it's not a requirement that the brief be served. The precise language of clause 5.2 is:

25 "All briefs of evidence and supplementary material shall be delivered by JO..."

Which I understand is Judicial Operations:

"...to the DPP unless exceptional circumstances apply."

30 So it's not mandatory.

THE CHAIRPERSON: Yes.

35 **MR MITCHELL:** It's clearly a general obligation, but it's subject to "unless exceptional circumstances apply".

THE CHAIRPERSON: Yes. Yes.

40 **MR MITCHELL:** So characterising it as a blanket requirement, in my submission, is a mischaracterisation.

THE CHAIRPERSON: Yes, it is a false assumption. So you will have to take that on board, Ms Anniwell.

45 **MS ANNIWELL:** I was going to take the commander to the next provision in the clause and make that point.

THE CHAIRPERSON: I see. Right. Okay. Yes. All right. Well, we will continue tomorrow, then.

50

MS ANNIWELL: We can. Thank you, Chairman.

THE CHAIRPERSON: Yes. Thanks. Adjourn till 9.45.

5 <**THE HEARING ADJOURNED AT 4.30 PM TO FRIDAY, 26 MAY 2023 AT 9.45 AM**