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LECC

Law Enforcement
Conduct Commission

Transcript of Proceedings

Hearing: Operation Cusco

Before the Chief Commissioner, The Hon MF Adams QC

Held at Level 3, St James Centre,
Elizabeth Street, Sydney

On Monday 9 September 2019 at 10.37am

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1 CHIEF COMMISSIONER: This is a public examination
2 pursuant to section 63 of the Law Enforcement Conduct
3 Commission Act 2016.
4

5 Pursuant to section 64 of the Act, I have appointed Ms
6 Lucy Saunders of counsel to assist the Commission in
7 relation to the examination, instructed by Mr Ben Dunstan,
8 solicitor for the Commission. I shall announce the scope
9 and purpose of the examination shortly. In doing so,
10 I propose to make one or two introductory remarks. After
11 that, I will call upon Ms Saunders to make some brief
12 opening remarks and then I will hear applications for leave
13 to represent any person.
14

15 The general scope and purpose of the examination is to
16 investigate whether the arrest and charging of [CU1] begin
17 by NSW Police Force officers in Condobolin in May 2014 and
18 the withdrawal of charges in February and March 2015 and
19 the enforcement by NSW Police Force officers of bail
20 granted to [CU1] in May and July 2014 was or concerned
21 serious misconduct and/or unlawful, unreasonable, unjust or
22 oppressive conduct, or arose wholly or in part from a
23 mistake of fact or law.
24

25 Secondly, whether the rules, orders or practice of the
26 NSW Police Force either generally or at particular stations
27 or commands concerning the imposition and enforcement of
28 bail conditions are or could be indicative of a pattern of
29 unlawful, unreasonable, unjust or oppressive conduct or
30 arose wholly or partly from a mistake of fact or law or
31 systemic issues that could adversely reflect on the
32 integrity and good repute of the NSW Police Force.
33

34 I will just take applications for leave to appear.
35

36 MR J VINEY: Commissioner, Viney, I seek your leave to
37 appear for [OFFICER 1].
38

39 CHIEF COMMISSIONER: Yes, thank you Mr Viney that leave is
40 granted.
41

42 MR E OATES: My name is Oates, if you please Commissioner,
43 I seek leave to appear for [OFFICER 2].
44

45 CHIEF COMMISSIONER: Yes, that leave is granted.
46

47 MR M HUTCHINGS: Commissioner, my name is Hutchings,



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1 I seek leave to appear on behalf of the Commissioner of
2 Police New South Wales.

3
4 CHIEF COMMISSIONER: Yes, that leave is granted.

5
6 MS C GOODHAND: Commissioner, my name is Goodhand, I seek
7 leave to appear on a behalf of [CU2] and [CU1].

8
9 CHIEF COMMISSIONER: Yes, that leave is granted. Are
10 there any applications? Yes?

11
12 MS GOODHAND: There is an application to anonymise the
13 names of my two clients for the course of the public
14 hearing. That application is primarily on the basis of a
15 precautionary measure. It is understood that there is
16 already the Court of Appeal proceedings which identify my
17 clients but it is not known what evidence may fall during
18 the course of the investigation, so the application is made
19 on that basis.

20
21 CHIEF COMMISSIONER: Yes. I am not sure that quite
22 articulates a basis upon which I should make such an order.

23
24 MS GOODHAND: The evidence that is --

25
26 CHIEF COMMISSIONER: Where are they living at present?

27
28 MS GOODHAND: Newcastle. I anticipate the evidence won't
29 be more than what is already in the public arena, but if
30 there is evidence that discloses further confidential
31 information in relation to either of them, that may then be
32 an issue so that the application is made as a precaution,
33 but it may be that at the conclusion of the public hearing
34 that the order can be lifted.

35
36 CHIEF COMMISSIONER: Yes, very well. For the time being
37 I will order that there be no publication of the names of
38 [CU1] or [CU2] and we'll refer to them, I think, as perhaps
39 "the person bailed", what's another term for [CU2], that
40 person's partner?

41
42 MS SAUNDERS: Perhaps it might be easier to just assign
43 pseudonyms CU1 for [NAME SUPPRESSED] CU2 for
44 [NAME SUPPRESSED].

45
46 CHIEF COMMISSIONER: Yes, certainly.
47



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1 MS GOODHAND: Thank you.

2

3 CHIEF COMMISSIONER: Are there any other applications?

4

5 MR HUTCHINGS: Yes, Commissioner. The first is that these
6 proceedings be conducted by way of a private hearing rather
7 than a public hearing, noting that CU1 and CU2 are both
8 represented by the same solicitors firms, I understand it,
9 instructing my learned friend Ms Goodhand, as are
10 instructed in relation to the civil proceedings. On one
11 view it would be appropriate, given that parties are
12 present who are currently plaintiff and defendant in
13 proceedings. Some of the issues that will be determined
14 here and I understand from the scope that you've
15 articulated, Commissioner, that there is a broader scope
16 than necessarily the finite issues in the civil
17 proceedings, but it does give rise to circumstances that at
18 the very least, without an order under 176 or 177 of the
19 LECC Act the use by which the material may be put in any
20 subsequent proceeding, whether there is a transcript and
21 I seek a --

22

23 CHIEF COMMISSIONER: If there were a --

24

25 MR HUTCHINGS: If there is a transcript and I'm about to
26 make a application for that, so there's a basket of things
27 that arise to address, whether that could be the subject of
28 cross-examination and subsequent civil proceedings, whether
29 that will affect the conduct of the civil proceedings.

30

31 CHIEF COMMISSIONER: I'm not quite sure what you mean by
32 the conduct of the civil proceedings. Do you mean the
33 conduct by the parties of the civil proceedings or the
34 conduct by the court, the District Court, of the civil
35 proceedings?

36

37 MR HUTCHINGS: At this stage, I mean the conduct of the
38 parties.

39

40 CHIEF COMMISSIONER: Why should that matter? The parties,
41 no doubt, proceed upon the basis of the factual material
42 available to them. This is one part of factual material.
43 For example, coronial proceedings are frequently conducted
44 prior to litigation, or, indeed, whilst litigation is
45 continuing and would not be the basis for applying to have
46 coronial proceedings conducted in private or part of the
47 evidence in coronial proceedings embargoed simply because



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1 there were civil proceedings. Criminal proceedings are a
2 different matter of course.

3
4 MR HUTCHINGS: Indeed.

5
6 CHIEF COMMISSIONER: The fundamental test must be
7 prejudice to the administration of justice, must it not.
8

9 MR HUTCHINGS: Yes.

10
11 CHIEF COMMISSIONER: You have a judge without a jury,
12 plainly that's not problematic in relation to happening to
13 come across material that might be published in public.
14 I might say that the media hasn't turned up so I'm not
15 quite sure how much will get into the public arena, so
16 I don't think that could be a relevant consideration. Then
17 there's the fact that it is true the parties might obtain
18 some advantage, for example, you might obtain the advantage
19 of knowing what the police are going to be saying or what
20 they might say under cross-examination, the plaintiffs
21 might have the same advantage and it might uncover further
22 material as to which they can lead evidence, but that's
23 simply the result of fact finding.
24

25 I don't see how their positions are prejudiced by the
26 acquisition of that additional information. Do you see --
27

28 MR HUTCHINGS: I see. Within the scope of the broader
29 powers that this Commission enjoys, there is the potential
30 that propositions could be put to those witnesses involving
31 their interpretation of legal principle and --
32

33 CHIEF COMMISSIONER: I can assure you I'm not going to
34 permit - I probably will permit questions of police
35 officers as to their understanding of the law, but that's,
36 as it were, a matter of fact.
37

38 MR HUTCHINGS: Yes.

39
40 CHIEF COMMISSIONER: It is not because I want to know what
41 the law is, but their understanding of the legal principles
42 is obviously relevant to the performance of their duties
43 and of course training and those kind of aspects are a
44 relevant part of our inquiry.
45

46 MR HUTCHINGS: Yes.
47



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1 CHIEF COMMISSIONER: In that sense I would be asking them
2 what did they understand the law to be, or they would be
3 asked that question.

4
5 MR HUTCHINGS: Yes.

6
7 CHIEF COMMISSIONER: That might be relevant in a civil
8 proceeding if, for example, shall we say they had a view of
9 the law or expressed a view of the law which they knew was
10 wrong or had not been adequately trained in, that might
11 have consequences, aggravated damages occurs to one, but
12 again, what is the prejudice? I'm obviously not going to
13 accept a view of the law that is the subject of a witness's
14 evidence, so I don't quite see the problem, and neither is
15 the judge, obviously.

16
17 MR HUTCHINGS: Indeed. One of the difficulties, I think,
18 is pursuant to section 27(2) there is the potential of
19 prejudice, which of course is the basis for your question
20 Commissioner of me. In the course of the evidence, and
21 because I don't know what sequence you intend to follow in
22 relation to the calling of the witnesses, who might ask
23 them questions, what the permitted ambit of those questions
24 might be.

25
26 CHIEF COMMISSIONER: We're yet to come to those matters.

27
28 MR HUTCHINGS: Indeed. I raise those questions as a
29 preliminary step. It may be that --

30
31 CHIEF COMMISSIONER: What is the prejudice? I think you
32 do need to at least identify potential risks and I'm
33 finding that difficult to see.

34
35 MR HUTCHINGS: At the present time, the pleading in the
36 District Court includes pleadings of trespass to land with
37 no articulation of the detail of individual entries and
38 what occurred. There are some global propositions put that
39 there was an attempt to draw the attention of the home
40 dwellers, if I may call them that, to the fact that police
41 had arrived on the premises.

42
43 CHIEF COMMISSIONER: If you're saying that it is likely
44 that those matters of fact will be explored in greater
45 detail, accept that's almost certainly true, but I want to
46 know what happened.

47



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1 MR HUTCHINGS: Yes.

2

3 CHIEF COMMISSIONER: But how does that evidence prejudice
4 either party? It might clarify the issues for the trial.

5

6 MR HUTCHINGS: It may. It may expand them, it may narrow
7 them, it may clarify them. At the present time, in
8 addition to the trespass claim, there's a misfeasance in
9 public office claim that's never been properly articulated,
10 and that may go to the clarity to which you just referred,
11 but it also permits what might be seen to be, if the
12 Commission permits it, some ambit questioning in the nature
13 of discovery to see if something can be made rather than a
14 claim that the --

15

16 CHIEF COMMISSIONER: I can tell you now I won't permit
17 questions that don't relate to the subject matter of this
18 hearing. This is not - in some respects this might form a
19 kind of rehearsal for the trial, that's because they have a
20 common subject matter, but I won't permit questions that go
21 outside that ambit and you are certainly at liberty to
22 object to them as going outside the scope and purpose of
23 the examination should you wish to. I will rule - I think
24 it is rather difficult to rule in a global way.

25

26 MR HUTCHINGS: I understand.

27

28 CHIEF COMMISSIONER: I have told you my view. I'm not
29 going to permit questioning that goes outside the scope of
30 the examination. At the same time, I can tell you that the
31 scope and purpose of the examination, which you will not be
32 surprised to hear, I myself drafted, were designed to try
33 to capture the whole of the material evidence that
34 explicates what happened, but not only what happened here,
35 of course, here, as an example of other bail enforcement
36 actions taken by the police. So, in that sense, although
37 one could make the point, which you validly made, it is
38 actually difficult to see what it might actually bite on,
39 if you follow what I mean. But we can take that question
40 by question.

41

42 MR HUTCHINGS: Thank you. Then in relation to at least
43 the two witnesses, there are five witnesses as I understand
44 it from the NSW Police, who are currently serving
45 officer --

46

47 CHIEF COMMISSIONER: Yes. I might say that almost



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1 certainly there will need to be more in due course and the
2 evidence of this particular hearing will inform us as to
3 those other witnesses.
4

5 MR HUTCHINGS: I understand. Insofar as those officers
6 are to give evidence about their understanding, both
7 historically and perhaps presently of the operation --
8

9 CHIEF COMMISSIONER: We'll certainly be asking about the
10 present situation.
11

12 MR HUTCHINGS: Yes. It would be appropriate in my
13 submission that an order be made anonymising those
14 officers' identities so that if there is, as you've
15 identified Commissioner the press don't appear to have
16 arrived, but if they do arrive and there is reporting of
17 it, it seems a fair interpretation that the object of this
18 Commission is not to embarrass or humiliate any individual
19 officer but rather to look at a systemic issue of
20 understanding of the operation of --
21

22 CHIEF COMMISSIONER: I think that's a fair point. These
23 are officers working in the ordinary course of their
24 employment and although police officers are not bank clerks
25 or other public servants, so, in a sense, their activities
26 are any way conducted in public, I think that they are
27 entitled to privacy unless there are good reasons for
28 exposing their privacy.
29

30 I assume most of them come from Newcastle or
31 thereabouts. Newcastle is a rather large city, it is not
32 like a small community where everybody knows everybody else
33 and their kids go to a local school and they would be known
34 as the kids of the local police, as it was in the Byron Bay
35 hearing.
36

37 I think in principle I can't see a public reason for
38 exposing them. I might say that, in saying that, there
39 will be cases and have been cases where it is appropriate
40 that police are identified, especially where there is a
41 strong case of culpable conduct, but here I think you're
42 right. I think my preliminary view at least is they were
43 doing what they understood to be their duty, however
44 misconceived that might be on a larger scale, and I don't
45 think this is a case which calls for them to be named.
46 I think we'll call them Officer 1 and so on, so that
47 answers that issue.



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1
2 MR HUTCHINGS: Thank you. Then, does the Commission --
3
4 CHIEF COMMISSIONER: I've made arrangements that they can
5 come into the building without going through the public
6 areas.
7
8 MR HUTCHINGS: Thank you, Commissioner.
9
10 CHIEF COMMISSIONER: So should there be media, they won't
11 have an opportunity to be identified in that way.
12
13 MR HUTCHINGS: Thank you, Commissioner. I then seek an
14 indication as to whether the Commission proposes to produce
15 a transcript in relation to these hearings.
16
17 CHIEF COMMISSIONER: Eventually there will be a
18 transcript. I understand there are connection issues at
19 present with giving you a running transcript on your
20 screen, but that's a luxury anyway. Hopefully it will be
21 fixed in due course. Obviously we can proceed without
22 that, but there will be a transcript and in due course
23 I will make orders giving you access to the transcript.
24
25 MR HUTCHINGS: Thank you. Again, it may be premature, but
26 in relation to the use of the transcript, perhaps it might
27 be appropriate under section 176 and 177 to limit its use.
28
29 CHIEF COMMISSIONER: Since it is a public hearing it is a
30 bit difficult to do that. I think we can decide that ex
31 post facto, really, at the end of the day's evidence and if
32 there are some particular matters. I am conscious of the
33 risk, though I think this is a small risk, of police
34 procedures becoming public so that wrong-minded persons
35 might take advantage of what they see as a gap in the
36 scheme, but I find it difficult to think that that kind of
37 problem will arise in this case, given that bail
38 proceedings in courts and so on are all public and freely
39 able to be tested. It is difficult to imagine such an
40 issue arising, but if it does, please make the point and
41 I will do something about it.
42
43 MR HUTCHINGS: Thank you, Commissioner. Those were the
44 issues I wished to raise at this stage.
45
46 CHIEF COMMISSIONER: All right. Are there any other
47 applications to be made?



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1
2 MR OATES: No, Chief Commissioner.
3
4 CHIEF COMMISSIONER: Very well. Just commencing, I think
5 we wished to call on a notice to produce.
6
7 MS SAUNDERS: Yes. It is the notice to produce directed
8 at the Commissioner of police. I have a copy I can
9 provide.
10
11 CHIEF COMMISSIONER: Thank you.
12
13 MR HUTCHINGS: I take it we're talking about a section 55
14 notice?
15
16 CHIEF COMMISSIONER: Yes.
17
18 MR HUTCHINGS: There appear to be one of them. Is it one
19 in particular?
20
21 CHIEF COMMISSIONER: Yes, it is the one which seeks copies
22 of the amended pleadings and paragraph 2, statements,
23 conferences.
24
25 MR HUTCHINGS: Right, I have that. Forgive me, but if
26 I might inquire, is the Commission satisfied about
27 production pursuant to paragraph 1 of the schedule?
28
29 CHIEF COMMISSIONER: I do think we have the pleadings now.
30 Yes, we are, thank you.
31
32 MR HUTCHINGS: That leaves paragraph 2 and in relation to
33 that which part of paragraph 2 is the subject of a specific
34 call so that I might provide some intelligible response?
35
36 CHIEF COMMISSIONER: All of them. There are witnesses -
37 well let's deal with the police witnesses to commence with.
38 Any statements they made, any notices, notes of conferences
39 with them.
40
41 MR HUTCHINGS: As I am instructed, there have been, since
42 the commencement of these proceedings, no witness
43 conferences conducted and no statements created in relation
44 to any of the officers and I understand before the civil
45 proceedings commenced - and I hope I prefaced the last by
46 reference to the civil proceedings, not these proceedings -
47 the sum total of documentation, as I understand it, would



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1 be found in COPS entry database records and if there are
2 perhaps notebook entries, but there haven't been statements
3 prepared for the purpose of the proceedings, as I'm
4 instructed.

5
6 CHIEF COMMISSIONER: I must say that I'm a little baffled
7 by that answer. I entirely accept it is truthful. But the
8 the statement of claim made a number of allegations of fact
9 to which the defendant responds in their defence.

10
11 MR HUTCHINGS: Yes.

12
13 CHIEF COMMISSIONER: A number of matters were admitted, my
14 assumption is on the basis of COPS documents and perhaps
15 notebook entries.

16
17 MR HUTCHINGS: Yes.

18
19 CHIEF COMMISSIONER: I might say I'm a little baffled when
20 I look through the particulars where requests for further
21 and better particulars from the defendant's solicitors,
22 Makinson d'Apice, included requesting particulars of COPS
23 reports which plainly they had in their pocket. Government
24 litigators, as I think you're well aware, and I don't wish
25 to patronise you, government litigators are bound by
26 different rules than an ordinary insurance company dealing
27 with an industrial dispute.

28
29 MR HUTCHINGS: I accept that.

30
31 CHIEF COMMISSIONER: They have to act in a way which does
32 not pointlessly add to costs. For example, I think it is
33 paragraph 16 of the statement of claim, which makes
34 allegations about the way in which attendances occurred.
35 You will see the response in the defence those matters were
36 not admitted. Those are matters within the knowledge of
37 the Commissioner. I ignore the nicety that Commissioner is
38 not strictly speaking the party, I don't think it matter
39 for this purpose, but, in effect, that is putting the
40 plaintiffs to significant cost and inconvenience to
41 establish those facts, which are plainly relevant facts
42 because they go to the damages of claim and they probably
43 go to the lawfulness also of the attendances.

44
45 It is one thing to march up to a door and bang on the
46 door, it is quite another thing to go around the house,
47 bang on the windows, prima facie.



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1
2 MR HUTCHINGS: Indeed. I understand your point.
3

4 CHIEF COMMISSIONER: So they're relevant facts. It is
5 true in the knowledge of the plaintiffs, because they were
6 aware of those things occurring, but they're also in the
7 knowledge of the defendant. And there's a nice question
8 about whether - it is not such a nice question - if those
9 are facts within the knowledge or able to be within the
10 knowledge of the defendant, upon which they would
11 inevitably have to get instructions anyway, because you
12 would need to know whether you are going to seek to
13 contradict that evidence or not. So as an inevitable part
14 of case preparation that you would not admit them strikes
15 me as being inconsistent with the duties of a public
16 litigator because it would needlessly add to costs and
17 inconvenience and indeed the length of the trial.
18

19 Some of those events might be admitted as having
20 occurred, some might be denied, but then the factual issues
21 would at least be clarified and it is the duty of a public
22 defendant to do its best to approach the litigation in that
23 way.
24

25 I must say, when I looked at the pleadings I was, to
26 attempt a neutral term, disappointed and, indeed, it was
27 because of those pleadings that I directed the section 55
28 notice because I found it difficult to imagine that
29 attempts would not be made to obtain that information.
30

31 Now, I understand that there was a preliminary
32 agreement between the parties that they would attempt to
33 litigate the purely legal issues which might, one way or
34 another, avoid a trial, but in that event, I would have
35 expected a communication from the defendant's solicitors
36 saying, "in order to reduce costs, we have taken the
37 pleading approach of not admitting these facts, depending
38 on the outcome of the legal question, but we will revisit,
39 should it have one outcome or another, the question in
40 order to, in effect, tell the plaintiffs, don't waste time
41 gathering that evidence at this point."
42

43 I know that litigation has become increasingly
44 combative over the last 20 years, but one should not be
45 seeing it in litigation involving the State of New South
46 Wales and I would very much appreciate it if you would
47 convey that view. And I can tell you in one case we are



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1 looking at a particular file, but this raises important
2 issues of administration which affect the Commissioner
3 since the fons et origo, as it were, of the litigation from
4 the defendant's point of view is, of course, the
5 Commissioner and the Office of General Counsel.
6

7 You might tell them this is on the radar and from what
8 I have seen I am not confident that the appropriate
9 approach as a public litigator has been taken.
10

11 MR HUTCHINGS: Commissioner, I hear and I understand the
12 nature of what you've said. Whether it is appropriate for
13 me to respond to that 55 notice or just to take --
14

15 CHIEF COMMISSIONER: No, I accept what you say that there
16 are no documents to produce in that class, I'm not
17 gainsaying the response you make on behalf of your client.
18

19 MR HUTCHINGS: I understand.
20

21 CHIEF COMMISSIONER: But I wish to call on it because
22 I wish to make what I think to be an important statement
23 about the way in which this litigation or litigation like
24 it should be conducted on behalf of the defendant. And it
25 strikes me - there may be other things that I've thought
26 of, although I have in my time, as you will appreciate,
27 dealt with a lot of litigation - it doesn't strike me as
28 being consistent with those rules, but with other rules
29 that apply between private litigants. That's an important
30 distinction.
31

32 MR HUTCHINGS: I understand.
33

34 CHIEF COMMISSIONER: All right then. I think what
35 I propose to do is to open the proceedings and will make
36 some general remarks. I will ask counsel assisting to
37 briefly open so that people here know and then we will call
38 the first witness.
39

40 Could you tell people outside that the hearing room is
41 now open. What were your proposed codes?
42

43 MS SAUNDERS: Continuing the pattern, Officer CU3
44 through --
45

46 CHIEF COMMISSIONER: No. I think we'll give them numbers.
47



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1 MS SAUNDERS: Yes.
2
3 CHIEF COMMISSIONER: But for [NAME SUPPRESSED]?
4
5 MS SAUNDERS: CU1.
6
7 CHIEF COMMISSIONER: CU1. [NAME SUPPRESSED] is CU2?
8
9 MS SAUNDERS: Yes.
10
11 CHIEF COMMISSIONER: All right.
12
13 MR HUTCHINGS: I take it, Commissioner, the officers will
14 become in the order they're called, 1, 2, 3, 4 and 5, and
15 so forth?
16
17 CHIEF COMMISSIONER: Yes.
18
19 MR HUTCHINGS: Thank you.
20
21 CHIEF COMMISSIONER: Yes, very well. The scope and
22 purpose of these public examinations is to investigate
23 whether (a) the arrest and charging of CU1 by NSW Police
24 Force officers in Condobolin in May 2014 and the withdrawal
25 of charges in February and March 2015 and (b) the
26 enforcement by NSW Police Force officers of bail granted to
27 CU1 in May and July 2014 was or concerned serious
28 misconduct and/or unlawful, unreasonable, unjust or
29 oppressive conduct or arose wholly or in part from a
30 mistake of fact or law.
31
32 Secondly, whether the rules, orders or practice of the
33 NSW Police Force, either generally or at particular
34 stations or commands, concerning the imposition and
35 enforcement of bail conditions, are or could be indicative
36 of a pattern of unlawful, unreasonable, unjust or
37 oppressive conduct or arose wholly or partly from a mistake
38 of fact or law or systemic issues that could adversely
39 reflect on the integrity and good repute of the NSW Police
40 Force.
41
42 I have appointed Ms Lucy Saunders, counsel assisting
43 the Commission, instructed by a solicitor employed by the
44 Commission. I will shortly ask Ms Saunders to make such
45 opening remarks as are appropriate and I will make some
46 introductory remarks in due course.
47



1 A principal function of the Law Enforcement Conduct
2 Commission is to detect, investigate and expose conduct
3 that is or could be serious misconduct or serious
4 maladministration. In doing so it is not bound by the
5 rules or practices of evidence and can inform itself on any
6 matter in such manner as it considers appropriate at all
7 times, of course, recognising the need for procedural
8 fairness.

9
10 The Act further requires the Commission to exercise
11 its functions with as little formality and technicality as
12 is possible. And, in particular, its examinations are to
13 be conducted with as little emphasis on the adversarial
14 approach as is possible. Following the investigation, the
15 Commission will prepare a report to parliament.

16
17 All exhibits admitted into evidence during the public
18 examination will be sequentially numbered. If a public
19 version of a confidential exhibit is to be produced it will
20 be separately identified.

21
22 The public version of any confidential exhibit will be
23 produced as soon as possible.

24
25 I wish to make this point: One of the reasons for
26 conducting a public examination or public hearings in
27 relation to particular events is, as in this case, to
28 explore not only whether the impugned conduct disclosed in
29 the particular circumstances is more widely practised. The
30 Commission conducts a wide ranging community communication
31 with various community bodies and one of the matters which
32 has frequently been the subject of complaint to us is
33 perceived oppressive conduct on behalf of police in
34 relation to the enforcement of bail conditions.

35
36 Whether that conduct perceived as oppressive is in
37 fact unlawful or inappropriate is, of course, another
38 question. But the fact that the issue has been raised in a
39 number of different fora attended by the Commission
40 suggests that at least in terms of public perception there
41 is seen to be a significant systemic problem.

42
43 Part of the reason for conducting public examinations
44 of this kind is to enable police to explain their policies
45 and practices to educate the public as to why they are
46 undertaken in the form that they are so that the public can
47 more readily accept the reasonableness of that conduct and



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1 does not use or will not use negative perceptions that
2 might damage the reputation of the force.
3

4 Another reason for conducting public examinations of
5 this kind is that because, as is obvious in the case of
6 bail, many thousands of people every month are subject to
7 bail conditions, most of which pass without controversy,
8 nevertheless, many people are unaware of what constitutes
9 appropriate police conduct in this area and the holding of
10 public hearings may instigate them to come forward with
11 useful information to the Commission to enable us to obtain
12 a wider degree of information as to the way in which this
13 work is undertaken by the police and the way in which it is
14 perceived by members of the public subjected to the various
15 practices. So one of the reasons to have public hearings
16 is to encourage people who have relevant information to
17 come forward with that information to the Commission and
18 assist us in the course of this investigation.
19

20 With those introductory words I now ask Ms Saunders to
21 open these hearings.
22

23 MS SAUNDERS: Thank you, Commissioner. The inquiry arises
24 specifically out of a complaint relating to police
25 behaviour towards [CU1] and [CU2] in mid-to late 2014.
26 That complaint is itself the subject of civil litigation
27 currently in the District Court which has attracted public
28 attention, but it is not as the Commission has observed an
29 isolated complaint.
30

31 What the conduct is, is what's known as bail
32 compliance checks, a phrase that is not found in the Bail
33 Act but nevertheless appears to be significantly ingrained
34 in police procedures and practices. In this matter it
35 involves a number of officers, a large number of officers,
36 some of whom have been required to give evidence in these
37 proceedings, repeatedly late at night in the absence of an
38 enforcement order in an unsuitable manner attending CU1's
39 house in which he lived with CU2 to essentially check that
40 he was there complying with the condition of his bail to
41 abide by a curfew.
42

43 It is, as described, conduct that is capable of
44 constituting serious misconduct, whether in respect of the
45 identified officers or others. Whether it is or not will
46 depend partially on how indeed the checks are carried out,
47 the nature of the conduct itself, but perhaps more



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1 significantly why it occurred, why the officers say they
2 were engaging in in behaviour, what the system is directed
3 at and indeed whether it is systemic the nature of training
4 and explanation the officers have given and it is that
5 which is the inquiry is directed at.
6

7 At this point the Commission has identified five
8 witnesses, given the earlier rulings I won't name them, two
9 of whom are to be examined today and three on Wednesday.
10 I'm content to call the first witness now. It may be
11 helpful, however, if Mr Viney is given a moment to explain
12 to his client the non-publication orders that have been
13 made and the pseudonyms that have been used simply so he
14 knows who we are talking about.
15

16 MR VINEY: Can I do that quickly, Commissioner. Would you
17 excuse me for that purpose?
18

19 CHIEF COMMISSIONER: Yes.
20

21 (Mr Viney conferred with his client).
22

23 CHIEF COMMISSIONER: Are we ready to proceed?
24

25 MR VINEY: Yes, thank you, Commissioner. Officer 1 is
26 present.
27

28 MR HUTCHINGS: Commissioner, before we do proceed may
29 I ask a question? In opening counsel assisting the
30 Commission identified that there had been attendance in a
31 "unsuitable manner". I'm just not sure what behaviour that
32 is sought to describe and if that might be further
33 particularised for the Commissioner's benefit.
34

35 MS SAUNDERS: Certainly. It was the behaviour I went on
36 to list, attending late at night, banging on windows,
37 shining lights, otherwise behaving in an oppressive way.
38

39 CHIEF COMMISSIONER: But also in breach of the proprietary
40 rights of CU1 and CU2. That is to say, without a licence
41 implied by law.
42

43 MR HUTCHINGS: The reason I raise it is that if that
44 characterisation of conduct arises from the content of the
45 amended statement of claim --
46

47 CHIEF COMMISSIONER: No.



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MR HUTCHINGS: I understand. Thank you.

CHIEF COMMISSIONER: We're not litigating the statement of claim.

MR HUTCHINGS: I understand that. I just sought some clarity; that's all.

CHIEF COMMISSIONER: Yes. Very well.

<OFFICER 1, sworn:

[11.20am]

CHIEF COMMISSIONER: Q. You may be seated officer. As you have been told by your solicitor, we will be referring to you as Officer 1.

A. Yes.

Q. However, I think we will need to identify you as a senior constable and what your station was at the time and is now, but I'll leave that to a later point.

A. Yes.

Q. I just thought that is material. I should tell you, I think you've already been told this by your solicitor but there are some things that I do need to tell you myself. Firstly, you must answer all questions which you're asked and produce anything you're asked to produce unless I tell you you don't have to. You can object to answering a question or producing something, but you must nevertheless answer the question or produce the document, but the effect of the objection is that it can't be used against you in any proceedings except, if I use a general term, for disciplinary purposes.

A. Yes.

Q. This has been explained to you?

A. Yes, and I understand.

Q. In order to avoid the necessity for you to object to every question or every time you're asked to produce anything, I can make a declaration covering the whole of your evidence and I take it you would wish me to do that?

A. Yes, please.

Q. I make a declaration pursuant to section 75 that all answers and other things given by this witness will be



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1 regarded as having been given on objection by the witness.
2 Yes.

3
4 **<EXAMINATION BY MS SAUNDERS:**

5
6 MS SAUNDERS: Q. Thank you Commissioner. I just want to
7 start with some background questions about yourself senior
8 constable. When did you join the police force?

9 A. 2010.

10
11 Q. You're a senior constable at the moment. When were
12 you promoted?

13 A. I think around about 2015.

14
15 Q. What command are you based in at the moment?

16 A. Newcastle City Police District.

17
18 Q. Where were you in 2014?

19 A. The same district. It was known as Newcastle City
20 Local Area Command at that time.

21
22 Q. You've always been in the same command?

23 A. Same area, yes.

24
25 Q. You're a general duties officer?

26 A. Yes, that's correct.

27
28 Q. Can you explain what that involves, what you do
29 day-to-day?

30 A. Our core duties, if you like, is responding to jobs,
31 calls for assistance from the public, so whenever someone
32 calls the police, accidents, break and enters, you know,
33 suicides or threats of self-harm or kind of anything along
34 those, any of those jobs.

35
36 CHIEF COMMISSIONER: Q. If one makes a 000 call, it is
37 assigned to your station and then you have a duty officer
38 who says go and attend to this or this?

39 A. We have - it gets broadcast on to our radio channel,
40 which is Newcastle/Lake Macquarie, but we cover the
41 Newcastle jobs, it gets broadcast and then the car crew
42 acknowledges it. You put your hand up and say "yeah, we'll
43 take that one" and go to the jobs after that.

44
45 Q. Are all your tasks happenstance in the sense that they
46 depend on, they're instigated by some call by some member
47 of the public or do you have some regular duties, places to



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- 1 patrol or things of that kind which you do as a matter of
2 course?
- 3 A. Yes, we have a bit of both, calls from the public and
4 also we might have pre-assigned, like random breath testing
5 on this street at nine o'clock or you know we used to do,
6 like hour of power it was called, which is like kind of
7 police flood an area. That might be at 1 o'clock
8 somewhere, a shopping centre at Wallsend, say, everyone
9 attend there.
- 10
- 11 Q. That's a sort of police visibility?
- 12 A. Yes, like a high visibility policing, yes, get
13 everyone there at one time.
- 14
- 15 Q. Are they planned like a month or two months ahead so
16 you're aware that that kind of thing --
- 17 A. Generally, it's - when it is planned I'm not sure but
18 we get told, notified that day, or that shift, yes.
- 19
- 20 Q. You come on shift and next to your name or somehow
21 you'll be told at this time you need to be doing that?
- 22 A. Yes. Generally by the shift supervisor, give you a
23 tap on the shoulder, this is what we've got on today, kind
24 of thing.
- 25
- 26 MS SAUNDERS: Q. A little more specifically, how is that
27 communicated? Is it written?
- 28 A. No, generally not written. You turn up to your shift,
29 get allocated a car crew, that's written who you're working
30 with, what car you're in, and then generally I think it is
31 just verbally, you know, RBT at 9pm on Griffith Road.
32 Sometimes those appointments can't be met due to - if
33 there's a heap of jobs happening, busy, then we can't
34 always make it, but it's kind of like a general kind of
35 guideline, yeah.
- 36
- 37 Q. What shifts do you work? What's your shift pattern?
- 38 A. 12 hour shifts, generally two days two nights
39 consisting of 6am until 6pm and then 6pm until 6am.
40 Sometimes we do a 3pm start, 3 till 3.
- 41
- 42 Q. Is that four on, four off?
- 43 A. Four on five off. Sometimes four, sometimes six,
44 yeah, depending on the roster.
- 45
- 46 Q. Just to make sure I'm understanding, say you're
47 working night shift you'd turn up at 6pm?



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1 A. Yes, start at 6.
2
3 Q. You would be tasked by the duty officer?
4 A. The sergeant or the acting sergeant, so the shift
5 supervisor, yes.
6
7 Q. The duty officer is a step above them; is that right?
8 A. Yes, that's correct.
9
10 Q. They tell you essentially what you're going to do and
11 when?
12 A. Yes.
13
14 Q. One of the tasks you perform is a bail compliance
15 check; is that right?
16 A. Yes, that's correct.
17
18 Q. How frequently do you do those?
19 A. The last probably little while, a few months to a
20 year, not as regularly, but people do get tasked,
21 I believe, every night shift. Yeah, over the past few
22 years it was more often we'd get tasked with them.
23
24 Q. When you say more often, how many per shift?
25 A. So how it kind of worked going back to 2014 --
26
27 CHIEF COMMISSIONER: Q. Yes, let's deal with 2014 first
28 and then we'll do --
29 A. Generally. Yes, 2014 how it worked was kind of in the
30 timeframe of being told about other duties like random
31 breath testing, a shift supervisor would print off what is
32 called a curfew bail list and it had a list of people on
33 curfew bail at that time, their address, their conditions,
34 like what time they had to be at home from and until. So
35 on some shifts - it wasn't always 100 per cent the same -
36 some shift supervisors would have that print out and come
37 up and say can you do these bail checks and have them
38 marked a certain number for, like that car crew to go and
39 attend to and then other car crews get different ones.
40
41 Sometimes that wasn't the case, it might one or two
42 individual officers, or like the offside to say, okay do
43 you want to do some bail checks, print off that list which
44 we had access to and go around and do two or eight or you
45 know however many you could kind of if you had time and all
46 those kinds of things. So that's kind of how it worked.
47

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21

OFFICER 1 (Ms Saunders)

Transcript produced by Epiq



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1 MS SAUNDERS: Q. On that curfew bail list what
2 information were you given?

3 A. There was a photo, name, address, the charge number,
4 yes, the actual condition, so the curfew is from 9pm to 9am
5 or 11pm to 7am. And I think that's about all that's on
6 there.

7
8 Q. Was this, just to your knowledge, a list of everyone
9 who at the time was on curfew bail?

10 A. Yes.

11
12 Q. Or was it more selective?

13 A. No, I believe everyone who was on curfew bail at that
14 particular time.

15
16 CHIEF COMMISSIONER: Q. Could I just ask you this: at
17 that time, more or less, obviously it would vary people on
18 leave and so on --

19 A. Yes.

20
21 Q. -- by and large, how many general duties officers
22 would be on a night shift?

23 A. On a shift? You'd generally have two car crews
24 starting, so four officers starting at 6pm over two cars
25 and then another crew which would have started at 3pm.
26 That's on a general night shift. And also a supervisor in
27 their own car. And then on busier times, say a Friday and
28 a Saturday night would be possibly another 5pm crew and yes
29 maybe even another 3pm crew, just depending upon the roster
30 and how busy we were.

31
32 Q. So possibly up to 16 or so, but usually not much more
33 than eight or nine, does that put it roughly?

34 A. Yes. Generally the three cars of two, so the six and
35 supervisor seven out on the road and then a couple more in
36 the station. Yes, generally that's kind of the basic
37 framework they work in.

38
39 MS SAUNDERS: Q. I think you said a moment ago you've
40 got the photo, you've got the charge and the conditions.
41 Did the curfew bail list have any information about
42 previous checks that had been conducted?

43 A. No.

44
45 Q. Any information about other officers' encounters with
46 the relevant person?

47 A. Every now and then there may be, like, a note to say



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1 that - like I remember doing it myself - knock on, say, the
2 side window, they've requested police go there or it is a
3 share house, he's in very back room, just walk down the
4 driveway and knock on the back door, things of that nature.
5 If you speak to the parties while doing the bail check and
6 they tell you go okay it's going to help them and it's
7 going to help us the next time so you email the intel
8 officer and they get it kind of updated on a list.
9

10 Q. If you were given - we'll come back to the situation
11 where you printed it out yourself?

12 A. Yes.

13

14 Q. Say the sergeant gives you the curfew bail list?

15 A. Yes.

16

17 Q. Would you check everyone on that list that shift?

18 A. Check, as in?

19

20 Q. I'll ask you again. Would you perform, say the
21 sergeant gives you a list with five people on it?

22 A. Yes.

23

24 Q. Would you perform a bail compliance check on everyone
25 on that list?

26 A. You would hope so. It wouldn't always be the case.
27 Like, yeah, if you got tied up with a job which took six
28 hours you wouldn't get to your bail checks but you'd intend
29 on getting to at least most or all.

30

31 Q. The idea is you're just checking everyone on curfew
32 bail?

33 A. Yes.

34

35 Q. Do you need anything else? Is it just the fact that
36 they're on curfew bail?

37 A. I believe so, yes.

38

39 Q. In 2014 what training had you received on bail
40 generally?

41 A. From my memory, of bail or bail checking?

42

43 Q. Bail first. We'll come back to checking?

44 A. Bail, exact training, I can't recall exactly what
45 training I had done, but I knew that people arrested,
46 charged, either released on bail, bail refused, yeah
47 released on bail, obviously certain conditions, different



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1 conditions for some people, depending on the circumstances
2 of their arrest, I'm assuming. Yes, I hadn't done any
3 supervising or bail authorisations for people so what goes
4 into it I don't know, but that's about it, yeah.
5

6 Q. What about bail checks, what had you been told about
7 those?

8 A. When I was a probationary Constable I remember my
9 first bail check, just go to a house and we knock on the
10 door, see if they're present, if they're on curfew bail
11 obviously. They're at home, answer the door, they're
12 complying with their bail. If they're not at home they are
13 obviously in breach of their bail. When I first started
14 doing them it used to be the case if they didn't answer the
15 door it was considered to be a breach. And then when
16 exactly it changed I'm not sure, but it changed if they
17 didn't answer the door, it wasn't necessarily a breach but
18 it was unable to determine whether they were in breach or
19 not.
20

21 Q. If they didn't answer the door at the point in time
22 where it was a breach what would you do?

23 A. You would create the police report and list them as
24 kind of suspect for breaching their bail. And I believe it
25 was either tasked to an oncoming shift to follow up or it
26 could have been just like left there so when they were
27 dealt with next so on the next bail check or when they went
28 to the police station again.
29

30 Q. What do you understand the purpose of bail checks to
31 be?

32 A. To ensure that they're complying with that curfew
33 condition. Yeah, my thoughts are and were that if police
34 are coming around and knocking on the door to check on on
35 people they're less likely - well, the people on bail are
36 less likely to go out in those curfew hours and potentially
37 commit crimes, or other crimes.
38

39 Q. It is risk management; is that what you meant?

40 A. Yes, I guess risk management.
41

42 Q. With curfew bail these checks are always going to be
43 conducted at night, aren't they?

44 A. I believe so. Yes, if they've got curfew between 11
45 and 7 or 8 and 6 generally they're all done at night.
46

47 Q. Were you told to carry out the checks at particular



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1 times at night?
2 A. During the curfew period, so anywhere in there really.
3
4 Q. When you could?
5 A. Yeah, when you could. Like in my mind, like, I was
6 never told otherwise or to do that, but like you'd want it
7 to be kind of more random, to be more effective, you think
8 it would be more effective that way.
9
10 Q. Explain that to me a little bit?
11 A. Well, I wouldn't want to go and check on someone at
12 10 o'clock every night because what would be the point of
13 that. If people know that police are coming to check on
14 them at 10 o'clock they'll be home at 10 o'clock and then
15 they leave, you know, after that. Whereas if the police
16 were to turn up at 10.30 and the next night it be at 2am,
17 then it is more effective they would comply with that bail
18 and that bail checks were actually making a difference.
19
20 Q. Would you sometimes make a deliberate choice to turn
21 up at odd hours like 2am?
22 A. I wouldn't say a deliberate choice to do that, but
23 fitting in the jobs that we, general duties, do do, yeah,
24 sometimes you may - I don't recall ever going I'm not going
25 to do that bail check now, I'm going to do it later, you
26 know.
27
28 CHIEF COMMISSIONER: Q. In other words, the pressure of
29 your work automatically meant you're unlikely to be doing
30 things at regular hours anyway?
31 A. Yeah.
32
33 Q. It would impose its variation?
34 A. Yes. Some nights you're busy from 6pm to 2am and you
35 have no chance to do anything else but the jobs. Some
36 nights you might get an hour window between 11 and 12.
37
38 Q. Bail checks on adults is something different to bail
39 checks on kids?
40 A. Yes.
41
42 Q. Do you agree?
43 A. Yes.
44
45 Q. With kids the odds are, it's not always the case,
46 you're not only disturbing them you're disturbing their
47 parents and families?



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1 A. Yes.
2
3 Q. They're much less likely to be happy about being woken
4 up at 3 or 4am in the morning?
5 A. That's correct, yes.
6
7 Q. Was there a different practice adopted where the
8 bailed person was a young person?
9 A. Not to my knowledge. I think the curfew bail list,
10 I could be wrong, but the curfew bail list just had people
11 on curfew bail.
12
13 Q. But you wouldn't know how old they, you might from the
14 photograph?
15 A. I don't think the bail list had the date of birth on
16 there.
17
18 Q. Anyway no different practice was adopted for young
19 persons?
20 A. Not that I'm aware. It could be the case that
21 children weren't on that list, I'm not 100 per cent sure,
22 but to my knowledge it is no different, just a curfew bail
23 check.
24
25 Q. You must have occasions where the bailed person didn't
26 come to the door but some other occupant of the house came
27 to the door?
28 A. Yes, that's correct.
29
30 Q. And those exchanges would not always be courteous?
31 A. Yes, that's correct.
32
33 Q. What did you do when the person who came to the door
34 told you to leave in, it doesn't really matter what form,
35 but it's unlikely to be polite, and "we don't want you
36 coming around here", shall we say? In other words,
37 objecting not only to your presence on that occasion, but
38 suggesting to you, "don't come around again"?
39 A. Yes.
40
41 Q. What then would you do? Would you report that?
42 A. At that time we would want to speak with the person
43 and ask why they were wanting us to leave, like --
44
45 Q. They might just say - they may give you a good reason,
46 they may just not be disposed to engage in conversation,
47 they're a whole lot of possible - I'm talking about



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1 negative contact, obviously?
2 A. Yes, sometimes they'd tell us he's not here, he hasn't
3 been here for two weeks or he's currently in gaol, so
4 obviously the bail list was incorrect.
5
6 Q. A mistake?
7 A. Yes, a mistake. For that type of situation, if we
8 were told to leave in leave in no uncertain terms, I don't
9 know honestly what we would have done, try to tell them
10 they're on bail I guess and they can't be out, try to check
11 on them, it may be a breach, something along those lines.
12
13 Q. Did you ever have that kind of experience?
14 A. Possibly.
15
16 Q. But You don't particularly recall any as you sit
17 there?
18 A. No.
19
20 CHIEF COMMISSIONER: Yes.
21
22 MS SAUNDERS: Q. You would, though, have had situations
23 where you were performing a bail compliance check and
24 someone other than the bailed person answered the door?
25 A. Yes.
26
27 Q. What would you do?
28 A. I would ask is the bailed person here.
29
30 Q. Yes.
31 A. A lot of the times they would say, "yeah, I'll just
32 get them", or, "no, they're not here, they're out in breach
33 of their bail", or, "no, they're in gaol", or no - yeah,
34 like I said, in breach of their bail. It may be the case
35 that we get told to leave, but, yeah, I don't recall.
36
37 Q. You're conducting those at a range of different times,
38 some of the houses you arrived at would have been dark with
39 the lights out?
40 A. Yes.
41
42 Q. You would have had to wake people up?
43 A. Yes.
44
45 Q. What would you do?
46 A. Knock on the door.
47



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1 Q. Yes.
2 A. Yeah, possibly knock on windows, but mainly just
3 started knocking on the door, that to my recollection was
4 usually enough.
5
6 Q. Say 2am?
7 A. Yes.
8
9 Q. Likely everyone is asleep?
10 A. Yes.
11
12 Q. What kind of knock? How are you knocking at the door?
13 A. If they didn't answer to start with then obviously a
14 louder knock.
15
16 Q. Yes.
17 A. Yes, I --
18
19 Q. You mentioned windows before. Is that another option?
20 A. I'm assuming, yeah, when --
21
22 Q. Did you ever do it?
23 A. Yeah. Oh, I believe I possibly did knock on a window.
24 Specifically to the - each bail check, I can't remember
25 over my time, but I possibly could have and would have
26 knocked on a window if someone didn't answer the front
27 door.
28
29 Q. Have you seen other people do that?
30 A. I'm assuming - I think so.
31
32 CHIEF COMMISSIONER: Q. Is it fair to say, without any
33 particular recollection of an actual event, that it would
34 not be uncommon for you or police who you were with,
35 because you wouldn't do a bail check by yourself,
36 I shouldn't think; is that right?
37 A. Well, sometimes --
38
39 Q. You might be the one at the front door but there would
40 be a police officer in the car?
41 A. Yes.
42
43 Q. So you or one of the others when there wasn't a
44 response at the door it was accepted that you could go
45 around the side and knock on a window and see if you could
46 wake someone; is that right?
47 A. Yes. Me personally, not so much I don't think going



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1 around the side, but if there's a window --
2
3 Q. Next to the door?
4 A. You know, next to the door you may knock on it. Like
5 if - like I said before, if you knew their bedroom was
6 there it would give you a reason to knock on the window,
7 yeah. It may be the case that people go around and knock
8 on side doors, side windows, but, yeah, specific times that
9 I've done that I can't recall, but it would have --
10
11 Q. You would have done it from time to time?
12 A. Yeah, more than likely, yes.
13
14 MS SAUNDERS: Q. So it is not just a knock and go,
15 you're trying to find out if they're there?
16 A. Yes, we're trying to make sure they're there
17 complying, that's the reason for the bail check, knock on
18 the door, see if they're there, yes.
19
20 Q. Sure. Would you ever shine a light in the window to
21 see what was happening?
22 A. Possibly.
23
24 Q. You are saying possibly because you can't specifically
25 recall that?
26 A. Yes.
27
28 Q. But it sounds like something that is common practice?
29 A. Yes, shine a light, similar to - like if there's a
30 window next to the door, you could shine a light see if
31 there's anyone in there, see if you could wake them up.
32
33 Q. Same example with the bedroom window from before, see
34 if they're in there?
35 A. Yes.
36
37 Q. Just for the record, I suggest is probably not
38 helpful, bedroom window - you might shine your torch in to
39 see if they're there?
40 A. Yes.
41
42 Q. What about the car headlights?
43 A. Shining the car headlights?
44
45 Q. Yes.
46 A. Again, I'm being general. It may happen. I remember
47 some checks that I've done with other people and we've



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1 turned up and not so much shining the headlights through
2 the window but just turning up, the headlines and the noise
3 of the car was enough for them to just come walking out.
4 So the officer knew and he just waited with his arm out the
5 window waiting for them to come out.
6

7 Q. I want to ask you about specific bail checks you've
8 done. Before we turn to that, in answer to a question from
9 the Commissioner or possibly me, when someone came to the
10 door you would explain that the person was on about bail
11 and you could check on them?

12 A. Yes.
13

14 Q. What did you understand gave you the right to perform
15 the bail checks?

16 A. We were checking to ensure that they were complying
17 with their bail.
18

19 CHIEF COMMISSIONER: Q. That's not quite the question.
20 That's what you were doing?

21 A. Yes.
22

23 Q. You're really asked what was your understanding about
24 the legal basis that entitled you to do that?

25 A. The legal basis? I knew there was a Bail Act in
26 police, specific parts in our legal, yeah, basis for going
27 to do the bail checks I'm unsure of, yeah, I can't -
28 I can't tell you, but I assumed that we were.
29

30 MS SAUNDERS: Q. You were being directed to do them; is
31 that fair?

32 A. Yes.
33

34 Q. 2014 you performed two bail compliance checks on a
35 person we've referred to as [CU1]. Has your solicitor
36 explained to you who that is?

37 A. Not the [CU1] reference but --
38

39 MR VINEY: He is an anonymous name.
40

41 MS SAUNDERS: Q. This will become apparent. I will show
42 you the document in a moment. Actually, could we show the
43 witness document 8440969. Just before we go into it, this
44 is a COPS record. Have you seen a print out of a COPS
45 record like this before?

46 A. Yes.
47



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1 Q. What is COPS, just in your own words?
2 A. COPS is the police system that obviously police use to
3 report - create police reports, charges. It's the basis of
4 all of your reports, police reports.
5
6 Q. How do you make entries into COPS?
7 A. You create, event, create, and just start of the
8 report and --
9
10 Q. Slightly more basic question. Do you have to be back
11 in the station to do it?
12 A. Sorry, yes. Back at the station, log into a computer
13 and then start the report. There is - sorry, now there are
14 ways that you can do it on the computer in your car.
15 That's more of a recent thing to start the report.
16
17 Q. But in 2014 you were doing it back at the station?
18 A. Back at the station, create the report.
19
20 Q. Do you do them at the end of the night or throughout
21 the shift?
22 A. Throughout the shift.
23
24 Q. Just take a moment to read through this to refresh
25 your memory.
26 A. Yes.
27
28 Q. The person identified there as the person of interest
29 we're calling him [CU1]?
30 A. Yes.
31
32 Q. Was [CU1] known to you at the time?
33 A. At the time - well, I can't recall specifically back
34 at that time. Yeah, I'm assuming that I knew he was on
35 curfew bail at that address but I don't know if I --
36
37 Q. You didn't know what charges he was on?
38 A. No.
39
40 Q. You wouldn't have had any other interactions with him
41 that you recall?
42 A. Not that I recall.
43
44 Q. You've entered there that the bail curfew conditions
45 are between 11am and 7am. How would you have got that
46 information?
47 A. From the bail list - curfew list.



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1
2 Q. That would have affected the time that you decided to
3 turn up, obviously?
4 A. Yes.
5
6 Q. You would want to be in the bail period, the curfew
7 period?
8 A. Yes, you'd want to check that, yes.
9
10 Q. You've attended at 11.45pm on 18 August. That's not a
11 particularly late time to conduct a bail check, is it?
12 A. It's late but it's, you know, in terms of bail checks
13 it's not particularly late, I guess. On bail between 11
14 and 7, and 11.45 I don't guess that's too late.
15
16 CHIEF COMMISSIONER: Q. You can't tell from this, aside
17 from the fact that you know you were on shift at this time,
18 when you happened to have started that shift, but the odds
19 are it would have been a 6pm start?
20 A. Yes, I believe it - I believe it was only because
21 I did a search before today of my shift times for that
22 shift and I think that one was a 6pm until 6am shift.
23
24 MS SAUNDERS: Q. If you'd known that the curfew started
25 at 8pm, would you have turned up earlier?
26 A. I could have, that doesn't rule it out, I guess.
27 Again, it comes down to jobs and how busy you are and
28 everything, but --
29
30 Q. Not necessarily?
31 A. Yes, not necessarily.
32
33 Q. When you performed this bail check do you recall what
34 happened?
35 A. No, I don't recall.
36
37 Q. Nothing out of the ordinary?
38 A. I can't recall that bail check.
39
40 CHIEF COMMISSIONER: Q. If there was something out of
41 the ordinary, say he was abusive or something like that,
42 would you have put that in COPS?
43 A. Not necessarily.
44
45 Q. Okay.
46 A. Yeah.
47



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1 MS SAUNDERS: Q. Would you have made a note if you'd had
2 to make a particular effort to wake the occupants up?
3 A. As in --
4
5 Q. If you'd had to --
6 A. -- extra effort?
7
8 Q. -- bang the door a couple of times, go to the windows?
9 A. I don't think so. Like I said before, like, if there
10 was something specific which you may get told, like, "He's
11 in the granny flat down the back", or something along those
12 lines, you may make a note of that and let other officers
13 know, but yeah, without saying that, no.
14
15 CHIEF COMMISSIONER: Perhaps you might ask some questions
16 in due course about the use to which these COPS entries
17 were made. I will leave it to you.
18
19 MS SAUNDERS: Yes, indeed.
20
21 Q. When you conducted this bail check were you aware that
22 there had been an earlier bail compliance check conducted
23 that night?
24 A. No, I wasn't aware.
25
26 Q. Would you at the time have checked COPS before
27 conducting a bail check?
28 A. No.
29
30 Q. When do you refer to these records generally?
31 A. To the COPS records?
32
33 Q. Yes.
34 A. When you'd go back to the station and create the
35 report.
36
37 Q. I am sorry, when would you as a senior constable look
38 up a COPS record that someone else had made?
39 A. That someone else had made?
40
41 Q. Yes.
42 A. If you create the report and you'd sometimes look at
43 the previous report the police have been involved with,
44 yeah, that's on the system, yeah. Sometimes you do look up
45 things, like if there has been a previous incident of a
46 similar nature, like if you're there for a domestic
47 violence incident you may read through a couple of reports



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1 and look for those type of things, but --

2

3 Q. Do you otherwise know what the COPS system is used
4 for, what the records are used for?

5 A. What they're used for?

6

7 Q. Yes.

8 A. Creating charge papers, when people are charged, to go
9 to court, AVOs which are going to court and AVOs that are
10 in place.

11

12 Q. I asked you a moment ago about an earlier visit at
13 11.08pm. You weren't aware of that at the time, I think
14 was your answer?

15 A. Yes, that's correct.

16

17 Q. Would you still have conducted the bail compliance
18 check?

19 A. Would I have still --

20

21 Q. Yes, if you had known.

22 A. Possibly.

23

24 Q. Why is that?

25 A. Because it's still on bail, if they're still on bail
26 in that time, yeah, you may, because they were there at
27 11.08 doesn't mean they're going to be still there at
28 11.45, check on it again.

29

30 Q. Is that part of the normal bail compliance procedure,
31 occasionally coming back twice?

32 A. Not so much coming back twice, but if you turn up
33 there and they tell you that "Someone has been here 40
34 minutes ago", "Okay, it's good that you're still here and
35 you're complying", yeah.

36

37 Q. So that does happen from time to time?

38 A. Sometimes, yes, because I did mention it before, as
39 well as the car crews that are on shift there's also
40 plain clothes officers, like proactive type officers, and
41 they also go and do bail checks and different things from
42 time to time.

43

44 CHIEF COMMISSIONER: Q. So they would have the same list
45 as you?

46 A. Yeah, that's correct.

47



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1 Q. In other words, the expectation is, if that's so, that
2 the person - who makes those lists, by the way, the duty
3 officer or the sergeant?

4 A. No. The actual compiling of the list --

5
6 Q. Yes.

7 A. -- is, I believe, by the intelligence officers.

8
9 Q. Right. Do you remember you said you got a document
10 that told you what you were supposed to do during the shift
11 and one of those things would be bail compliance checks and
12 you'd have a number of names and addresses?

13 A. Yes. The list that we would be given was just a
14 curfew bail list.

15
16 Q. Right. Who would be responsible for preparing that
17 list?

18 A. The intelligence officers.

19
20 Q. Right. So then, in effect, the intelligence officers
21 would be deciding how often, in a sense, those checks would
22 occur because if they gave that job to the plain clothes
23 police, for example, they would be expecting that those
24 officers would be attending. If they gave it to you they
25 would be expecting that you would attend and I suppose if
26 they gave it to another officer or officers, they would
27 expect that they would attend.

28 A. Sorry, I'll just have to clarify it.

29
30 Q. Is that how it works or not?

31 A. No, I'm just - yes, I'll clarify a little bit. Just
32 with that - so the intelligence officers they compile the
33 list and they have it on their folder on the computer which
34 any officer can access and print off.

35
36 Q. Right.

37 A. They don't task to people to complete the bail checks.

38
39 Q. You're sort of self-tasked, are you?

40 A. Yes. Sometimes the supervisor he accesses that list,
41 prints it off and would write, "Okay, your car crew to do
42 those four", or those three, or whatever. Sometimes us, as
43 individual officers, would print them off and go and do
44 them and I think in the plain clothes unit they'd print off
45 their list and go and do however many.

46
47 Q. So that theoretically you could have in the course of



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- 1 a night four or even five checks done by different
2 officers?
3 A. Yes, theoretically, yes, you could, if everyone
4 printed off their own individual list and went and did bail
5 checks of their own accord, then yeah.
6
7 Q. As I understand it, no-one controls that. Officers
8 are expected if they've got, as it were, spare time, they
9 should do it usefully and therefore one of those useful
10 things is to go and do a curfew check; is that how it
11 works?
12 A. Yes, that's fine, yes.
13
14 Q. Do you agree - perhaps you don't agree - if you were
15 checking on someone four times during the night, it's a bit
16 hard to get a night's sleep, that would not be - how would
17 I put it? The bail person would be unlikely to be inviting
18 that kind of supervision, do you agree?
19 A. Yeah, I would agree, yep.
20
21 Q. To your knowledge you might not know what other police
22 are doing in the normal course, whether other police had
23 done the same curfew check as you in the course of that
24 night; is that what you're saying?
25 A. Yes, yes, you'd be right, yes, if police were --
26
27 Q. Because you're not keeping track of what they're
28 doing?
29 A. Yes, that's correct. You can track, obviously, their
30 jobs that come in, but what they're doing in between those
31 jobs you wouldn't track, yes, so you wouldn't know if
32 they've - unless they were tasked otherwise by the
33 supervisor at the start then you wouldn't know if people
34 had been to this house or another house for checks or what
35 times or anything like that.
36
37 CHIEF COMMISSIONER: All right. Thank you. Yes,
38 Ms Saunders.
39
40 MS SAUNDERS: Thank you, Commissioner.
41
42 Q. You should still have that document in front of you.
43 Do you see the section where you've written in what
44 happened?
45 A. Yes.
46
47 Q. In the second paragraph there's a sentence:



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The person of interest came to the door when requested.

What do you mean by "when requested"?

A. When - I don't know but I - either when me or my offsider knocked on the door or if we've spoken to someone else and requested they get the person to come to the door.

Q. Sure. Someone who isn't on bail has answered?

A. Possibly.

Q. That's what that means?

A. Yes, it could mean that, yes, when requested, yeah, by someone else.

Q. You've asked them to go and get the person of interest?

A. Possibly yes.

Q. Could I show the witness document 8440972. Have you got that in front of you?

A. Yes.

Q. All right. Just take a moment to read it to refresh your memory.

A. Yes.

Q. This is 19 August 2014?

A. That's correct.

Q. So it's the next day?

A. Yes.

Q. Do you have any recollection of conducting this bail check?

A. No.

Q. You would have conducted it in the normal way, tried to wake them up to find out if [CU1] was there?

A. Yes, that's correct.

Q. Had you had, to your recollection, any interaction with [CU1] between the two shifts?

A. Not to my recollection.

Q. You had been there at the same time, roughly the same



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1 time the night before he was there; is that right?
2 A. Yes.
3
4 Q. Did you have any reason to believe that he wouldn't be
5 complying with his bail on Tuesday, the next day?
6 A. No, I don't think so.
7
8 Q. But you, nevertheless, conducted the bail check?
9 A. Pardon?
10
11 Q. But you still conducted the bail check?
12 A. Yes.
13
14 Q. Do you need to have any of that sort of suspicion to
15 conduct a bail check?
16 A. At the time I didn't believe so. We conducted, yeah,
17 numerous bail checks on numerous people whenever we could.
18
19 Q. You say "at the time". Has your understanding changed
20 recently?
21 A. Yes, in the last few days, yes, just after being
22 notified of today I did a little bit of - I tried to do a
23 little bit of research in relation to it.
24
25 Q. But no specific training from the police force?
26 A. When we have done - over the last six or 12 months we
27 did an online training package in relation to bail checks,
28 a bit more.
29
30 Q. What understanding did you take away from that
31 training package?
32
33 CHIEF COMMISSIONER: Q. Just before that, could we just
34 have the details. When you say it was training, what was
35 the particular way in which it was done?
36 A. The training?
37
38 Q. Yes.
39 A. Like an online learning package at your computer.
40
41 Q. What is the official name of it? Does it have a title
42 or a description?
43 A. For that training?
44
45 Q. Yes, for the package.
46 A. I don't know exactly what the name of it is. Yes,
47 there would be a name.



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1
2 Q. How would you access it?
3 A. I think through a system called iLearn.
4
5 Q. Is what happens - you've got your own terminal, do
6 you, or --
7 A. Yes.
8
9 Q. Right. When there was an iLearn package, it would
10 indicate to you that there's a package here for you to look
11 at, is that what would happen?
12 A. Yes.
13
14 Q. Then you would access that and it would record the
15 fact that you'd accessed that particular package?
16 A. Yes, I believe so, yes.
17
18 Q. All right. You say over the last six to 12 months
19 there have been a number of those?
20 A. Yeah, on different topics.
21
22 Q. On different topics?
23 A. Yes.
24
25 Q. Let's just talk about bail. But on bail?
26 A. I believe there has been at least one, one that
27 I remember, in relation to bail, or in relation to bail
28 compliance checks.
29
30 Q. How long do they take to go through, usually, the
31 packages? Are they five minutes, six minutes, 10 minutes?
32 A. Yes, around, yeah, the 5 to 10 minute mark, maybe
33 five-minute mark.
34
35 Q. Are they just in terms of writing or is there a sort
36 of lecture form or --
37 A. Yes, there's different ones. I think that one was a
38 video package, maybe writing as well, but yeah, I remember
39 there was a video - it played a video as part of that
40 package.
41
42 CHIEF COMMISSIONER: Thank you. Yes.
43
44 MS SAUNDERS: Q. Was it compulsory?
45 A. Yes, I believe so.
46
47 Q. What understanding did you take away from that



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1 training?

2 A. Just in relation to bail compliance checks, not to
3 knock on side windows and shine torches through windows and
4 stuff like that and if you're asked to leave by the
5 occupier, I believe that you had to leave their premises.
6

7 Q. We touched on this earlier. You mentioned before that
8 you were performing fewer bail compliance checks now than
9 you were in 2014?

10 A. Yes.

11

12 Q. How frequently are you performing them at the moment?

13 A. Personally, I haven't done one for some time.

14

15 Q. Sure.

16 A. But it was the case back in 2014 that there would be
17 kind of an encouragement or push for us to do a lot of bail
18 checks, whereas now it's - you've still got that list of
19 people but it's priority bail checks I think the
20 terminology is. I don't know what they take into account
21 with that but there's priority bail checks and the
22 supervisor instead of, like in 2014, may hand out a heap of
23 bail checks, they usually go, "Okay. Can you do this
24 one?", or, "Can you do these two bail checks?", and I think
25 maybe it's luck of the draw. I haven't been tasked to do
26 that for a fair while.
27

28 Q. As you observe things, how frequently are people being
29 tasked to do them now?

30 A. I think still every night, I believe.

31

32 CHIEF COMMISSIONER: Q. But a fewer number, a lower
33 number?

34 A. A fewer number, yeah.

35

36 MS SAUNDERS: Q. Have you seen a bail compliance list
37 with the priority bail checks identified?

38 A. I think I have. Well, how our particular sergeant
39 does it, I think he cuts them, the bail list, with the
40 priorities, such as kind of one little kind of slip of
41 paper with that person or those people. I haven't seen
42 that.
43

44 Q. And you don't know how those priorities are assigned?

45 A. No. No.

46

47 CHIEF COMMISSIONER: Q. Are there any key performance



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1 indicators that are linked to bail checks?
2 A. In relation to us as officers?
3
4 Q. Either you as an individual or the station as a whole?
5 A. Yes. Yes. Oh, the station as a whole I don't know,
6 but individual officers I don't know if there's much now as
7 back in 2014, but it's something that's measured every six
8 months. There's what's called a team review, a review of
9 every officer's kind of work that they've been doing, yeah,
10 one of those things that they measure with bail compliance
11 checks, yes. It's a meeting with the --
12
13 Q. So obviously they could pick up from COPS how many
14 bail compliance checks?
15 A. Yes.
16
17 Q. Would that be the primary information they would use
18 to pick up the - they just search COPS --
19 A. Yes.
20
21 Q. -- look at the appropriate entry and that will say
22 over a particular period, six, eight, 10, or whatever it
23 happens to be?
24 A. Yes, and then they can do a download of individual
25 officers and see what types, all types of reports, bail
26 check column, yeah, audit number.
27
28 Q. Were you informed of any number that it was expected
29 that you would perform?
30 A. No, no particular number.
31
32 Q. No.
33 A. Just never - they didn't like zeros, I've been
34 informed that from supervisors, duck eggs, as they - yeah,
35 didn't want zeros along any of the columns.
36
37 MS SAUNDERS: Q. Was that in that six-month period?
38 A. Yes, in the six-month period, yeah, they didn't
39 want --
40
41 CHIEF COMMISSIONER: Q. But you weren't told, "We would
42 have been expected 15, 20, 30, 40" --
43 A. No, I've never heard that.
44
45 Q. "-- of that kind of thing"?
46 A. No.
47



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1 MS SAUNDERS: Q. That measurement, is that part of the
2 reason why you might take it on yourself to print out the
3 bail list?

4 A. Yes.

5
6 MS SAUNDERS: I have nothing further, Commissioner.

7
8 CHIEF COMMISSIONER: Q. Could I just ask this then, have
9 you been informed of the legal power that you have to enter
10 on to the premise, what its nature is?

11 A. I think in that training package I would have; I can't
12 remember everything.

13
14 Q. As you sit there, you can't?

15 A. Yes, I can't remember a specific power we have to
16 enter or knock on the door and conduct bail checks.

17
18 Q. I don't think this is controversial. There is
19 available to the public generally what is called an implied
20 licence. People generally expect that you might want to
21 visit to deliver a letter, deliver a pizza, make an inquiry
22 of someone in the house.

23 A. Yes.

24
25 Q. And there's an implicit licence by the occupier to
26 allow people to come and knock on the door, but that's just
27 an implicit licence. In other words, if there's a notice
28 on the front gate which says, for example, "Salesmen are
29 not to come on to the premises", all the members of the
30 public still have that licence, except if you're there as a
31 salesman. Do you follow?

32 A. Yes.

33
34 Q. I think you can take it from me there's nothing in the
35 Bail Act about that matter?

36 A. Yes.

37
38 Q. That makes it quite important, do you understand, if
39 someone has said, shall we say, "I don't want you police
40 coming to my house any more", and the police say, "Well, we
41 have to bail check", and they say, "Look, that's your
42 problem, but I don't want anyone to come to my house"?

43 A. Yes.

44
45 Q. That would legally mean that you couldn't go to the
46 house, providing it was the person who was the actual
47 occupier of the house, do you understand?



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1 A. Yes.
2
3 Q. Have you been told about that kind of rule?
4 A. Yes. Sorry, when you just mentioned the word
5 "implied"?
6
7 Q. Yes.
8 A. By consent, yes, yeah, in that training there was if
9 the implied consent is removed, I believe that we have to
10 leave.
11
12 Q. Right. And it may mean that you can't go back too; it
13 depends on the terms.
14 A. Yes.
15
16 Q. "I don't want police coming here again" implies
17 "I don't want any police coming"; correct?
18 A. Ever, yes.
19
20 Q. I assume, but correct me if I am wrong, that where
21 that happened, if you were informed that, you would note it
22 on COPS so that other police would know?
23 A. Yes, I think so, yes.
24
25 Q. It might have other consequences. You might want to
26 change the conditions of bail because if you can't any more
27 conduct curfew checks, then that might change your view
28 about whether the conditions were appropriate or indeed
29 whether bail should be granted at all?
30 A. Yes.
31
32 Q. But that's a different question, do you agree?
33 A. Yes, I agree with all that.
34
35 Q. If you were informed of that, you would put it on
36 COPS. Would you do anything else to bring it to attention?
37 A. Yes. I believe that you would email, firstly, those
38 intelligence officers who compiled the list and more than
39 likely the police prosecutors as well, or maybe the officer
40 in charge of that particular charge that they're on bail
41 for.
42
43 Q. Right.
44 A. Yes, like you said, if they're on curfew bail and the
45 police can no longer go there, is it appropriate to have
46 that condition still on their bail, yeah.
47



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1 Q. If another police officer had been told that, I'd just
2 put to you what seems to me to be the sensible thing to
3 have happened and then I will ask you to comment on that.

4 A. Yes.

5
6 Q. A police officer is told, "I don't want you police
7 coming again", so you should at least tell the intelligence
8 officer and put an entry on COPS, so he brings it to the
9 attention of people. I would have expected the
10 intelligence officer seeing that would not require a curfew
11 check despite that indication. You might have to change
12 the conditions of bail?

13 A. Change that, yes.

14

15 Q. But while you have that indication you would have
16 expected that the officers, the general-purpose officers
17 would not be tasked with a curfew check in the knowledge
18 that the licence had been removed. Does that make sense to
19 you?

20 A. Yes, yes, it does. Like in 2019 after that training
21 then yes, definitely you're right, yes.

22

23 Q. Right. Obviously it is a bit difficult to expect
24 officers, the ordinary officers who are going about their
25 duty in their shift, to make a check every time whether a
26 licence to enter the premises had been granted or not. You
27 would expect those higher up the line who were supposed to
28 be managing the process, that they would only give you
29 curfew checks where, so far as they knew at least, the
30 licence had not been revoked; is that fair enough?

31 A. Yes, that's --

32

33 Q. That's what you would expect?

34 A. Yes.

35

36 CHIEF COMMISSIONER: Are there any questions arising out
37 of that?

38

39 MS SAUNDERS: There are, Commissioner.

40

41 Q. Would you have expected that in 2014?

42 A. In 2014? No, I wouldn't have expected that.

43

44 MS SAUNDERS: Can I show the witness a document, it is
45 8445650.

46

47 CHIEF COMMISSIONER: Would you repeat that number?



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MS SAUNDERS: 8445650, which is at tab 21.

CHIEF COMMISSIONER: I should say that all these are confidential exhibits but redacted copies will be placed on the website in due course, made available, and we'll discuss what should be redacted at that point.

MS SAUNDERS: Q. Have you got that on the screen in front of you?

A. Yes, I do.

CHIEF COMMISSIONER: Q. Is it big enough? Can you read it?

A. Yes.

Q. It is a bit difficult.

A. The small part on the right, is that the same?

MS SAUNDERS: Q. It is the same, so just read the part that --

A. Yes, I can read the left, yes.

Q. Have you seen that document before?

A. No.

Q. Were you ever advised that [CU1] had written to withdraw any implied consent?

A. From memory, no, but I did see an email over the last few days that an intelligence officer -- I went and saw them about bail checks that I had conducted and there was a print-out of an email not containing that letter but I think the general gist that they've withdrawn the consent for us to go to that house.

Q. Sure. Who was that --

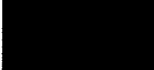
CHIEF COMMISSIONER: Q. Would that concern this individual or another?

A. No, this individual.

MS SAUNDERS: Q. Was that email from 2014?

A. Yes.

Q. Who sent that email?

A. I believe it was Inspector 



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1 Q. Do you know who it was to?
2 A. To the Newcastle City Local Area Command group
3 message, to everyone in the LAC.
4
5 Q. Is that every officer or the leadership team?
6 A. Yeah, every officer, I think.
7
8 Q. You would seen that at the time?
9 A. I think so, yes.
10
11 Q. Do you see the date on that? It is before you went to
12 perform your bail check?
13 A. Pardon?
14
15 Q. This --
16 A. On, this yes.
17
18 Q. Was that email sent before you performed your bail
19 check?
20 A. I don't recall the exact date, around that time.
21
22 CHIEF COMMISSIONER: Q. The email from Mr [REDACTED] was
23 dated when?
24 A. It was 2014. I think it was around the time, maybe
25 before, or that August/September timeframe 2014, I don't
26 remember exactly.
27
28 Q. You just got that recently?
29 A. I just looked at it recently.
30
31 Q. You looked at it recently?
32 A. Yes, it had been printed out. Yes, like I said, I did
33 some research in relation to today.
34
35 Q. And this is part of your preparation?
36 A. Yes, someone from intel said there was an email from -
37 I'll try to find it, printed it off and gave it to me.
38
39 Q. I would like to see whatever it was that you
40 consulted, including that email for the purpose of giving
41 your evidence?
42 A. Yes.
43
44 Q. So when we adjourn in due course, Mr Dunstan over
45 there, who is the solicitor - perhaps Mr Viney, perhaps it
46 is easier, if we communicate with you would you arrange for
47 those documents or print-outs made available to the



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1 Commission in due course.
2
3 MR VINEY: I'll get some instructions, yes, Commissioner.
4
5 CHIEF COMMISSIONER: Q. I'm not suggesting you've done
6 anything wrong, by the way, it's a perfectly reasonable
7 that you should refresh your memory. I want to know what
8 you have refreshed your memory with?
9 A. Yes, that's fine.
10
11 MS SAUNDERS: Q. That email was send to every officer in
12 your command?
13 A. I believe so.
14
15 MS SAUNDERS: I tender that document, Commissioner.
16
17 CHIEF COMMISSIONER: Very well.
18
19 MS SAUNDERS: I didn't tender the other two.
20
21 CHIEF COMMISSIONER: We've got three, I think.
22
23 **EXHIBIT #1 CONFIDENTIAL EXHIBIT BARCODED 8490969**
24
25 **EXHIBIT #2 CONFIDENTIAL EXHIBIT BARCODED 8440972**
26
27 **EXHIBIT #3 CONFIDENTIAL EXHIBIT BARCODED 8445650**
28
29 CHIEF COMMISSIONER: They are for the present confidential
30 exhibits.
31
32 MS SAUNDERS: There is one further document, it's 8445652,
33 which is tab 22.
34
35 CHIEF COMMISSIONER: Do you want to show that to the
36 witness?
37
38 MS SAUNDERS: Yes, all right.
39
40 Q. Just the part on the left that's legible?
41 A. Yes.
42
43 Q. Take a moment to read it. When you're done, let me
44 know if you've seen this document before?
45 A. I'm finished.
46
47 Q. Have you seen that document before?



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A. No.

Q. The email we were discussing before it might also be about this document?

A. Yes, I think so.

Q. Were you ever advised, at any point, that [CU1] had essentially said the police weren't allowed to come on to his property?

MR HUTCHINGS: I object. Just in relation to that, there's no evidence that C1, who has just been identified --

CHIEF COMMISSIONER: There is to be no publication of that name.

MR HUTCHINGS: There's no identification that C1 can be described as enjoying any dominion over "his property".

CHIEF COMMISSIONER: No. We're asking what he said. He may have claimed it or not claimed it, but I think so far the question is admissible. Whether in fact he does or not is entirely a different question.

MR HUTCHINGS: Thank you, Commissioner.

CHIEF COMMISSIONER: That's a complicated feature here.

MS SAUNDERS: Yes.

Q. I am just asking what you have and haven't been told, officer. Were you ever advised that [CU1] had withdrawn permission for the police to enter his property?

A. Not to my recollection.

Q. Have you ever been advised that any person on bail has withdrawn permission for police to enter their property?

A. Again, not to my knowledge.

Q. To date?

A. Yes, I have seen the email recently that, yeah, but --

Q. I just want to be clear about the question. I'm not just asking about 2014 now, apart from the email you've seen recently, do you recall ever being advised that any person had withdrawn permission for the police to enter



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1 their property?

2 A. No, only recently and that person had withdrawn
3 consent.

4
5 MS SAUNDERS: I tender the document, Commissioner.
6

7 **EXHIBIT #4 CONFIDENTIAL EXHIBIT BARCODED 8445652**
8

9 MS SAUNDERS: I have no further questions.
10

11 CHIEF COMMISSIONER: Yes. Ms Goodhand, I will give you
12 leave to ask questions but not to cover the same ground
13 that has already been covered. If you have additional
14 questions, you may ask them, subject of course to any
15 objection that might be made.
16

17 MS GOODHAND: Thank you.
18

19 CHIEF COMMISSIONER: Do you have any questions?
20

21 MS GOODHAND: I have some short questions.
22

23 CHIEF COMMISSIONER: Do so. You don't have to apologise.
24 I've given you leave for that very purpose.
25

26 MS GOODHAND: Thank you.
27

28 **<EXAMINATION BY MS GOODHAND:**
29

30 Q. Just in relation to the COPS event, you gave some
31 evidence that you would go back and enter that information
32 into the COPS database and create the COPS event. When you
33 attended at the actual property did you take notes in your
34 police notebook?

35 A. Not in my notebook. The bail list which I referred to
36 generally how it was and is done you have the list, write
37 on a simple, like the time of attendance and a tick if the
38 person presented at the door and if they didn't, a cross
39 and then that would be enough to create the report later
40 from that.
41

42 Q. When you were on duty it is the case that you wear a
43 police radio --
44

45 MR HUTCHINGS: I object. It's difficult to see how that
46 fits within the scope of this inquiry.
47



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1 CHIEF COMMISSIONER: It might though. I will allow it.
2
3 MS GOODHAND: Q. You wear a police radio --
4
5 CHIEF COMMISSIONER: Just because I haven't thought of the
6 question doesn't mean it is outside the scope of the
7 inquiry. Yes, go on.
8
9 Q. Do you wear a police radio?
10 A. Yes, that's correct.
11
12 MS GOODHAND: Q. Does that police radio communicate back
13 to VKG?
14 A. Yes.
15
16 Q. Can other police on duty in your command hear you
17 communicate to VKG?
18 A. Yes.
19
20 Q. When you arrive at a particular address to do a
21 compliance curfew check, would it be the case that you
22 ordinarily communicate to VKG that you're about to get out
23 of the police car and what you're doing?
24 A. No, on most times on a bail check you don't record -
25 I don't tell radio or don't record it. You just turn up,
26 knock on the door, note what time you were there and then
27 leave. It's very rare, if ever the people would --
28
29 CHIEF COMMISSIONER: Q. It is the practice to contact
30 VKG?
31 A. No.
32
33 Q. Do I gather from that that by and large, it may be
34 different in different commands of course, these checks
35 were not regarded as particularly risky or dangerous; is
36 that right?
37 A. Yes, generally speaking.
38
39 Q. If something were a risk or dangerous, you certainly
40 would, would you not?
41 A. Yes.
42
43 Q. So that someone is keeping an eye on you, as it were?
44 A. Yes. Some officers these days, on the what's called
45 the CAD, the dispatch systems, we've all the jobs, some
46 officers create a list of bail checks that they're going to
47 attend or are attending, like kind of as they're in that



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1 street and hit on the computer system "on scene" that
2 they're there, but you're not always looking at what other
3 car crews are doing.
4
5 Q. Right.
6 A. Yes, in terms of telling the radio, it's --
7
8 Q. It is a security management tool?
9 A. Yeah.
10
11 Q. Is that right?
12 A. Well, I think the reason people do it is so they've
13 got a list of --
14
15 Q. Just as a useful record?
16 A. Yes, that's there, instead of looking at their bit of
17 paper when they come back, they just look at that --
18
19 Q. Once you've put in your COPS entry would you throw
20 away the list?
21 A. Yes.
22
23 Q. The piece of paper you'd just throw away?
24 A. Yes.
25
26 CHIEF COMMISSIONER: Yes.
27
28 MS GOODHAND: I have no questions.
29
30 CHIEF COMMISSIONER: Thank you.
31
32 MR HUTCHINGS: I have no questions, Commissioner.
33
34 CHIEF COMMISSIONER: Do you have any questions, Mr Viney?
35
36 MR VINEY: No, Commissioner.
37
38 CHIEF COMMISSIONER: Depending on what we see when we've
39 got the documents we've asked for we might need to have you
40 back, but for the present you're free to go. Although it
41 has been a public hearing you ought not to discuss your
42 evidence, do you understand that, with any of the other
43 officers?
44 A. Yes, I understand.
45
46 CHIEF COMMISSIONER: Very well. Thank you. You're free
47 to go. We'll take the luncheon adjournment and resume at



1 1.45.

2

3 MS SAUNDERS: Yes, Commissioner.

4

5 **LUNCHEON ADJOURNMENT**

6

7 **UPON RESUMPTION**

8

9 CHIEF COMMISSIONER: Officer, you're still bound by your
10 former oath. Do you understand that?

11 A. I understand.

12

13 CHIEF COMMISSIONER: Yes.

14

15 MR VINEY: I will just assist you by forming you that
16 Officer 1 over lunch produced some documents which I have
17 passed on to counsel assisting.

18

19 CHIEF COMMISSIONER: Yes, thank you.

20

21 MR VINEY: They were copies of exhibits 1 and 2 already
22 before you Commissioner, a COPS entry of 30 October 2014
23 ending 146 and the emails that he referred to in his
24 earlier evidence.

25

26 CHIEF COMMISSIONER: Thank you.

27

28 MS SAUNDERS: It is those documents that I want to ask you
29 some questions about officer. Could I show you first the
30 document behind tab 73, which is barcode range 8449316 to
31 9317.

32

33 Q. Is that on the screen before you?

34

35 A. Yes.

36

37 Q. Can you identify this document for me, officer?

38

39 A. My knowledge of it?

40

41 Q. Yes.

42

43 A. Yes. The other day I approached the intelligence
44 officers at Waratah police station to try to get some kind
45 of download of bail compliance checks I was involved with.
46 They asked if I had to go down to Sydney this week and
47 I said, "yeah". They said, "Okay there's also an email
that was circulated. We'll print that off." Just gave it
to me as well, so that's what that document is.



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1 Q. The first email, the page currently before you, had
2 you seen this email before?
3 A. I can't recall.
4
5 Q. Were you aware of any orders made in respect of [CU1]
6 by the Newcastle Local Court?
7 A. No.
8
9 Q. Could we go to the second page of that document. Is
10 this the email that you were referring to earlier in your
11 evidence?
12 A. Yes, that's correct.
13
14 Q. And this email where it says in the "to line" "MDL New
15 City", does that mean it has been sent to everyone in the
16 Newcastle Area Command?
17 A. Yes, that's correct.
18
19 Q. So you would have seen this at the time?
20 A. Possibly.
21
22 CHIEF COMMISSIONER: Q. Why only possibly?
23 A. Well, sorry probably. A lot of emails that we do
24 receive, sometimes you don't view them for whatever reason,
25 don't read them.
26
27 MS SAUNDERS: Q. You would have --
28
29 CHIEF COMMISSIONER: Q. It is not likely but not
30 necessarily?
31 A. More than likely.
32
33 Q. Just before that, who is Mr [REDACTED]?
34 A. He was our crime manager at the time.
35
36 Q. Still the crime manager?
37 A. No, not at our command.
38
39 Q. All right. And Mr [REDACTED]?
40 A. Mr [REDACTED], he was our superintendent, our commander
41 at the time, Superintendent [REDACTED]
42
43 Q. But at present not?
44 A. Not at present, no.
45
46 Q. Inspector [REDACTED] what rank was he?
47 A. Duty officer, inspector.



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Q. And still?
A. I think he's still at our - yeah, at Newcastle.

Q. What about Inspector [REDACTED]?
A. I don't know who that is.

Q. It doesn't mean anything to you. What about [REDACTED]?
A. She's a police prosecutor, maybe head of the police prosecutors in Newcastle.

Q. And [REDACTED]?
A. I'm not sure who that is.

Q. You don't know who that is?
A. No.

CHIEF COMMISSIONER: Thank you. Yes, go ahead.

MS SAUNDERS: Q. Could I show the witness a document behind tab 74, starting at barcode range 8449318. I'll show you a page of that document. This is a third COPS entry in addition to the ones we discussed earlier; is that right?
A. Yes, correct.

Q. It is another bail curfew check conducted by you on [CU1]?
A. That's correct.

Q. That was on 29 October 2014?
A. In the narrative it says 30th October. Yes, that's the document, yes.

Q. 0001?
A. Yes, sorry.

Q. But that's after you received the email we were discussing a moment ago, isn't it?
A. Yes.

Q. Why did you still conduct the bail check?
A. I just went about my duties as per normal. If it was on the bail list, like I discussed before, and we attended to the bail checks from the bail list, whether or not it was tasked from a supervisor on that date or not, I don't

Edited transcript 10/09/2019.



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1 know, by, yeah, pretty much it was on that curfew bail list
2 and nothing to say that don't conduct them at this address,
3 then we would go and do the checks.
4

5 CHIEF COMMISSIONER: Q. I suppose there are two
6 possibilities. The first one is that you were aware of the
7 email, and consequently, that you were aware that your
8 permission to enter on to those premises was revoked and
9 therefore, that you conducted that bail check knowing you
10 had no entitlement to be on the property. That's one
11 possibility?

12 A. Yes.
13

14 Q. What do you say about that? Is that likely?

15 A. Oh, it's highly unlikely. If we knew --
16

17 Q. All right. The other possibility is that you were not
18 aware of the email and that you just thought the bail check
19 was just a conventional bail check with no particular
20 qualifications. So which of the two possibilities?

21 A. Yes, the second option. If there was something that
22 we were not supposed to go to that address we wouldn't have
23 went to that address, having knowledge of that.
24

25 Q. Let's just go back a step. Does it follow then that
26 the assignment of your duties which included the bail check
27 on [CU1] was, first of all, done by another officer, yes?

28 A. This one?
29

30 Q. Yes.

31 A. Well, he created the report, yes, on the system.
32

33 Q. No, no, sorry, we're at cross-purposes. You performed
34 a bail check after this email had been sent. You tell me,
35 as I understand it, you are almost certain that you had not
36 read it before you did the bail check?

37 A. That's correct.
38

39 Q. Am I right?

40 A. Yes.
41

42 Q. The system is that you would have received, one way or
43 another, a direction to do this bail check; correct?

44 A. Yes.
45

46 Q. From which it follows that the person who gave you
47 that bail check, on the assumption that person had the



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1 email, took no notice of it; correct?
2 A. If they had seen it, like the email?
3
4 Q. Yes, if they had seen it they ignored it?
5 A. Yes, well I'm --
6
7 Q. Would you not have expected that person to have let
8 you know if they had read the email?
9 A. Yeah, I would hope that they would let --
10
11 Q. You wanted to act lawfully as far as you know about
12 it?
13 A. Yes, if they were aware that we were lawfully to go
14 then they would hopefully tell us.
15
16 Q. So the two crucial questions become, as I see it, (a)
17 whether you were aware or not, you tell me you don't
18 believe you were?
19 A. That's correct.
20
21 Q. And (b), whether the officer who assigned the duty to
22 you knew or not a matter about which you do not know;
23 correct?
24 A. Correct.
25
26 Q. But had that officer been aware, you would have
27 expected that officer to tell you?
28 A. Correct.
29
30 Q. Or at least not put that bail check on your assigned
31 duties?
32 A. Correct, yes.
33
34 Q. You don't know, as you sit here, I suppose, who that
35 officer was, or do you recall?
36 A. The supervisor on that night?
37
38 Q. Yes.
39 A. No, I don't know.
40
41 Q. But it would have been a sergeant, an inspector, what?
42 A. A sergeant or an acting sergeant.
43
44 Q. And they would have held the position of what, duty
45 officer or --
46 A. Supervisor, shift supervisor.
47



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1 Q. Shift supervisor?
2 A. Yes.
3
4 Q. Shift supervisor is usually a sergeant or acting
5 sergeant?
6 A. Yes.
7
8 Q. Above that sergeant is an inspector?
9 A. Yes.
10
11 Q. But the inspector, as I understand you to tell me,
12 does not do that job of actually assigning duties on a
13 shift; correct?
14 A. Correct.
15
16 CHIEF COMMISSIONER: All right. Go on.
17
18 MS SAUNDERS: I have nothing further, Commissioner.
19
20 CHIEF COMMISSIONER: Does anyone have any questions
21 arising out of that? Thank you. You're free to go thank
22 you.
23
24 <THE WITNESS WITHDREW
25
26 MR HUTCHINGS: Could I seek hard copy access to those two
27 documents?
28
29 CHIEF COMMISSIONER: Yes. Don't have any problem.
30 Perhaps Mr Viney you would be good enough to - would you
31 mind arranging for that?
32
33 MR VINEY: Yes, I've taken some photocopies of that.
34
35 MR HUTCHINGS: I'm obliged.
36
37 MR VINEY: Could I be excused in the meantime
38 Commissioner, now my client has finished.
39
40 CHIEF COMMISSIONER: Yes. I should tell you we'll
41 naturally be calling people I named.
42
43 MR HUTCHINGS: I understand.
44
45 CHIEF COMMISSIONER: But that's for another occasion,
46 obviously.
47



8442241

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1 MR HUTCHINGS: Yes, thank you.

2

3 CHIEF COMMISSIONER: Very well, thank you.

4

5 MS SAUNDERS: We're ready for officer 2. Perhaps Mr Oates
6 could have the same discussion about the pseudonyms.

7

8 MR OATES: I've done that, Commissioner.

9

10 <OFFICER 2, sworn:

[1.55pm]

11

12 CHIEF COMMISSIONER: Q. Thank you, you may be seated,
13 officer. I am sure that Mr Oates - by the way I should say
14 I give you leave Mr Oates to appear for this witness.

15

16 MR OATES: Yes, Commissioner.

17

18 CHIEF COMMISSIONER: I give leave as previously to the
19 other legal practitioners mentioned. Thank you.

20

21 MR OATES: Could I indicate a declaration will be sought.

22

23 CHIEF COMMISSIONER: Q. Obviously, Mr Oates has told you
24 about your duties as a witness, but I do need to formally
25 tell you that, first of all, you must answer all questions
26 that are asked unless I tell you not to. You must provide
27 any documents that you're asked to provide again unless
28 I tell you not to. You can object either to answering a
29 question or to giving a document, but you still have to
30 answer the question or give the document, but the effect of
31 the objection is that that particular evidence cannot be
32 used against you except in disciplinary proceedings under
33 the Police Act. I assume that Mr Oates has explained this
34 to you?

35

36

37

38

39

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8442242

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1 Yes, thank you.

2

3

<EXAMINATION BY MS SAUNDERS:

4

5 MS SAUNDERS: Q. Officer, are you a currently serving
6 police officer?

7

A. I am.

8

9

Q. I just want to ask you some questions --

10

11

CHIEF COMMISSIONER: Q. Where are you stationed?

12

A. Waratah.

13

14

Q. And what is your rank?

15

A. Senior constable.

16

17

CHIEF COMMISSIONER: Thank you.

18

19

MS SAUNDERS: Q. Where is Waratah?

20

A. It's in Newcastle.

21

22

Q. Is Tuggerah Lakes also in Newcastle?

23

A. No.

24

25

Q. You were at Tuggerah Lakes for a few years when you
26 started in the force; is that right?

27

A. That's right.

28

29

Q. Whereabouts is that?

30

A. On the Central Coast.

31

32

Q. I see. Why did you move?

33

A. I wanted to be closer to home.

34

35

Q. When did you join the police force?

36

A. May 2001.

37

38

Q. You became a senior constable in 2006; is that right?

39

A. That's correct.

40

41

Q. And that's your current rank, I think you just said?

42

A. Yes.

43

44

Q. You're a I general duties officer?

45

A. Yes.

46

47

Q. Can you explain in layperson's terms what that means?



8442243

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- 1 A. It's a bit of everything, from domestics to car
2 accidents, deceased, stealings, malicious damages, yeah.
3
- 4 Q. What sort of shift pattern do you work?
5 A. Two days, two nights, 12 hour shifts.
6
- 7 Q. Are those 6am to 6pm and vice versa?
8 A. Yes.
9
- 10 Q. Could you just describe an average shift? What do you
11 do day-to-day? Start with what happens to you when you
12 first arrive at the station, how you're first tasked?
13 A. So I arrive, I get dressed, I go downstairs, put my
14 appointments on and my --
15
- 16 Q. By appointments you mean, what do you mean?
17 A. Firearm and cuffs and --
18
- 19 Q. I see.
20 A. Yes. And then I go into the sergeant's office and
21 that will have on the board what my duties are for that
22 day. I might be in the station or on the truck.
23
- 24 Q. If you're on the truck what sort of duties are listed
25 on the board?
26 A. What sort of duties?
27
- 28 Q. Yes. Does it just say you're on the truck or does it
29 say you're on specific things?
30 A. Yes, it will just say you're on this truck and who
31 you're working with.
32
- 33 Q. How do you get assigned specific tasks throughout the
34 day?
35 A. The team leader, the sergeant, will give me a task,
36 whatever he wants me to do.
37
- 38 CHIEF COMMISSIONER: Q. How is that task given, verbally
39 or do you get given a piece of paper?
40 A. Yes, verbally and sometimes you're given a piece of
41 paper.
42
- 43 Q. So this will be where say someone rings in and wants
44 some help or reports a crime or --
45 A. It could be, yes.
46
- 47 Q. A domestic violence case or something like that. The



8442244

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1 sergeant will see who is available in the station to attend
2 to it?
3 A. Yes.
4
5 Q. You might be one of those officers?
6 A. That's correct, yes.
7
8 MS SAUNDERS: Q. Is that the same system as in 2014?
9 A. Yes. Yes.
10
11 Q. One of the tasks that you performed in 2014 was bail
12 compliance checks; is that right?
13 A. Yes.
14
15 Q. Do you still perform those?
16 A. I have. I couldn't tell you when the last one I did.
17
18 CHIEF COMMISSIONER: Q. Would it be weeks or months ago?
19 A. I've only just come back from maternity leave, but two
20 and a half months ago, and I've done at least one, I think.
21
22 Q. Since you've come back?
23 A. Yes.
24
25 Q. How long were you away?
26 A. October last year to June, 19th June this year.
27
28 Q. So eight months?
29 A. Yes.
30
31 Q. Near enough?
32 A. Yes.
33
34 MS SAUNDERS: Q. How frequently were you doing bail
35 compliance checks in 2014?
36 A. I couldn't tell you. I'm not sure I'm sorry.
37
38 CHIEF COMMISSIONER: Q. Daily, weekly, monthly?
39 A. Probably at least every block.
40
41 MS SAUNDERS: Q. A four day block of shifts?
42 A. Yes, I would say.
43
44 CHIEF COMMISSIONER: Q. I think overwhelmingly, of
45 course, curfews are during the night, not during the day;
46 is that right?
47 A. Yes.



8442245

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1
2 Q. And so you would be making checks but only when you
3 happen to be on the night shift?
4 A. Yes.
5
6 Q. Right?
7 A. Yes.
8
9 Q. That would follow. By and large, were you day shift
10 or night shift or fifty-fifty?
11 A. Probably fifty-fifty.
12
13 Q. Right.
14 A. Yes.
15
16 MS SAUNDERS: Q. Were you working the two day, two night
17 roster usually?
18 A. Yes.
19
20 Q. Roughly speaking, in 2014 on one of your two night
21 shifts in a block you'd do some bail compliance checks?
22 A. Yes.
23
24 Q. I see. How would you be instructed to do those?
25 A. One of the sergeants would give me, if I was on a car
26 crew, or my partner, a sheet of - which is a list of people
27 that are on curfew bail and he'd highlight a couple with
28 whatever call sign our car is, or was, and ask us to go and
29 do those checks.
30
31 CHIEF COMMISSIONER: Q. Would that be a handwritten
32 sheet of paper or a print out?
33 A. It's a print out, yeah, a print out.
34
35 MS SAUNDERS: Q. Do you know how that sheet was
36 prepared?
37 A. I believe the intel unit prepares that sheet.
38
39 Q. And what information was on that sheet?
40 A. It's usually a picture of the person that's on bail,
41 their address, a charge number.
42
43 CHIEF COMMISSIONER: Q. Their name obviously?
44 A. Yes, sorry, a name. Charge number, whether it's
45 Waratah or Newcastle sector, and the times, the curfew
46 times.
47



8442246

8449388

1 MS SAUNDERS: Q. What training did you receive in how to
2 perform a bail compliance check?
3 A. Training? Just working with - observing senior police
4 over the years who have done those, yeah.
5
6 CHIEF COMMISSIONER: Q. Just following what other police
7 have done when you were following along?
8 A. Yes. Yes.
9
10 MS SAUNDERS: Q. What do you understand the purpose of a
11 bail compliance check to be?
12 A. Make sure the person's complying with whatever the
13 conditions of their bail.
14
15 Q. Why do you need to do that? It's all right if it
16 sounds like an obvious question, it probably is, but just
17 in your own words?
18 A. Crime prevention. Sorry, I'm having a mind blank.
19
20 CHIEF COMMISSIONER: Q. Take your time. Just relax.
21 We're not going to put you on the rack. Thumb screws are
22 prohibited.
23 A. Sorry, what was the question?
24
25 MS SAUNDERS: Q. You said that the purpose of a bail
26 compliance check was to make sure a person is complying
27 with the conditions of their bail?
28 A. Yes.
29
30 Q. Why do you need to do that?
31
32 CHIEF COMMISSIONER: Q. One of the reasons is you're
33 told to do it?
34 A. Yes, sorry.
35
36 MS SAUNDERS: Q. If you don't know the answer that's
37 fine, that's all you need to say that. Was it just the
38 fact that they were on bail that meant that bail compliance
39 checks were being done. Did you need anything else?
40 A. No, not - not - no, not that I --
41
42 Q. You were just told to check up on certain people?
43 A. Yes.
44
45 Q. As the Commissioner said, this tends to be at night?
46 A. That's right.
47



8442247

8449389

- 1 Q. A range of different times at night?
2 A. Yes.
3
4 Q. It depends on when you're able to with all your other
5 jobs?
6 A. Yes, that's correct, yes.
7
8 Q. You didn't always want to turn up at the same time; is
9 that right?
10 A. No. Yeah, no - yes, it's usually when I'm able to do
11 them, yeah. Yeah.
12
13 Q. It could sometimes be quite late at night?
14 A. It could be.
15
16 Q. It's not unusual to do a bail compliance check at a
17 house where all the lights are out?
18 A. Yeah, I guess. I guess.
19
20 Q. At a time where you might expect people to be asleep?
21 A. Yeah. Yes.
22
23 Q. Your job, when you're doing the check, is to find out
24 if they're there or not; is that right?
25 A. That's right.
26
27 Q. Is it just you knock and go or do you sort of try a
28 bit harder than that?
29 A. I usually knock and then go if we're unable to raise
30 anyone, yeah. Move on to the next job.
31
32 Q. You'd knock once, is that what you're saying?
33 A. Yeah, I do, yeah.
34
35 Q. Would you knock a number of times?
36 A. No, not really, no, I usually just --
37
38 Q. Have you ever seen anyone else?
39 A. Not that I can recall.
40
41 Q. What about knocking on the windows, have you ever seen
42 that?
43 A. I might have knocked on a window over the years, like,
44 if it's near the door.
45
46 Q. Sure. Just trying to wake people up?
47 A. Yes.



8442248

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1
2 Q. What about shining a torch in to see if anyone's
3 there?
4 A. No.
5
6 Q. Have you ever seen anyone do that?
7 A. No. No. I probably would have a torch so we can see
8 where we're going.
9
10 CHIEF COMMISSIONER: Q. Right, but what's your view? Do
11 you think you would be entitled to shine a light through a
12 window to see if anyone was in there?
13 A. Maybe if the window is right near the door, like, and
14 it was just --
15
16 Q. Yes.
17 A. -- might but yeah, I can't think of a --
18
19 Q. You can't think of a situation where you would do it,
20 is that what you're saying, or --
21 A. Like me personally?
22
23 Q. You've never done it yourself?
24 A. I have had a torch but I don't --
25
26 Q. I understand that. What I'm asking you is what your
27 view, do you think it is appropriate for an officer
28 conducting a bail check to shine a light through a window
29 if you're unable to raise someone by knocking on the door?
30 It's not a trick question.
31 A. Yeah, I would --
32
33 Q. I'm just trying to find out what your attitude is?
34 A. It depends on, I guess, the circumstances, why you're
35 there and how badly do you --
36
37 Q. Well we know why you're there, you're there for a bail
38 check?
39 A. For a bail check?
40
41 Q. Yes.
42 A. I'm not sure. I can't - I'm sorry, I --
43
44 Q. Is it fair to say that you've never asked yourself the
45 question?
46 A. Yeah, I - no. Yeah, sorry.
47



8442249

8449391

1 CHIEF COMMISSIONER: Yes, go on.
2
3 MS SAUNDERS: Q. Just going back a few steps, it is not
4 a social call, you're there to find out if someone is
5 complying with their bail; is that right?
6 A. Yes, yes, that's right.
7
8 Q. It's a pretty significant matter if they're not there?
9 A. Yeah. Well, if they're not there they're not
10 complying - they could potentially be not complying with
11 their bail, so --
12
13 Q. Is it fair to say that you wouldn't just politely
14 knock on the door once, particularly if it was quite late,
15 and then give up?
16 A. Sorry, what was that?
17
18 Q. Imagine it is one of the later visits, say it is one
19 or two in the morning?
20 A. Yes.
21
22 Q. People are almost certainly going to be asleep; would
23 you agree with that?
24 A. Yes, yes, they would be, yes.
25
26 Q. They're on bail, you have a job to do. I would just
27 knock once politely or would you make an effort to wake
28 them up and find out if they were there?
29 A. Me personally, I'd just knock and do what I have to do
30 and then, like I say, I'd move on to the next thing. It's
31 an not a - like for me the other things take priority my
32 own things.
33
34 Q. Have you observed people conducting a bail check in a
35 different way than you do personally?
36 A. No.
37
38 Q. Are you aware of it?
39 A. Aware of?
40
41 Q. People having a different attitude or approach to
42 these things?
43 A. No. No.
44
45 Q. I want to ask you about some specific bail checks you
46 completed in 2014?
47 A. Mmm-hmm.



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8449392

1
2 Q. Could I show the witness document 8440948. It will
3 come up on the screen in a second before you.
4 A. Mmm-hmm.
5
6 Q. Just take a moment to read that and refresh your
7 memory. Could we scroll down to the second page just
8 initially. Do you see the person identified there as the
9 person of interest?
10 A. Yes.
11
12 Q. We are referring to them here as [CU1], when I say
13 that that's who I'm talking about. Could we just go up to
14 the first page, please. You have seen a document like this
15 before, officer?
16 A. Yes.
17
18 Q. What is it?
19 A. It's a COPS event.
20
21 Q. How do you create those?
22 A. On our COPS system.
23
24 Q. Yes.
25 A. We create --
26
27 Q. What do you personally do?
28 A. I type in "EVECRE" which is event create and then
29 follow the bouncing ball from there.
30
31 Q. Where it says "CAD incident bail check" do you type
32 that in yourself or is it a drop-down menu?
33 A. Sorry, where is that?
34
35 Q. On the first page. Do you see your name is there
36 twice?
37 A. CAD?
38
39 Q. Sorry, at the top of the page, just hold the screen
40 where it is, do you see "event classification" at the top?
41 A. Yes.
42
43 Q. If we go down a little bit, do you see "CAD incident",
44 about five or six lines.
45
46 CHIEF COMMISSIONER: Q. On the left-hand side?
47 A. Incident, yes, bail check, yes.



8442251

8449393

1
2 MS SAUNDERS: Q. Do you type that in yourself or do you
3 select it from a drop-down menu?
4 A. It is from a drop-down menu.
5
6 Q. This is a record of a bail check you conducted on
7 [CU1] on 3 June 2014; is that right?
8 A. Yes.
9
10 Q: Do you remember what happened?
11 A. Do I remember this?
12
13 Q. Yes.
14 A. No, honestly, no.
15
16 CHIEF COMMISSIONER: Q. Could I just ask you under the
17 CAD incident, do you see it, there is a title "priority"
18 and it says "4". What does that indicate?
19 A. It's not a priority, it's low on the list of
20 priorities. Yes, it's not --
21
22 Q. So the list of priorities is 1 to 5 or 1 to 6 or
23 something?
24 A. Yes, there's priority 2 which is urgent, priority 2
25 which is semi and priority 4. It comes up automatically
26 when you select bail check.
27
28 Q. In effect, priority 4 is if you're not busy with
29 anything else, is that what it amounts to? If you've got
30 some spare time this is what you do?
31 A. Yes. Yes.
32
33 Q. Is that right? More or less, obviously I oversimplify
34 it?
35 A. Yes, there's a whole - there's admin, serving files,
36 they're all 4s, they all come up as 4 on the thing
37 automatically, yes, I'm pretty sure.
38
39 CHIEF COMMISSIONER: All right. Thank you.
40
41 MS SAUNDERS: Q. Is the reason perhaps that you don't
42 recall it because partially the time that's passed but
43 partially because it was quite routine for you to be
44 performing bail checks of this kind?
45 A. Yes.
46
47 Q. You've attended at 12.50am on a Tuesday morning. Is



8442252

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1 there anything unusual about that? If the answer is no,
2 the answer is no, it's not --
3 A. No, I don't - no.
4
5 Q. It's just the middle of your shift really?
6 A. Yeah, pretty much.
7
8 Q. It's more likely than not that the house was dark at
9 that time of the morning?
10 A. Could have been, probably.
11
12 Q. If it had been you would have knocked on the door; is
13 that right?
14 A. Yeah.
15
16 Q. And on this occasion you knocked and there was no
17 answer; is that right?
18 A. Yes.
19
20 Q. In your case, because of the way you personally
21 conduct these bail checks, it's likely that you just
22 knocked once; is that fair?
23 A. Yes. Yes.
24
25 Q. You said earlier you did bail checks when you were
26 given the curfew bail list by your sergeant; is that right?
27 A. Yes.
28
29 Q. Would you ever print that list out by yourself and do
30 them of your own initiative?
31 A. I have printed it out, usually, probably, if I've lost
32 the other - misplaced it, yes.
33
34 Q. Would you do a bail check in circumstances where
35 you've --
36 A. Usually own when I've been told to do it.
37
38 Q. More likely than not you've been direct to do it here?
39 A. Yes.
40
41 CHIEF COMMISSIONER: Q. Can I just ask this: You've told
42 us about knocking, would you call out, for example, police
43 bail check or any verbal communication or just the knock?
44 A. Just a knock, yes.
45
46 MS SAUNDERS: Q. Were you aware at the time, if you can
47 recall, that there had been a check performed at 2am the



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1 day before?
2 A. No, I'm sorry, I --
3
4 Q. Would you have any way of being aware of that at the
5 time? I just need you to answer verbally for the
6 transcript.
7 A. No. Sorry.
8
9 Q. If you had known would you still have conducted the
10 bail check? If you'd known that someone had been out
11 yesterday and you'd nevertheless been told to go out again,
12 would you still have done it?
13 A. Probably not, if it's already been done.
14
15 Q. The day before?
16 A. Maybe, or maybe not, I couldn't --
17
18 Q. I can make it a little simpler for you.
19 A. Thanks.
20
21 Q. It's Tuesday, 3 June 2016?
22 A. Yes.
23
24 Q. You turn up to your shift and you're given the bail
25 curfew list and told to do a check on [CU1]?
26 A. Yeah.
27
28 Q. Yes. Would you have been told any other information
29 at that point, just in the usual course?
30 A. No, just do - just - there's your list.
31
32 Q. If you had known that on Monday, the day before,
33 someone had been out, done a check and he was there, would
34 you still have performed the bail check as asked?
35 A. I might have because it is a different day, I might
36 have, or - yeah.
37
38 Q. Would it have concerned you particularly if someone
39 had been out the day before?
40 A. No, I don't --
41
42 Q. It wouldn't necessarily be unusual to do repeated bail
43 checks on consequent days?
44 A. I just do what I'm told, or whatever is - whatever
45 ones they pick for me that's the ones I do.
46
47 CHIEF COMMISSIONER: Q. Having done one, though, that



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1 would satisfy it, you wouldn't go back again that night and
2 do another one?
3 A. No.
4
5 MS SAUNDERS: Q. All right. So he --
6 A. I would say no.
7
8 Q. He didn't answer, you generated the COPS report and
9 you would have finished your shift at 6am that day?
10 A. More than likely, yeah.
11
12 Q. Yes?
13 A. Yeah.
14
15 Q. And then you would have come back on shift if you were
16 on night shift again at 6pm?
17 A. Yes.
18
19 MS SAUNDERS: I tender that document.
20
21 CHIEF COMMISSIONER: Thank you. That will be exhibit 7.
22
23 **EXHIBIT #7 COPS EVENT BARCODED 8440948**
24
25 CHIEF COMMISSIONER: Q. Could I just ask you this,
26 though, if you got no response that could be due to a whole
27 lot of reasons, of course, they could just be too drunk to
28 respond?
29 A. Yeah, could be, could be, or --
30
31 Q. It could be a whole lot of possible reasons?
32 A. Could be, yeah.
33
34 Q. Would you then make it a point to go back later in
35 your shift or you would let it go, by and large?
36 A. If I - it depends if - if --
37
38 Q. On?
39 A. Time and what else you've got on, like, you know, to
40 follow up or --
41
42 Q. If you had spare time on your shift?
43 A. In that same shift would I --
44
45 Q. Yes.
46 A. No, no.
47



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1 Q. You wouldn't?
2 A. No, no, generally, no.
3
4 Q. Okay. So he either responded to enable you to say you
5 had complied or your report on COPS would say, "no
6 response"?
7 A. Yes.
8
9 Q. That would be it?
10 A. Yes.
11
12 CHIEF COMMISSIONER: All right. Thank you.
13
14 MS SAUNDERS: Q. Could we go to 8440954. This is
15 another COPS record from, again, 3 June 2014?
16 A. Yes.
17
18 Q. This time it is at 10.24 at night?
19 A. Mmm-hmm. Yes.
20
21 Q. Again, it is a check - I'm sorry?
22 A. Sorry?
23
24 Q. I didn't mean to cut you off?
25 A. Yep.
26
27 Q. Again, it's a check on [CU1]?
28 A. Yeah. Yes.
29
30 Q. Really what has happened here, although it is the same
31 day, on one shift, your Tuesday shift - your Monday shift
32 I should say, you've turned up just after midnight and he
33 wasn't there, you've gone off shift and then you've come
34 back to check; is that right?
35 A. Yes. Yes.
36
37 Q. Do you recall anything about this bail check?
38 A. No, I'm sorry.
39
40 Q. That's all right.
41 A. I'm sorry.
42
43 Q. Would you have done that - you've gone back again,
44 would you have done that on your own initiative or would
45 you have needed to have been tasked?
46 A. I probably - with these I'm usually tasked, the only
47 time I do them is when I'm told.



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47

Q. I said it was 10.24 but according to the note it was 9.30pm earlier in the evening?

A. Yes.

MS SAUNDERS: I tender that document.

CHIEF COMMISSIONER: Yes. Exhibit 8.

EXHIBIT #8 COPS ENTRY BARCODED 8440954

MS SAUNDERS: Could we go back to exhibit 7.

CHIEF COMMISSIONER: Q. Do you recall - this is in 2014 - the name of the intelligence officers who would have originated the task?

A. I can tell I who I - who was working in that department, in that unit, but whether or not they did it I don't know.

Q. We can find out. What's the name?

A. [REDACTED], he's a senior constable. He works in that unit. And Sergeant [REDACTED] and there was someone else.

Q. Just see if you can think of the name.

A. [REDACTED], I think. I think - yeah, I can't think of anyone else.

MS SAUNDERS: Q. Could we just scroll down a little. It is the section entered by you explaining what happens, officer, and there's another note in that entry from 10.26 - 22.26, can you see that?

A. Yes.

Q. So is it right that after your second visit you made one COPS entry for that visit but you've also gone back to update the earlier entry?

A. Yes, that's what it looks like.

Q. Because he explained why he didn't answer the previous day?

A. That's right.

Q. "Didn't hear you knocking"?

A. That's what it says, yes.



8442257

8449399

1 Q. Have you done any training recently about bail checks,
2 officer?
3 A. Not that I can recall. Like, I've only been back for
4 a couple of months.
5
6 Q. Of course. Do you recall doing any formal training on
7 bail or bail checks?
8 A. There's your online lectures, that - yeah.
9
10 Q. Have you done one of those about bail checks?
11 A. I'm sure I would have. There's a list - there's a
12 fairly long list of things.
13
14 Q. Sure.
15 A. Off the top of my head I don't know. I'd have to have
16 a look at it. I'd say --
17
18 Q. You don't recall?
19 A. No.
20
21 Q. Do you recall ever being notified that a person on
22 bail had withdrawn permission for the police to attend
23 their property to perform a bail check?
24 A. No.
25
26 Q. Have you ever seen an email like that?
27 A. No.
28
29 Q. Could I show the witness exhibit 5. You've been at
30 Newcastle since 2010; is that right?
31 A. I was at Waratah, I arrived at Waratah in 2004. I was
32 there for six years.
33
34 Q. Around --
35 A. Over six years and then I went to Newcastle. And then
36 I've been back and forth between the two.
37
38 Q. Could we just scroll down to the second page of this -
39 okay. Take a moment to read that to just refresh your
40 memory.
41 A. Mmm.
42
43 CHIEF COMMISSIONER: Q. Have you read that?
44 A. Yeah.
45
46 Q. Do you recall ever seeing that?
47 A. Honestly, no, I --



8442258

8449400

1
2 Q. Would you have a look at the addressee right up the
3 top. That would have gone to your email account, would it
4 not? That's your address up there, generally to staff of
5 course; is that right?
6 A. Yeah. Yeah all of - yeah.
7
8 Q. Is there any reason why you wouldn't have read it?
9 A. I'm sorry, I don't recall reading it. I'm not sure.
10 I couldn't tell you why, yeah.
11
12 Q. Well, it's from an inspector. Wouldn't you read these
13 emails as a matter of course, it's the main method of
14 communicating, isn't it?
15 A. Yeah, yeah, that's right.
16
17 Q. Can you think of a reason you would not have read it?
18 A. Maybe - I might have been sidetracked, I might have
19 been doing another job, but I don't - yeah. But I - yeah
20 I might have just missed it. I don't --
21
22 Q. I understand you to be saying as you sit there you
23 don't know whether you read it or not?
24 A. I don't recall reading --
25
26 Q. You don't recall reading it?
27 A. No.
28
29 Q. Is that because you have a failure of recollection or
30 because you did not in fact read it? In other words it --
31 A. I probably didn't read it.
32
33 Q. -- are you saying I don't know whether I did or not?
34 A. I probably didn't read it.
35
36 Q. You probably didn't read it?
37 A. Yes.
38
39 Q. Do you think you might be likely to have recollected
40 it had read it at the time?
41 A. Not necessarily, sorry, it's five years ago.
42
43 Q. No, that's all right, this is a long time ago.
44 A. Yeah.
45
46 Q. Do you understand the thrust of it, do you? What is
47 it saying, in effect.



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8449401

1 A. That permission to attend the premises has been
2 withdrawn.
3
4 Q. And then the second paragraph says?
5 A. Police no longer have a lawful right to access.
6
7 Q. To routinely check compliance with the curfew
8 conditions?
9 A. Yes.
10
11 Q. At this property alone?
12 A. Yes.
13
14 Q. What do you think that means, in substance?
15 A. That you can't do routine bail checks.
16
17 Q. Sorry?
18 A. You're not allowed to do routine bail checks.
19
20 Q. At that house?
21 A. At that house.
22
23 Q. Had you read it that message would you have
24 understood?
25 A. Yes. Yes.
26
27 MS SAUNDERS: Q. It is fair to say that you really
28 relied on the person tasking you to tell you what you were
29 and weren't allowed to do?
30 A. Sorry, what was that?
31
32 Q. Would it be fair to say that you really relied on your
33 sergeant to tell you who to bail check?
34 A. Yeah. I --
35
36 Q. You'd expect that sergeant to not put someone on the
37 list that had withdrawn permission like that?
38 A. You'd have to ask them, I'm sorry, yeah, sorry.
39
40 Q. What would you expect?
41 A. Yeah, I guess so.
42
43 Q. You really just turn up and do what you're told?
44 A. Yeah. Yeah, I do whatever - mostly - yeah.
45
46 Q. You've done maybe one --
47 A. Sorry?

.09/09/2019

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OFFICER 2 (Ms Saunders)

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8442260

8449402

1
2 CHIEF COMMISSIONER: Q. Sorry, you sound a bit
3 uncertain. Did you turn up and do what you were told? It
4 is not a complicated question.
5 A. Yes. Yes. Yes.
6
7 MS SAUNDERS: Q. You said you've done maybe one bail
8 check since you've come back from leave?
9 A. Yes.
10
11 Q. Has the process changed at all?
12 A. I don't - I - no, I don't believe so, no.
13
14 CHIEF COMMISSIONER: Q. You've noticed no change?
15 A. No, I've noticed no change, sorry.
16
17 MS SAUNDERS: I have nothing further, Commissioner.
18
19 CHIEF COMMISSIONER: Yes. Mr Oates, do you have any
20 questions?
21
22 MR OATES: I do not, Chief Commissioner.
23
24 CHIEF COMMISSIONER: Ms Goodhand, do you have any
25 questions?
26
27 MS GOODHAND: No, thank you, Commissioner.
28
29 MR HUTCHINGS: No, Commissioner, thank you.
30
31 CHIEF COMMISSIONER: Q. Thank you. You're free to go.
32 It's likely we don't need to call you again but if we get
33 more information which we need to check with you in that
34 event you might have to come back.
35 A. Okay.
36
37 Q. But very likely you won't have to come back. Although
38 this is a public hearing you must not discuss your evidence
39 with any person. Do you understand that?
40 A. Yes.
41
42 CHIEF COMMISSIONER: Very well. I will adjourn.
43
44 MR HUTCHINGS: Commissioner, sorry, before you rise --
45
46 CHIEF COMMISSIONER: You can go. There's no need for you
47 to stay, Mr Oates.



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MR OATES: If the Commission please.

MR HUTCHINGS: Thank you, Commissioner. In the course of evidence today Senior Constable 1 gave evidence about an iLearn product training.

CHIEF COMMISSIONER: Yes.

MR HUTCHINGS: That's a micro-learn course and I propose to produce to the Commission this afternoon --

CHIEF COMMISSIONER: I was going to ask you in due course but thank you very much that would be helpful.

MR HUTCHINGS: There's also a nemesis dissemination in relation to bail that is relevant to that question so I propose to produce that to the Commission as well.

CHIEF COMMISSIONER: If you emailed them to Mr Dunstan that's probably adequate for our purposes.

MR HUTCHINGS: Hope it doesn't get caught in the firewall but if it does I'll communicate with Mr Dunstan and I'll make that available in some accessible form.

CHIEF COMMISSIONER: Yes, thank you very much.

<THE WITNESS WITHDREW

**AT 2.37PM THE HEARING WAS ADJOURNED TO WEDNESDAY,
11 SEPTEMBER 2019 AT 10.00AM**



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CERTIFICATE OF AUTHENTICITY

I, James Edwin Berman of EPIQ, hereby
certify that on Monday, 9 September 2019,
I transcribed the evidence of Officer 2
from page 58, line 12, to page 77, line 40.

Signed:

Dated:

9/9/19



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CERTIFICATE OF AUTHENTICITY

I, James Edwin Berman of EPIQ, hereby
certify that on Monday, 9 September 2019,
I transcribed the evidence of Officer 1
from page 18, line 12, to page 57, line 14.

Signed:

Dated:

9/9/19