



LAW IN ORDER PTY LIMITED

ACN 086 329 044

T: 1300 004 667

W: www.lawinorder.com.au

TRANSCRIPT OF PROCEEDINGS

ACT BOARD OF INQUIRY – CRIMINAL JUSTICE SYSTEM

CHAIRPERSON: MR W. SOFRONOFF KC

CANBERRA

WEDNESDAY, 24 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

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

MR C. GNECH appeared on behalf of thirteen AFP members

DR P. DWYER with 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.

5

MR JONES: Mr Chair, I just want to raise one issue and then Ms Longbottom wants to raise another issue.

THE CHAIRPERSON: Yes.

10

MR JONES: The issue I want to raise relates to your non-publication order yesterday.

THE CHAIRPERSON: Yes.

15

MR JONES: Yesterday, a recording of a conversation between Ms Higgins and Ms Maiden (indistinct) a portion of it was referred to.

THE CHAIRPERSON: Yes.

20

MR JONES: It's a recording from 2 July 2021.

THE CHAIRPERSON: Yes.

25

MR JONES: As I understand it, it was subpoenaed or produced for the purposes of the criminal trial but not ever tendered in the criminal trial. On 6 February 2023 - this year - you authorised a subpoena, number 2023/09, to the Director of Public Prosecutions - the Office of Director of Public Prosecutions. One of the items in that subpoena called for such documents. On or about 13 April 2023, the Office of the Director of Public Prosecutions compulsorily produced that recording to this Board of Inquiry. It is document DPP.005.007.9024.

30

THE CHAIRPERSON: Yes.

MR JONES: I seek to tender that, please.

35

THE CHAIRPERSON: Yes.

MR JONES: A transcript of the relevant portion that was cited yesterday will be produced and also tendered, just (indistinct) the whole recording does not need to be considered.

40

THE CHAIRPERSON: Sorry. What you are saying is that although Ms Richardson was right to be cautious about its use, in fact, it's not the - it's not - there's no reason not to be open about its content, it having been used yesterday in submissions, because it was produced to my inquiry.

45

MR JONES: That's right. And it was perfectly correct to refer to it.

THE CHAIRPERSON: Yes.

50

MR JONES: And you can, in my respectful submission, vacate your non-publication -

THE CHAIRPERSON: Anyway, there is no reason to suppress its publication. Yes. Thank you, Mr Jones. Yes, Mr Tedeschi.

5 **MR TEDESCHI:** Chairman, we haven't had an opportunity to see the document - or a transcript - to listen to it or - I don't believe that we have a transcript of it.

THE CHAIRPERSON: All right.

10 **MR TEDESCHI:** Might we have an opportunity -

THE CHAIRPERSON: Well, perhaps - we will give you a copy of the document, and I will deal with it later.

15 **MR TEDESCHI:** And I also raise for your consideration whether Ms Maiden might want to have some say in the matter. Because it appears to be a recording of a conversation -

THE CHAIRPERSON: I don't know what it is. I heard a little bit of it yesterday from Ms Richardson, but -

20 **MR TEDESCHI:** It appears to be a conversation -

THE CHAIRPERSON: I don't know that it's a big issue, but you can look at it before I make any ruling.

25 **MR TEDESCHI:** Thank you.

THE CHAIRPERSON: Thank you. And I think Ms Longbottom has something to raise; is that right?

30 **MS LONGBOTTOM:** Yes, I do, Mr Sofronoff. It concerns the rule in Browne v Dunn and the ICAC practice direction -

THE CHAIRPERSON: Yes.

35 **MS LONGBOTTOM:** - that was discussed yesterday afternoon. I have this morning circulated to counsel for the other parties a draft practice direction we will ask you to make. What I propose is that we have a discussion about that draft practice guideline after the luncheon adjournment today.

40 **THE CHAIRPERSON:** All right. Well, when everybody has had a chance to look at it, then I will decide whether to adopt the draft as a direction. But it mimics the ICAC direction on this issue?

45 **MS LONGBOTTOM:** It does.

THE CHAIRPERSON: All right.

MS LONGBOTTOM: It mimics material aspects of that direction.

50 **THE CHAIRPERSON:** Already. Well, we will deal with that after lunch.

MR TEDESCHI: Chairman -

THE CHAIRPERSON: Yes, Mr Tedeschi.

5

MR TEDESCHI: - I have had a brief chance to have a look at it, and I don't see any problem with it.

THE CHAIRPERSON: All right. Good. Well, I will rule on it after lunch, and I will adopt it as a guideline unless somebody has a different view.

10

MR TEDESCHI: If I could raise two matters -

THE CHAIRPERSON: Yes, go on.

15

MR TEDESCHI: - before we start with Mr Moller. Yesterday, I referred to a document which was an attachment to an email, the attachment being a letter from Mr Mitchell Greig, a DPP officer, to Rachel Fisher, the solicitor for Mr Lehrmann.

THE CHAIRPERSON: Yes.

20

MR TEDESCHI: I didn't have a reference to that document at the time, but I do have it now. If I could put that on the record.

THE CHAIRPERSON: Yes, certainly. Thank you.

25

MR TEDESCHI: DPP.005.0005.6350. And I think that I was at the point of drawing attention to the third page in which Mr Mitchell Greig - yes, the second-last paragraph:

30 "We further confirm that we have received a declaration, supplemented by a further inquiry that has received an investigator's confirmation on 24 August 2022 that all material, both in the possession and to the knowledge of investigators, has been disclosed in full."

35 We understand that the declaration referred to was the email from Senior Constable Frizzell to - I think it was to Sarah Pitney. Anyway, to an ODPP officer.

THE CHAIRPERSON: Yes. Thank you.

40 **MR TEDESCHI:** The second thing I would like to raise is that just this morning shortly before you came on to the bench, we were handed a supplementary statement by Senior Constable Frizzell. Our understanding is that counsel assisting would like to call her today, but we would need to have an opportunity to properly read that statement and discuss it and maybe get instructions about it.

45

THE CHAIRPERSON: Well, it's a short statement, and Constable Frizzell will be led in-chief, and no doubt you have got cross-examination of her, apart from whatever is covered in that other statement. So we can proceed, and if you need time at the end of your examination, we can give you that time.

50

MR TEDESCHI: We would just seek to have maybe a short opportunity to at least read it before she gives her evidence-in-chief.

5 **THE CHAIRPERSON:** All right. Well then, let's continue with Superintendent Moller and see how we go.

MR TEDESCHI: Yes. Thank you.

10 **MR JONES:** Just with that -

THE CHAIRPERSON: Yes.

MR JONES: - Senior Constable Frizzell will be not before 2.30 today, but -

15 **THE CHAIRPERSON:** All right. So it may not matter.

MR JONES: May not matter. But - she will be brief in evidence-in-chief, but she has some personal reason, which I'm happy to discuss with -

20 **THE CHAIRPERSON:** No, it doesn't matter.

MR JONES: We would really like to try and get her - we would like to get her done today, if we can.

25 **MR TEDESCHI:** I'm sympathetic.

THE CHAIRPERSON: Yes. All right. Well, we will see how we go. Thank you, Mr Jones. Mr Gnech, could you bring Superintendent Moller back in, please. Did you want to tender that email that you identified this morning? It's probably in somewhere, but we should tender it.

MR TEDESCHI: The email is one of the exhibits attached to our client's statement.

35 **THE CHAIRPERSON:** I see. Thank you for that. So you can cross that out.

<SCOTT JOSEPH MOLLER, CONTINUING

<EXAMINATION BY MR TEDESCHI:

40 **THE CHAIRPERSON:** Good to go?

DET SUPT MOLLER: Yes. Thank you.

45 **THE CHAIRPERSON:** Mr Tedeschi.

MR TEDESCHI: Thank you. Superintendent Moller, is there a policy in the ACT Police Force in relation to police officers in their official capacity engaging in social media?

50 **THE CHAIRPERSON:** In their official capacity?

MR TEDESCHI: Yes.

DET SUPT MOLLER: There's - there is policy documents in relation to how police interact in - in terms of social media and so on.

5

MR TEDESCHI: And in broad detail, what does that policy entail?

DET SUPT MOLLER: Well, my general knowledge of it - without reading the policy - it's about, from an organisational perspective, restricting police in uniform advertising or socialising what they do with - on the internet.

10

MR TEDESCHI: Would it discourage police officers in their official capacity as police officers from commenting publicly on matters of public controversy?

15

DET SUPT MOLLER: Yes, I would say yes.

MR TEDESCHI: Do you have a LinkedIn account?

DET SUPT MOLLER: Yes, I have a LinkedIn account.

20

MR TEDESCHI: And in that LinkedIn account, are you described as Scott Moller, Detective Superintendent, Unsolved Homicide?

DET SUPT MOLLER: Yes.

25

MR TEDESCHI: And that's your present position?

DET SUPT MOLLER: Yes, it is.

30

MR TEDESCHI: And in December of last year, shortly after the discontinuation of the matter against Mr Lehrmann, do you recall liking a comment that somebody had made about the Lehrmann case?

THE CHAIRPERSON: Sorry. Just so I can follow it, a comment made by somebody on what medium?

35

MR TEDESCHI: I will come to that, if I may. I'm talking about LinkedIn.

DET SUPT MOLLER: I'm not very active on LinkedIn, so I don't recall it, but -

40

MR TEDESCHI: Do you recall reading a LinkedIn post by somebody whose name is unimportant, but I can -

THE CHAIRPERSON: No, let's not bring anybody else into it. But if you can just identify it for Superintendent Moller.

45

MR TEDESCHI: Whose name is unimportant, who wrote a post in relation - sorry, wrote a comment in relation to a post by another person, again, whose identity is unimportant, about the Higgins case and Mr Lehrmann?

50

DET SUPT MOLLER: I don't remember doing that, no, but -

MR TEDESCHI: Could you have a look at this, please.

5 **THE CHAIRPERSON:** May I see it first? Thank you.

MR TEDESCHI: The comment is towards the bottom of the page.

10 **THE CHAIRPERSON:** So the point is that - yes. Thank you. Do you have a copy for Mr Jones?

MR TEDESCHI: I do. Mr Moller, do you see there that the original post contains a photograph of Mr Lehrmann from an article in The Australian?

15 **DET SUPT MOLLER:** Yes, I can see that.

MR TEDESCHI: And the heading underneath the photograph says, "Push for DPP to resign over Lehrmann trial"?

20 **DET SUPT MOLLER:** I can see that.

MR TEDESCHI: And somebody has added this comment down the bottom of the page:

25 "Mr Lehrmann is innocent until proven otherwise. I was deeply shocked by some of the prosecutor's reported words. This young man deserves the justice of our court and reporting system. He should not be negatively labelled for the rest of his life. Thank you for your input, Simon."

30 **DET SUPT MOLLER:** Yes, I can - I've read that.

MR TEDESCHI: And can you see that you have liked that comment?

DET SUPT MOLLER: Right. Yes.

35 **MR TEDESCHI:** And you've liked that comment in your capacity as a detective superintendent of the unsolved homicide squad?

DET SUPT MOLLER: Yes, I've liked it as Scott Moller. Yes.

40 **MR TEDESCHI:** And do you have a personal LinkedIn account as well as your professional one?

DET SUPT MOLLER: That's my - that's my - that's my personal LinkedIn account.

45 **MR TEDESCHI:** Your personal one, though, shows you as detective superintendent, doesn't it?

DET SUPT MOLLER: Well, I've only got the one account, so yes.

MR TEDESCHI: Yes. See, what I want to suggest to you is that it was entirely inappropriate for you, as a detective superintendant of the unsolved homicide squad, to like a message in relation to this matter.

5 **DET SUPT MOLLER:** "He should not be negatively labelled for the rest of his life."

MR TEDESCHI: Do you agree that it's contrary to police policy?

10 **DET SUPT MOLLER:** Look, I will accept that, in hindsight, I probably shouldn't have liked the comment.

MR TEDESCHI: And the comment that was made was in relation to a push for the DPP to resign -

15 **THE CHAIRPERSON:** I don't think that's a fair construction of it. It was a - he was - we can see from the top - the very top of the page that he was liking the comment that you read out.

20 **MR TEDESCHI:** I accept that. Superintendent, do you agree that this shows a bias by you in favour of Mr Lehrmann?

DET SUPT MOLLER: No, I don't agree with that. What I agree - or what I believe it shows is that I liked the comment. I agreed with the comment.

25 **MR TEDESCHI:** I suggest to you that it is inappropriate for a superintendent who is involved in the investigation of a charge against Mr Lehrmann to be publicly, in your capacity as a police officer, liking a comment of that nature. What do you say to that?

30 **DET SUPT MOLLER:** In hindsight and on reflection, I shouldn't have liked the comment.

MR TEDESCHI: Can I take you now to the -

THE CHAIRPERSON: Are you going to tender that?

35 **MR TEDESCHI:** Yes. If I might tender that, please.

THE CHAIRPERSON: Yes. Exhibit 118.

40 <EXHIBIT 118 TENDERED AND MARKED

THE CHAIRPERSON: And before we put it up on the website, we will redact the names of people who have posted other than Superintendent Moller.

45 **MR TEDESCHI:** Thank you.

THE CHAIRPERSON: Thank you.

50 **MR JONES:** I just wonder whether it needs - do you have the expanded one or is it - this is the one?

MR TEDESCHI: That's the one that I've got.

MR JONES: Not expanded. Okay. Thanks.

5 **THE CHAIRPERSON:** Thank you, Mr Tedeschi.

MR TEDESCHI: Superintendent, I would like to take you now to the December 2021 report of the Sexual Assault Prevention and Response Steering Committee, also known as the SAPR report.

10 **DET SUPT MOLLER:** Yes, I know the report.

MR TEDESCHI: You're aware of what I'm talking about?

15 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: Now, I think - would it be fair to say that you've read this carefully?

20 **DET SUPT MOLLER:** I've reviewed the SAPR report. It's a very detailed report, but I have reviewed it. I have seen it.

MR TEDESCHI: And do you agree that it highlights a lack of skills, training and experience amongst members of SACAT, the Sexual Assault and Child Abuse Team?

25 **DET SUPT MOLLER:** I wouldn't say that.

MR TEDESCHI: Do you agree that it highlights a lack of experience amongst police officers in that team?

30 **DET SUPT MOLLER:** I think it discusses that.

MR TEDESCHI: Do you think it discusses a lack of training amongst that team?

35 **DET SUPT MOLLER:** There are discussion points about training that should be improved, yes.

MR TEDESCHI: Does it also discuss a short staffing of that team?

40 **DET SUPT MOLLER:** It mentions staffing levels, yes.

MR TEDESCHI: Yesterday, in a comment that you made about that report, I understood you to be saying that rather than identifying undercharging by ACT Police in sex cases, that it highlighted general undercharging throughout Australia of sex cases. Is that what you said?

45 **DET SUPT MOLLER:** No, I said it gives a submission of charging across all the state agencies. My particular focus in relation to that is that the tables that they use in relation to recording the sexual assaults - they recorded over a 30-day period. Now, when you compare a small jurisdiction like the ACT -

MR TEDESCHI: Sorry. Could you answer my question, please. I was asking about the evidence that you gave yesterday. Did I understand your evidence correctly or not?

5 **THE CHAIRPERSON:** Well, if you put the question again. I thought you were asking him whether he had given evidence yesterday that the report was concerned with charging in all jurisdictions in the country; is that right?

10 **MR TEDESCHI:** I was asking him - did I understand his evidence correctly yesterday that this was not just an undercharging problem in the ACT but throughout Australia - had I understood his evidence correctly?

15 **THE CHAIRPERSON:** Yes. Well - so you are being asked whether - you gave evidence yesterday that you read the report as concerning undercharging in all jurisdictions in this country.

20 **DET SUPT MOLLER:** I read the report, and it shows a level of - a lower level of charging for all states and jurisdictions. In the ACT, it highlights - it highlights the ACT. But what I was trying to explain is the report - or the statistical data records investigations over a 30-day period. Now, in a small -

THE CHAIRPERSON: In a small -

DET SUPT MOLLER: Jurisdiction.

25 **THE CHAIRPERSON:** In a small jurisdiction like this, you might not get many in a -

DET SUPT MOLLER: It takes a longer time to progress to prosecution because we've got less people working on the investigation.

30 **THE CHAIRPERSON:** I see.

DET SUPT MOLLER: So that's what I was trying to explain.

35 **MR TEDESCHI:** Can I take you to the report, which is DPP.004.001.0568. And if I could take you to page 34 of the report, please. Around the middle of the page, do you see the paragraph that begins, "The ABS crime data"?

DET SUPT MOLLER: Yes.

40 **MR TEDESCHI:** It reads this:

45 "The ABS crime data in table 1 shows the outcome of sexual assault investigations in Australia at 30 days in 2020. This data shows that the ACT has one of the highest proportions of sexual assault investigations not finalised in Australia. Additionally, in 2020, the ACT had one of the highest proportions of investigations where a case was finalised with no proceedings against an offender within 30 days of reporting."

Do you see that?

50 **DET SUPT MOLLER:** Yes.

MR TEDESCHI: And underneath there's a table, table 1, which shows that for example, in New South Wales, eight per cent of offenders had been proceeded against after 30 days.

5 **THE CHAIRPERSON:** So just so I understand it, Mr Tedeschi, what - could you explain the significance of table 1 and what it means by "outcome of investigation at 30 days". Is that a study in which a complaint is made on day 1 and the question is asked, "How far has it progressed by day 30?"

10 **MR TEDESCHI:** As I understand it, yes.

THE CHAIRPERSON: All right. You go ahead.

15 **MR TEDESCHI:** In New South Wales, eight per cent of cases had proceedings finalised against an offender; in Victoria, 16 per cent; in Queensland, 25 per cent; in the Northern Territory, 26 per cent; in the ACT, 2.8 per cent of cases.

DET SUPT MOLLER: Yes, that's the data.

20 **MR TEDESCHI:** Do you see that?

DET SUPT MOLLER: Yes.

25 **MR TEDESCHI:** Now, over the page, there is figure 3. And underneath figure 3 - sorry, page 36. Page 36, underneath the figure 3, it says this:

"The ACT Policing PROMIS data in figure 3 shows for the period 2010 to 2021 the proportion of cases where charges were laid have decreased."

30 Now, could you just explain for the benefit of everyone what PROMIS data is?

DET SUPT MOLLER: That's the - that's the police recording system. So it's how we record our activity.

35 **MR TEDESCHI:** Is it the equivalent in New South Wales of the COPS system?

DET SUPT MOLLER: Similar, yes.

40 **MR TEDESCHI:** And what it shows, does it not, is that for example, in 2010, in the ACT, 28 per cent of matters had charges laid in sexual offence cases?

45 **THE CHAIRPERSON:** Now, I don't want to - I'm not sure where you are going, but I don't need to know. You proceed as you wish. But I'm conscious in reading what you've just shown on the screen that there are qualifications that have been applied by the writers of this report to the significance of numbers. For example, because in a case in which, say, child pornography is the subject matter of the offence, if there are 100 images, there might be 100 charges arising out of really what really one composite offence. And so the numbers of charges - the number of charges that are laid may be affected by matters such as that. Now, none of that may matter to the point that you wish to draw from this document from
50 Superintendent Moller, but I just draw to your attention and ask you, does it matter?

MR TEDESCHI: We would suggest that they are broad statistics, and it doesn't matter for this reason: that the same factor applies to 2010 as does to 2021.

5 **THE CHAIRPERSON:** But it may not, because if you just take - I don't know. I haven't read the report. But if you take 2020 and 2021, in 2020, 16 of charges were laid. In 2021, half that, seven were laid. And -

MR TEDESCHI: No, that's a percentage, Chair.

10 **THE CHAIRPERSON:** Right. 16 per cent of complaints -

MR TEDESCHI: Yes.

15 **THE CHAIRPERSON:** You go ahead, but I'm just conscious that I'm not sure what I'm going to draw out of this. But I want to make sure that I draw the correct thing out of it.

MR TEDESCHI: Yes. Do you see that in 2010, 28 per cent of charges in sexual offence matters had - sorry, 28 per cent of matters had resulted in charges being laid in sex cases of any kind?

20 **DET SUPT MOLLER:** I can see that. I can see the data.

MR TEDESCHI: In 2015, it was up to -

25 **THE CHAIRPERSON:** Mr Tedeschi, so I follow it, I see in figure 3 the purple bar represents charges not laid.

MR TEDESCHI: I'm sorry. Yes, that's right.

30 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: I was asking about -

35 **THE CHAIRPERSON:** But - and the grey bar represents charges laid.

MR TEDESCHI: Yes.

THE CHAIRPERSON: So what is the purple bar counting? Charges not laid represents what? The number of individual charges that might have been laid arising out of complaints - for example, one complaint might give rise to 10 charges, if charges were brought. Another complainant, as in the present case that we are looking at, would result in one charge being brought, if it was brought. What are we looking at in terms of this table?

45 **MR TEDESCHI:** They are broad -

THE CHAIRPERSON: I don't understand it.

50 **MR TEDESCHI:** They are broad statistics which identify a trend, which we submit show a deterioration in the level of charging in the ACT.

THE CHAIRPERSON: But if you look at the first paragraph under the table, the ACT's police data shows the proportion of cases where charges were laid. I see. So it's 72 per cent - they are counting cases. So they must be counting complainants, I suppose. Cases.

5

MR TEDESCHI: We assume so. Yes. It's the percentage of offences reported.

THE CHAIRPERSON: Or offenders reported. Anyway, we will get to the bottom of it in due course.

10

MR TEDESCHI: Offences -

THE CHAIRPERSON: You go ahead.

15 **MR TEDESCHI:** It says offences reported rather than offenders, Chairman, in the - at the top of the page, the description of figure 3.

20 **THE CHAIRPERSON:** See, they call it charges and then they call it sexual offence matters. Then they call it percentage of offences reported. And they are all different. But it doesn't matter. You make your point. We will see what significance it has. I just am having trouble following, that's all.

25 **MR TEDESCHI:** Having brought to your attention the figure for 2010, in 2015, 44 per cent of matters had resulted in charges being laid; is that right?

25

DET SUPT MOLLER: Look, I can't - I can't help you with the data because -

30 **MR TEDESCHI:** But that's what this chart purports to show, that in 2015, 44 per cent of offences that had been reported had resulted in charges being laid. That's what it seems to say, doesn't it?

30

DET SUPT MOLLER: But, Mr Tedeschi, I - I don't understand it.

35 **MR TEDESCHI:** Does that -

35

DET SUPT MOLLER: So - and I'm not the author of this - of this data. So I don't know how I can help you with this data. Like I said, from an organisational perspective, we have a team that is responding to this data, but I'm not involved in that.

40 **MR TEDESCHI:** Superintendent Moller, do you agree that that chart shows that in relation to sexual offence matters in 2015, the percentage of offences reported resulted in 2015 in 44 per cent of charges -

45 **THE CHAIRPERSON:** I'm not sure that you are interpreting correctly, Mr Tedeschi.

45

MR BLACK: Yes. And, Mr Chair, I object to the line of questioning. First of all, the witness has explained that he doesn't know what the data means.

50 **THE CHAIRPERSON:** No, but I think what Mr Tedeschi wants to do is invite the witness to understand the data and that it shows a tendency. And then he probably wants to ask the

50

witness about his involvement in charging and his attitude in matters of that kind. But what's your objection?

5 **MR BLACK:** Well, the latter part of what you've said, Mr Chair, I don't have issue with. But in terms of understanding this data, in my submission, it's unfair to this witness to single out a particular passage of the report, now in context where the witness has said he doesn't understand the data, and put propositions about that data to the witness.

10 **THE CHAIRPERSON:** Yes. I think there's something in that, Mr Tedeschi, because I don't understand - I mean, I'm not saying it's incomprehensible, but I would have to read the document to understand it, because I don't understand the - the caption to the diagram refers to charges. It refers to matters and then it refers to percentage of offences reported. So if one contemplates a complainant coming in and reporting offences, then a single complainant in a sexual offence matter might report multiple offences. A single complainant might report a
15 single offence. A single complainant would represent a matter. The charges in a matter may be multiple for a single matter. And then the bar chart refers to charges not laid and charges laid.

20 And I - I think what it means is in a case - there's an event, a complainant comes in. Whether single charges or multiple - whether alleged single offence or multiple offence, it's a complainant. It's a matter. And in that matter, a charge was not laid and that's what's being counted. So we are looking at percentages of complainants, not charges. I might be right about that, but I might be wrong. But I'm not sure it's going to be of much use to ask Superintendent Moller what he understands by it. Why don't you put to him what you
25 understand by it and then proceed upon that hypothesis, and if - and I'm sure you will put it correctly, what he ought to draw from it, and ask him to assume it. Would that be a way of proceeding?

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

THE CHAIRPERSON: Yes, go on.

MR TEDESCHI: In the absence of the witness?

35 **THE CHAIRPERSON:** Yes. Certainly. Superintendent would you excuse us.

<**THE WITNESS STOOD DOWN**

40 **MR TEDESCHI:** Firstly, Chairman, I note that he was quite prepared to accede to the statistic before our discussion, whereas now he appears to have taken -

THE CHAIRPERSON: Well he has to accede to the fact that whatever it records, it's a very low percentage in 2021, and it was much higher in 2015, and the trend is reducing. So whatever it is, he has to -

45 **MR TEDESCHI:** That's precisely what I want to put to him, that whatever it's recording - and it appears to be recording the percentage of offences that were reported by police in sexual offence matters.

50 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: That the percentage of charges that have been laid has gone from 44 per cent in 2015 to seven per cent in 2021. Now, we can't say why. It doesn't say why. But the sheer fact that the numbers have gone down is, we would submit, significant. And one presumes that's why those who wrote the report have written the comment immediately underneath it that the proportion of cases where charges were laid - for the period 2010 to 2021, the proportion of cases where charges were laid have decreased. In other words, the number of charges that were laid has decreased.

5
10 **THE CHAIRPERSON:** Yes, that's right.

MR TEDESCHI: And what I wish to take him to then is - I'm happy to indicate it to you, if you wish.

15 **THE CHAIRPERSON:** Yes, please. Yes.

MR TEDESCHI: At page - I think it's 67. Chairman, you will recall there was a figure of 2.8 per cent in the previous table that I showed him. On page 67, there's a comparison of that 2.8 per cent in 2020 with the figure of offenders - the percentage of offenders who were proceeded against in non-sexual assaults was just under 20 per cent. So 2.8 per cent in sex cases, the offender was proceeded against in 2020. 19.9 per cent - just under 20 per cent - proceeded against in non-sexual assault cases.

20
25 **THE CHAIRPERSON:** Just let me have a look at it. Yes. All right. So what you want to put is that when we look at the data, we see that first in relation to the first table, however one looks at it, fewer charges are being laid than used to be; and, secondly, when we look at the second set of data on this page, when one compares the percentage of matters that result in charges, there's a big difference between non-sexual assaults and sexual assaults.

30 **MR TEDESCHI:** Yes.

THE CHAIRPERSON: That's the broad picture you want to put.

MR TEDESCHI: Yes, that's correct.

35 **THE CHAIRPERSON:** Mr Black.

MR BLACK: Can I just point out with the last one, that's again within 30 days.

40 **THE CHAIRPERSON:** Yes. Well, the witness has addressed that earlier. But what Mr Tedeschi wants to put to him is, "Do you accept that the data that you looked at when you first saw this report show that the - you tend to be reducing the percentage of matters that result in charges, and that's not the way it is with non-sexual assaults?" So there must be something curious about sexual offences that's resulting in an ever-decreasing charge rate, and -

45 **MR BLACK:** I don't know if the report shows that there hasn't been a decrease in non-sexual assaults either. I haven't read it, but -

5 **THE CHAIRPERSON:** No, no. Just that when one looks at the table that we are looking at now, just above - in the first table, Assaults, under the - in the row called Investigation Finalised, as a percentage of all matters brought to police attention, only 22 per cent in 2016 - 22 per cent in 2016 resulted in charges being laid - in charges not being laid, as opposed to seven per cent if it was a sexual assault. So there's a stark difference that the reporter observes. And that's going to be put to him, and he's going to be asked questions about his experience of that, I guess. So on that broad level, we can proceed. What it's worth at the end of the day is another matter. It might be worth a lot. But I think Superintendent Moller is very intelligent, understands it and it was his job to read it, so he can deal with it.

10 **MR BLACK:** Yes. I would just emphasise my submission. In fairness to the witness, it should be clarified that these are talking about charges or - proceeded with within 30 days, not at all.

15 **THE CHAIRPERSON:** Yes.

MR BLACK: So this isn't telling us how many sexual assault cases resulted in charges.

20 **THE CHAIRPERSON:** I see. Yes, yes. I understand that point. Yes, yes. He will pick it up, and if he doesn't, Mr Tedeschi will point it out to him. Ms Richardson.

25 **MS RICHARDSON:** Just while the witness is out and while we are on this page, which is page 67 of the report, Mr Commissioner, if you wouldn't mind going to the second full paragraph - or it's up on the screen - which starts - where it says, "Attrition also occurs." But the second sentence says:

"However, there is limited data about the causes and stages of attrition."

30 And then we see at the bottom of the page, underneath the table - if the operator wouldn't mind scrolling up, it says:

"A review of sexual violence assault matters reported to ACT Policing will help the ACT to understand when and where blocks and barriers prevent cases progressing."

35 **THE CHAIRPERSON:** Just let me read that, yes. Yes, yes.

40 **MS RICHARDSON:** So the point of that is it's not clear where this is going in the sense that this matter was charged. So this matter is not representative of these statistics. So it's, in my submission, irrelevant. But even if there is some other basis, it's apparent from this report that no conclusions were drawn that there was, in fact, undercharging.

45 **THE CHAIRPERSON:** That is to say - more specifically, no conclusion could be drawn from the data at this point as to the reason why there is apparently such a low percentage. It may be due to something police were doing or not doing, and it may be lots of other reasons that have nothing to do with police. Is that your point?

MS RICHARDSON: Yes. And it may be the reasons that were flagged by the police on the first page that Mr Tedeschi went to, page 36, that, in effect, it's a small jurisdiction and you could have one matter with lots of different offences within it that can affect trend data in one

year versus another. But it's quite clear on page 67 that no conclusions were drawn at all about what the reasons are.

THE CHAIRPERSON: Yes.

5

MS RICHARDSON: And that's why in the submissions we made to the Commission late last week about the -

THE CHAIRPERSON: Yes, opposing this being examined.

10

MS RICHARDSON: That's right.

THE CHAIRPERSON: Well, let's see where it goes, Ms Richardson.

15 **MS RICHARDSON:** But in the sense of it does not - the whole point of recommendation 15 is to do a thorough look-back to work out what the reasons are -

THE CHAIRPERSON: That's right.

20 **MS RICHARDSON:** - because it is a complex matter -

THE CHAIRPERSON: Yes.

25 **MS RICHARDSON:** - and the report writers are clear. We can't draw conclusions from these statistics, which is why the ACT Government funded a cross-agency taskforce -

THE CHAIRPERSON: Yes.

30 **MS RICHARDSON:** - to work out this complex question -

THE CHAIRPERSON: Yes.

MS RICHARDSON: - which hasn't yet been resolve.

35 **THE CHAIRPERSON:** Yes, which is why I have no interest in examining it because it's too large and it's none of my business. But Mr Tedeschi has a point he wishes to make - or at least he wants to ask the witness something about the fact that the number of - the percentage of charges being brought and matters of being brought to attention of police has been decreasing. Is that the issue?

40

MR TEDESCHI: Correct.

THE CHAIRPERSON: Well, why don't we bring the witness back in and you can see where you go with it. Yes, Mr Jones.

45

MR JONES: Can I just add that -

THE CHAIRPERSON: One moment, Mr Gnech.

MR JONES: I will be very brief. I suspect it is going to happen, but that will be of almost no utility here.

5 **THE CHAIRPERSON:** Well, that may be so, but we had better find out, otherwise we are spending time talking about something that everybody says is nothing.

MR JONES: Of course. If the question is -

10 **THE CHAIRPERSON:** And if it is nothing, we will deal with it more quickly by showing it's nothing.

MR JONES: Thank you.

15 **THE CHAIRPERSON:** Go ahead, Mr Tedeschi. Mr Gnech, bring Superintendent Moller back. I guess you want to make a link between - or try to make a link between the data and attitudes?

MR TEDESCHI: Yes. Happy to do that.

20 **MS RICHARDSON:** Well, in my submission, it could only be - I don't accept it is relevant at all, but it could only be relevant to -

THE CHAIRPERSON: No, no. I understand. I understand.

25 **MS RICHARDSON:** - asking Superintendent Moller about his attitudes and not about other people.

THE CHAIRPERSON: Yes, yes. No, no. Of course that's right. Yes.

30 <SCOTT JOSEPH MOLLER, CONTINUING

<EXAMINATION BY MR TEDESCHI:

35 **MR TEDESCHI:** Superintendent, going back to page 36, I direct your attention to figure 3. Figure 3 appears to contain percentages of offences that are reported for each calendar year from 2010 to 2021?

DET SUPT MOLLER: That's what it appears to me, yes.

40 **MR TEDESCHI:** And it appears to assign percentages of charges not laid and charges laid over those years?

DET SUPT MOLLER: That's what the graph says, yes.

45 **MR TEDESCHI:** And do you agree that from 2015 to 2021, it appears from this chart that the percentage of charges laid has gone down?

DET SUPT MOLLER: That's what the chart depicts.

50 **MR TEDESCHI:** And it's gone down from 44 per cent to seven per cent?

DET SUPT MOLLER: That's what the chart predicts, but I don't think that's accurate.

5 **MR TEDESCHI:** Now, could I take you, please, to page 67. Table 4. You recall I asked you earlier about the figure of 2.8 per cent in 2020?

DET SUPT MOLLER: I remember you saying that, yes.

10 **MR TEDESCHI:** You can see that same figure in this chart in relation to Offender Proceeded Against, sexual assault cases in the ACT for 2020. You can see that same percentage?

DET SUPT MOLLER: I can see -

15 **MS RICHARDSON:** I ask Mr Tedeschi to point out (indistinct) narration of table 4 of the time period (indistinct).

MR TEDESCHI: I will. I will.

20 **MS RICHARDSON:** I ask that it be done now.

MR TEDESCHI: I'm happy to do that. This is in relation to outcomes at 30 days?

25 **DET SUPT MOLLER:** Outcomes of offences at 30 days -

MR TEDESCHI: At 30 days.

DET SUPT MOLLER: - by selected offences - percentages.

30 **MR TEDESCHI:** Yes. And what it purports to show - what it seems to show is it again refers to that 2.8 per cent of offenders proceeded against in sexual assault cases in 2020?

DET SUPT MOLLER: At 30 days.

35 **MR TEDESCHI:** At 30 days; correct?

DET SUPT MOLLER: That's what it appears.

40 **MR TEDESCHI:** Versus 19.9 per cent in non-sexual assaults in 2020 at 30 days in the ACT?

DET SUPT MOLLER: That's what it appears to be, yes.

45 **MR TEDESCHI:** Do you agree that what this report demonstrates in the figures that I've brought to your attention is that at the time that Ms Higgins brought her complaint against Mr Lehrmann to the police in 2021, that the ACT Police were undercharging suspects in sex cases compared to the charging of non-sexual assaults in the ACT?

50 **THE CHAIRPERSON:** By the -

MS RICHARDSON: I object to that question.

THE CHAIRPERSON: Yes. Just let me ask a question and then I will hear your objection. By the word "undercharging", do you mean does he agree that ACT police were failing to charge cases that they ought to have charged in sexual offence cases?

MR TEDESCHI: Yes.

THE CHAIRPERSON: Yes. What's your objection, Ms Richardson?

MS RICHARDSON: I object to it on the basis of the matters I raised while the witness was out, which I will refer to obliquely, on page 67 where the report writers expressly disclaim -

THE CHAIRPERSON: Now, just - I'm not - let me go another step with Mr Tedeschi. You are asking whether he agrees - whether it's his opinion that that is happening. Because if you are asking him if he agrees with - that that's what the report says, you are asking him to construe the report, and I wouldn't allow that question.

MR TEDESCHI: No.

THE CHAIRPERSON: So you've shown him the report. You can ask him whether in his opinion there's that tendency in his experience.

MR TEDESCHI: Yes.

THE CHAIRPERSON: But you can't ask him to tell us what the report says, because the report says whatever it says, and you will make submissions about it at the end of the day if that matters.

MR TEDESCHI: Yes.

THE CHAIRPERSON: Is that clear?

MR TEDESCHI: Yes. I understand that.

THE CHAIRPERSON: Does that deal with your objection?

MS RICHARDSON: Yes.

THE CHAIRPERSON: He's being asked whether in his opinion -

MS RICHARDSON: It has to be untethered to the report because the question -

THE CHAIRPERSON: Yes, untethered to the report. Yes.

MS RICHARDSON: The question is seeking to characterise this data as drawing -

THE CHAIRPERSON: No, no.

MS RICHARDSON: - (indistinct) report writers expressly disavowed.

5 **THE CHAIRPERSON:** Mr Moller is not going to be asked whether he agrees that the report shows that and whether the report is showing that it's true. He's being asked, having had his attention drawn to the subject matter by being shown the report, whether in his opinion that's so.

MS RICHARDSON: Well, I think if it's going to be done by reference to having -

10 **THE CHAIRPERSON:** Sorry?

MR TEDESCHI: If the witness should perhaps be outside.

MS RICHARDSON: Just wait.

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

MS RICHARDSON: The vice is that this is being used in some type of leverage -

20 **THE CHAIRPERSON:** Yes, I understand. But the question is going to be as to his opinion, not as to what he thinks the report says or whether he agrees with the report. So let's put the report to one side.

25 **MS RICHARDSON:** In my submission, it can't be connected to data at all. Because if that's going to happen, the other parts of the report where the report writers say what the statistics do not show -

THE CHAIRPERSON: It's not being linked to the report.

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

THE CHAIRPERSON: You are being asked whether you agree that ACT police have been failing to charge offences that should be charged - ought to be charged - and whether that tendency has been growing in recent years. That's your experience?

35 **DET SUPT MOLLER:** No, I would - I would say absolutely not, say that, you know, the team that work on sexual assault investigations are a dedicated, professional group of investigators. And absolutely not, in my experience, is that accurate.

40 **THE CHAIRPERSON:** You said earlier that you looked at this report when it came into your hands?

DET SUPT MOLLER: Yes, I did.

45 **THE CHAIRPERSON:** And did you and your officers consider the work that you had been doing in terms of how you deal with complaints that are made and whether you are doing anything wrong in terms of deciding whether to charge cases?

50 **DET SUPT MOLLER:** Absolutely. We are reviewing our processes, Commissioner, and we've got a whole team that's looking at the data and - and the information that's been provided to ACT Policing in relation to sexual assault offences. And the team is looking at

now, you know, our processes and our policies to make sure that what we have been doing is - is adequate, you know. And - and we will continue to do that. But unfortunately, you know, from my perspective, this data is inaccurate. It doesn't accurately reflect - like you -

5 **THE CHAIRPERSON:** Let's leave the data aside. I see at the bottom of that page, the reporters say:

"A review of sexual assault and violence assault matters will help the ACT to understand..."

10

Is this - is the body that wrote this report still in existence? That is, it's continuing to work with you?

15 **DET SUPT MOLLER:** Well, we are currently doing a review of the sexual assault matters. So we are currently undertaking that, and - and we are actively working on that to - to verify this data.

THE CHAIRPERSON: Yes, Mr Tedeschi.

20 **MR TEDESCHI:** Having seen those figures that I brought to your attention, do you agree that at the time that Ms Higgins brought her complaint against Mr Lehrmann to police in 2021, that the ACT Police were undercharging suspects, that is, not charging suspects appropriately in sex cases in the ACT compared to police forces in other parts of Australia?

25 **MS RICHARDSON:** I object to that question on the same basis.

THE CHAIRPERSON: Yes, that's - I don't know how the witness can answer a question about the rate of charging in ACT as opposed to other jurisdictions, except by reference to the report. And, again, his opinion about the content of the report is irrelevant. I can understand
30 the - your use of the report to draw his attention to something that's in the public arena and to ask his opinion about what's actually happening. I don't know how far you're going to get with that, but I don't know - I wouldn't permit to you put the report as true to him and have him grapple with that, because it's a report. And you will put it to me, and I will draw whatever conclusions I can after hearing from you.

35

MR TEDESCHI: I understand. Superintendent, do you agree that after the publication of this report in December 2021, the system within ACT Police for reviewing decisions not to charge suspects was completely overhauled?

40 **DET SUPT MOLLER:** What I would say is we implemented a system to review decisions in relation to not proceeding, and I was part of that.

MR TEDESCHI: A system that didn't exist before this report came out?

45 **THE CHAIRPERSON:** I think something is changing there. You were asked whether, after the report was published and came into your hands, did ACT Police change the methods by which they made decisions about charging? Did you change the way you proceeded? Is that what you first asked, I think?

50 **MR TEDESCHI:** Yes.

DET SUPT MOLLER: We added an additional layer, which is what I spoke about yesterday. We added an additional layer in relation to a - a committee to make decisions in relation to charges that aren't progressing.

5

MR TEDESCHI: And that's known as an oversight committee. Is that what it's called?

DET SUPT MOLLER: It's a committee that looks at - at investigations that aren't proceeding.

10

MR TEDESCHI: And -

THE CHAIRPERSON: But does it have a name?

15

DET SUPT MOLLER: It's the management team - the criminal investigation management team.

MR TEDESCHI: I suggest to you it's called something like a management oversight committee. Is that what it's called?

20

DET SUPT MOLLER: I've not heard it called that before.

MR TEDESCHI: All right. And it consists, does it not, of three superintendents?

25

DET SUPT MOLLER: Yes.

MR TEDESCHI: Are you one of them?

DET SUPT MOLLER: I have been previously, yes.

30

MR TEDESCHI: Does it vary as to who sits on the committee?

DET SUPT MOLLER: Yes, it can be, depending on what - what superintendents are available.

35

MR TEDESCHI: And do you agree that as a result of the work of that oversight committee, that the percentage of cases - sex cases in the ACT that have been charged has gone up?

DET SUPT MOLLER: No, I wouldn't agree with that.

40

MR TEDESCHI: Do you agree that there have been many more referrals to the.

DR DWYER: For advice in sex cases as a result or subsequent to this report?

45

DET SUPT MOLLER: I can't talk to an increase, but what I can say is that the committee has sent matters to the.

DR DWYER: . Absolutely.

MR TEDESCHI: So do you agree that there are many more matters, percentage-wise and by number, in sex cases that have been referred for advice to the.

DR DWYER: Than the period before this report?

DET SUPT MOLLER: Like I said, I can't comment on an increase, but what I can say is the management oversight committee definitely has sent matters to the.

DR DWYER: .

MR TEDESCHI: And you said to the Chairman that this report has led to a review of complaints that were not proceeded with?

DET SUPT MOLLER: Yes.

MR TEDESCHI: That's over a two-year period, 2020 and 2021?

DET SUPT MOLLER: Initially, yes.

MR TEDESCHI: And there is - it's a number of - something over 200, perhaps around 250, cases that have been looked at to date?

DET SUPT MOLLER: I do not know. You would have to talk to the review team.

MR TEDESCHI: Have you seen the interim results of that review?

DET SUPT MOLLER: No.

MR TEDESCHI: Okay. I think you say in your statement that this report - the SAPR committee report in December '21 had a bad effect on police morale?

DET SUPT MOLLER: Well, it criticised what the sexual assault team were doing, just like you have, you know, highlighted the data from here, which we don't agree with - we don't think it's accurate.

MR TEDESCHI: Has it had a bad effect on police morale?

DET SUPT MOLLER: I don't know that a bad effect on police morale. I think it - I think it affected us, for sure. It affected the policing - the investigation teams, definitely.

THE CHAIRPERSON: One thing we can see from table 4, which is on the screen now, is that at least in 2020, around half of ordinary assaults cases brought to the attention of police are finalised in one way or another, whereas with sexual assaults only a quarter are, within 30 days.

DET SUPT MOLLER: Mmm.

THE CHAIRPERSON: Can you offer me a reason why there's a difference between the speed with which non-sexual violent crimes are dealt with and the speed with which sexual assaults are dealt with might be different?

DET SUPT MOLLER: Yes. So without understanding the input into that data, if I -

THE CHAIRPERSON: Just generally from your experience.

5

DET SUPT MOLLER: Yes, I can give you general - assaults in the ACT are investigated by pretty well everybody - everybody that's in uniform, and they can range from a - you know, a minor assault to a very serious assault. Whereas sexual assaults in - in the ACT - and I'm thinking that this is the data they have drawn - have come from a specific team - from a specific investigative team. So you've got a - you know, a broad range of assaults - so many, many different categories - being investigated by pretty well the entire ACT Policing cohort, and then you've got the sexual assaults which are investigated by a small specialist team.

10

THE CHAIRPERSON: Thank you.

15

MR TEDESCHI: Prior to this report, the decision on whether or not - a final decision on whether or not a matter would be charged rested with the case officer in charge of the investigation; is that right?

20

DET SUPT MOLLER: No. That's not correct.

MR TEDESCHI: Who did it lie with?

DET SUPT MOLLER: It usually - it usually lies with the detective sergeant.

25

MR TEDESCHI: Is he in the position of being the case officer in charge?

DET SUPT MOLLER: Well, he can be, but normally he's the supervisor of that area.

30

MR TEDESCHI: And by interposing this review committee that you've told us about of three superintendents, do you agree that that has negatively impacted on morale?

DET SUPT MOLLER: I think what it's done is added another layer to the decision-making process, which has affected the teams or - or made the teams think that their recommendations or their instructions in relation to the investigation is not as important.

35

MR TEDESCHI: In your -

THE CHAIRPERSON: Now, Mr Tedeschi, where are we going with this? You are getting to a review of how police are going at the moment and what the morale is like, and that's got nothing to do with my business.

40

MR TEDESCHI: Chairman, this report came about largely because my client informed the Attorney-General and the Police Minister of his concerns. That was made known generally. So it's relevant to the breakdown of the relationship between the police and the.

45

DR DWYER: .

THE CHAIRPERSON: All right. Let's see how far you go.

50

MR TEDESCHI: In your statement at paragraph 67, you say this:

"Removing the decision-making has negatively impacted on morale and their value in the sexual assault judicial process."

5

DET SUPT MOLLER: Yes.

MR TEDESCHI: Is that true?

10 **DET SUPT MOLLER:** Well, yes.

MR TEDESCHI: Thank you.

DET SUPT MOLLER: It is.

15

MR TEDESCHI: Do you - are you of this view: does it appear to you that there has been - pardon me. Does it appear to you that there has been a cultural shift in the ODPP since the steering committee's report was circulated, with prosecutors now of a pro-charge mindset?

20

DET SUPT MOLLER: Yes.

MR TEDESCHI: And by that do you mean that, in your view, prosecutors are charging too many cases?

25

DET SUPT MOLLER: No, absolutely not. What I mean in my view is that - my - my experience is that the prosecutors had changed their view in relation to progressing sexual assault offences that - that previously, in the experience of the team, they wouldn't have progressed.

30

MR TEDESCHI: They wouldn't have progressed to charging or they wouldn't have progressed -

DET SUPT MOLLER: Prosecution.

35

MR TEDESCHI: - to trial?

DET SUPT MOLLER: Prosecution. So, you know, when we were talking to the prosecutors - and we engage with prosecutors, you know, throughout this process. Previously, they were not inclined to progress matters that we brought to their attention, matters that we thought, you know, we needed insight or assistance with. And now there was - or after this steering committee, there was almost like a complete change where they were prepared to progress pretty well any investigation that we had.

40

45 **MR TEDESCHI:** So in your view, are they progressing too many cases?

DET SUPT MOLLER: I think my view was that they were progressing cases - a lot more cases that they wouldn't have previously progressed.

50

MR TEDESCHI: In your view, is that appropriate or inappropriate?

DET SUPT MOLLER: Well, in my view, it was a change in the process. And in my view, I was - I was - I have been concerned that - that a lot of the matters that we are looking to progress are not meeting the required thresholds.

5

MR TEDESCHI: In your view, are there cases that are now being progressed that previously would not have been progressed prior to this -

THE CHAIRPERSON: I'm not interested in what's happening now. I mean, as a citizen, I'm very interested. But as a Commissioner, I have no interest.

10

MR TEDESCHI: I understand. Could I take you now, please, to a different document. This document is attached to your statement. It's titled A Review of the ACT Criminal Investigations Sexual Assault and Child Abuse Teams.

15

DET SUPT MOLLER: So that was the review that I commissioned?

MR TEDESCHI: In 2021.

DET SUPT MOLLER: Yes.

20

MR TEDESCHI: The reference is AFP.2003.0015.0474. You asked for this report to be done?

DET SUPT MOLLER: Yes.

25

MR TEDESCHI: In 2021?

DET SUPT MOLLER: Yes, I think that's the date of it. Yes.

30

MR TEDESCHI: I think the team that conducted this report commenced their review on 1 July 2021, at page 4?

DET SUPT MOLLER: It says it on the document. So if you flick over -

35

MR TEDESCHI: The only date I could find was on page 4, around the middle of the page.

DET SUPT MOLLER: So if you go back up - sorry, if you just go back up on - scroll back up, it says there:

40

"In June 2021, the ACT Criminal Investigations Management Committee authorised a review to be conducted of the ACT Criminal Investigations Sexual Assault and Abuse Team."

DET SUPT MOLLER: So June 2021.

45

MR TEDESCHI: And could I take you, please, to page 23. Actually (indistinct) another page. Sorry, page 14. Under the heading Case Finalisation Sexual Assault Offence, it states this:

50

"A review was conducted of each case that was finalised from 2016 to 2021 where the confirmed incident type recorded on PROMIS was sexual assault."

Do you see that?

5

DET SUPT MOLLER: Yes.

MR TEDESCHI: And down the bottom of the page, there's some data that summarises those years, 2016 to 2021. And the summary at the bottom identifies that over the reporting period, on average, 8.23 per cent of cases of sexual assault resulted in charges; is that right?

10

DET SUPT MOLLER: Yes. Yes.

MR TEDESCHI: And if we go over the page to page 15 -

15

THE CHAIRPERSON: Just go back to that other page, please.

MR TEDESCHI: It was page 14.

20

THE CHAIRPERSON: Yes. Thank you. Yes. Thank you.

MR TEDESCHI: Over the page, we've got - at the top of the page, we've got the figures for 2016. And we see that in 2016, 18 out of 144 cases were charged?

25

DET SUPT MOLLER: Yes, that's right.

MR TEDESCHI: 2017 - at the bottom of the page - 16 out of 146 cases were charged?

30

DET SUPT MOLLER: That's the data, yes.

MR TEDESCHI: Over the page - page 16 - seven out of 130 cases were charged?

DET SUPT MOLLER: That's right.

35

MR TEDESCHI: 2019, 14 out of 179 cases were charged?

DET SUPT MOLLER: Yes, that's right.

MR TEDESCHI: 2020, four out of 150 cases were charged?

40

DET SUPT MOLLER: Yes, that's right.

MR TEDESCHI: And for 2021, I don't see any amount for the number of cases charged. Is that because perhaps -

45

DET SUPT MOLLER: Well, that's when the data was done.

MR TEDESCHI: - the figures hadn't been collated?

50

DET SUPT MOLLER: Correct.

MR TEDESCHI: So that figure that I brought to your attention at the bottom of page 14 of 8.23 per cent, is that an average of those figures that I referred to for the individual years?

5 **DET SUPT MOLLER:** I think that's what the author drew from the data on average over the reporting period, cases were finalised due to, and that's the data that they have -

MR TEDESCHI: All right. Can I now take you to page 23, please. At the bottom of the page, the last dot point says:

10

"A review of sexual assault investigations undertaken by SACAT should be conducted to identify the reasons for the low percentage of cases which result in the commencement of..."

15 And over the page:

"...commencement of criminal proceedings for sexual assault offences and the subsequent low prosecution rates within the jurisdiction."

20 Do you see that?

DET SUPT MOLLER: Yes.

25 **MR TEDESCHI:** Do you agree that this review has demonstrated a low percentage of cases -

DET SUPT MOLLER: Well, I think -

30 **MR TEDESCHI:** - which result in the commencement of criminal proceedings for sexual assault offences?

35 **THE CHAIRPERSON:** Well, that's a - with respect, that's a meaningless question, because it reveals eight per cent of a total resulted in charges. But whether that's low - well, it's low if you call it eight per cent out of 100 per cent low. That's true. But whether it's low in the sense in which I think you're putting it depends upon what other jurisdictions experience, but also it depends upon a great deal of material that we don't have and that we will never have because it's not part of my work, namely, if it's too low, it may be because of factors that have nothing to do whatsoever with police, factors relating to why complainants cease to cooperate or advance their matters with police - that was a large category - factors relating to complaints that are withdrawn and why they are withdrawn, why they might be wrongly withdrawn and matters of that kind. So to ask him whether that's low is, with respect, meaningless, and I won't allow that question.

45 **MR TEDESCHI:** If the Chairman pleases.

50 **THE CHAIRPERSON:** I don't know what we are getting out of this because - I can understand that you want to make a case that they have been habitually treating sexual offence complainants in a different way and, fine, that's legitimate and it's something I need to consider and look at, and you've been helpful in that. But looking at statistics I don't think is going to get me anywhere, because I've looked at some of the literature on rape complaints

and their fate, and there is so much that goes into the progress of a rape complaint and so much that goes into why they are not progressed. One factor is the attitude of police. It's only one factor. And often things - a rape complainant disappears long before police could have had any effect upon him or her.

5

So this isn't assisting, I think, Mr Tedeschi. I understand the point you are making, and there is a great deal in the evidence already in relation to this matter in which - upon which you can make submissions concerning the attitude of police. The proceedings are rich in evidence about facts that go to colour the attitude of police. And, indeed, Superintendent Moller has admitted to some of those matters, and others have come from other sources. You will make a great deal out of that. This isn't helping me, I don't think.

10

MR TEDESCHI: What I was seeking to do, Chairman, is to identify what the authors of this report have said in that dot point note and ask him if he agrees.

15

THE CHAIRPERSON: But what - he's a party to this. I don't know that he wrote it, but he's a party to it in the sense he's a senior officer in AFP Police, and they regard it as a number that bears examination. They are going to review it. All right. We see that.

20

MR TEDESCHI: What they -

THE CHAIRPERSON: And they can use that at the end of the day and submit that it's too low, and we will see where we go.

25

MR TEDESCHI: What they - what the authors of this report say is that they want to look into the reasons for the low percentage of cases which result in the commencement of proceedings.

30

THE CHAIRPERSON: Yes. But the low percentage - if it's too low a percentage, if that's what the word "low" means, may be due to a lot of factors that they haven't yet uncovered. So what are we doing here?

MR TEDESCHI: Seeking to establish that there is an unacceptably low percentage of cases.

35

THE CHAIRPERSON: Unacceptably? That doesn't show that. Their review may show that for good reason that will never be changed to do with the nature of these offences and the effect upon victims of these offences, police will never get to the point of charging more than eight per cent or 10 per cent. I don't know. But we are going nowhere, Mr Tedeschi, really.

40

MR TEDESCHI: Mr Chairman -

THE CHAIRPERSON: I would ask you to stop this because I don't see it as helping. I understand the point you are making.

45

MR TEDESCHI: Yes.

THE CHAIRPERSON: It's a valid point, and one upon which I will invite your submissions.

50

MR TEDESCHI: Yes.

THE CHAIRPERSON: And I will be interested in them. But I don't think this is going to be part of them somehow.

5 **MR TEDESCHI:** I accept that.

THE CHAIRPERSON: But to the extent that it is, it's in there and I will look at it and I will give consideration as you advise me to.

10 **MR TEDESCHI:** All right. There's one further line in this regard that I would like to ask him.

THE CHAIRPERSON: Go on.

15 **MR TEDESCHI:** Well, I - it obliquely refers to an area that's still the subject of submissions and that you haven't made a decision about. Could I suggest -

THE CHAIRPERSON: Well, I'm looking at - I'm pretty much forming a view about it. But what is it you want to do?

20

MR TEDESCHI: Well, I don't want to - what I thought I might do is to tell you what those questions are in the absence of the witness and offline.

25 **THE CHAIRPERSON:** All right. Yes. All right. And - excuse us, Mr Moller. We will go offline, you can tell me what the questions are, we will hear argument about it and then we will have a morning break.

<THE WITNESS STOOD DOWN

30 **MR BLACK:** Just while that's happening Mr Chair, would it be convenient for Mr Moller to be advised that the morning break can happen -

THE CHAIRPERSON: Yes, tell him that - it's 11.12. We will have the morning break, but when we will finish we will determine after we see how long this goes. Is that good?

35

<THE HEARING ADJOURNED AT 11.12 AM

<THE HEARING RESUMED AT 11.42 AM

40 **THE CHAIRPERSON:** We are ready for Superintendent Moller?

MR TEDESCHI: Chairman, I've got a few questions to ask that I have highlighted in a closed session -

45 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: - which will only take a couple of minutes, and then I understand Ms Dwyer wishes to intervene, and I've got no objection to that. I then have probably another half an hour or so to go.

50

THE CHAIRPERSON: All right. Well, let's do that.

MR TEDESCHI: But I understand that Ms Dwyer will be several hours.

5 **THE CHAIRPERSON:** I see.

DR DWYER: Well, I will certainly finish today. I don't know how long I'm going to be, Mr Chair. I think it will just depend on the witness. But I'm grateful for the opportunity to interpose, if it doesn't inconvenience the tribunal.

10

THE CHAIRPERSON: But if you are going to be a few hours, why are we interposing you when Mr Tedeschi is only going to be half an hour, he says?

DR DWYER: I've only got today and then I'm back - I need to be on the plane.

15

THE CHAIRPERSON: I see. All right.

DR DWYER: And I think counsel assisting -

20

THE CHAIRPERSON: Anyway, if the parties are agreed, we can do that.

DR DWYER: Thank you, Mr Chair.

25

MR TEDESCHI: It might be suitable to let Senior Constable Frizzell know that she is unlikely to be required today.

THE CHAIRPERSON: All right.

30

MR JONES: No. We will have to interpose Senior Constable Frizzell (indistinct) matters personal to her (indistinct).

THE CHAIRPERSON: Well, there's a conflict, then, between Ms Dwyer's commitments and Senior Constable Frizzell's commitments.

35

MR TEDESCHI: And I won't be ready to cross-examine her today.

THE CHAIRPERSON: Well, why not?

40

MR TEDESCHI: Because we've only just got a statement this morning -

THE CHAIRPERSON: A second statement. You've got her first statement.

45

MR TEDESCHI: Yes, I've got that. But I haven't had a chance to consider her second statement and to get instructions about it.

THE CHAIRPERSON: Well, as to instructions, you've had since you received the - I mean, you personally have been here, but you can get instructions while the hearing is going on. You will have lunchtime to get instructions. You can't just put off Senior Constable Frizzell because you get a short second statement.

50

MR TEDESCHI: It's very significant, though.

5 **THE CHAIRPERSON:** It is. It is. It is. Anyway, if Ms Dwyer is going to be perhaps the rest of the day, and you say Senior Constable Frizzell has to be done today, does she have to be done today rather than later in the week or next week?

MR JONES: No. She can be done on Thursday or Friday.

10 **THE CHAIRPERSON:** Yes.

MR JONES: If you give me a moment, we will chat with Mr Gnech.

15 **THE CHAIRPERSON:** Why doesn't Mr Tedeschi continue with Superintendent Moller and finish his - the short piece that he wants to do. And in the meantime, you can find out what the position is with Senior Constable Frizzell and what to do with Ms Dwyer's problem. All right. Yes.

MR BLACK: Mr Chair, I'm told that Ms Frizzell can do tomorrow.

20 **THE CHAIRPERSON:** Good.

MR BLACK: One of her main difficulties - she's an hour out of town.

25 **THE CHAIRPERSON:** Yes.

MR BLACK: So we will have to let her know pretty soon if she's not going to be needed this afternoon to save her a trip in.

30 **THE CHAIRPERSON:** Yes, yes.

MR BLACK: So if -

THE CHAIRPERSON: Well, let's do that. Does that make sense, Mr Jones?

35 **MR JONES:** Yes.

THE CHAIRPERSON: All right. Well, let's relieve her of her problems today, and we will start with her tomorrow - as soon as we can tomorrow.

40 **MR BLACK:** Thank you.

THE CHAIRPERSON: So that solves that problem. So you still want to do your brief little segment to tidy up the -

45 **MR TEDESCHI:** Yes. It's literally a minute or two.

THE CHAIRPERSON: Yes. All right. Let's bring Superintendent Moller back and go ahead. And that solves your problem, Ms Dwyer?

DR DWYER: Yes. Thank you, Mr Chair. Mr Chair, just while the witness is coming, might I introduce my colleague, Ms Edwards, who is at the bar table for the first time and will be taking the remaining witnesses after me. So she is appearing -

5 **THE CHAIRPERSON:** Thank you.

DR DWYER: - with the Chair's leave, for Ms Yates.

THE CHAIRPERSON: Yes, you have leave. Thank you.

10

<SCOTT JOSEPH MOLLER, CONTINUING

<EXAMINATION BY MR TEDESCHI:

15 **THE CHAIRPERSON:** Have a seat, Superintendent. So you probably know that Mr Tedeschi will ask you some questions and then Ms Dwyer will question you on behalf of her client and then - and she's being interposed and then Mr Tedeschi will finish his questioning.

20 **DET SUPT MOLLER:** Okay.

THE CHAIRPERSON: You go ahead, Mr Tedeschi.

25 **MR TEDESCHI:** Superintendent, you said earlier this morning that you were aware that there's a review looking at a large number of cases that had not proceeded to charging during 2020 and 2021. Are you aware that as a result of that review, there have been a significant number that have been referred back to the police for renewed investigation?

30 **DET SUPT MOLLER:** No, I'm not. I don't know how many has been referred.

MR TEDESCHI: I didn't does ask you how many. Are you aware -

DET SUPT MOLLER: A significant number. So, sorry, I took that as a lot.

35 **MR TEDESCHI:** Are you aware that there are some that have been referred for renewed investigation?

DET SUPT MOLLER: There are some, yes.

40 **MR TEDESCHI:** Are you aware that there are some that have been referred for renewed re-engagement by police with the complainant?

45 **DET SUPT MOLLER:** There's been some referred. Honestly, I don't have any oversight or any involvement with that. I'm now with a whole another area. But I do - just from discussions in the office, I do know that some have come back for review.

MR TEDESCHI: And are you also aware that some of those matters that have previously not resulted in charges have, in fact, now resulted in charges being laid?

50 **DET SUPT MOLLER:** I don't have any knowledge of that, I'm sorry.

MR TEDESCHI: Are you aware of whether there are any of those matters that are currently within the criminal justice system in court?

5 **DET SUPT MOLLER:** I don't know.

MR TEDESCHI: I'm content now for Ms Dwyer to intervene.

THE CHAIRPERSON: Yes. Thank you, Mr Tedeschi.

10

DR DWYER: Grateful.

THE CHAIRPERSON: Ms Dwyer.

15 **<EXAMINATION BY DR DWYER:**

DR DWYER: Thank you, Mr Chair. Superintendent Moller, you have been an officer for over 30 years with the police; is that right?

20 **DET SUPT MOLLER:** Yes, it is.

DR DWYER: And investigator since 1994?

DET SUPT MOLLER: Yes. A detective since '94, yes, working on -

25

DR DWYER: A detective since '94.

DET SUPT MOLLER: Yes.

30 **DR DWYER:** And you have worked on many sexual assault investigations?

DET SUPT MOLLER: I have, yes.

DR DWYER: You will have seen very significant reforms over that 30 years in the treatment of sexual assault complainants?

35

DET SUPT MOLLER: Thankfully, yes, I have. Yes.

DR DWYER: By the courts and by the police?

40

DET SUPT MOLLER: Yes.

DR DWYER: And you welcome them, obviously?

45 **DET SUPT MOLLER:** Absolutely, yes.

DR DWYER: When you started as a police officer, there would have been no witness intermediaries?

50 **DET SUPT MOLLER:** Absolutely not.

DR DWYER: No SACAT, no large Victims of Crime Commission office where victims can go and seek support?

5 **DET SUPT MOLLER:** Which is, you know, a fantastic development, to be honest. Yes.

DR DWYER: You mean the Victims of Crime Commission -

DET SUPT MOLLER: Yes, yes.

10

DR DWYER: - is a fantastic development? It's fair to say that you have done a lot of learning yourself on the job?

DET SUPT MOLLER: Yes. Absolutely.

15

DR DWYER: And, in fact, every case is an opportunity to learn?

DET SUPT MOLLER: Absolutely it is. Yes.

20 **DR DWYER:** This case is one of them, isn't it?

DET SUPT MOLLER: Yes, this is - you know, there's a lot of learnings out of this for, you know, ACT Policing. And like I said I think yesterday, in terms of certainly from an investigative point of view, we won't shy away from that. And absolutely we will take that - whatever there is on board, and - and we will move forward and - and, you know, our goal is really to make this better - a better process for - for complainants.

25

DR DWYER: Sure. I'm going to suggest to you at the end of my examination that Ms Yates would like to sit down and have a cup of tea with you, or coffee, and talk through the ways that you could work together, improve on your relationship as an agency and individuals. It's already good; you can make it better. Is that fair?

30

DET SUPT MOLLER: Yes, absolutely. And knowing Ms Yates and having dealt with her previously on the intermediary program, like I have - we implemented that program together - I could absolutely see and appreciate that she would want to do that. And I would be absolutely engaging in that.

35

THE CHAIRPERSON: What's the intermediary program?

DET SUPT MOLLER: Yes. Ms Yates brought that program to Canberra, and it's a - it's basically a support network for people that are giving evidence in court that are otherwise not able to give that evidence for mental health or physical reasons.

40

THE CHAIRPERSON: I see. Thanks.

45

DR DWYER: Ms Yates - I think you said to me outside you haven't had - you haven't read her statement; is that right?

DET SUPT MOLLER: No, not yet.

50

DR DWYER: She describes her relationship with you and a number of other police as highly professional and respectful, and it was a productive working relationship. You would agree with that?

5 **DET SUPT MOLLER:** Yes, I would.

DR DWYER: And in fact, in your statement, you outline that from your previous dealings with the VOC - with Commissioner Yates, you feel that prior to the trial of Mr Lehrmann, you had a productive and respectful relationship?

10 **DET SUPT MOLLER:** Yes.

DR DWYER: And you expect to have a productive and respectful relationship long after this inquiry has finished; correct?

15 **DET SUPT MOLLER:** I - I hope so, yes.

DR DWYER: In - you noted earlier that every opportunity - you take every opportunity to learn from a case, including this one. I think at the time you prepared your statement, is it fair to say that you didn't have a detailed understanding of the Victims of Crime Commission Act?

20 **DET SUPT MOLLER:** Well, I guess, from my perspective, I have now looked at the Act. And, you know, I can absolutely see that it's within the role for Ms Yates to be involved in matters like this as a support person if she chooses to.

DR DWYER: And if somebody requests her - obviously if a -

25 **DET SUPT MOLLER:** Yes.

DR DWYER: If a complainant requests her. The legislation - section 11 of the Victims of Crime Act, you would realise when you read it or read it in detail, it sets out a broad number of functions for the Victims of Crime Commissioner, doesn't it?

30 **DET SUPT MOLLER:** Yes, it does.

DR DWYER: It includes advocating for the interests of victims, ensuring victims' rights are dealt with promptly and efficiently, ensuring the provision of efficient and effective services for victims?

35 **DET SUPT MOLLER:** Yes.

DR DWYER: And you welcome her performing that role?

40 **DET SUPT MOLLER:** Yes.

DR DWYER: And I think this is what you are alluding to, section 13 of the Victims of Crime Act specifically says that for the exercise of her functions under the Act, the Commissioner is entitled to be present at the hearing of a proceeding in a court in respect an offence, including any part of a proceeding held in private unless there's an objection?

45 **DET SUPT MOLLER:** Yes.

DET SUPT MOLLER: Yes.

5 **DR DWYER:** And that's something you appreciate now, sitting in the witness box, that you didn't appreciate preparing your statement; is that correct?

DET SUPT MOLLER: Yes.

10 **DR DWYER:** You refer in your statement to ACT Police using a trauma-informed, victim-centric approach when they are dealing with complainants in sexual assault matters?

DET SUPT MOLLER: Absolutely, yes.

15 **DR DWYER:** And just so we all understand that language, that wasn't around when you first started as a police officer 30 years ago, was it?

DET SUPT MOLLER: No, absolutely not.

20 **DR DWYER:** What it involves is - correct me if I am wrong, please - understanding that trauma that many survivors feel impacts on their mental health?

DET SUPT MOLLER: Yes.

25 **DR DWYER:** And, therefore, on their behaviour?

DET SUPT MOLLER: Yes.

DR DWYER: Including in the preparation for a trial?

30 **DET SUPT MOLLER:** Yes.

DR DWYER: And it's important, therefore, to create a safe environments for complainants to report violence?

35 **DET SUPT MOLLER:** A supportive, safe environment, yes.

DR DWYER: And to make sure they have trusted supports?

40 **DET SUPT MOLLER:** Yes.

DR DWYER: And that's where the Victims of Crime Commission can play a very important role; correct?

45 **DET SUPT MOLLER:** Absolutely they can, yes.

DR DWYER: It's important too, isn't it, in terms of a trauma-informed, victim-centric approach to give the victim or complainant, wherever possible, agency over the decision-making?

50 **DET SUPT MOLLER:** Yes. I would agree with that, yes.

5 **DR DWYER:** Just before I get into some of the chronology of the case we are talking about, in your statement you have some important reflections for the Chair about the difficulty for some of your officers because of the lack of experience and the constant attrition rate of police; is that right?

DET SUPT MOLLER: Yes.

10 **DR DWYER:** You note, for example, that in SACAT, the bulk of the members are quite inexperienced - or they were at the time of you preparing your statement?

DET SUPT MOLLER: Well, they are.

15 **DR DWYER:** They are.

DET SUPT MOLLER: They are very young. Yes. Very young, inexperienced officers that - that - and, you know, in some respects, we take sort of pride in the fact that a lot of the experience is gained with us before they move on into other parts of the organisation. That's something that we in the management sphere, you know, have a lot of pride in, to be honest. So it's a development area, I think - you know, a training ground, I guess, for budding detectives to - to learn their - their strategies.

25 **DR DWYER:** But you want, ideally, is experienced officers within SACAT, or at least a fair number of them, to help the others through?

DET SUPT MOLLER: So, you know, that's been one of the things that I discussed in my statement. One of the problems that - you know, that I see from an organisational perspective is we get to a point where we have depleted the experience to an extent where we have very young officers running investigations with minimal or less than ideal direction from a senior officer. So, you know, to put it in layman's terms, Commissioner, you know, historically, you would have - you know, we are a rank structure. So you would have, you know, a constable - probationary constable - young constables working, learning their trade. You would have a senior constable guiding those people that's a detective, ideally. And then above him, you would have a detective sergeant that is, you know, guiding the whole lot and managing the team.

40 Through attrition and - and, you know, less than ideal recruitment standards with us, we have seen that those detective senior constables that give so much - pass on so much experience and knowledge have depleted or moved on, and we have much larger teams of just constables. Well, those much larger teams of just constables, we have a detective sergeant overseeing the whole team. So for example, you know, they might have 10 people in their team. That additional strain on the detective sergeant managing 10 constables without any experience means he's got to be across every one of those jobs. And that - that experience level then jumps up to the inspector, who then has to intervene and be across - so - so what I'm saying is, you know, there has been a - you know, it has been diluted, I guess, in some respects, that experience level in ACT Policing. So it's - from a management perspective, it's much harder. Much harder. And you have to be - you know, those line managers have to be across the detail of each investigation, which puts a lot of pressure on them. So, yes - sorry, getting back to -

50

DR DWYER: No, not at all. And just - I'm sure the Chair is interested in this. Just so we understand the numbers, I think SACAT is three teams of about eight officers with three team leaders; is that right?

5 **DET SUPT MOLLER:** So they have increased now. But at the time, yes, that was correct.

DR DWYER: So at the time, you have got about 27 officers. And I think you say in your statement only four had completed the AFP DTP - is that the detective training program?

10 **DET SUPT MOLLER:** That's the detectives training program, yes.

DR DWYER: And even fewer than four had completed the sexual assault training?

DET SUPT MOLLER: Yes.

15 **DR DWYER:** Do you know how many of those 28 or so?

DET SUPT MOLLER: I don't have the data in front of me, but -

20 **DR DWYER:** Okay. Somewhere between one and three?

DET SUPT MOLLER: Very few.

DR DWYER: Okay. And had you done that training in your role?

25 **DET SUPT MOLLER:** So - have I completed the training?

DR DWYER: Yes.

30 **DET SUPT MOLLER:** No.

DR DWYER: Okay. I think we've got Officer Frizzell in her statement - I don't need to take you there in the interests of time, but at paragraph 26 she explains that the sexual offences investigation program didn't provide guidance on how to conduct a sexual assault investigation. It was course - presentation based, and it didn't focus on the process, procedure or law applicable to sexual assault investigations. Is that the sexual assault training you are talking about?

40 **DET SUPT MOLLER:** Yes. Yes.

DR DWYER: So there was still obviously room for improvement in terms of -

DET SUPT MOLLER: Yes, absolutely there is. Yes.

45 **DR DWYER:** And Officer Madders had not received any formal training. He was one of those officers you are talking about -

DET SUPT MOLLER: Yes.

50 **DR DWYER:** - in relation to sexual assault. He describes hands-on experience.

5 **DET SUPT MOLLER:** Yes. So they - obviously there's a place for the academic aspects of training. But, you know, much of their training in ACT Policing is derived from experience. But like I just explained, Commissioner, the difficulty we are seeing now is we don't have the vast amount of officers to pass that experience on. It's left with very, very few, being the detective sergeants, to build that experience in the teams, which, you know, makes for difficult management decisions.

10 **DR DWYER:** And if you want your officers to learn about victim-centric, trauma-informed approaches, you want them to have some speciality training in that regard, don't you?

DET SUPT MOLLER: Yes. Yes. So the - you know, the training they are given or - at the moment is learnt on the job.

15 **DR DWYER:** I will move to the case involving Mr Lehrmann and Ms Higgins. The relationship between police and Ms Higgins before Ms Yates' involvement - and I say this, of course, with no disrespect to Ms Higgins. But you have pointed out it was frustrating for police, wasn't it, trying to work with Ms Higgins to help develop the case?

20 **DET SUPT MOLLER:** It was difficult because of the perceived interest that Ms Higgins had in the media. You know, the drive that Ms Higgins showed to - to be in the media.

25 **DR DWYER:** And you describe this at various parts of your statement. But for example, in paragraph 81, you became aware that the case had recommenced on 8 April '21, and you received a briefing document from Detective Inspector Boorman authored by Detective Sergeant Gareth Saunders on that day. A significant aspect was that Ms Higgins wasn't willing to provide a formal statement at that time?

30 **DET SUPT MOLLER:** Yes.

DR DWYER: She had had engagement with the media at that time. And you - your view when you wrote this statement is that the strategy adopted by Ms Higgins hindered the investigation and made it difficult for investigators?

35 **DET SUPT MOLLER:** Yes. Well, the - you know, the significance for me at that time was that Ms Higgins had made - already done media interviews, and it appeared to me from what I was told that Ms Higgins wanted the - wanted the matter reported and wanted it to be a live investigation, is the word she used, and my opinion was that she wanted it live to give credibility to the story that was being aired.

40 **DR DWYER:** Between February and May, some of those frustrations continued for you in terms of -

45 **DET SUPT MOLLER:** Definitely, yes.

50 **DR DWYER:** So I want to talk to you just for - to help you understand the significant assistance that Ms Yates gave you when she became involved. Can I show you, please, a page of a document. I will ask that this come on the screen - I beg your pardon. I'm going to show you an unredacted page. This has been discussed with counsel assisting, Chair. I've got a copy for you, of course.

DET SUPT MOLLER: Thank you.

5 **DR DWYER:** I will just wait until that's with you, Chair. Can you just have a read of that to yourself, Superintendent. It explains how Ms Yates came to be involved in Ms Higgins' case. So, Superintendent, this forms part of Ms Yates' statement. Tell me when you have finished that paragraph. Sorry for interrupting.

10 **DET SUPT MOLLER:** Yes. Thank you. I've read that.

DR DWYER: So I'm not adopting any criticisms of police, but what you understand now is that in early May, Ms Yates gets a phone call from Ms Higgins saying, "Can you help me?"

15 **DET SUPT MOLLER:** Yes.

DR DWYER: And you now understand, appreciating what Ms Higgins' rights were, she had the right to ask the Commissioner to assist her?

20 **DET SUPT MOLLER:** Yes.

DR DWYER: And the Commissioner had the right to appear as her support - or to adopt her as a support; correct?

25 **DET SUPT MOLLER:** Yes, she did. Yes.

DR DWYER: And it was legitimate for Ms Higgins to say to Ms Yates, "Look, I would prefer you to be my contact person with the police"?

30 **DET SUPT MOLLER:** Yes. Yes.

DR DWYER: And to explain to her how she was struggling. I don't want to go into those details -

35 **DET SUPT MOLLER:** Yes.

DR DWYER: - but she needed help.

DET SUPT MOLLER: Yes.

40 **DR DWYER:** And I'm going to show you now - Ms Yates at that time then gets in contact with Officer Boorman. Can you remind me of his rank, Superintendent?

DET SUPT MOLLER: Yes, he's an inspector.

45 **DR DWYER:** Inspector Boorman. Can I have on the screen, please, this document.

THE CHAIRPERSON: Have you finished with this sheet?

50 **DR DWYER:** Yes, I have. Thank you.

THE CHAIRPERSON: Yes.

5 **DR DWYER:** WIT.0057.0003.0001_244. This is an email of 5 May 2021 from Ms Yates to Inspector Boorman. That's Ms Yates' statement? Okay. Sorry, I've given you the wrong reference. So that's Ms Yates' statement. If we have a look at that first. What she explains is that at 2.50 that day, she calls Inspector Boorman, advises him that she has spoken to Ms Higgins, she would like:

10 "...all communications with police to come via me for the time being."

Now, that was entirely within her rights and appropriate in the circumstances, wasn't it?

DET SUPT MOLLER: Yes. Well, she - yes, definitely under the Act, yes, she's -

15 **DR DWYER:** All right. Can you have a look at this one. That can come down now. WIT.0057.0003.0001_0245. I am going to short-circuit this and just read it to you. That's not the document that I need. So on 5 May, Ms Yates sends this email to Inspector Boorman:

20 "Marcus, thank you for the opportunity to talk this afternoon. As discussed, I'm writing to confirm that Ms Brittany Higgins has requested that for the time being contact with police in relation to the investigation of her matter come via myself rather than via direct contact with her. To confirm..."

25 And then she gives her direct mobile line and her direct office line. So far, completely appropriate; correct?

DET SUPT MOLLER: Yes.

30 **DR DWYER:** And then she goes on to say:

"I look forward to working with you and Ms Higgins as police finalise their investigations."

35 I suggest to you that that type of communication with police from Ms Yates was typical of her email exchanges, polite cordial, constructive?

DET SUPT MOLLER: Yes, she - yes, she has been. Yes.

40 **DR DWYER:** And then she goes on to say:

45 "As discussed, Ms Higgins has indicated she is very open to providing ACT Policing with any further information required, including returning to Canberra in person if this is necessary. Thanks to you and your team for your ongoing work in this matter. I look forward to staying in touch over the coming weeks."

So it was evident from that first email she was expressing her interest in helping Ms Higgins to work with police; correct?

50 **DET SUPT MOLLER:** Yes. Yes.

DR DWYER: On 21 May, there's a phone call that Ms Yates makes to Inspector Boorman returning a voicemail of the day before - and the reason that I'm taking you through this, Superintendent - it is probably obvious, but you haven't read Ms Yates' statement, and we also don't have Officer Boorman. So it's important that you understand this background.

5

DET SUPT MOLLER: Yes.

DR DWYER: On 21 May, there's a phone call from Ms Yates to Mr Boorman, and Ms Yates explains this in her statement - page 247. Perhaps that can come on the screen, WIT.0057.0003.0001_0247-8. Scroll down if you will, operator, please. Just have a read of that, if you don't mind.

10

DET SUPT MOLLER: The 122, is that what -

15

DR DWYER: Yes. 122.14, please, operator.

DET SUPT MOLLER: Yes.

DR DWYER: And then give us a shout when you are ready and we will scroll down.

20

DET SUPT MOLLER: Yes, I've read that.

DR DWYER: So if you can just keep going. So what you see there is that Inspector Boorman explains that there's a need to do this second evidence-in-chief interview. There's one that's been done in February, and he's telling Ms Yates, "We are going to need a second one."

25

DET SUPT MOLLER: Yes.

30

DR DWYER: And he specifically says to Ms Yates that he's considered that some of this might be traumatic and confronting because there's a need to clarify some of the issues.

DET SUPT MOLLER: Yes.

35

DR DWYER: That's entirely appropriate for one of your officers to advise Ms Yates. It might be confronting.

DET SUPT MOLLER: Yes.

40

DR DWYER: And, of course, you would expect that it would be.

DET SUPT MOLLER: Yes.

DR DWYER: It would be up to her when the interview occurred. Mr Boorman said it would be advisable for Ms Higgins to have some support at the meeting from the Canberra Rape Crisis Centre or someone else. And there's a discussion about the location. And Inspector Boorman also advises that they would ask Ms Higgins to bring her phone with her -

45

DET SUPT MOLLER: Yes.

50

5 **DR DWYER:** - and that it would be more practical in Canberra. Can I ask you to accept that Ms Yates says to him something like, "I will contact Ms Higgins, and I will come right back to you." And the evidence is that that's exactly what she does. So at 2.25 pm, you would accept that Ms Yates sends a text message to Ms Higgins. And at 2.45 pm, there's a follow-up call from Ms Yates to Inspector Boorman who says, sure enough, "Ms Higgins will attend, and she will bring the phone, and we will see you there." So that response was prompt, cooperative and respectful. Do you agree?

10 **DET SUPT MOLLER:** Yes.

15 **DR DWYER:** On 21 May at 3.28, there's an email that Ms Yates sends to Inspector Boorman. And I would like you to see this, if I'm capable of operating the system, WIT.0057.0003.0003_1062. Is that it? I will try again. Try this. It's actually exhibit 79 referred to in the statement of Ms Yates, WIT.0057.0003.0001_0249. Otherwise, I will just read it to you, Superintendent. I might just read it to you, Superintendent, if that's - it might pop up while we are talking. This is what Ms Yates says to Inspector Boorman:

20 "Hi Marcus, good to speak with you earlier this afternoon. As discussed, I confirm we agreed that Ms Higgins will travel to Canberra for a further EIC at Winchester at 9.30 am on Wednesday next week, 26 May."

25 So you see between February and May, you've had real difficulties with the police getting in touch with Ms Higgins. Ms Yates gets involved, and there's almost immediate facilitation of this interview; correct?

DET SUPT MOLLER: Understanding that Ms Yates obviously - could have had difficulty with Ms Higgins as well. Yes, it made it easier.

30 **DR DWYER:** Okay. And the email goes on to say:

"Ms Higgins will also bring her phone to the appointment."

So you've had trouble getting the phone. Ms Yates has organised to get it for you; correct?

35 **DET SUPT MOLLER:** Yes.

DR DWYER: And:

40 "She has asked me to attend as a support person, which I'm happy to do so on this occasion, if it is suitable to the ACTP."

So that's now come on up on the screen. Do you see that there?

45 **DET SUPT MOLLER:** Yes, I can see that.

DR DWYER:

50 "...if it is suitable to the ACTP. Please let me know if there is anything further you need to discuss. Otherwise, my office will assist Ms Higgins to organise flights and accommodation, etcetera."

DET SUPT MOLLER: Yes.

DR DWYER: Another example of her polite, respectful correspondence; correct?

5

DET SUPT MOLLER: Yes.

DR DWYER: But also you see that she specifically says there, "If it's suitable to the ACT Police." And no one ever says to Ms Yates that it wasn't suitable; correct?

10

DET SUPT MOLLER: I don't know that anybody said to Ms Yates that it wouldn't be suitable.

DR DWYER: Okay.

15

DET SUPT MOLLER: I certainly didn't.

DR DWYER: And you're certainly not aware of Inspector Boorman ever doing so?

20

DET SUPT MOLLER: No.

DR DWYER: That can come down now. Thank you. The decision to re-interview Ms Higgins in May - the second interview - and to show her the CCTV, and to film it, was a difficult one, wasn't it?

25

DET SUPT MOLLER: Yes, it was.

DR DWYER: And I think you explained it by saying you are torn by the desire to get the best evidence and the desire to support the complainant -

30

DET SUPT MOLLER: Absolutely, yes.

DR DWYER: - and try not to re-traumatise her -

35

DET SUPT MOLLER: Yes.

DR DWYER: - when you are showing her this really difficult evidence; correct?

DET SUPT MOLLER: Yes.

40

DR DWYER: And the decision to actually film her watching it was a very unusual one; correct?

DET SUPT MOLLER: Yes. And a difficult one.

45

DR DWYER: It needed to be carefully thought out, and you needed to consider, even though you wanted the evidence, that Ms Higgins was vulnerable and needed supports; correct?

DET SUPT MOLLER: Yes.

50

DR DWYER: In order to be victim-centric and trauma-informed, it was entirely appropriate that Ms Yates was there as a support person for that very difficult experience; correct?

5 **DET SUPT MOLLER:** Well, it supported - it supported Ms Higgins.

DR DWYER: And appropriate. Would you agree?

10 **DET SUPT MOLLER:** Yes. And, you know, from our perspective, it was about supporting Ms Higgins. I mean, that's what we were showing the - the video for. She wanted to see it. So we were trying to do that.

15 **DR DWYER:** And I think earlier - it might have been on Monday - you talk about how it - what you want to do in terms of working with other support agencies, whether it's the Rape Crisis Centre or the Victims of Crime Commissioner, is engage them to assist you to support?

20 **DET SUPT MOLLER:** Yes. Well, the police aren't - the police aren't counsellors. That's not our forte. You know, we are - predominantly at the heart of what we do is investigate crime, and - and I don't think it's appropriate for police to act in a counselling role, because that's - we are not trained to do that, Commissioner. So engaging support agencies that have expertise in that line of work is vital to us, so yes.

25 **DR DWYER:** And in this case - I mean, you have already told the Chair how limited some of the training was - specialist training of your officers.

DET SUPT MOLLER: Absolutely, yes.

30 **DR DWYER:** So to have someone like Ms Yates, who is so professional and so highly trained in trauma-informed response, was actually a big help for police, wasn't it?

DET SUPT MOLLER: Yes.

35 **DR DWYER:** At the time of this second interview, there was significant pressure on Ms Higgins, wasn't there, because of the national debate and what was going on in Parliament in terms of what was being said about it? Do you accept that?

DET SUPT MOLLER: I would accept, yes, there was significant pressure on all of us. But, yes, as well as - yes, absolutely.

40 **DR DWYER:** Sure. Sure. And I think you would acknowledge, wouldn't you, significant pressure on police, significant pressure on the Victims of Crime Commissioner, significant pressure on the DPP, significant pressure on Ms Higgins.

45 **DET SUPT MOLLER:** Yes.

DR DWYER: It was a highly pressured environment, wasn't it?

DET SUPT MOLLER: Yes.

5 **DR DWYER:** On the day before that second interview - I will just ask you if you knew this - there were three things that happened as set out by Ms Yates that would have been likely to affect Ms Higgins. Firstly, the AFP responded to a question on notice indicating Mr Dutton's office was advised by the AFP of something in October of 2019, and that appeared contrary to previous advice. That got a lot of publicity; correct?

DET SUPT MOLLER: I am aware of that reporting, yes.

10 **DR DWYER:** And it would have been in your mind that that was likely to be distressing to Ms Higgins?

DET SUPT MOLLER: Yes. Absolutely, yes.

15 **DR DWYER:** And Officer Kershaw spoke to the Senate Estimates Committee. That was a matter talked about in Parliament. Do you recall that?

DET SUPT MOLLER: I do remember that.

20 **DR DWYER:** Adding to the pressure on Ms Higgins?

DET SUPT MOLLER: Yes.

25 **DR DWYER:** And on the same day, I think, 25 May, the Kunkel report was tabled in Parliament without notice to Ms Higgins?

THE CHAIRPERSON: The what report?

30 **DR DWYER:** The - I think it's the Kunkel, K-u-n-k-e-l, report was tabled in Parliament. Are you aware of that one? Do you recall a report being tabled in Parliament about -

DET SUPT MOLLER: I - I just don't know it being called the Kunkel report -

DR DWYER: Okay.

35 **DET SUPT MOLLER:** - but I do - I do know the report you are talking about.

DR DWYER: So what was going on in terms of the national debate and what was going on in Parliament was likely to add significant pressure on Ms Higgins?

40 **DET SUPT MOLLER:** Yes.

DR DWYER: You understood that?

45 **DET SUPT MOLLER:** Yes. Yes.

DR DWYER: And you were concerned about it, weren't you, in terms of her mental health?

DET SUPT MOLLER: Yes, I was, yes.

DR DWYER: All the more reason to have a senior and professional support person like Ms Yates to walk alongside her. Do you agree?

5 **DET SUPT MOLLER:** Well, absolutely - look, we need to have support people. Absolutely I agree with that.

DR DWYER: Okay. And what Inspector Boorman had been worried about in particular being traumatic and confronting was that - you have given evidence of this previously - you had to show her - or you wanted to show her the CCTV, you wanted to film her response and you were challenging the veracity - or there was a potential for her to perceive at least you were challenging the veracity?

DET SUPT MOLLER: Yes.

15 **DR DWYER:** And that was likely to be distressing?

DET SUPT MOLLER: Confronting.

20 **DR DWYER:** And distressing. You would accept that?

DET SUPT MOLLER: Well, I mean, you know, all of our interviews have got the potential to be like that. We do everything that we can to alleviate that. And we've done that - you know, in consultation with Ms Yates and her office, to design the office and the interview rooms and the - and the environment to be as, you know, the least confronting it can be. But I accept that it is confronting.

DR DWYER: Yes. I'm not criticising your forensic decision.

30 **DET SUPT MOLLER:** Yes.

DR DWYER: That's not a matter for Ms Yates, but your forensic decision had consequences -

35 **DET SUPT MOLLER:** Yes.

DR DWYER: - that you must have envisaged as a senior police officer -

DET SUPT MOLLER: Yes.

40 **DR DWYER:** - could be distressing?

DET SUPT MOLLER: Yes.

45 **DR DWYER:** Ms Higgins brought - sorry, I withdraw that. Ms Yates brought Ms Higgins to the SACAT office - do you recall that - on the morning of 26 May?

DET SUPT MOLLER: Well, that was my briefing, yes.

50 **DR DWYER:** And you were there to greet Ms Yates and Ms Higgins, weren't you?

DET SUPT MOLLER: Yes, I remember meeting them at the - at the office. Yes.

DR DWYER: So that was Inspector Boorman and yourself?

5 **DET SUPT MOLLER:** Yes.

DR DWYER: And Detective Sergeant Saunders?

DET SUPT MOLLER: Yes.

10 **DR DWYER:** Three very senior officers, if I may say; correct?

DET SUPT MOLLER: Yes. Well, we are the senior, I guess - if you think about the investigation area, I was the manager of that area, Detective Inspector Boorman was my 2IC and then you've got Detective Sergeant Saunders who was a team leader or a line manager in the sexual assault area.

DR DWYER: It's not normal for you as a superintendent to go down and meet a complainant in the sexual assault case to welcome and meet and greet them with two other officers, is it?

20 **DET SUPT MOLLER:** No.

DR DWYER: So it's a reflection of the high-profile nature, the complex nature of this investigation; correct?

25 **DET SUPT MOLLER:** Absolutely, yes.

DR DWYER: In evidence earlier I think in relation to Mr Tedeschi's questions or perhaps my learned friend, counsel assisting, you said something about the SACAT interview rooms. I think it was in relation to Mr Tedeschi.

DET SUPT MOLLER: Yes.

DR DWYER: The SACAT interview rooms were ones that had been kitted out I think with the assistance of Ms Yates' suggestions -

DET SUPT MOLLER: Absolutely.

DR DWYER: - in terms of design that would make complainants feel comfortable; correct?

40 **DET SUPT MOLLER:** Yes. Absolutely.

DR DWYER: I appreciate that you have said that you don't have a great memory of the detail of 26 May, but can I remind you that the bathrooms and kitchens had been renovated with the funds from the Victims of Crime Commissioner as part of the intermediary program rollout. So on 26 May, those rooms weren't ready. Does that refresh your memory?

DET SUPT MOLLER: I can't remember them, but absolutely agree that the Victims of Crime Commissioner assisted in design and funding of those - of that office.

50

DR DWYER: And your firm memory is that, in fact, because the room wasn't available, you were taken next door to the Belconnen Police Station?

DET SUPT MOLLER: Yes, that would be right. Yes.

5

DR DWYER: Does that refresh your memory?

DET SUPT MOLLER: Yes. Yes.

10 **DR DWYER:** Okay. It is obviously not your fault, but those rooms are not purpose built for an investigation or an interview with a victim of sexual assault; is that right?

DET SUPT MOLLER: No - in Belconnen, you mean?

15 **DR DWYER:** Yes.

DET SUPT MOLLER: Sorry. Yes, no, they are not purpose built. No, that's right.

20 **DR DWYER:** Okay. After the interview - that second interview had been conducted, Officers Madders and Frizzell told Ms Higgins that other officers wanted to join, that is, that you and Boorman and Saunders were going to come in?

DET SUPT MOLLER: Okay. Yes.

25 **DR DWYER:** That had been your purpose, hadn't it, in - I'm not being critical of you, but you hung around after meeting Ms Higgins and Ms Yates, and you were going to come back in and talk to Ms Higgins?

30 **DET SUPT MOLLER:** I'm not - I'm not sure that I was there when Ms Yates first came in. I definitely met them at Belconnen Police Station. I walked over there with Inspector Boorman. So, yes - but what you just said in terms of meeting them, yes, absolutely I went over there to meet them.

35 **THE CHAIRPERSON:** So the interview was conducted in the usual way by the two officers -

DET SUPT MOLLER: Yes.

40 **THE CHAIRPERSON:** - who had conducted the first interview -

DET SUPT MOLLER: Yes.

THE CHAIRPERSON: - to give continuity of experience, I take it?

45 **DET SUPT MOLLER:** Yes.

THE CHAIRPERSON: And then you and Mr Boorman and Ms Saunders were intending to meet Ms Higgins later -

50 **DET SUPT MOLLER:** And Ms Yates.

THE CHAIRPERSON: - and Ms Yates later -

DET SUPT MOLLER: Yes.

5

THE CHAIRPERSON: - to talk about the case generally?

DET SUPT MOLLER: Yes. Well, my purpose was to talk about media.

10 **THE CHAIRPERSON:** Yes, yes.

DET SUPT MOLLER: My concerns.

15 **DR DWYER:** And you have anticipated exactly what I was going to ask you. You wanted to give her some pretty frank advice about the media, didn't you?

DET SUPT MOLLER: Well, I definitely wanted to talk to her about the media, yes.

DR DWYER: Sure.

20

DET SUPT MOLLER: And the problems that that caused.

DR DWYER: You wanted her to understand the problems that that might cause the case going forward?

25

DET SUPT MOLLER: Yes.

DR DWYER: And the way that, from your perspective, it might jeopardise the case going forward?

30

DET SUPT MOLLER: Yes, absolutely.

DR DWYER: And you wanted to give her some frank, clear advice about that, didn't you?

35 **DET SUPT MOLLER:** Well, I was honest. Yes.

DR DWYER: You were read, I think, the recollections of Ms Yates who was taking some notes at the time, and she sets this out in paragraph 122.24. I will just read it to you. She says:

40 "To the best of my recollection, Mr Moller said words including, 'This is your choice. You're doing the process. You're in control. We will prepare the brief. It goes to the DPP at this point. It's taken out of police hands. Once a charge is laid, it's out of your hands. If the matter proceeds, it will be very difficult. And your welfare is key'."

45 That - I think you have given evidence that's exactly the sort of thing that you would have said?

DET SUPT MOLLER: Yes, that's right.

50 **DR DWYER:** And she recalls you going on to say:

"Things are going to get much harder from here. There shouldn't be any further contact with the media. You've got to stop talking with the media."

5 **DET SUPT MOLLER:** Yes.

DR DWYER: I'm - much has been made about the tone - or something has been made about the tone. You've acknowledged the content. I'm just going to ask you to put on your victim-centric, trauma-informed hat and try and think about what that advice might have been like for Ms Higgins and for her support person. You - there were, by this time, five people in the room. There - I think you couldn't remember who they were, but I will just remind you. There was yourself, Inspector Boorman, Officer Saunders, Frizzell and Madders.

15 **THE CHAIRPERSON:** Five officers.

DR DWYER: Five officers. I beg your pardon.

THE CHAIRPERSON: And Ms Yates and Ms Higgins, yes.

20 **DR DWYER:** Five police officers. Two women, in terms of the civilians, Ms Yates and Ms Higgins. And one of the pieces of information that you were giving to Ms Higgins was something like, "If you are going to speak to the media and this can't go ahead, it will all be for nothing, this case." Do you accept you said something like that?

25 **DET SUPT MOLLER:** Yes, absolutely. I was - I was honest about the issues that were being generated by the media coverage.

THE CHAIRPERSON: Candid.

30 **DET SUPT MOLLER:** Yes, I was being candid. Yes, I was, Commissioner.

DR DWYER: In - what you now know is that after that interview where Ms Higgins was shown the CCTV footage, she was distressed, as predicted by Inspector Boorman, and she was seated on a couch in the room. She had just been - had her veracity questioned - the truthfulness of her evidence questioned. Ms Yates noted her to be visibly upset and shaking. That wouldn't surprise you, given your experience with sexual assault complainants?

40 **DET SUPT MOLLER:** Well, she - she had obviously been through a second interview. So, yes, I would agree, she's probably been -

DR DWYER: And in circumstances where there are now five officers in the room when you're giving her that advice about the media, from Ms Higgins' perspective, she might have felt that you were scolding her. Do you accept that?

45 **DET SUPT MOLLER:** She could have, yes.

DR DWYER: Okay. And from her support person's perspective, you understand that Ms Yates' training is that victims can blame themselves sometimes if charges don't go ahead in court, even though we know that's terrible shame. It's true, isn't it?

50

DET SUPT MOLLER: Yes.

DR DWYER: And victims can feel that they failed if there's no criminal justice system - justice outcomes, even though that's not what you want them to feel?

5

DET SUPT MOLLER: Well, no, that's against the - you know, our victim-centric approach where, like I said to Ms Higgins, you know, "You're leading this process." You know, "You're in charge. And we will do, you know, what you need to do."

10 **DR DWYER:** Sure. And you also said, "Things are going to get much harder from here. There should not be any further contact with the media. You've got to stop talking to the media. If you're going to speak to the media and it can't go ahead, it will all be for nothing."

DET SUPT MOLLER: Yes, I was candid -

15

DR DWYER: Yes. And you -

DET SUPT MOLLER: - to use the Commissioner's words, about the media.

20 **DR DWYER:** Sure. In that context, though, you can appreciate why Ms Yates, as a support person, wants to say, "Hang on, Scott - in front of Ms Higgins, "Hang on, Scott. It won't all be for nothing because she's actually achieved a great deal already." You can appreciate why she wants to get that across in front of Ms Higgins, can't you?

25 **DET SUPT MOLLER:** So I can acknowledge that when I'm saying, "It will all be for nothing," I was talking about the prosecution, rather than her - her ability to - ability to heal.

DR DWYER: Sure. You - that's what you meant.

30 **DET SUPT MOLLER:** That's what I meant, yes.

DR DWYER: You were well-intentioned.

DET SUPT MOLLER: Yes.

35

DR DWYER: But you can absolutely understand from Ms Yates' perspective that she's got to make sure that Ms Higgins doesn't feel like a failure if it doesn't go ahead to trial; correct?

DET SUPT MOLLER: Yes. Yes, I can. Yes.

40

DR DWYER: So in that context, you can understand her saying something like, "Excuse me, Scott. I'm just going to intervene here. I'm conscious that you are saying it will be for nothing, but I would just like to note that the criminal justice system is just one thing that we are dealing with. And Ms Higgins has already undertaken a great deal of advocacy at a national level to bring attention to the difficulties of sexual assaults of others making disclosures and seeking support and calling for improvements across a range of areas." That's the sort of thing that Ms Yates said in response, isn't it?

45

DET SUPT MOLLER: I don't remember that paragraph.

50

DR DWYER: Sure. Well, you don't have a clear memory of this?

DET SUPT MOLLER: No.

5 **DR DWYER:** And you didn't take notes?

DET SUPT MOLLER: No.

10 **DR DWYER:** She went on to say something like, "Those calls have resulted in a large number of inquiries and lots of conversation about ways - about how we might improve responses for sexual assault survivors." That's the type of language that Ms Yates speaks in, isn't it?

15 **DET SUPT MOLLER:** Well, I mean, absolutely she advocates for that area. So, yes, you know, I'm not saying she didn't say that because I don't have a recollection of it.

20 **DR DWYER:** Okay. And she said something like, "I understand the criminal justice process is very important to Ms Higgins. But even if, for whatever reason, a charge could not be laid, it's important for us to just recognise it would not all be for nothing. She's already achieved a great deal." That was a completely fair comment, wasn't it?

DET SUPT MOLLER: I acknowledge that, yes, absolutely. Remembering that our goal, obviously, is to go to prosecution. That's what we want to do.

25 **DR DWYER:** Sure.

DET SUPT MOLLER: But, yes, I acknowledge - I - you know, I acknowledge what you're saying.

30 **DR DWYER:** Because that's your goal, and you are focused on it.

DET SUPT MOLLER: Yes. Yes.

35 **DR DWYER:** But Ms Yates is trying to balance the welfare of Ms Higgins in the circumstances.

DET SUPT MOLLER: Absolutely. Yes. And I understand that, yes.

40 **DR DWYER:** You now - can I suggest to you you now understand that better than you did at the time you wrote your statement.

45 **DET SUPT MOLLER:** Yes. Look, I - you know, it's - it's an awareness thing, isn't it, you know, understanding that. I mean, we were fixated on prosecution, even though other people have said we weren't. We were certainly fixated on, you know, trying to move this matter into a - you know, a prosecution. So - and doing everything we could to get to that point. And obviously, you know, the media, you know, in my view, was - had the potential to undermine everything we were trying to do to get it to a prosecution. So, yes - you know, I accept that, on reflection, that comment could have caused, you know, some concern.

5 **THE CHAIRPERSON:** It's interesting, isn't it? It's an instance of people saying things and on an occasion when you hear what they are saying. Ms Yates heard what you said, and you heard what she said, whatever it was, something to that effect. And each of you meant something by what you said; it's not just the literal words. So your statement, "Don't talk to the media. If this goes off, it will all be for nothing" -

DET SUPT MOLLER: Nothing, yes.

10 **THE CHAIRPERSON:** You meant to protect the criminal process, which is your sole interest -

DET SUPT MOLLER: Yes.

15 **THE CHAIRPERSON:** - professionally. And Ms Yates then responds not by addressing the criminal process but by addressing an entirely different subject, because she was engaged not in - really not in - as I understand it, but you will tell me if I'm wrong in due course - not so much in correcting you, as in saying something in support of her client -

20 **DET SUPT MOLLER:** Yes.

THE CHAIRPERSON: - to ensure that her client didn't feel demolished by feeling guilty about jeopardising the criminal process. So she was saying something really - the audience was her client.

25 **DET SUPT MOLLER:** Yes.

THE CHAIRPERSON: "Don't worry, because you've already achieved much." But she did it by speaking to you rather than speaking to Ms Higgins.

30 **DET SUPT MOLLER:** Yes.

THE CHAIRPERSON: But you don't remember, I suspect, because you weren't interested in that, because it had nothing to do with what you were saying. What you were saying was, "I want my criminal process protected."

35 **DET SUPT MOLLER:** Yes. Well -

40 **THE CHAIRPERSON:** And she was - she had a wider - Ms Yates had a wider aspect, the criminal process and the wellbeing of her client. So it's - if one asked - if this was ever possible - it never is - Ms Yates would ask, "What does he really mean when he says that?" And then she could interpret that for her client. And if you were asking, "What does she mean?" You would think, "Right. I know what she's doing. She's reminding me that there's more to this, but she's really speaking for the benefit of her client" -

45 **DET SUPT MOLLER:** Yes.

THE CHAIRPERSON: - "in saying don't worry about that, because we all know it's not - that's not everything."

5 **DET SUPT MOLLER:** And, you know, the important thing, I think, Commissioner, certainly from my perspective and reflecting on this, is that, you know, we absolutely need those people that can advocate and remind us that it's not all about a criminal prosecution. You know, this is about healing, about moving on. And as focused as I was on trying to move this to a criminal prosecution and trying to develop that evidence that we needed, is not always the most important thing.

10 **THE CHAIRPERSON:** No, but it's the most important thing for you. And as you said, you are not a social worker, and you ought not be a social worker. You are an investigator, and you ought to do that. By doing that, you serve the criminal justice process and you serve those who depend upon it. Whereas Ms Yates had a different agenda and - yes, very interesting. Go ahead, Ms Dwyer.

15 **DR DWYER:** You are both performing your statutory functions there, aren't you?

DET SUPT MOLLER: Yes.

20 **DR DWYER:** You are doing your job as an investigator, and Ms Yates is doing her job as a support person for Ms Higgins in that time?

DET SUPT MOLLER: Yes.

25 **DR DWYER:** In - I just want to ask you to reflect on the nuances and the way in which - I think Mr Chair just said to you we can all hear different things at the time, depending upon our perspectives or our focus. At paragraph 192 of your statement, you say:

"I remember in one of our meetings I was speaking to the VCC, and I said words to the effect of, 'She has to stop doing the media'."

30 In relation to Ms Higgins. I think you only had two face-to-face meetings with Ms Yates in relation to the Higgins matter; is that right?

DET SUPT MOLLER: Yes.

35 **DR DWYER:** This one and the one in July that I will come to?

DET SUPT MOLLER: Yes.

40 **DR DWYER:** And so - you then go on to say:

"Ms Yates said to me, 'She can't stop. She's the face of the movement now'."

DET SUPT MOLLER: Yes.

45 **DR DWYER:** I want to suggest to you - and, initially, you don't think anything about that comment. You don't make any sort of file note of it; correct?

DET SUPT MOLLER: No.

50 **DR DWYER:** Okay. Sorry, you are agreeing with me?

DET SUPT MOLLER: Yes, sorry, I'm agreeing with you. Yes.

5 **DR DWYER:** Okay. I want to suggest to you that she never used the term "face of the movement". What she said was, "Ms Higgins has already undertaken a lot of advocacy at a national level to bring attention to the difficulty of sexual assault survivors making disclosures, seeking support, calling for improvements, etcetera." But what you heard was her suggesting that she was the face of the movement. Is that possible?

10 **DET SUPT MOLLER:** Well, no, I - I definitely remember those words. They stuck with me. And, yes, I didn't record them. But like I said in my statement on reflection, I thought about it, and - and it upset me. And it stuck in my mind.

15 **DR DWYER:** Let me show you the note you make of that meeting. It's at AFP.2003.0003.8121.

20 **THE CHAIRPERSON:** But was that said then - am I to understand it that according to your memory that was said in the context of what Ms Higgins - Ms Yates was saying about not everything is lost if the legal proceedings end, because Ms Higgins has achieved a great deal otherwise and will go on to achieve otherwise - great things otherwise. And in that context she has achieved this, that she's of the face of a movement. Is it because - I guess it depends on the context in which those words are said. Was that the context in which you would say they were said, as part of that dialogue to which Ms Yates was a party with you addressing a different subject matter?

25 **DET SUPT MOLLER:** Yes.

THE CHAIRPERSON: Yes, go ahead.

30 **DR DWYER:** And just before I move on from that, could you read out - I think that's a file note that you made on 26 May 2021?

DET SUPT MOLLER: Yes:

35 "8.30, meet with SACAT team discussions re-Brittany Higgins. 9 am out with Boorman and Saunders to Belconnen Police Station. Meet with Higgins and Yates. Discussion with same re investigation or investigative proceeds. Discussion re media and Higgins to refrain from any media as it may influence any upcoming court processes/trials."

40 Then:

45 "Of Senior Constable Frizzell and Detective Senior Constable Madders, to Higgins re EIC."

DR DWYER: You agree with me there's no complaint in there about Ms Yates -

DET SUPT MOLLER: No, I didn't make - I definitely didn't make any note of it.

DR DWYER: I have finished with that. Thank you very much. On 27 May, the very next day after that interview, which was - you have acknowledged was distressing to Ms Higgins -

DET SUPT MOLLER: Yes.

5

DR DWYER: - you called on Ms Yates for her assistance, don't you? Do you remember that? Let me take you there. This is dealt with I think at paragraph 179 of your statement. It's - I will have a go at this. WIT.00033 - actually, have you got your statement in front of you?

10

DET SUPT MOLLER: Yes.

DR DWYER: That might be easier. Page 37. I think it's paragraph 179.

15 **DET SUPT MOLLER:** Yes, I'm there.

DR DWYER: So I think you refer to here in the early stages of the investigation you were briefed that Ms Higgins had previously suffered from anxiety and depression?

20 **DET SUPT MOLLER:** Yes.

DR DWYER:

25

DET SUPT MOLLER: [REDACTED]

DR DWYER: I'm sorry, I've just referred to something that is redacted.

30

THE CHAIRPERSON: Yes. Pause the feed, please. Sorry.

DR DWYER: I apologise, Mr Chair.

35 **THE CHAIRPERSON:** That's all right. There's a two-minute delay, so don't worry about it.

DR DWYER: I'm grateful. Thank you, Mr Chair. Might I ask while I'm on my feet just for a non-publication order of that information I read out though in case any of the media are in court?

40

THE CHAIRPERSON: Yes, I direct that Ms Dwyer's last question not be published.

DR DWYER: Thank you.

45 **THE CHAIRPERSON:** And just for those here - I will say it when we are back on live feed. For those of you watching on the stream, we cut the stream because as you know we have redacted personal matters from many, many documents. But counsel often are using an unredacted document from which to ask questions, and what's happened is inadvertently counsel recited something that had been redacted. So I cut the stream so that that part could

be not published. And these things happen from time to time. So we will continue,
Ms Dwyer.

5 **DR DWYER:** Thank you, Mr Chair. So, Superintendent, I will stick to what's on the screen.
If you have a read of it there, I think you have also refreshed your memory though from the
unredacted portion of your own statement?

DET SUPT MOLLER: Yes, I have. Yes.

10 **DR DWYER:** Given the intense pressure on Ms Higgins, you were concerned for her
welfare and you then contacted Ms Yates; correct?

DET SUPT MOLLER: Yes, I was absolutely concerned for Ms Higgins' welfare, yes. And
the contact was through Ms Yates, so that's why I contacted her.

15 **DR DWYER:** It would have been absolutely devastating if something adverse had happened
to Ms Higgins at any time, let alone during the investigation. It would have been just terrible,
wouldn't it?

20 **DET SUPT MOLLER:** Absolutely.

DR DWYER: And you knew Ms Yates had training and experience in trauma-informed care
of complainants?

25 **DET SUPT MOLLER:** I knew - yes.

DR DWYER: And you knew she was professional and experienced and kind and
compassionate; correct?

30 **DET SUPT MOLLER:** Well, I trusted her. You know, I trusted her in that situation.

DR DWYER: And you would have welcomed her support in those circumstances for
Ms Higgins, wouldn't you?

35 **DET SUPT MOLLER:** Absolutely.

DR DWYER: It's a good example of how important it is for police and the Victims of Crime
Commissioner to trust each other and to work closely together. Do you agree?

40 **DET SUPT MOLLER:** Well, it was very important - very important at that time to make
sure that Ms Higgins had been looked after.

DR DWYER: Can I ask for this to come on the screen and direct you to your statement at
paragraph 180, so you know what I'm asking you about. On the screen please,
45 WIT.0033.0005.0001_0037. Do you see the redacted version of your statement there?

DET SUPT MOLLER: 180, is that number 180? Paragraph 180.

DR DWYER: Yes. Thank you.

50

DET SUPT MOLLER: Yes. Okay.

5 **DR DWYER:** And what's important, of course - and you understand because you know more of the background - is that this was another example where you had some information that gave you concern for Ms Higgins' welfare?

DET SUPT MOLLER: Yes.

10 **DR DWYER:** And you reached out to Ms Yates, and you trusted her to go and follow up and provide the support that Ms Higgins needed?

DET SUPT MOLLER: Absolutely.

15 **DR DWYER:** And that's exactly what she did?

DET SUPT MOLLER: Yes.

20 **DR DWYER:** That can come down now. Thank you. Mr Chair, is that - I think I'm going to be relatively short after the break, but would it be convenient so that I can shorten my notes that we take -

THE CHAIRPERSON: Yes. Yes, that often happens. So, yes, let's adjourn, then, till 2 o'clock.

25 **DR DWYER:** Thank you.

<**THE HEARING ADJOURNED AT 12.44 PM**

30 <**THE HEARING RESUMED AT 2.05 PM**

THE CHAIRPERSON: Ms Longbottom.

35 **MS LONGBOTTOM:** Mr Sofronoff, you will recall we deferred discussion about the practice guideline to deal with the rule in Browne v Dunn -

THE CHAIRPERSON: Yes.

40 **MS LONGBOTTOM:** - to now. I have conferred with my colleagues. Save for a matter Ms Richardson wants to raise about how the proposed guideline sits with the position (indistinct), my understanding is that there's no objection to the guideline as proposed.

THE CHAIRPERSON: Yes. All right. Yes.

45 **MS RICHARDSON:** Thank you, Mr Commissioner. We have no issue with the practice guideline at all. I just note that we wrote to the inquiry on 3 May where we set out our understanding, and I just wanted to say that, that in my submission, it's consistent with the practice guideline, firstly, that we are proceeding on the basis that the inquiry would not make an adverse comment or adverse finding about a person in its report unless the person is called as a witness; and, secondly, that an interested party is not taken to have accepted the
50 correctness -

THE CHAIRPERSON: I'm sorry, what's that?

5 **MS RICHARDSON:** That the AFP or an interested party is not taken to have accepted the
correctness of the evidence of a witness because they have not requested that the witness be
called for cross-examination. So in my submission, that does dovetail into the practice
guideline that has been published because that is setting out the Board's expectation that in
circumstances where - this is in paragraph 4 - it is to be - the Board is to be invited to reject or
10 deliberately gave false evidence and so on, that the party is, in effect, required to put that to
the witness -

THE CHAIRPERSON: Yes.

15 **MS RICHARDSON:** - as an obvious rule of fairness. So that's where a party is, in effect,
openly inviting the inquiry to reject evidence on a material issue on the grounds of false
evidence or unreliability. So in those circumstances, plainly enough, it's beholden on the
party to put that to the person.

20 **THE CHAIRPERSON:** Yes.

MS RICHARDSON: But in circumstances where the way this inquiry has evolved is there is
a lot of witnesses who haven't been called for obvious reasons - but we are proceeding on the
basis, as I assume all parties are, that they are not taken to have accepted every
25 word - everything -

THE CHAIRPERSON: No, that's right. That's right.

30 **MS RICHARDSON:** - that everyone has said because there's a lot of matters that aren't in
issue. But if a party wishes to impeach the evidence of a particular - make a submission
where they impeach evidence, that that's when the practice guideline would be engaged.

THE CHAIRPERSON: Thank you for that. Well then, I will have the practice guideline
relating to the issue of challenging evidence uploaded to the website, and I will adopt it.

35

MS LONGBOTTOM: Thank you, Mr Sofronoff.

THE CHAIRPERSON: So, Ms Dwyer, over to you?

40 **DR DWYER:** Thank you. Superintendent, I asked you about the main meeting you will
recall before lunch, and I'm about to about June 2021. So I don't have a huge amount of time
to go. On 29 June 2021, Ms Yates sent an email to Inspector Boorman, and I'm just going to
read it to you. If at any point you want these documents, I will do my best to use the operator.
Okay. So she - 29 June, the email is this to Inspector Boorman:

45

"Hi Marcus, just touching base. Noting that I understand your team will now be
working to finalise the outstanding matters in the DPP brief, are you able to confirm
that police will provide my office with a heads up when the remainder of the brief is
to be provided to the DPP?"

50

Do you recall that?

DET SUPT MOLLER: Yes.

5 **DR DWYER:** And I don't need to read the whole email exchange to you. Suffice to say, you are the one that actually replies to that email, aren't you?

DET SUPT MOLLER: Yes, I was.

10 **DR DWYER:** And you say:

"Hi Heidi, I'm the point of contact for this matter. Please touch base with me about any further inquiries."

15 And then you give her some timeline about the service of the brief; correct?

DET SUPT MOLLER: That's right, yes.

20 **DR DWYER:** And it's - I think you have already said it's unusual for someone of your rank to be involved -

DET SUPT MOLLER: Yes.

25 **DR DWYER:** - at this stage with these sorts of communications, but it was a reflection of the high profile of this matter and the complexity of this matter; correct?

DET SUPT MOLLER: Yes.

30 **DR DWYER:** And the reply you get from Ms Yates is:

"Hi Scott..."

You are on a first named basis, Scot and Heidi; correct?

35 **DET SUPT MOLLER:** Yes. Well, I have worked with her before, yes.

DR DWYER:

40 "Hi Scott, thanks for confirming you are the updated contact for this matter. I will advise Ms Higgins regarding the four-week timeline for finalisation of the brief and welcome your confirmation that you will advise us when complete."

You had asked her also for a face-to-face meeting with Ms Higgins, and Ms Yates writes:

45 "Regarding a face-to-face meeting, I'm happy to facilitate a request. I'm not confident that Ms Higgins will be open to a personal meeting next week, although thank you for offering to travel to her. To aid in my consideration, are you able to provide some further information in relation to the nature of the meeting? I can discuss by phone or here is my direct mobile."

50

That was entirely appropriate, that communication between yourself and Ms Yates; agree?

DET SUPT MOLLER: Yes.

5 **DR DWYER:** And you had emailed her on the 29th, and I think within - I think at 2.44, and then by 3 o'clock she has emailed you straight back?

DET SUPT MOLLER: Yes.

10 **DR DWYER:** So it's a reflection of how responsive she is to the concerns of police. Would you agree with that?

DET SUPT MOLLER: Yes.

15 **DR DWYER:** As you know, she then, within a few hours, also emails Ms Higgins. And I will read that you email. She says:

20 "Hi Brittany, please see below exchange of emails from police following the email that I cc'd you in to with Marcus on Tuesday morning. As discussed, Detective Superintendent Scott Moller has indicated he's now the contact person. Please let myself or police know how you would like to proceed or let me know how I might assist to progress."

25 You're not copied in to that email from Ms Yates at that time. But you can see, can't you, that what Ms Yates does is immediately responsive to your request to contact Ms Higgins and encouraging Ms Higgins to contact Ms Yates or the police directly?

DET SUPT MOLLER: Yes. I can see that, yes.

30 **DR DWYER:** And what happens next, though, is that Brittany - or Ms Higgins writes back at 6 pm that night, thereabouts, to Ms Yates:

"Good afternoon, thank you for the status update."

35 She copies you in to this. Do you remember this email?

DET SUPT MOLLER: Mmm.

40 **DR DWYER:** I will read it to you. She says:

"I would prefer any information be relayed through my lawyer, cc'd above."

DET SUPT MOLLER: I do remember it, yes.

45 **DR DWYER:** And Mr Zwier is cc'd:

50 "Our last conversation was quite distressing, and any way we can mitigate any unnecessary protracted conversations would be preferable. If your advice pertains to whether or not the DPP are planning to proceed, please feel free to be as blunt and straight to the point as possible. No need for any long form explanations either way."

In turn, I will continue to respect your overt preference for my ongoing media silence."

5 So it was frustrating to you, wasn't it, that you couldn't have direct conversations with Ms Higgins?

DET SUPT MOLLER: I felt it was cumbersome that I wasn't dealing direct with Ms Higgins.

10 **DR DWYER:** But what you now appreciate, having your memory refreshed from this correspondence, is that, in fact, Ms Higgins - I'm sorry, Ms Yates was acting as an effective tool of communication between yourself and Ms Higgins?

15 **DET SUPT MOLLER:** I think after - after seeing the documents that I've just seen today, it, you know, definitely appears to me that, you know, having Ms Yates was assisting the police.

THE CHAIRPERSON: So am I understanding this correctly: at the time, it looked like if you wanted information from Ms Higgins, you had to ask Ms Yates and she would ask Ms Higgins and give you the information?

20

DET SUPT MOLLER: Yes.

THE CHAIRPERSON: Whereas, in fact, what Ms Yates was doing was acting as a facilitator so that if you needed to talk to Ms Higgins, that would happen?

25

DET SUPT MOLLER: Yes.

THE CHAIRPERSON: But if you wanted to arrange something, well, talk to Ms Yates and she will arrange it?

30

DET SUPT MOLLER: Yes.

THE CHAIRPERSON: Thanks.

35 **DR DWYER:** That's something you appreciate now that you didn't appreciate at the time of writing your statement. Is that fair, Superintendent?

DET SUPT MOLLER: Yes. Yes, that's fair.

40 **DR DWYER:** So at paragraph 77, you say:

"I felt that the VCC, Ms Yates, was attempting to place a barrier between investigators and the alleged victim."

45 At the time of writing your statement, you didn't have all the facts that you have now?

DET SUPT MOLLER: No. Well, obviously we have got more information now, but - certainly that's how I felt at the time. But now on reflection and, you know, being provided with that information, it makes it a lot clearer.

50

DR DWYER: A lot clearer that Ms Yates was being a significant help to police?

DET SUPT MOLLER: Was assisting, yes.

5 **DR DWYER:** To that end, I think on 7 July, Ms Yates received a text from Ms Higgins asking her to come with her to a meeting with police in Brisbane. This is the second time that you met with Ms Yates and Ms Higgins.

DET SUPT MOLLER: Yes.

10

DR DWYER: Ms Yates was happy to do so. And on 12 July, she flew up to Brisbane to assist. Do you recall that?

DET SUPT MOLLER: Yes. Yes.

15

DR DWYER: And just covering off on the chronology, that meeting took place. That's when you advised Ms Higgins that there were reasonable prospects of success?

DET SUPT MOLLER: That's right, yes.

20

DR DWYER: And you said words to the effect of you wanted to work as a team or in partnership with Ms Higgins?

DET SUPT MOLLER: Yes.

25

DR DWYER: You were then informing her of the date when the brief was likely to be ready, and you were making an effort to be reassuring to Ms Higgins?

DET SUPT MOLLER: Yes. Yes, I was trying to assure her that we were supporting her through this prosecution.

30

DR DWYER: Yes. And the point I'm hoping you will agree with me, Superintendent Moller, is that just one and a half months after this meeting on 26 May, there's a second meeting between yourself, Ms Yates and Ms Higgins. It's cordial. It's respectful. It's conducive to the investigation going forward. Do you agree?

35

DET SUPT MOLLER: Yes.

DR DWYER: I'm reminded of something that you point out in your statement. You recall your frustrations that you hadn't been able to get the phones from Ms Higgins?

40

DET SUPT MOLLER: Yes, that's right.

DR DWYER: At this meeting in July, attended by Ms Yates - after the meeting, Ms Higgins and Ms Yates left. And a short time later, Ms Higgins returned and handed Detective Inspector Boorman two mobile phones which - sorry, Ms Yates returned -

45

DET SUPT MOLLER: Ms Yates. Yes, that's right.

DR DWYER: - and handed Detective Inspector Boorman two mobile phones which belonged to Ms Higgins?

5 **DET SUPT MOLLER:** Yes, I think that was our eighth or ninth attempt at getting the phones, and - and Ms Yates was able to get those phones.

DR DWYER: Significant assistance to the police. Do you agree?

10 **DET SUPT MOLLER:** It was - it was very beneficial to us.

DR DWYER: You - I think you said to Ms Higgins in an effort to reassure her that your intention - I withdraw that. In an effort to reassure her, you said at that meeting in July that she would be the first to know when the brief had been served or when charges would be laid; is that right?

15 **DET SUPT MOLLER:** Yes, that's right.

DR DWYER: And that was absolutely your intention at that time?

20 **DET SUPT MOLLER:** Yes, absolutely.

DR DWYER: That's victim-centred, trauma-informed, isn't it?

25 **DET SUPT MOLLER:** Yes. Well, it's just best practice, yes.

DR DWYER: So on 4 August 2021, you sent an email to Ms Yates - tell me if you want to see any of this, but saying you wanted to meet Ms Higgins on the Thursday or Friday?

30 **DET SUPT MOLLER:** That's correct.

DR DWYER: And that was - am I right - for the purposes of telling her that Mr Lehrmann would be charged?

35 **DET SUPT MOLLER:** That's right.

DR DWYER: Consistent with the undertaking that you - or the suggestion you had made in July?

40 **DET SUPT MOLLER:** Yes.

DR DWYER: In fact, although that was your intention, you were directed not to do that, weren't you?

45 **DET SUPT MOLLER:** Yes.

DR DWYER: So on 5 August, Ms Yates was driving to Belconnen and - to the police station to meet with you, and you were going to call Ms Higgins. And she got a text from you saying the meeting can't proceed?

50 **DET SUPT MOLLER:** That's right.

DR DWYER: And then it was for Ms Yates to let Ms Higgins know that the meeting couldn't proceed; correct?

5 **DET SUPT MOLLER:** Well, yes, because I didn't have direct contact.

DR DWYER: Sure.

DET SUPT MOLLER: Yes.

10 **DR DWYER:** You were relying on her as a support person -

DET SUPT MOLLER: Yes, that's right.

15 **DR DWYER:** - to walk Ms Higgins through that, to - and to try to give her some reassurance; correct?

DET SUPT MOLLER: Yes.

20 **DR DWYER:** And you later said to Ms Yates that you wanted to meet the next day. So I think on 5 August, you sent her a - there's a text message. I will take you to it so I don't get that wrong. At 5.21, you sent a text message to Ms Yates saying you would like to talk to Ms Higgins at 2.30 pm the next day, and you confirmed a meeting in Ms Yates' office for that time. Do you recall that?

25 **DET SUPT MOLLER:** Yes.

DR DWYER: And that's exactly what happened. The next day, Ms Yates facilitated the meeting in her office, and you called Ms Higgins?

30 **DET SUPT MOLLER:** Yes, that's right.

DR DWYER: And you let her know then that Mr Lehrmann had been charged?

35 **DET SUPT MOLLER:** Yes.

DR DWYER: So when you requested access to Ms Higgins at that time, Ms Yates facilitated it in accordance with your request; correct?

40 **DET SUPT MOLLER:** Yes. Yes, she did.

DR DWYER: You've been asked some questions - sorry, I'm trying to find something and I can't put my hand on it. Will you just excuse me one moment. I'm sitting on. This is one of the last documents I want to take you to. On 26 August at 3.43, you sent an email to Ms Yates. I think you previously offered for Ms Higgins to be the direct contact with her some time around 16 August. Do you recall that?

DET SUPT MOLLER: Yes.

50 **DR DWYER:** She didn't reply to your email?

DET SUPT MOLLER: That's right.

DR DWYER: It was evident to you she still wanted Ms Yates to be the contact person?

5

DET SUPT MOLLER: Well, I guess she didn't want contact with me directly, yes.

DR DWYER: And it's now evident to you that she wanted Ms Yates to be the contact person?

10

DET SUPT MOLLER: Yes.

DR DWYER: And you were happy to continue to work with Ms Yates as the contact person?

15

DET SUPT MOLLER: Yes.

DR DWYER: And on 26 August 2021 at 3.43, you sent an email to Ms Yates saying that - sorry, I will go back a step. On 26 August, Ms Yates sends you an email at 10.26. And she says:

20

"I've spoken to Ms Higgins yesterday and confirmed she received your email of 16 August. Thank you for the procedural information. In relation to ongoing contact, I've checked with the DPP. Their office will take over from there."

25

DET SUPT MOLLER: That's right.

DR DWYER: You have already been asked some questions, I think, about wanting to - the reasons why you wanted to have an interview with Ms Yates after that time in September?

30

DET SUPT MOLLER: Yes.

DR DWYER: I'm not going to question your forensic decisions. You've been asked some questions about it. But on 9 September or thereabouts, there was a decision to interview Ms Yates?

35

DET SUPT MOLLER: Yes.

DR DWYER: Ms Yates having sent some correspondence around 15 September telling you that, in fact, she was there as a support person?

40

DET SUPT MOLLER: Yes.

DR DWYER: But she would be happy to do the -

45

DET SUPT MOLLER: Yes, that's right. She would be happy to do the interview, yes.

DR DWYER: And a few days later, she did do the interview?

50

DET SUPT MOLLER: Yes.

DR DWYER: She complied with the request that police were asking of her?

DET SUPT MOLLER: Yes, she did. Yes.

5

DR DWYER: In the weeks after Ms Higgins was told about the charging, police knew that Ms Yates would be there to check on the welfare of Ms Higgins; correct?

DET SUPT MOLLER: Yes.

10

DR DWYER: So not only had she been a significant conduit for information, but Ms Yates was, as far as you know, a very significant support for Ms Higgins; correct?

DET SUPT MOLLER: Absolutely, she supported Ms Higgins, yes.

15

DR DWYER: I'm nearly finished. I'm going to come to some reflections shortly. I wanted to ask you about your ideas about hierarchy. In police, there's a very strict rank structure?

DET SUPT MOLLER: Yes.

20

DR DWYER: And that's very different to the Victims of Crime Commissioner, isn't it?

DET SUPT MOLLER: Yes.

25

DR DWYER: And it's important that your officers understand that going forward?

DET SUPT MOLLER: Yes.

30

THE CHAIRPERSON: Understand what?

DR DWYER: Understand the differences in hierarchy and structure. But I might ask you to explain it, Superintendent, firstly starting with the hierarchy and what your officers might perceive as a result?

35

DET SUPT MOLLER: Yes. So we have a rank structure that we work to, and it's - it's very important in our organisation. If a senior officer gives a direction, it's followed because of our rank structure. And I think - you know, on reflection, I think this may have contributed to the - the issues - or the perceived issues with the - with the Victims of Crime office in that -

40

THE CHAIRPERSON: You are apparently dealing with a head of a unit of public administration when she regards herself as just a support person like any other support person might have been. Is that what you mean?

DET SUPT MOLLER: I think it's more about the title, Commissioner.

45

THE CHAIRPERSON: Yes. Yes.

DET SUPT MOLLER: Because we are dealing with a commissioner -

50

THE CHAIRPERSON: I see. Yes.

DET SUPT MOLLER: - the Victims of Crime Commissioner.

THE CHAIRPERSON: Yes.

5

DET SUPT MOLLER: We are a rank-based structure. You know, I think I describe it like this. If I'm going to - to the meal room in my office, police in my office that I work with are generally much more quiet and don't speak so openly when I'm there. If my commander came in, they are even less likely to talk. If my Commissioner attended, I think they probably wouldn't be there. They would go and make themselves busy and, you know - so in terms of dealing with, you know, the Commissioner from the Victims of Crime office, my staff look at her the same way they would look at our Commissioner. So, you know, that - that presents a problem for my organisation in that we need to develop and - and certainly build those communication so my officers realise that, in fact, the Commissioner from the Victims of Crime office has a different way to look at that structure.

10

15

THE CHAIRPERSON: Yes, I see.

DET SUPT MOLLER: So, yes, certainly from our perspective - you know, and I think it's - I definitely think it's to do with our rank structure, that, you know, there is that issue there.

20

THE CHAIRPERSON: Yes. Ms Yates undoubtedly regarded herself as acting in her capacity as a support person for a victim of crime under her statute, and it might have been Ms Yates, it might have been somebody else within her office doing that. And so they are there in their capacity as such. But for police officers who are in a rank well below the Police Commissioner, the relevant relationship is, first, it's a head of an agency -

25

DET SUPT MOLLER: That's right.

30

THE CHAIRPERSON: - by whatever of name. Secondly, the title is Commissioner, so gives it a cachet and a rank. And they would approach her with that status in mind, whereas Ms Yates did not regard herself as having that status. So there's a lot of room for warped appreciation of what each of you is doing. Is that it?

35

DET SUPT MOLLER: That's correct.

THE CHAIRPERSON: Yes, I understand.

DR DWYER: And following on from the Chair's comments, there's a lot of room, then, for education of your officers -

40

DET SUPT MOLLER: Yes.

DR DWYER: - about the office going forward?

45

DET SUPT MOLLER: Absolutely. Well, I think there's - you know, there's definite scope for us to develop training both - you know, in both organisations. I think there's a lot of scope there.

50

DR DWYER: Sure. And given what you have said previously about the limits of the experience levels of your officers, and given the expertise in the Victims of Crime Commission office on trauma-informed response, would you welcome any offers of training from the Commission?

5

DET SUPT MOLLER: Absolutely we would.

DR DWYER: Just in relation to Ms Yates acting as a support person, some of the comments in your statement suggest that you were surprised to see her there as a support person. You had actually had other experiences of her being a support person to families, though, hadn't you?

DET SUPT MOLLER: Well, I guess in her role she has worked with other families. Definitely. What I hadn't seen myself - what I hadn't experienced is that Ms Yates working at that operational level, I suppose, with police.

DR DWYER: I just want to read to you from her statement at paragraph 85.1 and give you some of this information. In her statement, she indicates:

20 "I estimate I personally assisted approximately 200 victims of crime during my five years as Victims of Crime Commissioner. Within this cohort, I estimate that approximately 70 clients have been victims or survivors of sexual assault."

25 That she has personally assist. That's not something that you were aware of at the time of Mr Lehrmann's trial, were you?

DET SUPT MOLLER: No, no. And I guess that level of assistance, you know, can go from - I don't know. But, you know, there's a big - big - varied amount of assistance you can provide.

30

DR DWYER: But you are usually not the investigator on the ground dealing with the support person.

DET SUPT MOLLER: No, I'm not.

35

DR DWYER: So there would be lots of occasions where she might be the support person, but you haven't -

DET SUPT MOLLER: And I wouldn't know.

40

DR DWYER: Yes. And that's something you have learnt through this inquiry; correct?

DET SUPT MOLLER: Yes. Absolutely.

45 **DR DWYER:** And in 2020, I think, there was advocacy and support you recall that she provided to a large extended family of a man who had died, which was a homicide investigation. Do you recall that?

DET SUPT MOLLER: Look, I've - I've had interactions with Ms Yates over different investigations. I guess my point to this is I've never had that involvement at an operational level, like, you know, during interviews and things like that.

5 **DR DWYER:** Okay. I'm just going to show you - I'm just going to prompt your memory with two particular cases. I don't want to put them on the screen. The Commission is aware of them, but I'm obviously respecting the privacy of those involved.

DET SUPT MOLLER: Yes. Yes.

10

DR DWYER: Have they made their way to you yet, Superintendent? They are coming.

DET SUPT MOLLER: No, that's all right.

15 **DR DWYER:** I will just deal with them chronologically. The first one, 21 May 2021. You have emailed Heidi and said:

"Please see below the summary of the investigation..."

20 Into a particular sexual assault. And we have obviously blacked out the names, but I'm hoping there's enough information there for it to trigger your memory.

THE CHAIRPERSON: What you want to know is if Superintendent Moller looks at these emails, it might trigger his recollection that he's dealt with Ms Yates at an operational level?

25

DR DWYER: That's right. So -

DET SUPT MOLLER: Yes. I guess these are matters that I've dealt with Ms Yates previously.

30

DR DWYER: Yes.

DET SUPT MOLLER: Absolutely agree with that. I guess what I was saying earlier is I haven't dealt with her in the context of interviewing and, you know, dealing with people at that operational level. Certainly I've emailed her in relation to - and - and had emails from Ms Yates in relation to other operational matters - other investigations we have conducted.

35

DR DWYER: Okay. So in relation to that May one, do you recall you called Ms Yates to discuss your concerns about that particular sexual offence matter? In that call, you highlighted ACT Policing's safety concerns for a particular sexual assault complainant in circumstances where the DPP hadn't objected to a bail application. I'm not being critical of the DPP there, but you highlighted your concerns for a complainant. Do you recall?

40

DET SUPT MOLLER: Yes. I don't actually recall, but I'm not -

45

DR DWYER: Okay. You don't -

DET SUPT MOLLER: I don't disagree.

50 **DR DWYER:** Okay.

DET SUPT MOLLER: I just don't recall the exact circumstances of it.

5 **DR DWYER:** Do you accept that in those circumstances you asked Ms Yates to consider advocating on the victim's behalf with the DPP?

DET SUPT MOLLER: Absolutely. Yes.

10 **DR DWYER:** And to check that the victim had the appropriate level of support -

DET SUPT MOLLER: Yes.

DR DWYER: - that they were entitled to?

15 **DET SUPT MOLLER:** Yes.

DR DWYER: And the other issue that I wanted to remind you of was on 15 October, there were some concerns that Ms Yates raised with SACAT inspector Damian Toohey about a particular sexual assault investigation, and you replied to Ms Yates on the same afternoon providing her with some reassurances.

20 **DET SUPT MOLLER:** Yes, that's right. Yes.

DR DWYER: It's another example of discussions, at least at an operational level, and a constructive approach between police and the Victims of Crime Commissioner. Do you agree?

DET SUPT MOLLER: Yes, absolutely.

30 **DR DWYER:** You said earlier, I think, that every case is a learning opportunity. And on one of the days you have given evidence, you said something like, "If there is one thing this case has taught me - or this inquiry has taught me, it is that the AFP and the VOC need to work closer and better with better lines of communication."

35 **DET SUPT MOLLER:** Yes.

DR DWYER: Are you aware that since early 2022, there has been a meeting now between the Victims of Crime Commissioner and police, to ACT Policing commanders and the ACT Policing corporate executive manager, for about an hour each month?

40 **DET SUPT MOLLER:** Yes.

DR DWYER: That's a welcome development, isn't it?

45 **DET SUPT MOLLER:** Yes, it is.

DR DWYER: They - those meetings, you are aware, go for about an hour. They range from operational matters through to systemic reform issues - anything that either agency wants to raise -

50

DET SUPT MOLLER: Yes.

DR DWYER: - to facilitate communication and effective working together; correct?

5 **DET SUPT MOLLER:** Yes.

DR DWYER: It's one example of agency collaboration outlined in the memorandum of understanding between police and the Victims of Crime Commission?

10 **DET SUPT MOLLER:** Yes. It is. Definitely.

DR DWYER: In spite of those monthly meetings and your suggestions of training, you would still welcome the opportunity to sit down with Heidi Yates face to face and have a cup of tea and talk about anything - any of the issues that concern you going forward?

15

DET SUPT MOLLER: Yes. Look, I would be absolutely open to that.

DR DWYER: Thank you. Those are my questions.

20 **THE CHAIRPERSON:** Thank you. Mr Tedeschi.

<EXAMINATION BY MR TEDESCHI:

25 **MR TEDESCHI:** Superintendent, I have some general questions to ask you at this stage. We are towards the end of the questioning. Chairman, there might be some questions that I have asked him previously, but I want to bring them all together, if I may.

THE CHAIRPERSON: All right.

30 **MR TEDESCHI:** Superintendent, the eventual decision whether or not to charge Mr Lehrmann was taken out of the hands of investigators, including you and Inspector Boorman, by the upper echelons of the ACT Police; is that right?

DET SUPT MOLLER: No.

35

MR TEDESCHI: You were directed by DCPO Chew to charge Mr Lehrmann?

DET SUPT MOLLER: No.

40 **MR TEDESCHI:** He expressed his view that Mr Lehrmann should be charged?

DET SUPT MOLLER: He expressed a view, but I acted on the advice from the Director of DPP.

45 **MR TEDESCHI:** But, essentially, it was Mr Chew who took responsibility for that decision?

DET SUPT MOLLER: No, it was me that took responsibility for - for - for signing the charge.

50

MR TEDESCHI: You signed the summons -

DET SUPT MOLLER: Yes.

5 **MR TEDESCHI:** - but you knew that you had Mr Chew's imprimatur for that decision?

DET SUPT MOLLER: Well, no, I acted on the advice from the Director.

10 **MR TEDESCHI:** It was Mr Chew's decision to get advice from the Director, wasn't it?

DET SUPT MOLLER: It was Mr Chew's decision to get advice, yes.

15 **MR TEDESCHI:** See, I suggest to you that without that decision to get advice from the DPP, that in all probability Mr Lehrmann would never have been charged.

MS RICHARDSON: I object to that question.

20 **THE CHAIRPERSON:** Well, that's a hypothetical question that he can't answer and wouldn't - the answer from him wouldn't help me.

MR TEDESCHI: If the hearing pleases. Do you know of any other sexual assault cases in the ACT in which the Deputy Chief Police Officer has made the decision to go with the DPP?

25 **THE CHAIRPERSON:** I'm sorry, what's the question, any other case in which?

MR TEDESCHI: The Deputy Chief Police Officer has made a decision over a superintendent or an inspector to get an advice from the DPP.

30 **THE CHAIRPERSON:** Over? I don't understand.

MR TEDESCHI: To get an advice from the DPP.

THE CHAIRPERSON: I see.

35 **DET SUPT MOLLER:** Look, I would have met Mr Chew daily, if not hourly, on a myriad of matters. Sexual assaults is just one area that - that I was looking after. And often we would have discussions about how matters would progress. So - so, no, I would know of other matters. Can I lean to them now? No, I can't. But I would say that, you know, my briefings with Mr Chew - on a daily basis, we would discuss different cases and the progression or not
40 of those cases. This particular matter, I - I went to paper - or, you know, I - I expressed my opinion in an executive brief to him. But lots of other matters I briefed him on, and we discussed, and - and he also gave me his opinion.

45 **MR TEDESCHI:** But it's very rare, isn't it, for a superintendent and an inspector to not want to go to the DPP and the Deputy Chief Police Officer, in fact, insists upon it?

DET SUPT MOLLER: No, I think I gave evidence yesterday to say that it's - it's not a - it's unusual or usual. It's a process that we go through, and - and it wasn't always that my commander listened to me. Quite often he didn't.

50

MR TEDESCHI: But is it very rare for your commander to disagree with you and insist upon getting the advice of the DPP?

DET SUPT MOLLER: No.

5

THE CHAIRPERSON: Well, the word "insist", where does that come from? I can understand the -

MR TEDESCHI: From his decision.

10

THE CHAIRPERSON: - question is it's unusual for his commander to ask advice from the DPP. You could put it's unusual to ask advice from the DPP having had firm advice from the superintendent. But where does the word "insist" come from?

MR TEDESCHI: I will rephrase the question. Do you agree that it's very rare for the Deputy Chief Police Officer to seek advice from the DPP contrary to the advice from you and your inspector?

MS RICHARDSON: I object to that question.

20

THE CHAIRPERSON: Mmm.

MS RICHARDSON: I'm happy to do it in the absence of the witness, but it's not consistent with the -

25

THE CHAIRPERSON: Yes. Certainly. Excuse us, Superintendent.

<THE WITNESS STOOD DOWN

THE CHAIRPERSON: I guess it might be a problem - before I hear you, it might be a problem in the way it's phrased. What's happened is, as I understand it, Superintendent Moller had a firm view about the prospects of success in this case, and he explained his reasons for that in a written document. And despite that firm advice - let's call it firm advice - and a firmly held opinion, Mr Chew decided to get the DPP's opinion. "Is that unusual," is the question.

35

MS RICHARDSON: In my submission, the question was slightly different. It was premised on -

THE CHAIRPERSON: Yes. I'm sorry. What is it?

40

MS RICHARDSON: It was premised on the fact that Superintendent Moller disagreed with the proposal for advice to be sought from the DPP when, in fact, the Moller executive briefing that went from him to Commander Chew has - it's in the format of an executive briefing. It has three recommendations. And before that, the expected reaction from his - this is a template, presumably. The expected reaction is expressed to be positive, that is, positive to the following three recommendations:

45

"(1) for decision and direction re the operation; (2) attached media plan; and (3) should you believe the attached brief of evidence meets the threshold..."

50

And so on:

"....please forward it."

5

So there is no statement in this document from Superintendent Moller, "Do not send this to the DPP. I disagree with it." Rather, he's proposing an open recommendation to his commander. If he has reached a certain state of satisfaction, he might consider seeking advice. And he expects the reaction of his commander to that recommendation to be positive, and we see that at the top of the third page at pin site 563 -

10

THE CHAIRPERSON: He's asking for a "yes". "Are you going to give me a 'yes'?" That's how he puts it?

15

MS RICHARDSON: Well, at the very least, it's an open question, which is, "Should you believe the attached brief of evidence meets a threshold, please forward it."

THE CHAIRPERSON: Yes.

20

MS RICHARDSON: So the premise of this question is that Superintendent Moller disagreed with a proposal that the advice of the DPP be sought, which is not consistent with the record.

THE CHAIRPERSON: Yes. Mr Tedeschi.

25

MR TEDESCHI: Chairman, he has given evidence that his view was that he didn't think it was the right thing to do to go to the DPP. He wanted to get independent legal advice instead.

THE CHAIRPERSON: I don't know that he gave that evidence.

30

MR TEDESCHI: And he discussed that with the DCPO.

THE CHAIRPERSON: I thought his evidence was he wanted independent advice at a very early stage.

35

MR TEDESCHI: And then he had a discussion, and the DCPO said, "No, I want your briefing because, in my view, it's going to go to the DPP." Then Superintendent Moller prepares his executive briefing, having been told already -

THE CHAIRPERSON: It's a question of timing. I understood his evidence yesterday or the day before to be at an early stage of this matter - investigation of this case, he had suggested getting an outside opinion because of his belief that the DPP was prejudiced or biased or something of that kind. And Chew wasn't prepared to do that. Then events moved on, and Chew asked him to -

40

45 **MR TEDESCHI:** Prepare a briefing.

THE CHAIRPERSON: - prepare a briefing note.

MR TEDESCHI: Yes.

50

5 **THE CHAIRPERSON:** So he prepare as a briefing note and gives it to Mr Chew. And as a result of that, an opinion is asked of the DPP. But at the point of time, which is the subject of your inquiry, I don't know that he's given evidence that he held a view that an opinion should not be obtained from the DPP or that he held a view at that point in time that an outside opinion should be sought. So you would have to establish those matters if you want them to be the premise. I don't understand those to be the facts. But he may agree that they are the facts.

10 **MR TEDESCHI:** I will attempt to put it in the way that he's given evidence about.

THE CHAIRPERSON: All right. Yes. Mr Gnech -

MR TEDESCHI: Can I just raise one other matter.

15 **THE CHAIRPERSON:** Yes.

MR TEDESCHI: I anticipate there might be an objection to my next question, so whilst he's out of the room -

20 **THE CHAIRPERSON:** Yes. Go on. Ask the question, then.

25 **MR TEDESCHI:** I want to put to him that his counsel, Mr Black, has indicated last week that there's no challenge to the correctness of the DPP's decision to initiate and maintain the prosecution of Mr Lehrmann for the sexual assault of Brittany Higgins. And I want to ask him that in light of that, does he still maintain his position - or does he still maintain that he was right in wanting Mr Lehrmann not to be charged at an early stage.

THE CHAIRPERSON: I don't see that as objectionable. Do you object?

30 **MS RICHARDSON:** Well, in my submission, my learned friend might be very clear about what timeframe he's talking about -

MR TEDESCHI: Yes, I will.

35 **MS RICHARDSON:** - because Superintendent Moller has made it clear that while he had concerns at a certain point, his position changed after he had received the DPP's advice.

THE CHAIRPERSON: Yes.

40 **MS RICHARDSON:** And he did form the requisite state of satisfaction and sign the summons.

45 **THE CHAIRPERSON:** Yes. Well, he - the evidence thus far is that he held a view that this was a case that did not meet the threshold for charging. He then received the DPP's advice. Thereafter, he formed the view that it did meet the threshold for charging, so he charged. And the question now is having regard to the fact that nobody suggests - nobody is going to submit to me that it was improper to bring a charge, does he maintain his view that Mr Lehrmann ought not be charged. That's the point?

MS RICHARDSON: But which view he not be charged? Because Superintendent Moller formed the view in August -

5 **THE CHAIRPERSON:** Does he maintain his view now that he ought not have been charged? Does he think now still that Mr Lehrmann ought not have been charged?

MS RICHARDSON: But he didn't hold that view after he received the DPP -

10 **THE CHAIRPERSON:** I know. And that's what he said. But that's the question. I see nothing wrong with the question.

MS RICHARDSON: May it please the inquiry.

15 **THE CHAIRPERSON:** Yes, Mr Gnech - Black, I'm sorry.

MR BLACK: Sorry, the only other thing I was going to say to that is the question, as I understood it, included "initiate and continue the prosecution". But, of course, the DPP didn't initiate -

20 **THE CHAIRPERSON:** No, but that's just a technicality. I mean, it's an important technicality somewhere, but it's his opinion about whether the threshold isn't met and whether he still maintains that it hadn't been, as I understand it.

25 **MR BLACK:** Yes. And then - I don't mean to repeat -

THE CHAIRPERSON: The other thing is there is this debate about who initiates, but -

MR TEDESCHI: I will use the term "commence and maintain" -

30 **THE CHAIRPERSON:** No, no. I know what you mean, Mr Tedeschi. But ordinarily police here and in Queensland initiate the charge by filing a document in the Magistrates Court, and a person is then charged after committal. Nothing can happen without an indictment being presented. So that's the initiation of proceedings under indictment, and only the Director can do that.

35 **MR BLACK:** Yes.

40 **THE CHAIRPERSON:** Whatever we call it - and some people want to say police start the process. Well, they do, but there comes a point where it is not a mere continuation; it's a decision to present an indictment.

MR BLACK: Yes.

45 **THE CHAIRPERSON:** So I understand that to be the position, and I won't be confused.

MR BLACK: No. As long as -

THE CHAIRPERSON: And if I am, you will tell me.

50 **MR BLACK:** As long as it's put clearly to Mr Moller.

THE CHAIRPERSON: Yes.

5 **MR BLACK:** Because as my learned friend has indicated, his most recent evidence is that he changed his mind after reading -

THE CHAIRPERSON: Yes. Well, we will see what he says now. So - yes. Thank you. Bring him back, please, Mr Gnech.

10 <**SCOTT JOSEPH MOLLER, CONTINUING**

<**EXAMINATION BY MR TEDESCHI:**

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

MR TEDESCHI: I'm just trying to remember my original question that was objected to.

20 **THE CHAIRPERSON:** Well, the question is having had regard to - I'm sorry, you had better ask it.

MR TEDESCHI: Yes. Superintendent, your counsel Mr Black last week indicated that there is no challenge to the correctness of the DPP's decision to take the Lehrmann matter to trial and to continue that trial until the time that it was discontinued, the trial being the trial of Mr Lehrmann for the sexual assault of Brittany Higgins. In light of that concession by your

25 counsel, do you agree that the original position that you took, that you didn't think that there was a sufficient basis for the charging of Mr Lehrmann, was wrong?

MS RICHARDSON: Can I ask my learned friend to indicate a timeframe in which he is asking -

30

MR TEDESCHI: His original view.

MS RICHARDSON: At what time?

35 **THE CHAIRPERSON:** Well, before the opinion, I guess. Because at the time that - there was a time - Superintendent Moller, there was a period of time when you believed that this was not a case that met the threshold for charging?

40 **DET SUPT MOLLER:** That's right.

THE CHAIRPERSON: And you then signed a summons?

DET SUPT MOLLER: That's right.

45 **THE CHAIRPERSON:** And you've said that as a result of reading the Director's opinion, you formed the view that this was a charge that could be brought and you could swear a summons under the Magistrates Act?

50 **DET SUPT MOLLER:** That's right.

THE CHAIRPERSON: And I think the question is having regard to what you know and having regard to the fact that your counsel is not going to submit that Mr Lehrmann ought not have been charged, do you maintain the view that an indictment should not have been presented?

5

DET SUPT MOLLER: Well, I changed my view based on the DPP's advice, and that's my opinion now.

THE CHAIRPERSON: Yes. Thank you.

10

MR TEDESCHI: Do you acknowledge that your original opinion before the DPP's advice was obtained, that there was an insufficient basis for Mr Lehrmann to be charged, was wrong?

15 **DET SUPT MOLLER:** Can you ask me that question another way?

MR TEDESCHI: Certainly. You've told this inquiry that up until the time that the DPP's advice was provided to you, you and the members of your investigation team, including Inspector Boorman, were of the view that there was an insufficient basis to charge Mr Lehrmann?

20

DET SUPT MOLLER: That's right.

MR TEDESCHI: In the knowledge of the DPP's advice -

25

DET SUPT MOLLER: Yes.

MR TEDESCHI: - and in the knowledge of the fact that your counsel has, in effect, conceded that it was right for Mr Drumgold to take the Lehrmann matter to trial and to maintain that trial until was discontinued -

30

MR BLACK: Well, that's overstating what was conceded in terms of - I'm certainly not making a submission that it was wrong to charge or commence, but this is now going forward beyond the trial. I'm not saying I'm going to make submissions against that, but if it could be confined to the actual point.

35

THE CHAIRPERSON: Mr Tedeschi.

MR TEDESCHI: I think it's in accordance with the concession that you sought, Chairman.

40

THE CHAIRPERSON: Put the question again as best you can.

MR TEDESCHI: Yes. In light of the DPP's advice and in light of the fact that your counsel has conceded the correctness of Mr Drumgold taking the matter to trial and maintaining the matter at trial -

45

THE CHAIRPERSON: Well, it is a concession, Mr Black, in that nobody is - you are not going to submit that the decision was wrong -

50 **MR BLACK:** No.

THE CHAIRPERSON: No? There you go. Go.

5 **MR TEDESCHI:** Do you agree that your original view before you saw the DPP's advice, that there was an insufficient evidentiary basis to charge Mr Lehrmann, was wrong?

DET SUPT MOLLER: I just - no, I agree that my opinion changed when I read the advice from the Director, who's far more experienced in matters of the court than I am.

10 **MR TEDESCHI:** Do you agree that your original decision, pre-DPP advice, was wrong?

DET SUPT MOLLER: Like I said, no, my advice changed, and - and I was happy with going with the advice of the Director.

15 **MR TEDESCHI:** The evidence didn't change, did it?

DET SUPT MOLLER: Well, I think I've just explained to you that I think the way that the Director analysed the evidence, in a way that I am not educated in, changed my opinion.

20 **MR TEDESCHI:** So it was the Director's advice that convinced you that your original decision had to be changed and Mr Lehrmann had to be charged; is that right?

DET SUPT MOLLER: It was the Director's opinion that changed my mind.

25 **MR TEDESCHI:** That Mr Lehrmann had to be charged.

DET SUPT MOLLER: Well, that's what happened.

30 **MR TEDESCHI:** Yes. See, what I want to suggest to you is that the original view that you had that there was an insufficient basis for charging was due, in part, to a misunderstanding of the standard of proof required for police to charge in a sex case.

DET SUPT MOLLER: I don't agree.

35 **MR TEDESCHI:** I want to suggest to you that your original decision that the evidence was insufficient to charge Mr Lehrmann was based, in part, on outdated views about credibility issues concerning complainants in sex cases.

40 **DET SUPT MOLLER:** So I just need to correct your wording. You said my original decision. I didn't -

MR TEDESCHI: Your original view.

45 **DET SUPT MOLLER:** I didn't make a decision. I had a view, and I had an opinion -

MR TEDESCHI: I will rephrase the question.

DET SUPT MOLLER: Can I finish? Can I finish?

50 **THE CHAIRPERSON:** Answer the question, Superintendent.

5 **DET SUPT MOLLER:** Thank you. So I had a view, and I had an opinion, and I forwarded that view and that opinion to my commander. And based on the collective evidence and information, then a decision was made to forward it to the DPP for advice. That's what good investigators - having a - a thorough investigation, that's what happens in very high profile cases.

MR TEDESCHI: I want to -

10 **DET SUPT MOLLER:** So I think the - the view that a decision was made - no, a decision wasn't made. There was definitely an opinion held. Yes, absolutely, I would agree with that.

15 **MR TEDESCHI:** I want to suggest to you that your original view that you held before you saw the DPP's advice, a view that Mr Lehrmann - that there was insufficient evidence to charge Mr Lehrmann, was based on outdated views held about credibility issues concerning complainants in sex cases. What do you say?

DET SUPT MOLLER: No.

20 **MR TEDESCHI:** And I want to suggest to you that the view that you held about the insufficiency of the evidence to charge Mr Lehrmann prior to seeing the DPP advice was based upon a practice or an attitude that was generally held in the ACT Police at that time -

25 **MS RICHARDSON:** I object to that question.

THE CHAIRPERSON: Yes. Well, ask him about his attitude.

30 **MR TEDESCHI:** I suggest that you held an attitude towards sex cases generally that meant that complainants' allegations resulted in undercharging.

MS RICHARDSON: Well, I object to that question. What is the basis of that -

THE CHAIRPERSON: No, but you are -

35 **MS RICHARDSON:** It's a question being put propositionally.

40 **THE CHAIRPERSON:** I'm with you, Ms Richardson. His attitude is material to whether the superintendent did anything or omitted to do anything improperly. His opinion about whether his attitudes conformed or didn't conform to the attitudes of other people is irrelevant and unhelpful to me.

MR TEDESCHI: Chairman -

45 **THE CHAIRPERSON:** You are saying, "You are just like all your colleagues."

MR TEDESCHI: - what I'm seeking to do is to -

THE CHAIRPERSON: What is he supposed to say to that?

MR TEDESCHI: - put to him the basis for his view at the time, namely, that it was in line with the views of other -

5 **THE CHAIRPERSON:** His view is his view, and where it comes from is impenetrable. Whatever his view is - whatever his attitude is is based upon his experience, and he either has an attitude or doesn't. Ask him about that. But we are not going to delve into where he got all these ideas from, assuming he has ideas that are interesting.

10 **MR TEDESCHI:** I'm seeking to - in a fairly shorthand way, to put to him that his views are in accordance with the statistics that have emerged from the SAPR report.

15 **THE CHAIRPERSON:** You haven't crossed that line yet, because - if you are seeking to establish that AFP Police generally have an antediluvian attitude to cases like that, I'm not looking at that. And you certainly haven't established it by showing the report that you've shown. If you want to ask Superintendent Moller, cross-examine him about his attitude at the time, and what it was, go right ahead. And that is very interesting to me. But to try to fix it as something in common with a lot of other people, I don't know that you can even - that you would ever be able to do that, and I don't think this witness can answer that question. But I'm interested in his attitude. So I would be assisted by whatever you extract from Mr Moller in relation to his attitude and what ideas he has in mind that led to that attitude, if that becomes germane. What you are really saying to him, "You are like all the rest. You have these old-fashioned ideas." Well, if you cut out "like all the rest", you have a good question. "You have these old-fashioned ideas." That's what I'm interested in.

25 **MR TEDESCHI:** I've put that to him. But I wish to take it the next step and -

THE CHAIRPERSON: You want to ask him about what he thinks was the attitude of his colleagues. That's the first step in your question.

30 **MR TEDESCHI:** Yes.

35 **THE CHAIRPERSON:** And if he says, "I think they are perfectly good," then you will say, "No, they are not. They are old-fashioned." And we will have a debate between - you will be questioning him about his colleagues. That's what I don't want to do. Forensically, I can understand why you would wish to approach it that way, but legally it doesn't work.

40 **MR TEDESCHI:** If the hearing pleases. In retrospect, Superintendent, do you agree that the credibility issues that you and Inspector Boorman were concerned about in 2021, prior to the DPP's advice being obtained, were legitimately issues to be decided by a jury?

DET SUPT MOLLER: I think they were legitimate issues to convey to my manager.

45 **MR TEDESCHI:** Do you agree that they were legitimately issues to be decided by a jury and not by a police officer?

DET SUPT MOLLER: Well, I sent them to my manager.

50 **THE CHAIRPERSON:** No, what Mr Tedeschi is referring to is that when you put together, as you did, a series of propositions about credibility - what he's putting to you is that it's all very well putting it to your manager and for you as a senior officer to consider them yourself

in assessing the case. But at the end of it, whatever you think is by the way because they are exactly the sorts of things that it is a jury that should decide, not a police officer, who is like a gatekeeper to the jury, and if the police officer makes an assessment of those issues, then the jury never gets to see it. So in a nutshell, you put together those issues. Isn't it the case that to the extent that you thought you should grapple with them and Commander Chew should grapple with them, you were wrong. They are classically things that a jury should grapple with. Have I summarised it?

MR TEDESCHI: Yes.

THE CHAIRPERSON: So that's - what's your opinion about that?

DET SUPT MOLLER: Well, I think ultimately the jury decides. Yes, I would agree with that. But it's certainly not my role to filter that evidence or decide on whether that information or evidence goes to the jury. My role is to make sure I provide all of that information for the decision-makers. So I'm not that person.

MR TEDESCHI: If a decision had been made by DCPO Chew or yourself or Inspector Boorman that Mr Lehrmann not be charged, then those matters would not have been before a jury, would they?

DET SUPT MOLLER: Well, not at that time. But just because a decision is made at that time doesn't mean the investigation stops.

MR TEDESCHI: And if there had not been so much publicity in this case and what DCPO Chew described as interference, this matter may well have been decided by the police?

MR BLACK: I object.

MS RICHARDSON: I object.

MR TEDESCHI: I withdraw the question.

THE CHAIRPERSON: Yes.

MR TEDESCHI: Do you agree that if the matter had not gone to trial because Mr Lehrmann had not been charged, that Ms Higgins would have had -

THE CHAIRPERSON: No, these are hypothetical questions. I don't know - where does it go to? Of course, if Mr Lehrmann had not been charged, the jury wouldn't have seen it.

MR TEDESCHI: I don't have any further questions.

THE CHAIRPERSON: Thank you, Mr Tedeschi. Before Mr Jones rises to re-examine, if he is to re-examine, does anybody want to ask Superintendent Moller any questions?

MR BLACK: Mr Chair, could - if there is no other further cross-examination, could I have a few moments just to confer with my client before I re-examine?

THE CHAIRPERSON: Yes, you want to - you want to ask some questions of him?

MR BLACK: Potentially.

THE CHAIRPERSON: Yes, you might be -

5

MR BLACK: They will be very short.

THE CHAIRPERSON: Yes. Yes, certainly. Will 20 minutes do you?

10 **MR BLACK:** Yes. Thank you.

THE CHAIRPERSON: Well, we will adjourn till 25 past 3 or as soon thereafter as possible.

<**THE HEARING ADJOURNED AT 3.05 PM**

15

<**THE HEARING RESUMED AT 3.26 PM**

THE CHAIRPERSON: Mr Black.

20 <**EXAMINATION BY MR BLACK:**

MR BLACK: Yes. Thank you, Mr Chair. Mr Moller, are you aware of the position of victim liaison officers (indistinct)?

25 **DET SUPT MOLLER:** Yes.

MR BLACK: Are you able to explain to the board what their role is, what they do?

DET SUPT MOLLER: The victim liaison officers?

30

MR BLACK: Yes.

DET SUPT MOLLER: Well, they provide a service to the victims, and they work between -

35 **THE CHAIRPERSON:** They are in police?

DET SUPT MOLLER: Yes. And they work between victims and - and the police, and provide that service of support and - and assist them in matters of court and what they need to do and things like that.

40

MR BLACK: Do you - or are you aware of what training they have or are involved in?

DET SUPT MOLLER: I'm not across all the training, no.

45 **MR BLACK:** If I can just refer you back to the briefing or the meeting that you had with Mr Chew on 17 June 2021.

DET SUPT MOLLER: Yes.

MR BLACK: You've given evidence that at that time - so before you had the DPP advice - you thought there was insufficient evidence to charge. So you had a view about the sufficiency of evidence.

5 **DET SUPT MOLLER:** That's right.

MR BLACK: At that point, as a police manager, had you formed a view about the quality of the investigation your team had done?

10 **DET SUPT MOLLER:** Yes. You know, from my perspective, I thought it was a - you know, they had done an excellent job. They - they had compiled a - you know, a significant brief of evidence. And, you know, they were extremely dedicated, professional police that had put their heart and soul into gathering as much evidence as they could. What really, I suppose, emphasised it for me was, you know, when we had the feedback from the red team review, which really emphasised the importance. And then obviously Mr Drumgold himself
15 commenting on - on, you know, the quality of the brief that he received. So, you know, from my perspective, young - young detectives dedicated to their role and have produced a body of work that was exceptional. And I'm - I'm exceptionally proud of that.

20 **MR BLACK:** The meeting of 17 June 2021 with Mr Chew - again, at that time - there was obviously, from your evidence, a difference of views about the sufficiency of evidence between you and Mr Chew. I gather from what you've said it wasn't entirely unknown that you might have a difference of views with your commander. Do you have a view about the process for how that difference of views was resolved?

25 **DET SUPT MOLLER:** Yes. Look, from my perspective, it was a great outcome for us. Even though it wasn't, you know, initially what I had - what my opinion that I had put up, but you need to understand that process, that, you know, we commence an investigation. We go through the investigation. We have a view. That view is tested. And the process is that a view
30 is tested, it goes to DPP, then it's tested at court again and - and then the jury ultimately make the decision and test it finally. You know, from my perspective, that's the process. It ran this - in - in this particular case, that process ran, and I'm glad it did. You know, it's a good outcome for us.

35 **MR BLACK:** Finally, Mr Moller, you were asked some questions about your attitude towards looking at the credibility of complainants in sex offence matters, and this one in particular. Is there any particular life experience that you have that informs your approach to those matters?

40 **DET SUPT MOLLER:** Yes, there is. And, you know -

MR TEDESCHI: I object. It is not a matter -

45 **THE CHAIRPERSON:** Sorry. What's the objection?

MR TEDESCHI: It is not a matter that was raised in cross-examination, if this is re-examination.

50 **THE CHAIRPERSON:** What's the question - repeat the question.

MR BLACK: The question is about any life experience that informs Mr Moller's attitude towards assessing the credibility of complainants in sex matters. And it was put to him that he had an outdated or - I think that was the term - attitude towards the assessment of such credibility.

5

THE CHAIRPERSON: No, I won't allow it, Mr Black.

MR BLACK: Mr Moller, you've given some evidence about your experience as a police detective. Is there any particular life experience that motivated you to take up that profession?

10

MR TEDESCHI: I object.

THE CHAIRPERSON: Mr Tedeschi, it's not re-examination. Mr Black hasn't examined his client. Mr Jones examined his client. So this is the opportunity for Mr Black to do what he would have done if he had been permitted to go first, in the same way as when you examined your client, I didn't regard it as re-examination. The trial paradigm for examination, cross-examination and re-examination only applies a little bit. But this inquiry requires a different approach. So I'm not going to stop Mr Black every time he raises something new. On the other hand, if he raises something that you think you ought to inquire into to do justice to your client's case -

15

20

MR TEDESCHI: I object on the basis of relevance to the inquiry, some personal experience that resulted in him wanting to join the police force.

25

THE CHAIRPERSON: Well, I don't know yet. But I have to see what the answer is and where Mr Black is going. He has some sense that it's relevant. I won't trouble asking him, because it will just take time. So let's just see where it goes. It won't do any harm.

30

MR BLACK: Thank you, Mr Chair. Perhaps I can be even a little more specific. You have been asked questions about victim-centric approaches. You have given some evidence about that. Did you have a life experience that has informed your approach to those sorts of matters as a police officer?

35

DET SUPT MOLLER: Yes. Yes, I have. I'm a survivor. So 45 years ago, I was a victim of a sexual assault. And I've lived with that for 45 years. And that has driven my desire to work in the police and to work with victims. Community-based policing specifically. But that's driven my desire and - and my want to make sure that never happens - that sexual assault never happens to anyone else in the community. And to honest, it's offensive when I hear allegations about rape myths and that sort of thing. Because I've lived with that, and it's difficult.

40

And, you know, to - to have that experience and to be continually moving forward working with the community to try and resolve those issues, as dedicated as I am and the other police are in ACT Policing, is disappointing to hear, you know, that there's an inference that we are not working as hard as we can to - to solve those matters, to - to move forward with those matters, to - to have them prosecuted. And, you know, that's been my driving force. There's a lot of other police that work at ACT Police who draw on other life experiences, but that's been mine. And that's been my ongoing commitment, and it will be my ongoing commitment until I retire.

50

THE CHAIRPERSON: Thank you.

MR BLACK: Thank you, Mr Chair. That's all I have.

5 **THE CHAIRPERSON:** Thank you. Superintendent Moller, I wanted to ask you something else. This particular case was unique, of course, for a lot of reasons. And because it was peculiar in ways that everybody appreciates, it had political significance, which most cases don't. You formed the view that it wasn't a case that warranted charging at an early stage, and you didn't do that as a matter of mere impression. You and your colleagues prepared a
10 document that was a form of analysis as to why you thought the case ought not be brought, and you held that view firmly.

DET SUPT MOLLER: Yes.

15 **THE CHAIRPERSON:** But the position came then when you were - you were so firm in your view that you thought the DPP might be too firm in his view to the point of prejudice and wanting to charge when it wasn't chargeable, that you wanted an outside opinion. You remember giving that evidence?

20 **DET SUPT MOLLER:** Yes.

THE CHAIRPERSON: And we know that Mr Boorman's state of mind was so strong that he was prompted to tell Mr Whybrow that if Mr Lehrmann was convicted, he would quit the force. Whether he really intended that or not, it was an indication of the strength of his
25 feeling. And we have heard evidence about relations with Ms Yates which were based on a misunderstanding of her role that Ms Dwyer has gone through, and we have heard from you that some police at the time were on sick leave who were associated with this case. Did I understand that to be so?

30 **DET SUPT MOLLER:** Well, they - they - yes, partway through the case, they went on sick leave. And some of them have not returned because of mental health concerns.

THE CHAIRPERSON: Yes. So -

35 **MS RICHARDSON:** I'm sorry to interrupt. Multiple people have confirmed that the audio seems to be down on the live feed.

THE CHAIRPERSON: What's happening? All right. I will put that question again because it wasn't streamed. I'm asking you a question apart from what you've been asked about. This
40 case, we know, is unique. It's peculiar, and it's unique because, I guess, where the offence is alleged to have happened - where the incident happened, who the young people were who were involved in this and it was a senior minister's office in Parliament House. So that changes everything. And it happened to coincide with a political movement that was examining just such things happening and why they happen and their sequelae. So it had all
45 those features and, therefore, it had great political significance, unlike most cases that you and your colleagues investigate. So that heightened, no doubt, the stress and nervousness associated with investigating this case -

DET SUPT MOLLER: Absolutely.

50

5 **THE CHAIRPERSON:** - and everything that you did and everything you said. Then we have seen that the view that you held at the time that this wasn't a case worth charging was deeply held by you - perhaps more deeply held than you normally think about cases, whether they are chargeable or not - so deeply that you say to your superior to the effect, "The DPP is prejudiced. Like, he's going to go anyway, and we can't trust his judgment." I'm not saying you said this, but this is the substance of it.

DET SUPT MOLLER: Yes.

10 **THE CHAIRPERSON:** "Let's get an outside opinion so that we really know where we stand." And your judgment of - I'm going to continue. Your judgment of Ms Yates, as we have learned - and I think from your - from the evidence you gave in your statement, was that she was obstructing - she might have been doing her role, but she was obstructing your work and not helping, to put it mildly. And now you say, "Well, I now understand actually - she
15 was actually a help." The contrary. And, finally, some of your officers suffered such a degree of stress that they had to take sick leave. So my question for you is now - you've almost finished your evidence. When you answer this question, you will have finished your evidence. Looking at it, what would you say about the loss of objectivity of police in working on this case?

20 **DET SUPT MOLLER:** I would say that they had deeply seated views in relation to not - not having sufficient evidence. And even though they had those views, they pushed forward against their own beliefs. So if we are to use the words of "loss of objectivity", I would say I don't think they lost objectivity. Because when we decided to go through and charge, that was
25 our direction.

THE CHAIRPERSON: Yes.

30 **DET SUPT MOLLER:** So even though they had their views - and, you know, this ties back into what I said earlier about us being a semi-military organisation where we take direction. Even if their views were continuing to be held - you know, I think we have seen evidence where members of the investigation team were - felt sick when they found out we were going to move forward to charge. They still did it, Commissioner. They still did it, and they were committed to the process. Because that's what we do as police. If - you know, for - for
35 whatever reason, if there's a - a motor vehicle accident and it's dangerous, we still go there. We still do that.

40 You know, our opinion, in some respects, is not as important as the greater good. And, you know, like I said, we followed the process, we took the Director's advice and we went through to prosecution. And, yes, their opinions were - were - were highly held. And - and I'm not stepping away from that. I'm actually proud of them to have those opinions. I'm proud of them that they - they expressed their opinions. But what I'm more proud of is they moved forward. Even against those own opinions they had, they moved forward and followed the process and moved forward with prosecution.

45 **THE CHAIRPERSON:** Yes. Thank you. Does anybody require Superintendent Moller further?

50 **MR TEDESCHI:** No.

THE CHAIRPERSON: No. You are excused. Thank you, Superintendent.

DET SUPT MOLLER: Thank you.

5 <**THE WITNESS WAS RELEASED**

MR JONES: This morning I attempted to tender the audio on the question that was asked by Ms Richardson. That was DPP.005.007.9024. You held off from accepting that exhibit. Rather than tendering that entire audio, I will tender just a transcript of the portion that was referred to. And that is BOI.0023.0001.0001.

THE CHAIRPERSON: Thank you. So Senior Constable Frizzell is coming tomorrow?

15 **MR JONES:** That's right.

THE CHAIRPERSON: All right. And is anybody else coming tomorrow?

MR JONES: I believe it's Chew and possibly Commander Cameron.

20 **THE CHAIRPERSON:** All right. Good. We will adjourn till 9.45, then.

<**THE HEARING ADJOURNED AT 3.43 PM TO THURSDAY, 25 MAY 2023 AT 9.45 AM**