



Hearing: Operation Almas

Before Ms Anina Johnson, Commissioner

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

On Friday, 5 December 2025 at 10.05am
(Day 3)

WITNESS INDEX

Scott Richard Tanner	302
Tracy Chapman	407



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1 THE COMMISSIONER: Good morning, Ms Sullivan.

2
3 We might just, for the record, take a note of who is
4 here from the Bar table this morning. There's been,
5 understandably, expected changes of faces over the time.
6 Perhaps I could just ask people to introduce themselves
7 again.

8
9 MR SMARTT: Yes, S-M-A-R-T-T for the Commissioner of
10 Police, appearing with Mr Falzon from NSW Police Force.

11
12 MR GOLLAN: If the Commissioner pleases, my name is
13 Gollan, G-O-L-L-A-N. I appear on behalf of Ms Chapman and
14 Mr Tanner who are giving evidence today, and I am in the
15 company of my instructing solicitor, Mr Warwick Anderson.

16
17 THE COMMISSIONER: Thank you. Mr Fishpool I know from the
18 professional standards command. Thank you, that just
19 clears up who is at the Bar table.

20
21 Ms Sullivan?

22
23 MS SULLIVAN: Thank you, Commissioner. I call
24 Superintendent Scott Tanner.

25
26 <SCOTT RICHARD TANNER, sworn: [10.10am]

27
28 THE COMMISSIONER: Have a seat, Superintendent.

29
30 Does your client seek an objection, Mr Gollan?

31
32 MR GOLLAN: Yes, he does, yes.

33
34 THE COMMISSIONER: Mr Tanner, I understand that you want
35 to take an objection when giving evidence today?

36
37 THE WITNESS: Yes, Commissioner.

38
39 THE COMMISSIONER: As I've said to other witnesses it's
40 a very sensible course of action. It's the course that
41 almost everyone sitting in that chair takes. So there is
42 nothing adverse - no adverse inference is drawn as a result
43 of you taking that.

44
45 I do make a declaration pursuant to section 75 of the
46 Law Enforcement Conduct Commission Act that all answers and
47 other things given by this witness will be regarded as



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1 having been given on objection.
2

3 And I'll just step you through what that means. I'm
4 sure you have discussed it already with Mr Gollan and
5 Mr Anderson, but it does mean that your evidence can still
6 be used against you for proceedings under the Law
7 Enforcement Conduct Commission Act, so obviously, as you've
8 taken the oath, your obligation remains to be truthful in
9 your evidence today.

10 It can be used for this investigation, obviously, or
11 to allow the Director of Public Prosecutions to give
12 advice, and it can also be used against you in disciplinary
13 proceedings under the Police Act, in particular, section
14 173, section 181D and section 183A. I presume you're aware
15 of those sections.

16
17 THE WITNESS: I am, thank you Commissioner.
18

19
20 THE COMMISSIONER: Thank you. Were there any questions
21 you had, Superintendent?

22
23 THE WITNESS: No, I don't have any.

24
25 THE COMMISSIONER: The other formality that I need to go
26 through is section 62 of the Law Enforcement Conduct
27 Commission Act requires me to go through the scope and
28 purpose of the examination.

29
30 I'm not sure, did you have a chance to review the
31 opening of counsel assisting?

32
33 THE WITNESS: I have not, no.

34
35 THE COMMISSIONER: The scope and purpose is, in short
36 compass, the same as was on your summons. It's to
37 investigate the circumstances surrounding the police
38 response to a 000 call made at 7.03 on 3 January 2023
39 reporting that a woman was being bashed behind the
40 Salvation Army building in Ballina, including the radio
41 broadcast and dispatch of police, the response, including
42 the timing of New South Wales police officers to that radio
43 broadcast, the actions of New South Wales police officers
44 on attending the location of the alleged assault, and the
45 decision by New South Wales police officers not to declare
46 a critical incident in relation to Ms Lucena's death, and
47 any subsequent review of that decision, and it's also to



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1 consider whether the conduct could be police misconduct or
2 administrative officer misconduct or serious misconduct or
3 agency maladministration, and, importantly, to consider
4 whether there are any systemic issues that arise that could
5 be areas for agency improvement.

6
7 So that, in broad terms, is what we will be talking
8 about today.

9
10 THE WITNESS: Thank you.

11
12 THE COMMISSIONER: Thank you. Yes, Ms Sullivan.

13
14 **<EXAMINATION BY MS SULLIVAN:**

15
16 MS SULLIVAN: Q. Sir, can I have your full name for the
17 record, please?

18 A. Scott Richard Tanner.

19 Q. And your rank?

20 A. Superintendent.

21 Q. You are the commander of Liverpool City PAC?

22 A. I am.

23 Q. And you attested from the academy in 1993; is that
24 right?

25 A. I did.

26 Q. Just in terms of your background, please correct me if
27 any of this summary isn't correct but, as I understand it,
28 you were in GDs from about 1994 through to 2010, then as
29 a sergeant?

30 A. Correct.

31 Q. And then from 2010 to 2018, in GDs as an inspector and
32 duty officer?

33 A. Yes.

34 Q. And then from February 2018 to August 2020, you were
35 a superintendent and the commander of New England police
36 district?

37 A. Correct.

38 Q. And then from August 2020 to April 2025, the
39 superintendent and commander of Richmond police district?

40 A. Correct.



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1

2 Q. And from 6 April this year, to present, you are the
3 Liverpool City PAC commander?

4 A. Correct.

5

6 Q. Thank you. For the purposes of this investigation,
7 you have prepared a section 54 response; is that so?

8 A. I have, yes.

9

10 Q. And you've had an opportunity to review that response
11 dated 10 November 2025?

12 A. I have, yes.

13

14 Q. Any corrections that you would like to make?

15 A. No.

16

17 Q. True and correct to the best of your knowledge,
18 information and belief, sir?

19 A. Yes, it is.

20

21 MS SULLIVAN: Thank you. Commissioner, I tender that
22 document, which is tab 75, barcode 8641371 to 8641408.

23

24 THE COMMISSIONER: So that statement will be exhibit 22C.

25

26 MS SULLIVAN: Thank you, Commissioner.

27

28 **EXHIBIT #22C SCOTT TANNER'S RESPONSE TO SECTION 54 AND**
29 **SECTION 55 NOTICES, BARCODED 8641371 TO 8641408**

30

31 MS SULLIVAN: Q. Now, Superintendent, I would just like
32 to ask a little bit about your experience with critical
33 incidents.

34 A. Yes.

35

36 Q. During your time as an inspector, were you ever a SCI,
37 a senior critical incident, investigator?

38 A. No, I was not.

39

40 Q. Once you became a superintendent or - well, putting
41 that aside, you were certainly familiar with the critical
42 incident guidelines, notwithstanding, as an inspector?

43 A. Yes.

44

45 Q. And duty officer?

46 A. Yes.

47



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1 Q. A duty officer has certain roles in relation to
2 critical incidents; that's so?
3 A. Correct.

4
5 Q. Once you became a superintendent, did you - that's in
6 2018 - did you receive particular training in relation to
7 the critical incident guidelines and the superintendent's
8 role?

9 A. Yes, we did, yes. So as part of the supers transition
10 program, which was just prior to being promoted to
11 superintendent, we received training on critical incident
12 guidelines.

13
14 Q. And did you receive any training in relation to
15 a particular form that relates to critical incident
16 declarations known as a P1179 form?

17 A. Yes.

18
19 Q. All right. Can you outline the nature of the training
20 that you received in relation to that form?

21 A. That was just a presentation from professional
22 standards command about that is the form that the delegate,
23 which is the assistant commissioner, would fill in to
24 declare or not declare a critical incident.

25
26 MS SULLIVAN: Just for completeness, we might bring that
27 form up. That's tab 52, please, barcode 8634212 to
28 89634215.

29
30 Q. Is that on the screen in front of you?
31 A. No, it is not. Do you want me to turn it on?

32
33 Q. No, no, don't -
34 A. Don't touch it.

35
36 THE COMMISSIONER: Don't touch the screen, Mr Tanner.

37
38 MS SULLIVAN: It will magically appear momentarily.

39
40 THE COMMISSIONER: It will come up magically, all by
41 itself.

42
43 MS SULLIVAN: Q. Is that on the screen now?
44 A. I have that, yes.

45
46 Q. Excellent. So that's the form that you received some
47 training in relation to?



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1 A. Correct. I should - sorry.
2

3 Q. Yes, please?

4 A. I should point out, I've relieved as an assistant
5 commissioner on a number of occasions so I have used this
6 form for critical incidents as well.
7

8 Q. On how many occasions have you relieved as an
9 assistant commissioner?

10 A. I think it's about 30 weeks over the last - since
11 about 2020.

12 Q. And have you had cause to use this form in connection
13 with those roles?

14 A. Yes, I have.

15 Q. Have you ever had cause to - you've no doubt declared
16 a number of critical incidents?

17 A. Correct.

18 Q. Just in general terms, what's your understanding of
19 when that should occur?

20 A. Well, there's specific guidelines around death or
21 serious injury involving a police firearm. There's a -
22 like - well, I've got it in front of me here.
23

24 Q. Yes, yes.

25 A. -- the criteria, if you want me to read that out.
26

27 Q. Do.

28 A. But, you know, police operation, and there's two
29 levels, there's a level 1 or a level 2, depending on the
30 circumstances.
31

32 Q. In connection with police conduct?

33 A. Correct.

34 Q. And there's another category in section 111 of the
35 LECC Act. Are you aware of that category?

36 A. Is that the public interest?

37 Q. Yes.

38 A. Yes.

39 Q. Have you had cause to declare a public interest
40 critical incident?

41 A. Not that I can recall. No. Not that I believe.
42



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1

2 Q. Do you recall ever receiving any training in relation
3 to what a critical incident under that category might look
4 like?

5 A. It would have been part of the presentation during the
6 transition program. But it is a very broad - in my
7 understanding, it's a broad definition of what public
8 interest would dictate.

9

10 Q. All right. Have you had cause to look at the
11 guidelines in relation to that aspect at any time that you
12 can recall - the critical incident guidelines?

13 A. I would have read them at some stage but I don't
14 recall when that may have been.

15

16 Q. Specifics? Okay. Have you ever completed, as an
17 acting assistant commissioner, a P1179 in relation to
18 a non-declaration?

19 A. Yes, I have.

20

21 Q. On how many occasions have you done that?

22 A. I can certainly remember one occasion. But possibly
23 two, but I don't have those details with me, but
24 I certainly have.

25

26 Q. And what is the circumstance in which you would
27 complete it for a non-declaration of a critical incident?

28 A. So the one that I can recall was in regards to the
29 injury, so the - I was asked in regards to whether this met
30 the definition of a critical incident, and I waited,
31 I think it was about 24 hours, to get a better
32 understanding of what the level of injury was for the
33 person. Then once we had that, I was satisfied that it did
34 not meet the requirements, so therefore I did the
35 non-declaration form.

36

37 Q. Okay. So that's the one occasion you can recall?

38 A. That's the one I can recall.

39

40 Q. And do you see some value in terms of filling out this
41 form in relation to a non-declaration, in this respect: it
42 provides a clear account of the region commander's thinking
43 at the relevant time in relation to consideration as to the
44 issue about a critical incident?

45 A. Well, there's probably two trains of thought, if I
46 could probably just deviate real quickly.

47



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1 Q. Yes, please.

2 A. So on occasions, superintendents or inspectors will
3 ring either the PSM or the region commander and just
4 basically outline the circumstances of an event, basically
5 say, "Hey, I just want to talk to you about what your
6 thoughts are around this." Then on other occasions it's
7 a case of ringing them up and saying, "I want
8 a declaration", or a non-declaration, in regards to the
9 circumstances.

10

11 Q. So just pausing there, you could be seeking advice?

12 A. Correct.

13

14 Q. Or you could have a firm view and you're basically
15 telling PSC, "This is my thinking. Can you record it?"

16 A. Correct. So in the second circumstances absolutely,
17 where you are asking for that declaration. In the first
18 example, it's again more about seeking advice, sort of,
19 I guess, testing to see where it fits in their thinking.

20

21 Q. And in that context, you're giving consideration to
22 the declaration of a critical incident in the sense that
23 you're contemplating whether or not it is or it isn't?

24 A. It could be, yes.

25

26 Q. Well, when you say, "It could be", how is it not, when
27 you're ringing up and seeking advice? Aren't you seeking
28 advice because you're giving consideration to the issue
29 about whether it's a critical incident?

30 A. I think you're trying to, I guess, flesh out the
31 details about where they believe it might sit.

32

33 Q. Yes.

34 A. And because they're not always clear cut, there's
35 a number of --

36

37 Q. I accept that.

38 A. A number of examples that we could give, but - so on
39 occasions you will ring up for advice or just to really -
40 I guess the terminology is bounce the consideration around.

41

42 Q. Yes. Did you say "bounce the consideration around"?

43 A. Well, probably bad terminology.

44

45 Q. No, I think it is perfect formulation?

46 A. But it's certainly a case of, you know, some assistant
47 commissioners would see that as being asked about



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1 a declaration or a non-declaration, and they would fill
2 this form out. Others may not be asked or - others may not
3 be thinking they're being asked for a declaration, if that
4 makes sense.

5

6 Q. Right. It does in one sense, but do you agree with
7 this proposition, that even if you're talking about the
8 category where there's bouncing around for consideration,
9 if you complete this form, even as a non-declaration,
10 there's a clear record of the region commander's thinking,
11 isn't there?

12 A. Yes, correct.

13

14 Q. And that's a useful document if, for example, one
15 finds oneself in front of a commission like this?

16 A. Definitely.

17

18 Q. Or in a coronial?

19 A. Yes.

20

21 Q. So it has value to complete as soon as consideration
22 is given to whether or not a matter is a critical incident?

23 A. Correct.

24

25 THE COMMISSIONER: Before you move on, Ms Sullivan, I want
26 to clarify something.

27

28 Q. You said, as superintendent, you would ring, I think
29 you said, the region commander or your assistant
30 commissioner?

31 A. The - so you would either ring the region commander or
32 the professional standards manager.

33

34 Q. Within the region?

35 A. Within the region, yes.

36

37 THE COMMISSIONER: Okay. I think, Ms Sullivan, you might
38 have referred to the call being made to the PSC.

39

40 MS SULLIVAN: I did.

41

42 THE WITNESS: Sorry. Yes --

43

44 THE COMMISSIONER: No, no, I just want to be sure that
45 we're clear about the superintendent's evidence.

46

47 MS SULLIVAN: I apologise.



1

2 THE COMMISSIONER: Q. So the sort of bouncing around of
3 these ideas, you know, "Does this drop in the box or not",
4 that's a conversation that you, as superintendent, would
5 have with an assistant commissioner?

6 A. Normal - normal process would be you contact the -
7 well, in regional, you would contact the on-call inspector
8 for the region.

9

10 Q. I see.

11 A. Out of hours.

12

13 Q. Yes.

14 A. If it's during business hours, you would contact the
15 professional standards manager, and provide them the
16 information. They would take that to the assistant
17 commissioner. The assistant commissioner then may reach
18 directly back into the superintendent --

19

20 Q. I see.

21 A. -- or it might come back down that chain, depending on
22 who the assistant commissioner is.

23

24 Q. But that's part - I mean, the ultimate decision is
25 being made by the assistant commissioner, it's the chain of
26 command to get there and the back?

27 A. Correct, correct.

28

29 Q. When you've been assistant commissioner you've
30 received that information in turn from the superintendents
31 that you are --

32 A. Absolutely.

33

34 Q. -- supervising?

35 A. Personally I prefer to hear directly from the people
36 who have the information so it's not getting any steps
37 missed.

38

39 MS SULLIVAN: Q. When you say that, you would "prefer to
40 hear directly from the people who have the information",
41 who are you talking about?

42 A. That'd be the superintendent.

43

44 Q. The superintendent.

45 A. Yes.

46

47 Q. Would you ever, in your role as an assistant



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1 commissioner, undertake inquiries directly with officers
2 who have been involved or --
3 A. No.

4
5 Q. Okay.
6 A. No.

7
8 Q. Approximately how many critical incidents do you think
9 you've declared in your career?
10 A. Maybe five or six.

11
12 Q. And were those ones fairly clear cut to your
13 recollection?
14 A. They were, yes

15
16 Q. Taking you back, Superintendent, to the events
17 in January 2023 - I appreciate that it is now some three
18 years, so --

19
20 THE COMMISSIONER: Ms Sullivan, before you do that, I just
21 want to make sure that Superintendent Tanner's aware - I'm
22 sure that Mr Gollan and Mr Anderson have reminded him -
23 we're using pseudonyms for some of the officers involved.

24
25 THE WITNESS: Okay.

26
27 THE COMMISSIONER: We've got - there were two officers who
28 attended as part of the car crew. Have you been - has this
29 discussion been had with you?

30
31 THE WITNESS: It has, yes.

32
33 THE COMMISSIONER: It has, yes. We have Officer C, who
34 I think ultimately ended up meeting up with Mr Huber and
35 coming back to the scene --

36
37 THE WITNESS: Yes.

38
39 THE COMMISSIONER: There is Officer C. Officer D, I'm not
40 sure what contact you had with him, he was Woodburn 29.

41
42 THE WITNESS: Yes.

43
44 THE COMMISSIONER: And Officer E is the duty officer on
45 the night.

46
47 THE WITNESS: Yes.



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1

2 THE COMMISSIONER: If you can try to remember that, that
3 would be great.

4

5 THE WITNESS: I will.

6

7 THE COMMISSIONER: If not, we'll just raise the flag and
8 we'll deal with it in the transcript. But the
9 non-publication orders remain on foot in relation to the
10 identity of those officers.

11

12 THE WITNESS: Thank you Commissioner.

13

14 MS SULLIVAN: Thank you very much, Commissioner.

15

16 Q. Whilst on that subject, in the documentation there are
17 names of officers. It may be necessary for me to refer to
18 those officers in passing. Of course, they're not subject
19 to a pseudonym. I'll try to avoid that where I can but
20 just for any of the media --

21

22 MR GOLLAN: Could I also rise to just make an observation,
23 the non-publication and pseudonym orders - I have not
24 exposed this witness to. I have told him that there are
25 pseudonyms for officers by reason of their actions as
26 opposed to who the individuals are, and I do see, it might
27 be challenging --

28

29 THE COMMISSIONER: I see.

30

31 MS SULLIVAN: Q. I can indicate, do you have an
32 understanding who Ballina 14 was?

33 A. Yes, I do.

34

35 Q. And an understanding of who Woodburn 29 was?

36 A. Yes, I do.

37

38 Q. And an understanding of the identity of the duty
39 officer?

40 A. Yes.

41

42 Q. And I don't think you --

43

44 MR GOLLAN: That should be clear.

45

46 THE WITNESS: Thank you.

47



1 MS SULLIVAN: I might tender the P1179 form, which is
2 tab 52. I understand that this could be a public exhibit.
3

4 THE COMMISSIONER: That's the blank P1179.
5

6 MS SULLIVAN: That's the blank, yes.
7

8 THE COMMISSIONER: That can be public - so that will be
9 exhibit number 4 [sic].
10

11 **EXHIBIT #5 BLANK P1179 TEMPLATE - CRITICAL INCIDENT**
12 **DECLARATION/NON-DECLARATION BY REGION COMMANDER, BARCODED**
13 **8634212-8634215**

14 MS SULLIVAN: Q. How good is your recall of the events
15 of 4 January, Superintendent?
16 A. It's good. It was quite a - it was a terrible event.
17 It's something that I do recall, yes.
18

19 Q. And you've been able to refresh your memory with all
20 the documentation for the purposes of this investigation?
21 A. Yes.
22

23 Q. Did you make any entries in any duty book or notebook
24 or any notes?
25 A. No, I didn't. And the reason being is that I was at
26 home when I received the call. It was - I think it was
27 close to 1am or a bit after midnight. So I've left
28 straight from my house and gone straight to the scene, so
29 I didn't have any notebooks or anything on me, and then
30 I've left that scene and gone straight to Ballina police
31 station and typed up the email, which --
32

33 Q. 3.25?
34 A. 3.25, yep. Then I've gone home and I've come back
35 into work later that day and again sent another email,
36 I think it was about 3 o'clock that afternoon.
37

38 Q. Yes.
39 A. So all - all of my notes, I guess you would call them,
40 are what's contained on the emails.
41

42 Q. Any notes of telephone calls with, for example, Acting
43 Assistant Commissioner Chapman or meetings that you
44 attended?
45 A. No, no.
46

1 Q. Would you ordinarily take notes of those things?
2 A. Of the meetings or of the calls?

3
4 Q. Of those types of meetings and calls?
5 A. Well, I think in regards to the calls, I think they
6 were sort of reinforced within emails, as in more of, "Hey,
7 this is what we've discussed, this is the circumstances".
8 Normally, if I was at the scene, I would have my notebook
9 and I would be making scene - making notes, correct.

10
11 Q. So let's go to the circumstances in which you are
12 asleep and your phone rings and you're told about this
13 incident. What can you recall being told and by whom?
14 A. Yes, I believe it was from Detective Acting Inspector
15 Mick Smith, but it could have been Officer E. I'm just not
16 too sure about that. And the reason I say that was that
17 Detective Acting Inspector Smith was a crime manager and
18 normally an event like this, he would be the first point of
19 contact and then they would call me.

20
21 So I was informed that a person had walked into the
22 Ballina police station and said that he thought his wife
23 was dead. Then they have attended to what is now known as
24 Holden Lane, and gone into the side of the St Vincent De
25 Paul - sorry, Salvation Army building, and located a female
26 deceased. They did tell me at that stage that police had
27 been called there earlier in the night for a person
28 assaulting or a male assaulting a female.

29
30 Q. Okay. How long was that conversation?
31 A. Minutes. Yeah.

32
33 Q. Brief. And you were then, of course, the
34 superintendent of Richmond police district. Where is your
35 office in the ordinary course?
36 A. Lismore.

37
38 Q. Are you familiar with the Ballina CBD?
39 A. Yes, I am.

40
41 Q. Were you familiar with Holden Lane?
42 A. Not by name, no. But I was aware - when they
43 explained to me where it was, I was aware of how to get
44 there. It sort of runs parallel.

45
46 Q. Had you ever been to that Salvation Army building
47 before?



1 A. Oh, not that I can recall.
2

3 Q. So after that call, what did you do then?
4

5 A. So I prepared myself to go to work and I drove down to
6 the scene. On the way to the scene, I made a phone call to
7 the on-call region officer, which was Inspector Lisa Jones,
8 and told her basically what I'd been told and that I'd give
her a further call once I got to the scene.

9
10 Q. And that's in accordance with the protocol?
11

12 A. Correct. Because you're, firstly, dealing with
13 a potential murder, so that was my focus at that time of
the information I had.

14
15 Q. But did you also have in the back of your mind that
16 there had been an earlier police operation in connection
17 with that?

18 A. No, not at that stage, I don't believe so, no.

19
20 Q. How long did it take you to get to the scene, do you
21 recall?

22 A. Probably 15, 20 minutes.

23
24 Q. And do you have a sense as to when you arrived?

25 A. It was around the 1am, possibly a little bit later.

26
27 Q. We have notebook entries from Officer C, which
28 helpfully suggest that you're there between 1.30 and 1.42pm
29 on scene.

30 A. Okay, yeah.

31
32 Q. Does that accord broadly with your recollection?

33 A. That could be right, yes.

34
35 Q. That's likely a reference to you being in the crime
36 scene, is it, as opposed to on the outer perimeter?

37 A. Correct.

38
39 Q. So once you were on scene, what did you do?

40 A. So I spoke with Officer C and D, who I believe were on
41 scene.

42
43 Q. Okay. Pausing there. Did you speak to them together
44 or did you speak to them separately?

45 A. I think they would have been together. I think. But
46 I can't be certain of that, but - they were holding the
47 crime scene, from memory.



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1

2 Q. So your best recollection is they're together?

3 A. Best recollection, yes.

4

5 Q. All right. Doing your very best, what was the content
6 of that discussion?

7 A. So I asked them what had occurred and they told me
8 about the gentleman walking into the police station and
9 saying what he said, attending and locating the deceased
10 lady. I did ask them about what the delay was from the
11 time the job came in to when they got there, and they
12 explained that they'd been [redacted] at Alstonville
13 and they'd also been at a motor vehicle accident on the M1.

14

15 Q. Okay. Pausing there, do you remember if one officer
16 was providing an account and the other was sort of more
17 agreeing? Was there someone who was taking the lead?

18 A. I believe it was officer - who was on 14.

19

20 Q. Yes.

21 A. So it would be Officer --

22

23 Q. Ballina 14. If it's easier for you to refer to
24 Ballina 14, please --

25 A. Ballina 15, that would be great, thank you.

26

27 Q. Okay.

28 A. Ballina 14 as the supervisor and a very experienced
29 officer. I do recall having a conversation with him about
30 where they'd been up to.

31

32 Q. Okay.

33 A. And I do not remember whether Woodburn 28 [sic] was
34 with him or not at the time.

35

36 Q. Woodburn 29?

37 A. 29.

38

39 Q. Okay. And what was your understanding, based on what
40 he said, about the cause of the delay in attending?

41 A. They were tied up with other jobs at the time.

42

43 Q. Did he give you any details about those jobs?

44 A. The job on the M1, they said it was a vehicle that was
45 broken down, I believe, on the side of the road or in lane
46 1, and they were having troubles with the traffic; and the
47 other job at Alstonville where Ballina 17 --



8649515

1
2 Q. 18?
3 A. -- were tied up.
4
5 Q. 18, Ballina 18.
6 A. Ballina 18 - sorry.
7
8 Q. Sorry, we're both wrong. It's A018, Alstonville 18.
9 A. Oh, was it, okay, yeah.
10
11 Q. Yeah.
12 A. So the job at Alstonville, which was the crew from
13 Ballina, involved [Non-publication order].
14
15 MS SULLIVAN: I note that that is subject to
16 a non-publication order in accordance with the
17 Commissioner's order.
18
19 THE WITNESS: Thank you.
20
21 MS SULLIVAN: Q. Did you have any sense of the timing
22 during that conversation - that is, their time in attending
23 to the first mental health issue, the second motor vehicle
24 accident and then attendance on the scene, or did you just
25 understand --
26 A. Not at that time. I do recall and I think I provided
27 in the documents that I had a conversation with a radio
28 supervisor.
29
30 Q. Yes.
31 A. Who sent me through the details of the job in Holden
32 Lane.
33
34 Q. I think that comes after. So we'll get to that.
35 A. Was it? Okay, yeah.
36
37 Q. Yes. What did Ballina 14 tell you about what they'd
38 done - that is, he and Officer D, Woodburn 29 - when they
39 had attended that job initially?
40 A. In Holden Lane?
41
42 Q. In Holden Lane.
43 A. So they told me that they both got there separately
44 and they drove up each end of Holden Lane. I believe they
45 said they put their alley lights on looking - or just on
46 dusk, being daylight saving, and they did not see anyone.
47 And I believe Ballina 14 said that if - there was only one



8649516

1 call and if it had still been going on, they would have
2 expected more calls to have come in.

3
4 Q. That's your best recollection?
5 A. That's my best recollection.

6
7 Q. In your section 54 response, you say this, you refer
8 to this account:

9
10 Once that job was finished --

11
12 that job being the motor vehicle accident:

13
14 they attended the call in Holden Lane,
15 which is the location of the Salvation
16 Army. They told me when they arrived it
17 was just on dusk, and they drove around the
18 car park and up and down Holden Lane but
19 did not see anybody.

20
21 A. Correct.

22
23 Q. Is that what they told you or what Ballina 14 told
24 you? You see there is a difference between the
25 account that you just --

26 A. Was there? What was the difference in the account?

27
28 Q. The difference is, firstly, in relation to driving
29 into the car park and, secondly, in relation to whether or
30 not they drove up and down Holden Lane?

31 A. So - and I'm sure you've seen Holden Lane.

32
33 Q. Yes.

34 A. It's - the car park, there's a car park in front of
35 the Salvation Army and the laneway, then there's a further
36 car park up further. So I understood it that they'd driven
37 up and down and around both the car parks. The car park's
38 not very big at the Salvation Army.

39
40 Q. Would you be assisted by a map that would --

41 A. That would be good, thank you.

42
43 MS SULLIVAN: All right, we'll bring up tab --

44
45 THE COMMISSIONER: Exhibit 3, which is the public exhibit,
46 which is tab 42A.



1 MS SULLIVAN: Thank you, Commissioner.
2
3 Q. Is that in front of you now? That's the Salvation
4 Army premises, Superintendent.
5 A. I'm just trying to get my bearings.
6
7 Q. So Holden Lane is where the foliage is on the
8 perimeter there?
9 A. So where the hand is now?
10
11 Q. Yes.
12 A. Yes. And that - is that the Salvation Army there?
13
14 Q. Yes. I'm sorry, I've got a different photo up. So
15 you see the premises almost smack bang in the middle with
16 the aquamarine roof. Maybe I shouldn't speak to you in
17 terms of colours.
18 A. I do see that, yes.
19
20 Q. You would be familiar with the council chambers --
21 A. Yes, I am.
22
23 Q. -- on the left there. So it's to the right of that?
24 A. Yes.
25
26 Q. So you were describing Holden Lane?
27 A. Correct.
28
29 Q. And the car park?
30 A. And so - so my understanding was that they drove up
31 Holden Lane --
32
33 Q. Yes.
34 A. -- around the car park and when I say "car park"
35 I also mean the one around the council chambers which is
36 the larger car park.
37
38 Q. So drove into the car park?
39 A. That's my understanding.
40
41 Q. And drove around?
42 A. Yes.
43
44 Q. And also drove into the car park at the Salvation
45 Army?
46 A. That's my understanding, yes.
47



8649518

1 Q. And did they, to your understanding, patrol the front
2 area, that is Tamar Street?

3 A. I don't know. I don't know. I don't recall that.

4

5 Q. You don't recall that?

6 A. No.

7

8 Q. You don't recall ever asking that?

9 A. No, I don't, no.

10

11 Q. Did you have an understanding as to whether or not
12 they had alighted from their vehicles at any point in time?

13 A. I believe they said that they didn't get out of the
14 vehicles at the time.

15

16 Q. What did you think about that?

17 A. I didn't think anything of it at the time. Based on
18 the information of the job, you know, I didn't expect them
19 to get out of their vehicle. I didn't know where they
20 would search. The details of the job were in the car park
21 at the rear of the Salvation Army, and I think they made
22 the assumption that they were - there was no-one in the car
23 park and they patrolled up and down. So I don't know where
24 they would have got out to look around.

25

26 Q. So when you say "up and down", they patrolled down,
27 back down Holden Lane as well is your understanding?

28 A. I believe so, yes, up and down Holden Lane.

29

30 Q. Up and down and into the car parks of both?

31 A. Correct.

32

33 Q. And that would accord with your expectation about
34 a proper response to that job, would it, if they had done
35 that?

36 A. Yes.

37

38 Q. What about if they'd just driven along Holden Lane and
39 not driven into the car parks?

40 A. I still think that would suffice because that's quite
41 an open area. I think they can see quite openly into those
42 car park areas just by staying on Holden Lane.

43

44 Q. We'll come to whether or not you subsequently had any
45 concerns about that, but I take it, in effect, from your
46 evidence now, you do think that's an appropriate response?

47 A. Yes, based on the information that we had at the time.



8649519

1

2 Q. At the time?

3 A. Yes.

4

5 Q. Perhaps now is the time to just briefly explore that.

6 You're very experienced in GDs operations --

7 A. Mmm-hmm.

8

9 Q. -- if I can suggest that to you?

10 A. Yes.

11

12 Q. You can agree?

13 A. I can agree.

14

15 Q. And so you would have responded to countless jobs
16 where there is limited information and a location that has
17 a degree of specificity but may be open to interpretation,
18 for example, "behind a particular premises"; is that right?

19 A. Correct.

20

21 Q. And as a GDs operational police officer, does one need
22 to have a degree of awareness about the prospect that an
23 informant calling 000 may not be precise about that
24 location?

25 A. Correct.

26

27 Q. And incidents can be mobile, so that something that
28 can start off behind somewhere can end up to the side, to
29 the front, in the vicinity; is that fair?

30 A. It could end up anywhere, yes.

31

32 Q. Well, it could end up anywhere, sure, but a good
33 starting place, when you're being given a specific address,
34 is to scope the perimeter of that area; the front, the
35 back, if you can access it?

36 A. I don't agree with that.

37

38 Q. Okay.

39 A. Based on --

40

41 Q. Tell us. Tell us why.

42 A. Based on this information, it came across that there
43 was a fight in the car park at the rear of the Salvation
44 Army.

45

46 Q. Pausing there. "Female being bashed behind Salvation
47 Army"?



8649520

1 A. Yep, yep. Female being bashed.

2 Q. Yes.

3 A. And I don't mean any disrespect at all.

4 Q. That's understood.

5 A. Yes, so female being bashed. They've arrived at
6 that - what they believe is the location. Haven't found
7 anyone. There was further information, I believe, that was
8 provided by VKG that they attempted to call the informant
9 back, who could provide no further information.

10 Q. Pausing there. Pausing there. That VKG had called
11 the informant back?

12 A. Correct.

13 Q. That's your understanding, that whilst the officers
14 were on scene, VKG had called --

15 A. I believe that was prior to the officers getting on
16 scene.

17 Q. All right.

18 A. So my understanding, on the CAD job, it actually
19 says - you know, correct me if I'm wrong with the timing
20 but it was, you know, maybe 20 minutes later they rang the
21 informant back for further details, and that's my
22 understanding, and that they were met with some aggression.
23 And then that person then was attempted on another two
24 occasions to be contacted and they did not answer the call.

25 Q. All right.

26 A. So based on that, like, that's what they have, and the
27 timings, it was close to an hour from the time of the
28 initial call to when they got on the scene.

29 Q. Yes.

30 A. And I believe they've made an appropriate look, and
31 appropriate patrol, looking for that.

32 Q. Right. So this was a priority 2?

33 A. Correct.

34 Q. It required an immediate response?

35 A. Well, that's correct. However, priority 2s come in a
36 lot of different forms and fashions.

37 Q. Okay. Tell us about that.



8649521

1 A. So they are - my understanding is that's based on the
2 information they received, and it certainly met the
3 criteria of a priority 2. However, there is an ability for
4 the police to downgrade that to a priority 3.

5

6 Q. Yes.

7 A. Or, like I'm at Liverpool now, I may have right now
8 have five priority 2s going at once. So it's about the
9 officers making an assessment and basically a dynamic risk
10 assessment about which job needs to go first.

11

12 Q. Okay.

13 A. So --

14

15 Q. Presumably that's where they come in around the same
16 time?

17 A. Correct.

18

19 Q. All right. So this priority 2 was the only priority 2
20 in Ballina between 6.38pm and 7.41pm.

21 A. Correct.

22

23 Q. So in that case, there's no competing priority?

24 A. They did have the job on the M1.

25

26 Q. Yes.

27 A. Whilst not classified as a priority 2, certainly
28 posed, in my opinion, a significant risk to the public, and
29 would have needed to be attended to.

30

31 Q. Yes. Do you --

32 A. In some urgency.

33

34 Q. Yes. Do you have a clear understanding of the
35 chronology about the attendance of those officers on that
36 job, accepting that once they got there, Ballina 14 formed
37 a particular view about obstruction of the road? Do you
38 have an understanding as to when that job was broadcast --

39 A. I believe it was broadcast before the one in Holden
40 Lane.

41

42 Q. Correct.

43 A. By maybe a couple of minutes.

44

45 Q. Yes. 7.03 is when that one goes over.

46 A. Yes. So they, I believe, were at Alstonville at the
47 time.



8649522

1
2 Q. Yes.

3 A. And the job came over at Newrybar, which is, I guess -
4 if you look at Ballina, Newrybar and Alstonville, it's like
5 a triangle, so they've left from there and started heading
6 to the job at Newrybar.

7
8 Q. Yes.

9 A. I don't know whether they copied the job at 7.05, was
10 it, for the P2.

11
12 Q. 7.03 is when Ballina 14 copies it. 7.04 is when
13 Woodburn 29 copies it.

14 A. That's for the accident.

15
16 Q. That's for the accident.

17 A. I don't know when they copy the one in Holden Lane.
18 I don't recall that.

19
20 Q. They copy into the one in Holden Lane at 7.46?

21 A. Okay. And it was broadcast?

22
23 Q. So it was broadcast at 7.10pm.

24 A. Right.

25
26 Q. And at that point, Ballina 14 is en route to the
27 accident, and the transcript indicates that Woodburn 29
28 joins him because Woodburn 29 is the only one with the
29 alcometer.

30 A. Okay. I'm not aware of that.

31
32 Q. So you haven't seen the VKG audio transmissions from
33 that evening?

34 A. No, I've not.

35
36 Q. Is that something that you would ever look at for the
37 purposes of a review in relation to the events of
38 a particular evening - that is, the radio transmission?

39 A. Not on that occasion. I looked at the Holden Lane -
40 not transcript, because I didn't have access to that, but
41 the chronology on the CAD job.

42
43 Q. On the CAD job?

44 A. Yes.

45
46 Q. We'll pull that up in a moment, but it's right that
47 from the CAD incident log, you're able to see how many



8649523

1 times a job has been broadcast; is that right?

2 A. Correct.

3

4 Q. And do you have a broad understanding as to the
5 requirements within the radio operations group about the
6 broadcast requirements for a priority 2 job?

7 A. I'm not overly familiar with that, no.

8

9 Q. So you are not aware that, for example, if a P2 has
10 been unacknowledged, after the initial - 90 seconds after
11 the initial broadcast, it should be rebroadcast every
12 minute thereafter?

13 A. I did not know that.

14

15 THE COMMISSIONER: Q. Is that your experience,
16 Superintendent Tanner, that a P2 job - you said, for
17 example, in Liverpool at the moment, odds are you've got
18 five going at once. Are each of those rebroadcast every
19 60 seconds over the VKG? I know you're not in the truck
20 these days?

21 A. So - yes, I know, and that's - technology's taken
22 over, Commissioner, a lot. So a lot of the jobs are
23 acknowledged on their in-car devices.

24

25 Q. The MDT?

26 A. The MDT. So they may see it pop up on their screen
27 and they may acknowledge it.

28

29 Q. Which is done by - that was a - it's a visual tap?

30 A. A visual tapping of the screen to acknowledge it.

31

32 Q. Okay.

33 A. So if it's broadcast, they'll acknowledge it and then
34 that would be it. So it would not be then rebroadcast
35 because it's been acknowledged by that car attending.

36

37 Q. But if it hasn't been, and it's being broadcast over
38 the radio - in your experience, would they keep
39 broadcasting it over the radio every 60 seconds?

40 A. Not that I - look, I could not say that that is my
41 understanding. But I'm sure they would have a process in
42 place that would rebroadcast if it hasn't been
43 acknowledged. I quite often hear, again in Liverpool, that
44 if they are broadcasting jobs, they will seek Liverpool 14
45 for a direction, which I guess is another level of
46 supervision.

47



8649524

1 Q. And that's the supervisor's --
2 A. Correct, yes, and asking them to say, "Hey do we
3 either (a) downgrade this job or will you allocate it to
4 somebody or should we keep on calling it?"

5
6 MS SULLIVAN: Q. You've never had cause to drill down to
7 those procedures, as it were, in connection with other
8 critical incident matters?

9 A. No, no.

10
11 Q. And you're not aware of any of the evidence in these
12 proceedings that has done that?

13 A. No.

14
15 MS SULLIVAN: Just for completeness, we will go, firstly,
16 to tab 8, please, which is exhibit - this is the incident
17 log for the Pacific Highway accident. That is exhibit 4C.

18
19 Q. It should pop up in a moment. Do you have that?
20 A. I do, yes.

21
22 Q. So that is a priority 3 job, one vehicle has hit
23 a tree in the service lane near above address, no persons
24 trapped, no persons injured, one vehicle requires towing,
25 no fluids, not known intoxicated person, and there's
26 a description of the vehicle, no further information.

27 A. Yes.

28
29 Q. So there's nothing in that report that indicates that
30 there's an obstruction of the highway, is there?

31 A. No, there is not.

32
33 Q. No.

34 A. However, being familiar with that area, any accident
35 on the M1 needs to have a swift response, because of the
36 risk that it has to other members of the public. You know,
37 you've got vehicles doing 110 plus on the highway.

38
39 Q. Understood.

40 A. Yes.

41
42 Q. All right. Is that the type of job that, in your
43 experience, highway patrol might attend?

44 A. Normally, if they were working, yes.

45
46 Q. If they were working?

47 A. Yes.



8649525

1

2 Q. You're familiar with the staffing arrangements on that
3 particular evening - that is, the four officers at Ballina
4 only?

5 A. Correct.

6

7 Q. That is Ballina 14, the station officer and
8 Alstonville 18, and then the back-up is Woodburn 29 and
9 Coraki 22?

10 A. Correct.

11

12 Q. That's the Ballina sector?

13 A. Yes. Well, yes. So Woodburn and - I should point
14 out, Woodburn and Coraki --

15

16 Q. Are Lower Rivers?

17 A. -- are Lower Rivers.

18

19 Q. Thank you. Is there a possibility for someone in
20 Ballina 14's position, when that priority 2 comes over at
21 7.10, to actually call for highway patrol to attend this
22 incident so that he can get the P2?

23 A. He would know if highway were on, if they were
24 working. My understanding was they were not on duty.

25

26 Q. How did you have that understanding?

27 A. Oh, part of the review that I did. I would have gone
28 through their rosters.

29

30 Q. The rosters?

31 A. And, yeah, they - my understanding was that they were
32 not working. We had no other ancillary units working that
33 night. And when I say that, that's your detectives or your
34 proactive team.

35

36 Q. And you didn't have an understanding that Woodburn 29
37 was going to that accident because he had the alcometer?

38 A. No, I did not. I understood that he was going there
39 to help him with traffic control, and I would expect that,
40 you know, any accident on the M1, trying to do it by
41 yourself is near impossible.

42

43 Q. That's fair. But can I suggest, if we look at the
44 staffing arrangements, when you are limited in your
45 resources, once that 7.10 P2 came over the radio, the
46 appropriate course was to send one of those officers to
47 deal with that job?



8649526

1 A. No.

2 Q. No?

3 A. No, I would not send a single unit officer to what
4 appears to be an assault occurring. My expectation is that
5 that is unsafe.

6 Q. Okay.

7 A. And we have a number of policies around that with
8 a single unit policy and things like that.

9 Q. Okay. What policy would govern that as an alpha unit
10 attending an assault?

11 A. That would be the single unit policy. I think they
12 still call it the single unit policy.

13 Q. Where does that sit? Is that in the handbook or --

14 A. It's an actual stand-alone policy --

15 Q. Stand-alone?

16 A. -- that sits within - I believe it would be either HR
17 or somewhere like that.

18 Q. So you would always need two officers to go to that
19 job?

20 A. You should. So when I say "you should", it's based on
21 their experience, their understanding of the location, the
22 understanding of who's involved. You know, for instance,
23 you know, I've worked in single-unit stations a lot of my
24 career, and you would know certain addresses that you would
25 never go to alone.

26 Q. Okay.

27 A. Whereas others you may.

28 Q. Okay.

29 A. But I think on this occasion, from what my
30 understanding is, they were attending to the accident to
31 make sure that the roadway was not impeded and there was
32 any further danger. And then obviously they went to the
33 job in Holden Lane.

34 Q. All right. But you can see how there may be
35 consternation about the classification system when a P2
36 that refers to a female being bashed - anyone being bashed,
37 but it's a female being bashed - priority 2, we understand
38 that to mean immediate response. And then there is an



8649527

1 earlier, by seven minutes, P3 accident on the Pacific
2 Highway. Accepting everything you say about it being
3 a dangerous stretch of road, it's a P3. So we're trying to
4 understand the resourcing constraints and --

5 A. Yes. I think by labelling it, we're probably
6 downplaying the risk of that incident on the M1. Whilst,
7 yes, it would come across as a P3, because there's nobody
8 injured, there's no obstruction, things like that, being
9 a high-volume road, any distractions on the side of the
10 road, whether it's a car into a tree that people will see
11 going past, poses a significant risk. So I think the
12 judgment call is basically up to the officer, you know, it
13 is their experience. I had two very senior officers, very
14 experienced officers --

15
16 Q. Yes.

17 A. -- and I believe that the decision they made was
18 a decision that was acceptable.

19
20 THE COMMISSIONER: Q. If that - that is to say, with all
21 the time in the world, Superintendent Tanner, it sounds
22 like - are you suggesting that the motor vehicle accident
23 was really a P2?

24 A. No, I'm not - I'm not suggesting that at all.

25
26 Q. Okay.

27 A. No, Commissioner. I'm just saying it's - it's not
28 a definitive scale. It certainly has to be a sliding scale
29 based on that officer's experience of the area and --

30
31 Q. And risk?

32 A. And risk.

33
34 Q. Which is something that wouldn't necessarily be known
35 to the VKG team?

36 A. Correct.

37
38 Q. Who are calling it out of - I think Newcastle?

39 A. Correct.

40
41 MS SULLIVAN: Q. And in fairness to Ballina 14, once he
42 does get on scene, at about 7.21, he finds that there is
43 a partial obstruction of lane 1 --

44 A. Yes.

45
46 Q. -- northbound, and at that point makes a call to VKG
47 and asks that Woodburn 29 be upgraded to code red?



8649528

1 A. Okay. I did not know that.

2
3 Q. And he's then on scene by around 7.24 to 7.25.
4 A. Okay.

5
6 Q. Which happens to be the time of the second broadcast
7 for the P2 Salvation Army job.
8 A. Okay.

9
10 Q. Does that chronology broadly accord with your
11 understanding?

12 A. It does. I did not know about the upgrading of the -
13 to code red. But, yeah, that's my understanding of the
14 chronology of the calling of the Holden Lane job.

15
16 Q. Can I suggest, with the benefit of hindsight, it would
17 have been helpful for you to have the VKG audio to
18 understand those transmissions?

19 A. Oh, it absolutely would. On the night?

20
21 Q. Yes, on the night.

22 A. Yes, absolutely.

23
24 Q. That might be something that you would ask for going
25 forward if you had cause to review something?

26 A. I wouldn't have got it on the night.

27
28 Q. Not on the night, but subsequently, did you review it
29 at any time subsequently?

30 A. Once I've provided the information up to the AC -
31 that's part of my responsibility --

32
33 Q. Job done?

34 A. Not so much "job done", but I provided information.
35 If they wanted to review that, they could have asked me to
36 get it, but I certainly did not turn my mind to that.

37
38 Q. But you have done in previous matters, you have
39 obtained it?

40 A. No, I haven't.

41
42 Q. Never obtained the audio?

43 A. No, not as part of my decision-making, because most of
44 them have been pretty clear cut.

45
46 Q. I see.

47 A. Yes.



8649529

1

2 Q. Thank you. All right. And you, in your time as
3 superintendent in that space, you've attended fatalities on
4 that road, I take it?

5 A. Absolutely.

6

7 MR GOLLAN: I'm not sure that answer was recorded,
8 your Honour.

9

10 MS SULLIVAN: "Absolutely".

11

12 THE COMMISSIONER: He said, "Absolutely".

13

14 MS SULLIVAN: He said, "Absolutely".

15

16 THE COMMISSIONER: It's on the transcript here, Mr Gollan.

17

18 MS SULLIVAN: You're welcome to come closer.

19

20 Q. Just in terms of reflections and learnings and there's
21 not a question, if I could put it in these terms, that the
22 officers were doing their job on a busy shift, doing their
23 best on the evening of a busy shift, but we do need to
24 reflect on any potential learnings from this situation,
25 don't we?

26 A. Yes.

27

28 Q. You agree?

29 A. Absolutely, yes.

30

31 Q. And so if you had a GDs officer call you, let's just
32 say, with the same job, tomorrow, "This is the scenario,
33 female being bashed behind this particular premises, sir.
34 Is it okay if we just do a drive by?", what would you think
35 about that?

36 A. I think that's a very downplayed example, with
37 respect.

38

39 Q. Please?

40 A. (a) they would not call about that. No-one would ring
41 me and say, "Hey, I've got this job. Do you mind if we
42 just do a drive by". That just would not happen.

43

44 Q. Well, I'll change the scenario, if that's
45 a hypothetical that you're struggling with. I'm really
46 trying to understand what we can take from this situation
47 where we know these two officers, on a busy shift, have



8649530

1 attended this location but not alighted from their vehicle.
2 So they're not privy, for example, to any sounds in the
3 vicinity, in their vehicle, in the way that they would be
4 if they got out. Agree?

5 A. I do recall that they turned their cars off and had
6 had their windows down. I think I have a recollection of
7 a conversation similar to that, that they actually met -
8 I think they met sort of in Holden Lane.

9
10 Q. Yes. For the purposes of having a discussion with
11 each other?

12 A. Correct.

13
14 Q. All right. But that's a separate thing to putting your
15 window down to have a listen and observing what's going on
16 around you, isn't it?

17 A. Again, based on the information they had, which was
18 that there was a female being bashed in the car park behind
19 the Salvos.

20
21 THE COMMISSIONER: Q. I think Superintendent Tanner,
22 just so you're clear, the "in the car park" was never part
23 of the VKG broadcast. It said, "behind the Salvation Army
24 building".

25 A. Sorry, my apologies, Commissioner.

26
27 THE COMMISSIONER: No, and I think that's probably one of
28 the important characteristics.

29
30 MS SULLIVAN: Let's pull the CAD up just so we're all very
31 clear about exactly what it was. That's tab 2, exhibit 3C,
32 thank you.

33
34 Q. All right. So we see there, this is the P2 that comes
35 in at 19:03 that we know that isn't broadcast until 7.10.
36 You'll see the information is:

37
38 *Behind the Salvation Army [building],*
39 *73 Tamar St, Moon St, Ballina ...*

40
41 So a specific address; agree?

42 A. Yes, correct.

43
44 Q.

45 *Male stated a female being bashed behind*
46 *Salvation Army building.*

47



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1 So that's a bashing at that point in time; correct?

2 A. Yes, correct.

3

4 Q. Serious assault?

5 A. Yes.

6

7 Q. That's sufficient information to identify a very
8 particular area to search, isn't it?

9 A. It's behind the Salvation Army, correct.

10

11 Q. But "behind the Salvation Army" could also be the
12 perimeter of that area behind?

13 A. Are you saying the perimeter of the building?

14

15 Q. Yes.

16 A. Could be, yes.

17

18 Q. So one would look to see the boundaries?

19 A. They would, yes.

20

21 Q. And if one saw a fence there, as we know there was, it
22 would be important to understand whether there was
23 something going on behind that fence, I suggest?

24 A. Again, I can't comment on that scenario. That is the
25 mind of the officer, understanding what has happened, with
26 the information that he has - he or she has. I - if you
27 are asking me do I expect them to get out and search behind
28 every wall cavity and fence, I would say no.

29

30 Q. I wasn't asking that.

31 A. Okay.

32

33 Q. I was asking very specifically about a fence that is
34 approximately 8 to 10 metres from where the cars were
35 patrolling on Holden Lane.

36 A. Mmm-hmm.

37

38 Q. And the evidence is to the effect that the officers
39 cannot see past that fence.

40 A. I take your word on that, yes.

41

42 Q. So, in those circumstances, accepting that they did
43 not drive into the car park --

44 A. Okay.

45

46 Q. -- would you expect that, at the very least, they
47 would drive into the car park and shine the lights down the



8649532

1 side, where you know there's a fence, to have a look?
2 A. I would accept that, yes. Well, I would accept they
3 would drive into the car park.
4

5 Q. You would expect that they would drive into the car
6 park?
7 A. I would expect that, yes.
8

9 Q. But, for example, if one got out of the vehicle, one
10 could have a look around to see whether there was any
11 blood?
12 A. Correct.
13

14 Q. One could listen to see whether there were any sounds
15 down the side of the building, anyone around?
16 A. Yes.
17

18 Q. You're much better placed, aren't you, to make an
19 assessment if you get out of the vehicle?
20 A. Oh, of course.
21

22 Q. And you could do that - you could do that search of
23 that scene - you're familiar with the scene, you have been
24 there. You could do that, I suggest, in approximately
25 a minute?
26 A. I would say, though, that even if you did that --
27

28 Q. I'll just get you to answer my question. You could do
29 that in approximately a minute; do you agree?
30 A. A minute or two, yes.
31

32 Q. Two minutes?
33 A. Yes.
34

35 Q. Two officers, 30 seconds each, they could take a side
36 of the car park each?
37 A. Of the car park or are you talking about the - the
38 perimeter of the building?
39

40 Q. Well, the car park has a perimeter, doesn't it?
41 A. Yeah, but the building has a perimeter as well.
42

43 Q. It does. I'm not going to take a police officer on
44 about perimeters, and we can pull the map up, if we need
45 to --
46 A. No, no, no, no, I --
47



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1 THE COMMISSIONER: Ms Sullivan, so I'm clear, are you
2 suggesting that the officers needed to patrol around the
3 car park?

4
5 MS SULLIVAN: At this point I'm suggesting the perimeter
6 of the car park, walk around the car park, at least get out
7 of the car in that car park.

8
9 THE WITNESS: I think they could see clearly from Holden
10 Lane, though, if there was any evidence of a female being
11 bashed, that would be clearly evident, if that was still
12 occurring. If you're asking would - should they or could
13 they have got out and searched for any blood or exhibits or
14 things like that, that's a different - a different
15 scenario.

16
17 MS SULLIVAN: Q. That would be evidence of a female
18 being bashed, wouldn't it?

19 A. It could be, yes.

20 Q. And you don't know unless you get out?

21 A. Correct.

22 Q. And that would be a very simple thing to do, to get
23 out of the vehicle?

24 A. It would be, yes.

25 Q. To walk around?

26 A. Yes.

27 Q. Quick?

28 A. Yes.

29 Q. Shine your torch down that gated area that you can't
30 see but you know is there because you can see it from
31 Holden Lane?

32 A. Yes.

33 Q. Thirty seconds?

34 A. Yes.

35 Q. Yell out? "Hello" --

36 A. There's a lot of things.

37 Q. -- "Anyone there"?

38 A. Yes.



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1 Q. So those are the things - and please understand that
2 I do accept that the officers were doing their best on that
3 night, but what I'm trying to ascertain is what your
4 expectations are about operational police who were
5 responding to a job like this. What are the lessons here?
6 A. To be perfectly honest, and which I am being perfectly
7 honest --

8 Q. Please.

9 A. -- the lesson is we need more staff.

10 Q. Okay.

11 A. We need more - we need more police. We need more
12 people to join our organisation. You know, Ballina is
13 a community of over 35,000 people. It still has the same
14 first response it had in 1985.

15 Q. Okay.

16 A. So, you know, in an ideal world, yes, it's only five
17 minutes from the police station, and we would have the
18 resources to deploy, but we don't.

19 Q. These are very important things that you're saying,
20 can I suggest. But can I also suggest this, you're not
21 responding to my question, because we had two police on
22 scene at the time, and we know from the audio that there
23 wasn't time pressure on them, at that point, to go to
24 another job. Okay? Do you accept that? I'm happy to take
25 you to the passage.

26 A. No, no, no, I accept what you're saying.

27 Q. So if we just try and understand what your
28 expectations are about police attending this scene, and if
29 there are lessons to be learnt about how GDs, doing their
30 best, should approach a job like this, do you have an
31 expectation they should get out of the vehicle and scope
32 the scene for a couple of minutes at least?

33 A. I go back to the fact that - what was based in the CAD
34 message, they've based their response on that.

35 Q. Yes.

36 A. And if they were satisfied they didn't see a female
37 being bashed behind the building, you know, close to an
38 hour later, then their response was appropriate on the
39 night with what they had. As a "lessons learnt",
40 absolutely, these two officers almost certainly - and as an
41 organisation, possibly reinforce, that, you know, we need

1 to be a bit more intrusive when we don't find what we're
2 looking for.

3
4 Q. What do you mean by "a bit more intrusive"?
5 A. As you're saying, get out of car, search around, shine
6 torches, things like that but --

7
8 Q. Can I suggest they're not intrusive messages; they're
9 pretty basic messages? Can I just suggest that?
10 A. Well, you've got to understand as well, we would get
11 hundreds of these types of jobs.

12
13 Q. This was the only P2 from 6.38 to 7.41pm. Okay? And
14 there's no time pressure on these officers at this point in
15 time. Okay? So if you --

16 A. I'm trying to explain the response.

17
18 Q. Yes, please.

19 A. As in this is the information they had.

20
21 Q. Yes.

22 A. Their responses, in my opinion, was adequate for that
23 response that they provided on the night.

24
25 Q. Okay. And so in terms of a case study for the academy
26 for GD officers, do you think this is a good example of the
27 need to --

28 A. It's not for me to say. That's for the educators.
29 So --

30
31 Q. Well, given your long experience in GDs, as almost an
32 expert in that space, do you think that there is something
33 that should be conveyed? You are a senior officer. We're
34 trying to make sure that we pick up on all the systems
35 issues, and we'll come to the resourcing, because that's
36 really --

37 A. Will we?

38
39 Q. We will. I promise you we will. But there's a lesson
40 here, can I suggest, in terms of the need for GDs
41 responding to an incident like this to be more thorough?

42 A. I will accept that.

43
44 Q. I think we can move on.

45 A. Thank you.

46
47 Q. Now, going back to the chronology, the discussion that



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1 you had on scene with Ballina 14, and possibly Woodburn 29,
2 how long was that discussion?

3 A. Would have been no longer than five minutes, I would
4 not imagine.

5

6 Q. And did you speak to anyone else on scene?

7 A. I believe the detectives were there by then.

8

9 Q. Yes.

10 A. And Officer E, I believe, arrived at - I can't
11 believe - whether Officer E was already there or later.

12

13 Q. And did you have a discussion with her on scene?

14 A. I do recall that, yes.

15

16 Q. What was the content of that discussion?

17 A. About what else had been happening, because that
18 officer was the duty officer on the night, so I was getting
19 an overall picture not only of Ballina but also, you know,
20 Lismore. So on occasions, when Ballina are run off their
21 feet, we will deploy Lismore staff down to assist. And
22 they told me that they had a quite a busy shift that night
23 as well.

24

25 Q. Did you know that there were some Lismore staff who
26 were attending to P4 matters at about 7.12 that night?

27 A. A P4 matter?

28

29 Q. P4, priority 4?

30 A. Yes, I know - but what was the matter?

31

32 Q. It just says "File". I can show you the CAD message.
33 Was that something you looked at in your review?

34 A. When I did my review, it appeared to me that the two
35 response vehicles, and I believe the supervisor, were going
36 from P2 to P2 in regards to assisting the hospital and the
37 ambulance, I believe, with mental health, and there may
38 have been one other job there, I can't recall. So I would
39 have to have a look at what that P4 - who was doing the P4.

40

41 Q. Okay. Only because you've mentioned it, and I don't
42 mean to belabour the point, because you've made it clear
43 that you conducted a review, but if we could perhaps bring
44 up tab 137, barcode ending 814, please.

45

46 THE COMMISSIONER: It's exhibit 18C.

47



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1 MS SULLIVAN: Thank you. Barcode 814. The full barcode
2 is 8636814, sorry.

3

4 Q. Has that come up yet?

5 A. No, it has not.

6

7 Q. Okay. Perhaps you could just assist us with what
8 a definition of a P4 - I'm throwing that term around as
9 though I know it.

10 A. So it's an administrative task.

11

12 Q. Okay. I think that has come up on the screen. Can
13 you see that, Superintendent?

14 A. So that's at 19:12.

15

16 Q. Yes.

17 A. Officer William Blair, Goonellabah.

18

19 Q. That's one of the Lismore response units - -

20 A. Correct.

21

22 Q. -- Lismore 15?

23 A. Correct. So they went off air for a file.

24

25 Q. Yes. Were you aware of that?

26 A. That's - I wasn't aware of that, no, sorry.. Was that
27 in part of my review?

28

29 Q. No, I don't think so.

30 A. Okay. I was under the understanding that they were at
31 a P2 at a hospital.

32

33 Q. So that is at 7.12pm, that would be two minutes after
34 the priority 2 has just come in?

35 A. Yes.

36

37 Q. So that unit may have been well placed to respond to
38 that job?

39 A. And looking at that, that appears to be a single unit
40 officer that attended that. If you --

41

42 Q. How do you - how do we find that out?

43 A. Under "Officer Details", it's got just the one
44 registered number.

45

46 THE COMMISSIONER: Q. Would you expect to direct
47 a Lismore car, a single officer Lismore car, to Ballina to



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1 respond to a P2 job?

2 A. Only to back someone else up.

3

4 Q. So only if there's someone else on scene and you
5 need back-up. And then presumably Lismore to Ballina is
6 what?

7 A. Half hour.

8

9 Q. Half hour. So you would need - the first officer
10 that's already there would need to wait until the Lismore
11 officer joined them so that you could go two on scene, is
12 that --

13 A. Again I should say depending on the level of the P2.

14

15 Q. And what you already know about the situation?

16 A. Correct.

17

18 Q. And perhaps the people involved?

19 A. Yes.

20

21 MS SULLIVAN: Q. Could I just indicate, there is also
22 another Lismore 14 P4 matter at 7.01, from 7.01 to 7.06.
23 Would you like to see that as well?

24 A. If you wouldn't mind, thank you.

25

26 Q. So 806 are the last three digits of the barcode, if we
27 can just go backwards. This is, of course, before the P2
28 comes in?

29 A. Yes. Again, same officer, single officer, for
30 a follow-up.

31

32 Q. So that officer is attending to administrative
33 matters?

34 A. It appears - just for clarity, would you mind if I had
35 a look at the response that I provided in regards to my
36 review?

37

38 Q. Please - please feel free to review to anything at any
39 time?

40 A. I just want to make sure that - sometimes they change
41 cars through the night. So 15 --

42

43 Q. So are you talking about your 3.25am email?

44 A. Yes.

45

46 Q. All right. So we will pull that up. That is in your
47 response, tab 75, exhibit 22C, at barcode ending 375. In



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1 fact - no, I think it might actually be the 3.11 is your
2 resourcing review, in the afternoon.

3 A. Was it?

4

5 Q. Could that be --

6 A. Yeah, it could be. The one where I said where all the
7 car crews were.

8

9 Q. I think that's 3.11. We'll go there instead.

10 A. Thank you.

11

12 MS SULLIVAN: So that's the same exhibit, 386 is the
13 barcode reference. Thank you. So if we go to the next
14 page, we've got "Lismore" down the bottom there.

15

16 Q. And then you'll see this is your summary.

17

18 THE COMMISSIONER: Which page do you want?

19

20 MS SULLIVAN: 387, I'm sorry.

21

22 THE WITNESS: I'm just looking at that now, Commissioner.
23 So at Lismore you had, yeah, the custody, the supervisor,
24 station officer, et cetera.

25

26 MS SULLIVAN: Q. Yes.

27 A. Urgent assist with the hospital at 18:33, back on at
28 18:50. Then the concern for welfare at 19:09. Then the P2
29 at 19:42. So I - not being an expert in the CAD system,
30 when I've done my review, I dare say it didn't bring up the
31 priority 4. It would have only done the 2 and the 3s.

32

33 Q. Yes.

34 A. Hence why I would have missed that one.

35

36 Q. Missed this?

37 A. Okay. So that was certainly not deliberate.

38

39 Q. No, no, and I'm not suggesting that. But it is
40 a relevant circumstance, isn't it?

41 A. Absolutely, and certainly the discussions that I had
42 with Officer E, you know, they expressed how busy they were
43 that night with mental health.

44

45 Q. Yes. But this raises the prospect, doesn't it, that,
46 for example, Lismore 15 could have backed up Woodburn 29 to
47 go to the P2?



1 A. It could have, yes.

2
3 MS SULLIVAN: Is it an appropriate time for a short break,
4 Commissioner?

5
6 THE COMMISSIONER: Let's do that. Twenty minutes. We
7 will be back at 11.35.

8
9 **SHORT ADJOURNMENT**

10
11 MS SULLIVAN: Commissioner, I should indicate I just
12 indicated to Superintendent Tanner that it was fine for him
13 to have a copy of his section 54 response in front of him
14 to refer to, so he now has that.

15
16 THE COMMISSIONER: That sounds very straightforward. On
17 the topic of exhibits, I think I have made a mistake in
18 numbering the public exhibits that I did this morning, if
19 we could just correct that. The P1179, the blank exhibit,
20 which is tab 52, should be exhibit 5, not exhibit 4, sorry.

21
22 (Exhibit description amended in original location)

23
24 MR SMARTT: Could I raise an issue of housekeeping before
25 we proceed? We have requested a copy of the court book and
26 that has been denied, and we press our request for the
27 court book, given witnesses are giving evidence by
28 reference to it and exhibits are being displayed. That
29 seems to be a modest request and there doesn't appear to be
30 a good reason why that should be refused.

31
32 THE COMMISSIONER: We don't have a court book in this
33 jurisdiction, Mr Smartt.

34
35 MR SMARTT: Well, the book from which barcodes are being
36 read.

37
38 THE COMMISSIONER: The Commission brief.

39
40 MR SMARTT: Yes.

41
42 THE COMMISSIONER: So the usual practice as an
43 investigation in this Commission is that, for obvious
44 reasons, matters are not necessarily disclosed to parties
45 before they give their evidence and matters are instead
46 unfolding.

47



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1 My understanding is that, almost without exception,
2 all of these matters, any of the CAD documents, all of
3 that, would have been known to your client, as the
4 Commissioner of Police; they're almost all police records,
5 aren't they?

6

7 MR SMARTT: Some of them are.

8

9 THE COMMISSIONER: Which are the ones that aren't police
10 records that have taken you by surprise?

11

12 MR SMARTT: None so far, but the difficulty is we have
13 trouble following along the questioning of witnesses. We
14 don't have the same barcode numbering as you do. Obviously
15 there has been a large amount of documents produced and
16 obviously the time will come where we all need to give
17 consideration to tendering documents, and it's most
18 helpfully done, I would say, from the book given to the
19 Commission.

20

21 Now, if there is some special reason why there is some
22 document that shouldn't be disclosed - it's hard to see how
23 that is, given that a lot of them are police records and
24 this is a public inquiry - then we're happy to be
25 reasonable about that. But there doesn't seem to be
26 a reason as to why we can't have that book of documents.

27

28 MS SULLIVAN: It's an investigation brief, so we should be
29 precise about the terminology, firstly.

30

31 Secondly, it may be my oversight but I had understood
32 I was clearly identifying quite a limited subset of
33 documents, for example, in relation to incident records,
34 that would be available to the Commissioner. So, for
35 example, the Salvation Army CAD incident, the Newrybar
36 accident incident, they're readily available, I would have
37 thought, those documents, to the Commissioner and
38 identified as such.

39

40 MR SMARTT: Yes. But again, the difficulty remains that
41 practically, we can't navigate to them quickly --

42

43 THE COMMISSIONER: They're on your screen, Mr Smartt.

44

45 MR SMARTT: Yes, but we're taken to particular pages, we
46 can't look between pages and again, we don't see the
47 practical problem with them being provided, noting that,



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1 you know, the rules of procedural fairness require some
2 kind of equal footing between the parties. Even though
3 this is an investigation, serious misconduct findings are
4 theoretically possible, given the scope and purpose, and
5 those rules of procedure fairness require that we have
6 access to that information, the same information that you
7 do, Commissioner.

8

9 THE COMMISSIONER: I'm not sure that they would allow you
10 to have access to the same information that I've got,
11 Mr Smartt, as this is an investigation, not a court
12 proceeding, so the rules obviously are quite different in
13 that context.

14

15 MR SMARTT: But the rules of procedural fairness remain.

16

17 THE COMMISSIONER: I'm well aware of the rules of
18 procedural fairness, but thank you.

19

20 MR SMARTT: Yes.

21

22 THE COMMISSIONER: Certainly an order was made at the
23 outset that any exhibits that are being tendered are
24 certainly able to be made available to you.

25

26 Let me reflect on that over lunch and consider that
27 request further, but at the moment, I'm struggling to see
28 why - I understand that you might like to be provided with
29 a copy of the exhibits so that you are able to see the full
30 exhibit at the time.

31

32 I'm not inclined, at the moment, to provide you with
33 the Commission's investigations brief. We tab that in
34 advance for our own convenience. Matters are in there that
35 may never be put to any of the witnesses. And unless
36 they're exhibited, they wouldn't be relied on by this
37 Commission in reaching a decision. But they're matters
38 that are collected as part of the investigation. So in
39 that sense, quite different to a court brief or even to
40 a police brief that's being prepared as part of an
41 investigation.

42

43 MR SMARTT: Yes. I understand there's a difference.
44 I think the nub of the issue is how different, and --

45

46 THE COMMISSIONER: And you would like to have access to
47 the documents that are being shown to the witness?



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1
2 MR SMARTT: Yes.
3

4 THE COMMISSIONER: Yes. And certainly once they've been
5 tendered as exhibits, you're entitled to have access to
6 those and they can be provided by the end of today.
7

8 MR SMARTT: Yes. But - I think you understand what I want
9 and I understand you're going to reflect about that.
10

11 THE COMMISSIONER: I'll reflect and see if there's
12 anything in what you've said that I've missed. I can
13 indicate now, a copy of the Commission's investigation
14 brief will not be provided to you. That's our
15 investigation brief that we use and I don't see that
16 there's anything in procedural fairness that requires the
17 Commission to disclose to the parties at large what it is
18 that we've compiled as part of our investigation.
19

20 If there are matters that the Commission will be
21 taking into account as part of its decision-making process,
22 then obviously the obligations of procedural fairness are
23 to make sure that you have an opportunity to look at that
24 material.
25

26 MR SMARTT: Yes.
27

28 THE COMMISSIONER: And reflect on it and to make whatever
29 submissions you wish to do.
30

31 MR SMARTT: I suppose there are two scenarios. One is
32 they're all police records in which case, it doesn't seem
33 to me there is a problem with disclosing it, or two, there
34 are some police records and some other things and the other
35 things might be probative of certain issues, and we don't
36 have access to them because they're not police records.
37

38 Now, there may be --
39

40 THE COMMISSIONER: But if they're probative and I'm
41 relying on them, then, as a matter of procedural fairness,
42 we would provide them to you.
43

44 MR SMARTT: But they may not be - they are only relied on
45 if they are tendered, but we may wish to tender --
46

47 THE COMMISSIONER: You're at liberty to tender whatever



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1 you wish, Mr Smartt.
2

3 MR SMARTT: But we may not have the records that we want
4 in this scenario. All we know, from our perspective, is
5 there is some body of documents, call it whatever you want,
6 from which things are being shown to witnesses and from
7 which documents are being tendered.

8 Barring some reason as to why we can't have access to
9 them, it seems sensible to allow us to have access. But
10 I understand what you've said about that. That's my
11 position.

12 THE COMMISSIONER: I understand your position.

13 MR GOLLAN: Commissioner, could I also rise on this issue.
14 Could I join with my friend in the submission, and it's not
15 so much the access to the exhibits, it's a matter of
16 whether or not there are other documents within the body of
17 material that should be exhibited, because they bear upon
18 the exhibits or the evidence that has been given.

19 Now, I clearly don't have the same access that my
20 learned friend does because I'm not acting for the
21 Commissioner, and in circumstances where documents are
22 properly understood, it's often relevant to have a look at
23 the shouldering documents to see what was done before and
24 what was done afterwards rather than be constrained to the
25 thought process of the particular counsel assisting, with
26 great respect. I'm not suggesting anything other than
27 that's the way in which it is seen, but it could be seen
28 differently through other eyes.

29 So I join my friend in the submission and I would -
30 I have heard the exchange and I don't have much more to say
31 other than to amplify the point that it may be that there
32 are documents there that, in our opinion, bear upon
33 a proper interpretation of the exhibits that have are
34 before you for you to consider.

35 THE COMMISSIONER: Which you haven't had an opportunity to
36 obtain through your clients, Mr Gollan?

37 MR GOLLAN: Correct.

38 THE COMMISSIONER: Could you just elaborate for me, before
39 Ms Sullivan rises to address on the issue, why you wouldn't



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1 have an opportunity to obtain any shouldering documents
2 through your clients?

3

4 MR GOLLAN: Well, my clients are individuals, they are not
5 the corporation, as it were, and so it would be improper
6 for me to ask for the corporation's documents in
7 circumstances where I haven't issued a process, being in
8 the nature of a subpoena or otherwise, because it affects
9 the interests of other parties that are within the police
10 force, other individuals that are within the police force.

11

12 So we've been constrained - and I will be candid with
13 you, when it all started I said, "Where's the brief?" You
14 know, "I need to get busy on this before I go and help you
15 this coming week". That was last week. And I was
16 restricted to the documents being the responses that the
17 police officers had given, and I've had an opportunity to
18 do that.

19

20 I expressed in writing last night - I haven't
21 cross-pollinated any of the witnesses by exposing them to
22 other people's documents and have expressly told them that
23 that's not permissible and it would do them no service to
24 inquire of their own accord. I would like to have a look
25 at the documents that may shoulder some of the tenders to
26 see whether or not there is more context that can be given
27 so that you can properly understand the response.

28

29 MS SULLIVAN: Commissioner, I am unclear by what is meant
30 by the phraseology "documents that may shoulder" other
31 documents, for a start.

32

33 This is an investigation --

34

35 MR GOLLAN: I can explain that.

36

37 MS SULLIVAN: Well, you will have an opportunity to do
38 that if the Commissioner determines, but this is an
39 investigation, as you have indicated, Commissioner. To the
40 extent that material is relied upon adversely to the
41 interests of a party, it must be disclosed, and that is the
42 course that we are undertaking at the moment, and if there
43 is a need for either of my friends to have more time in
44 response to any material that has been disclosed on the
45 screen and they need to access a particular exhibit to ask
46 further questions, I'm sure, Commissioner, that could be
47 dealt with.



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1

2 But I am somewhat unclear about the difficulties that
3 are arising in circumstances where the CAD incident reports
4 that we have gone to, I've been over a number of times,
5 they're readily available to the Commissioner. I'm
6 struggling to understand the difficulties in relation to
7 the concerns that have been raised about procedural
8 fairness to date.

9

10 MR GOLLAN: Let me just assist my learned friend.
11 Shouldering documents, an example could be within clinical
12 notes of medical records and you have a particular focus on
13 a particular note but the notes that are on either side of
14 it might give context to that particular thing.

15

16 It's exactly the same as undertaking of an
17 investigation, or police performing their functions. There
18 are some records that record what they did and there are
19 other records that are the progenitor to what they did or
20 are otherwise distal to it, at first blush, but they don't
21 give any context to it in the absence of knowing what else
22 is in the room.

23

24 THE COMMISSIONER: And they wouldn't be caught by the
25 section 55 notice that has been issued to all of your
26 clients to produce whatever relevant records to the
27 Commission - records that are relevant to their response to
28 the Commission?

29

30 MR GOLLAN: Commissioner, with great respect, I don't know
31 that. I don't know whether or not there is another
32 document that sheds light, because of my own experience
33 acting with the police force or acting for them, and that
34 there would be another document here or there would be
35 another document there, or someone else has said something,
36 and that's giving context by reference to the later
37 document which becomes part of the tender. It's a matter
38 of us not knowing rather than that we have any confidence
39 that that's the limit of the beginning and the end of that
40 particular function or inquiry. And that's the reason why
41 I raise it.

42

43 MS SULLIVAN: We're not dealing with medical records;
44 we're dealing with quite particular police documents, and
45 if my friend has concerns about whether or not he has an
46 accurate compilation of records that relate to his clients,
47 he should make those inquiries. But we had understood that



8649547

1 the universe of relevant material in relation to his
2 clients had been produced in response to the section 54 and
3 55 notice.

4
5 I should also say that it's unfortunate that poor
6 Superintendent Tanner has been subjected to this procedural
7 argument because it ought not to occur in the presence of
8 a witness.

9
10 THE COMMISSIONER: I think I understand where people are
11 coming from. I'll reflect again over lunch. I think
12 you've heard my preliminary views. If there's anything
13 about that that changes, we'll deal with that before the
14 next witness returns.

15
16 MR GOLLAN: If the Commissioner pleases.

17
18 THE COMMISSIONER: Ms Sullivan? Mr Tanner.

19
20 THE WITNESS: Thank you, Commissioner.

21
22 MS SULLIVAN: Q. I'll take you back to the crime scene -
23 sorry, we're back there - at the point in time where you
24 have taken some photographs of the scene and sent them to
25 Assistant Commissioner Chapman; is that right?

26 A. Correct.

27
28 Q. What areas did you photograph in particular, if you
29 could just --

30 A. So I believe I did the car park, or standing in the
31 car park to the back of the building, and then at the side
32 of the building, down to where the deceased was located,
33 and then the area in which the deceased was located.

34
35 Q. Do you remember approximately how many photos you
36 took? Was it just a couple or --

37 A. I think it was only two or three - well, it would have
38 been three I imagine, and I have tried to find those photos
39 but I cannot locate them.

40
41 Q. Were they attached to an accompanying email?

42 A. No, they were sent by text.

43
44 Q. By text?

45 A. Yes.

46
47 Q. Do you remember the content of the text?



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1 A. It would have been on the back of the discussion I've
2 had along the lines of, "You wouldn't have seen where the
3 person was located due to where it was." And I sent those
4 photos to her to reinforce that.

5

6 Q. Of course, when you went there it was dark.

7 A. Correct.

8

9 Q. With the officers went there, it was light?

10 A. On dusk, yes.

11

12 Q. Dusk, thank you.

13 A. Yes.

14

15 Q. Did you have a discussion, or on scene did you have
16 a discussion with Assistant Commissioner Chapman?

17 A. Yes.

18

19 Q. What was the content of that discussion?

20 A. So I went through the whole event from go to whoa and
21 explained what I could see, et cetera, with the photos and
22 things like that, and discussed the aspect of the police
23 response and whether it did meet the critical incident
24 guidelines.

25

26 Q. You raised that matter at that point in time?

27 A. I believe I did, yes.

28

29 Q. And what did she say in response to that?

30 A. At that stage, I understand she was not satisfied that
31 it didn't meet that criteria.

32

33 Q. Had you proffered a view about whether you thought it
34 might?

35 A. I agreed with her.

36

37 Q. You agreed that it didn't, at that stage, based on the
38 information?

39 A. Correct, yes.

40

41 Q. But it was certainly under active consideration. Is
42 that a fair --

43 A. That's fair, yes. I guess, bearing in mind it was
44 very early in the incident.

45

46 Q. Yes. By that stage it would have been just within an
47 hour or so of Ms Lucena's body having been discovered?



8649549

1 A. Correct.

2
3 Q. So then you return to the station, is that right?
4 Ballina station, that's the next sequence?

5 A. That's correct, yes.

6
7 Q. And once you got there, what did you do?

8 A. That's when I reviewed the CAD message and then
9 formulated the - if I may have a look.

10
11 Q. Yes, please, refer to it. So this is the 3.25am
12 email.

13 A. Let me see.

14
15 Q. I think that's --

16 A. Yes, correct. That's where I did some background
17 checks.

18
19 MS SULLIVAN: Just for the record, I note we're at tab 75,
20 exhibit 22C, barcode ending 375, is where that email is.

21
22 THE COMMISSIONER: We might bring that email up on the
23 screen so that everyone can see it. So tab 75, and the
24 barcode number again?

25
26 MS SULLIVAN: Is 375.

27
28 THE COMMISSIONER: Ending in 375.

29
30 MS SULLIVAN: Thank you.

31
32 Q. Has that come up for you?

33 A. It has now, yes.

34
35 THE COMMISSIONER: You can refer to your own copy,
36 Mr Tanner, if that's easier. It's simply a matter of
37 making it easy for other than else.

38
39 THE WITNESS: Okay. So the purpose of - I guess the
40 purpose of this email, so it's - I guess I'm acting with
41 two hats. You know, I'm doing my commander role and we
42 have a serious crime, being a homicide, so we need to brief
43 up in regards to that. But then also, once asking the
44 questions about whether the response by police was
45 appropriate, or could be deemed a critical incident.

46
47 MS SULLIVAN: Q. Okay.



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1 A. So the contents of this email, the 3.25 email, was the
2 background of the deceased and the alleged offender, how
3 the incident unfolded, and then basically what we've got in
4 place to manage that.

5

6 Q. Okay. Had you - in terms of the incident and the
7 information set out about Ballina 14 and Woodburn 29 being
8 tied up with the MVA, et cetera, had that come from CAD or
9 was that the information they told you?

10 A. Both. So they told me, and then I - I think it was
11 the VKG supervisor sent me the email about 1.44am.

12

13 MS SULLIVAN: Yes. So that is at barcode 400. We might
14 just pull that up - in the same document.

15

16 Q. That was a request that you made when you were on
17 scene; is that right?

18 A. Correct, correct.

19

20 Q. The files that are attached to that email, when we've
21 pulled that up --

22 A. Yes, I've got those.

23

24 Q. What are the files that were attached?

25 A. So that's the CAD log for the original job at 19:03,
26 and then the second one is the CAD job which was created
27 when they - they've re-attended it at 12.40am.

28

29 Q. Thank you. Right. And so that information you then
30 incorporate into your email of 3.25am?

31 A. Correct.

32

33 Q. Just in terms of the reference that you make to the
34 "location of the body is at the side of the building behind
35 two gates and no lighting available", what did you mean by
36 that?

37 A. Can I just see where that is?

38

39 Q. Yes, please. So it's the penultimate bullet point
40 under "Incident".

41 A. Okay.

42

43 THE COMMISSIONER: So we'll go back to page 375.

44

45 MS SULLIVAN: Oh, sorry, 376.

46

47 THE WITNESS: Correct. So that's where I'm incorporating



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1 both - both, I guess, trains of thought about the actual
2 incident, but also highlighting any issues that may need to
3 be considered for the critical incident. So I just wanted
4 to highlight - and that was - the content of this email, it
5 also, I guess, reinforced or summarised the conversation
6 that we'd had on the phone. So there was a record of it.
7

8 MS SULLIVAN: Q. Okay. Neither officer had told you no
9 lighting was available - do I misunderstand?

10 A. No, I think you might misunderstand that. So there's
11 is actually no lighting at the side of the building where
12 the deceased was located.

13 Q. I see.

14 A. So it's in complete darkness.

15 Q. At the time that you attended?

16 A. At whatever time it was, yeah.

17 Q. Thank you. And then you set out under current status
18 of the investigation in terms of the allocation of an OIC
19 and the strike force --

20 A. Correct.

21 Q. -- being convened and you note the region commander
22 informed and briefed. That's Acting Assistant Commissioner
23 Chapman?

24 A. Correct. So this basically becomes then the notes,
25 because I didn't have my notebook.

26 Q. Thank you. And then you indicate I think at the
27 bottom of that email:

28 *Further information to be supplied as the
29 matter progresses through the day.*

30 A. Correct.

31 Q. In appreciation that it's still early days?

32 A. Correct.

33 Q. After you sent that email what did you do?

34 A. I would have gone back home - I think
35 I actually probably - I went back to the scene, just to
36 check on the welfare of the staff, and I think by that
37 stage, I think they were still waiting for crime scene to
38 arrive and things like that. I - I have a recollection -



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1 sorry, I have a recollection we recalled maybe some staff
2 to come in and do some crime scene. But it was just
3 general welfare/tasking and then I went home. I think
4 I arrived home - I think it was just coming up light when
5 I got home, from memory.

6

7 Q. And you had a quick sleep?
8 A. A little sleep, yes.

9

10 Q. And then came back in at about midday; is that right?
11 A. Correct.

12

13 Q. And what happened from midday?
14 A. So then I made a call to Ma'am Chapman.

15

16 Q. Yes.
17 A. On the back of she sent me an email saying, "Info sent
18 through to the DCOP. When you're available this morning
19 can you give me a call."

20

21 Q. Is that the email she sends you at about --
22 A. 7.29.

23

24 Q. 7.29?
25 A. Correct.

26

27 Q. Thank you. Right. And so once you get back in, you
28 call her in response to that?
29 A. Correct.

30

31 Q. And what conversation do you have at that time?
32 A. I think that perhaps - I think prior to that I might
33 have got an update on the investigation.

34

35 Q. From the OIC?
36 A. From the OIC. I do have a - that would be my normal
37 course, I would come straight back in, I would ring the
38 crime manager and say, you know, "Give me an update of
39 where we are at."

40

41 Q. Can you remember what happened in that conversation?
42 Can you remember what you talked about?

43 A. That would have all been around, you know, crime
44 scene's attended, the offender's in custody, you know, the
45 processing, all that kind of stuff.

46

47 Q. The status of any witnesses they might have been able



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1 to identify?

2 A. Correct. Because there was the gentleman that made
3 the call with the phone and that aspect of the
4 investigation as well.

5

6 Q. And the Salvation Army workers?

7 A. And the Salvation Army - that might have come a little
8 bit later, but it certainly was contained in my email that
9 afternoon.

10

11 Q. At 3.11?

12 A. Correct. So I would have received that information
13 from the crime manager and I would have relayed that to
14 Ma'am Chapman, and I do recall, whether it was in that
15 conversation - certainly before that email was sent, that
16 I was asked to do a review of the workload at the time.

17

18 Q. Okay. And what was the purpose of that review --

19 A. To further --

20

21 Q. -- as you understood?

22 A. I took it to further inform her about her
23 decision-making whether to call it as a critical incident
24 or not.

25

26 Q. As to whether there should be called a critical
27 incident?

28 A. Correct.

29

30 Q. Do you remember at about - about 1pm that day, having
31 a Teams meeting with Deputy Commissioner Pisanos?

32 A. I have a very - and I don't mean to be dismissive but
33 I was quite fatigued and I don't actually have
34 a recollection. I know we had a meeting at some stage,
35 I don't know whether it was 1 o'clock or when it was, but
36 if you --

37

38 Q. It was that day, on the 4th?

39 A. I couldn't tell you whether it was that day or the
40 next day, but if you have records that indicate it was that
41 day, I would accept that.

42

43 Q. Okay. We only have some notes from Assistant
44 Commissioner Chapman as to --

45 A. Okay.

46

47 Q. -- there being reference to a 1pm meeting with Deputy



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1 Commissioner Pisanos.

2 A. Correct.

3

4 Q. So there was only the one time that you spoke to him?

5 A. Correct - as in one time the three of us spoke

6 together, I believe.

7

8 Q. Okay. Right. That clarifies it. What was the
9 purpose of that meeting?

10 A. Again, twofold. Firstly, to tell him about the job,
11 because it's an horrendous matter.

12

13 Q. Yes.

14 A. Then also to inform him about the decision-making
15 around critical incident or not.

16

17 Q. To inform him?

18 A. Correct. It was part of the discussions to,
19 I guess - because he's not the delegate to call a critical
20 incident.

21

22 Q. That's the region commander's call?

23 A. That's the assistant commissioner's call, yes.

24

25 Q. Yes.

26 A. But I think it was to, I guess, satisfy him that our
27 thought patterns aligned with what he thought and the
28 information that we had. So it was a review maybe, you
29 would best call it.

30

31 Q. A review as to whether or not it was a critical
32 incident?

33 A. Correct.

34

35 Q. Do you remember broadly how long that call was? Are
36 we talking sort of an hour or 15?

37 A. No, it wouldn't have taken - I think it was probably
38 around a half an hour mark and we stepped through
39 everything that we knew at that stage. I do recall that
40 there was a discussion saying that if it wasn't a critical
41 incident, there was enough oversight - like, there would be
42 obviously a criminal investigation, a coronial
43 investigation as well. But I - I do distinctly remember
44 saying - I think that's when they asked me to do the
45 review, like, go and see where the truck crews were and all
46 that stuff.

47



1 Q. Pausing there, when you say there's a coronial
2 investigation, what's different in terms of what's done for
3 the coronial?

4 A. I think that goes further into the police responses.
5 It could also - another layer, another lens over the police
6 response as opposed to a critical incident.

7
8 Q. All right. And was there discussion about a DV
9 homicide review during that meeting?

10 A. There would have been. So there's always a DV
11 homicide review. That's conducted after every DV homicide.

12 Q. Tell us about --

13 A. But that doesn't involve me.

14 Q. Who has responsibility for that, is that state crime
15 command or --

16 A. My understanding, it does sit somewhere within state
17 crime. It's certainly - well, actually it probably sits
18 with the DV registry or the DV command now, but I do know
19 from past experience that there is a review conducted.

20 Q. Okay.

21 A. And that looks holistically, not so much just at the
22 police response to that incident, but, you know, whether
23 AVOs were in place, what engagement had they had with
24 police in the past, all that kind of stuff.

25 Q. Is it the function of that review to identify
26 deficiencies in the police response?

27 A. I'm not too sure what the function is of it. It's
28 outside my wheelhouse, so I really don't know.

29 Q. Were you asked to arrange or to speak to the people
30 who were conducting the DV homicide review?

31 A. No. No.

32 Q. Clear about that?

33 A. As clear as I can be, unless you can tell me
34 differently.

35 Q. That's pretty clear. No, no, I just need to make sure
36 that that's your understanding.

37 A. Yeah.

38 Q. And just to be clear, is that something that is
39 arranged by the OIC who is conducting the substantive



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1 criminal investigation or is that undertaken by another
2 unit?

3 A. I think it's state crime.

5 Q. You think it's state crime.

6 A. I think they are the ones that organise it.

8 Q. Did you speak to the on-call homicide consultant at
9 any point?

10 A. No.

12 Q. That's not your role?

13 A. No.

15 Q. Okay. Can I just test to see whether any of this
16 information prompts your recollection about what may have
17 been discussed during that conversation?

18 A. Please.

20 Q. You provided information on the current investigation
21 plan: does that accord with --

22 A. Yeah, I think that's part of the investigation about
23 trying to find the person with the phone.

25 Q. Yes, and Acting Assisting Commissioner Chapman
26 confirmed that she had requested that the DV homicide
27 review include the police actions from 1700 hours and had
28 initiated the region response as part of the
29 investigation - do you remember that occurring?

30 A. I do know the region response, absolutely, but the
31 notes about the DV homicide review, that would have been
32 a discussion that she would have had with state crime,
33 I would imagine.

35 Q. You don't think that was discussed during that
36 meeting?

37 A. Not that I'm aware of, no, or not that I recall,
38 I should say.

40 Q. Was there a discussion about media?

41 A. Yes. Yes.

43 Q. And you were the one who was nominated to do that
44 media briefing?

45 A. Yes.

47 Q. And you have a clear recall, do you, that the -



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1 whether or not the matter was a critical incident was
2 discussed?

3 A. Yes.

4

5 Q. And that was an important function of that meeting,
6 was it?

7 A. Correct.

8

9 Q. All right. After that meeting concluded - was it
10 canvassed during that meeting, or had it already been
11 decided, that you would do a further review of the workload
12 and staffing?

13 A. It was from that meeting.

14

15 Q. From that meeting it came out?

16 A. Yes.

17

18 Q. Did you have a conversation with Acting Assistant
19 Commissioner Chapman after that meeting in relation to the
20 review or - as in the types of things you should be doing?

21 A. I may have. I don't recall it but I may have.

22

23 Q. You don't remember?

24 A. Yeah. We were sort of tick-tacking all day, if that
25 makes sense.

26

27 Q. It does. And then at 3.11pm you send your email,
28 we'll go to --

29 A. Yep.

30

31 Q. We'll go to that.

32 A. Yes, that's correct.

33

34 MS SULLIVAN: That's at tab 75, exhibit 22C, barcode
35 ending 386, please.

36

37 Q. So this is your email?

38 A. Yes.

39

40 Q. You'll see there's the information in relation to the
41 investigation, and by that stage, you'll see that the
42 second bullet point is:

43

44 *Two workers from the Salvation Army have
45 provided statements. The POI and VIC have
46 been at the Salvation Army the last couple
47 of days seeking help and "rough" sleeping*



8649559

1 A. Correct.

2
3 Q. And we have touched on this. The 7.03 P2 is in red?
4 A. Yes.

5
6 Q. What was the purpose of highlighting it in red?
7 A. Just to indicate that's the job that we're talking
8 about. For no other reason.

9
10 Q. And I think --
11 A. I did the same - sorry, I did similar with the
12 previous email about, I think, about the bail --
13
14 Q. Yes.
15 A. -- person being refused bail by police.

16
17 Q. Yes. To highlight significant information?
18 A. Correct.

19
20 Q. And I think we have - is there anything else about
21 your review there that you'd like to - we have touched on
22 this earlier this morning?

23 A. The only thing I'd like to raise is the 19:09 concern
24 for welfare, 422 Ballina Road. So Lismore 15 obviously
25 acknowledged and attended that. That was a similar time,
26 was it not, that one of them was listed as a "file"?

27
28 Q. I'm sorry, after the --
29 A. So there was one you showed me --

30
31 THE COMMISSIONER: Is that on the next page of this
32 document?

33
34 THE WITNESS: The one you showed me earlier with
35 a priority 4 job.

36
37 MS SULLIVAN: Sorry, just pause one moment,
38 Superintendent. So that's barcode 367, the next page, if
39 we could please move.

40
41 Q. So, yes, the P4 that I showed you; is that what you're
42 referring to?

43 A. That's right, yeah. I just wanted to make sure those
44 timings were correct, because it seemed --

45
46 Q. I will find my chronology. So the relevant P4 is
47 Lismore 15, off from 9.12 to 9.18 [sic]?



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1 A. So that's where I'm - when I was saying before about
2 sometimes they use different cars but use the same call
3 signs. That one, to me, indicates they were going to the -
4 Lismore 15 was going to the concern for welfare at Ballina
5 Road at the time that they were also attending a file job.
6

7 Q. Right.

8 A. So I think when you asked before about that, "Well,
9 had you seen it", I think because that was a file and a P4,
10 it may not have been the first response vehicles that
11 attended, if that helps any. It may not, but --
12

13 THE COMMISSIONER: Q. So the suggestion that counsel
14 assisting put to you earlier that Lismore 15 was doing a P4
15 filing job --
16 A. Correct.

17 Q. -- at that time, is inconsistent with that dot point
18 that suggests that at 19:09, they're in fact doing a P2
19 concern for welfare?

20 A. Correct, yes.

21 MS SULLIVAN: Q. But could they not have attended that
22 job immediately in response?

23 A. It might be a completely moot point, Commissioner, but
24 I just wanted to highlight that.

25 THE COMMISSIONER: What was the time again, Ms Sullivan,
26 of the apparent P4 --
27

28 MS SULLIVAN: The P4 comes in at 7.12.
29

30 THE COMMISSIONER: Right.
31

32 MS SULLIVAN: And is dealt with between 7.12 and 7.18.
33

34 THE WITNESS: What address, would you mind?
35

36 MS SULLIVAN: It's Goonellabah. I just don't necessarily
37 want to read the person's name onto the --
38

39 THE WITNESS: Oh, no, no, just - all I'm trying to
40 indicate, because they're the same and then they're - at
41 19:19, a minute later, they're off at 422 Ballina Road,
42 Lismore Heights, which is some distance - like, you
43 wouldn't get from Goonellabah to Lismore Heights in a
44 minute. That's the point I'm trying to make.
45



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1

2 The inference I'm trying to draw is that potentially
3 they were using two separate vehicles, someone else was
4 calling "Lismore 15" as well, which happens quite often.

5

6 THE COMMISSIONER: Q. So designating that vehicle as
7 Lismore 15, there's actually two vehicles there but we're
8 just not seeing that?

9

10 A. It could be. So, for instance like Ballina,
11 Alstonville 18 was the response car, where normally Ballina
12 15 is their response car. So depending - some police will
13 jump into Alstonville 18 and call it Ballina 15. I know
14 it's confusing as all buggery - terrible word, sorry,
15 I apologise and withdraw that.

16

17 So what I'm suggesting is that someone, whether it was
18 the station constable or the custody officer, may have been
19 using a vehicle they thought was Lismore 15, calling off on
20 a file, when the response crew, who are in Lismore 15,
21 could have been - it could have been Kyogle 23, another
22 vehicle. That's all I guess I'm trying to get at.

23

24 MS SULLIVAN: Q. That's a possibility. Is it also
25 a possibility that it is Lismore 15?

26 A. A highly doubt it, only because of the time frames,
27 when you say calling back on at 19:18, and then a minute
28 later you're at Goonellabah.

29

30 Q. Okay. So the concern for welfare that comes in at
31 19:09, that's a check bona fides, isn't it?

32 A. Yes.

33

34 Q. That is "Telstra advised caller requested police. On
35 transfer caller terminated. Nil call backs due to pay
36 phone. No further information." That's that job?

37 A. Correct.

38

39 Q. All right. That doesn't sound like a job of grave
40 severity, if I can put it in those terms?

41 A. I'm just putting it out there.

42

43 Q. Thank you for that further explanation.

44 A. Sorry.

45

46 Q. No, don't apologise. So, other than that, are there
47 any other matters in relation to that review that you would
48 wish to draw to our attention, before we move on?



8649562

1 A. No.

2
3 Q. Can I just ask, the source - or confirm, the source of
4 the information about there being no other units on duty
5 who could respond, such as the highway patrol, detectives,
6 PCT - what's that?

7 A. Proactive crime team.

8

9 Q. Okay. CPU?

10 A. Crime prevention unit.

11

12 Q. So that information came from the roster.

13 A. Correct.

14

15 Q. Thank you. Now, can I just - I'm sorry, I'm jumping
16 around but there's a telephone call that is referred to by
17 Acting Assistant Commissioner Chapman at around 9.15am.
18 This is, exactly as you said, you were tick-tacking during
19 the course of the day. Can you recall speaking to her at
20 about 9am?

21 A. No, I can't, sorry. I must have been at home.
22 I don't recall that, no.

23

24 Q. Her account is to the effect that during that call,
25 you conveyed that you were satisfied that police attended
26 as quickly as they could?

27 A. That would be my - yes, I would have said that, yes.
28 That was my standing on it.

29

30 Q. And that they had patrolled the front and the rear of
31 the premises with nil find.

32 A. Okay. I don't recall the front or - the front part of
33 it, but certainly the rear.

34

35 Q. Okay. Do you think it's unlikely - it's unlikely you
36 said that?

37 A. It's likely - it's either/or.

38

39 Q. You can't say?

40 A. I can't say.

41

42 Q. That wasn't your subsequent understanding, was it,
43 that they had patrolled the front, once you, for example,
44 obtained their statements?

45 A. Sorry, could you --

46

47 Q. Once you obtained their statements - that is, of



1 Ballina 14 and Woodburn 29 - did you understand --

2 A. I didn't obtain their statements.

3

4 Q. You never reviewed their statements?

5 A. No, no. No, that would have been part of the brief,
6 which I - yeah.

7

8 THE COMMISSIONER: Q. Was that because you didn't think
9 it was necessary, Superintendent Tanner, or because it was
10 part of the brief and you were deliberately keeping
11 yourself away from that?

12 A. Once it was not declared a critical incident,
13 Commissioner, that was my involvement with that side of it.
14 I would have kept an eye on the proceedings, but certainly
15 I would not have reviewed anyone's statements that I can
16 recall.

17

18 MS SULLIVAN: Q. Do you recall being directed or
19 requested by Acting Assistant Commissioner Chapman to
20 review those statements?

21 A. I may well have, as I said, I don't recall that. But
22 if she made records of it and said that I did, well then
23 I would take her - that I would have but I certainly do not
24 recall it.

25

26 Q. You don't recall being told to do that?

27 A. I don't recall both - I don't recall being told to do
28 it and I don't recall doing it.

29

30 Q. Okay. And is it likely that you would recall doing
31 it, given where we are now?

32 A. I - nearly three years ago, it was - I'd been up most
33 of the night. If it was on that day that they took the
34 statement - I don't even know when they took the
35 statements.

36

37 Q. I will tell you the chronology.

38 A. Please do.

39

40 Q. We understand that on the evening of 4 January,
41 Ballina 14 prepares his statement, and then on 6 January,
42 Woodburn 29 prepares his statement.

43 A. So is the indication that I reviewed them after the
44 6th?

45

46 Q. Correct.

47 A. Okay. I don't recall that. I don't recall that.



1

2 Q. And if you had reviewed them, is it likely that you
3 would have sent an email by way of update indicating that
4 you'd done that?

5 A. I would have assumed so unless I had a conversation
6 with Ma'am Chapman and she made records of it, but
7 I certainly do not recall that.

8

9 Q. There are no such records to that effect?

10 A. Not that I could find any, no.

11

12 Q. Does that suggest it is unlikely that you did review
13 those statements?

14 A. No, I wouldn't say that. As I said, it's as likely
15 that I did as it is unlikely that I did it, but if - well,
16 I should frame it this way: if Ma'am Chapman asked me to
17 do it then I would have done it, but I do not have any
18 recollection, sitting here today, of reading those
19 statements.

20

21 Q. But you have very carefully set out your initial
22 review at 3.25am and the review in the afternoon at 3.11pm?

23 A. Correct.

24

25 Q. And by 6 January, it's still a relatively fresh
26 incident, things are still unfolding. Agree?

27 A. Correct.

28

29 Q. Can I suggest that it's likely that if you had
30 reviewed those statements, it would have been important for
31 you to have made a record about your findings by way of,
32 for example, another updating email?

33 A. It probably would have, but what I would suggest is
34 that if there was nothing in those statements that changed
35 my view from my original two emails, then perhaps I made
36 a phone call to Ma'am Chapman and said, "There's nothing
37 out of the ordinary".

38

39 Q. I see.

40 A. I don't know whether she received those statements or
41 not, whether she reviewed them herself, I have no
42 recollection of that. I could check my emails to see
43 whether I did.

44

45 Q. Could you do that?

46 A. When I prepared - sorry, when I prepared this notice,
47 I don't think I went to 6 January. I think I just did the



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1 3rd and the 4th, and perhaps the 5th but I certainly don't
2 remember the 6th. So I can certainly do that and get back
3 to the Commissioner.

4

5 MS SULLIVAN: Yes, please, thank you very much.

6

7 THE COMMISSIONER: Maybe I will just formally make a call
8 under section 69(2) of the Law Enforcement Conduct
9 Commission Act for those - any emails relating to this
10 matter.

11

12 THE WITNESS: Yes.

13

14 THE COMMISSIONER: From, shall we say, the 6th to the 10th
15 of January.

16

17 MS SULLIVAN: Perhaps to the 15th.

18

19 THE COMMISSIONER: 6th to the 15th.

20

21 Q. When I say "relating to this matter", I'm talking
22 about the police response --

23 A. Okay.

24

25 Q. -- not matters --

26 A. Not the homicide investigation.

27

28 Q. -- dealing with the homicide investigation.

29 A. Certainly.

30

31 Q. Which I understand you still kept a kind of watching
32 eye over, as it happened?

33 A. Correct, thank you.

34

35 MS SULLIVAN: Q. Is it likely that during that
36 discussion that morning - that is at 9.15am - there's still
37 the issue of the critical incident quite live --

38 A. It would have been.

39

40 Q. -- as between you and --

41 A. Yes, it would have been.

42

43 Q. Yes. You don't recall any discussion about that,
44 I take it, that --

45 A. I don't. I apologise, no.

46

47 Q. And I'm sorry to be jumping around, but in that



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1 discussion do you remember any reference to the DV homicide
2 review process?

3 A. The 9.15am?

4

5 Q. 9.15 call.

6 A. I don't recall the call, so --

7

8 Q. No?

9 A. No.

10

11 Q. All right. Can you recall, at 9.15am or any time that
12 day, a discussion about whether there should be
13 a walk-through with the officers who attended at 7.55pm?

14 A. No, I don't recall that, no.

15

16 Q. No?

17 A. Not that I recall.

18

19 Q. Is it likely that if that was discussed, that's
20 something you would remember, a walk-through?

21 A. I would think so, yeah. So was it a walk-through for
22 the critical incident part or for the homicide
23 investigation? Because quite often, the first responding
24 police, homicide will get them to walk back through the
25 scene to say "what you saw", that would have been separate.

26

27 Q. So a discussion about a walk-through with the officers
28 who attended at 7.55pm?

29 A. Okay. It could have been part of the homicide
30 investigation and that would have been discussed with the
31 crime manager and homicide.

32

33 Q. Okay.

34 A. If that's what that refers to.

35

36 Q. That's not your note. So I'm just trying to see if we
37 can prompt any recollection on your part.

38 A. No, no.

39

40 Q. All right. Thank you. We have canvassed the Teams
41 meeting. Just to be clear about who attends that, that's
42 Deputy Commissioner Pisanos, Acting Assistant Commissioner
43 Chapman and their respective staff officers?

44 A. Normally, yes.

45

46 Q. Normally?

47 A. Yes.

1

2 Q. And yourself?

3 A. And myself.

4

5 Q. Do you have a staff officer?

6 A. No, I do not.

7

8 Q. We've covered the content of that. Do you recall
9 seeing a situation report about this matter that evening?

10 A. As in - for the homicide investigation, yes.

11

12 MS SULLIVAN: All right. We might pull up tab 56, please.
13 Which is exhibit 19C.

14

15 THE WITNESS: Yes, I have that.

16

17 MS SULLIVAN: Q. That has come up for you?

18 A. Yes.

19

20 Q. Thank you, Superintendent. Do you see - I think and
21 just to be clear, this is a sit rep report on 4 January at
22 6.53pm. It's prepared by the crime manager; is that right?

23 A. It is prepared by - yes, Sergeant Michael Smith, who
24 was the acting detective inspector, crime manager.

25

26 Q. And it's been vetted by Officer E, the duty officer.

27 A. Correct.

28

29 Q. You have no role in approving the content of this
30 document, I take it?

31 A. No, no.

32

33 Q. But do you recall seeing it?

34 A. Yes.

35

36 Q. Do you see under the heading "Current Position",
37 there's an update on the homicide investigation. Do you
38 see that it then says:

39

40 *Police were delayed in their response by*
41 *other priority 2 incidents occurring in the*
42 *area at the time.*

43

44 Do you see that reference?

45 A. I'm just looking - is that in "Current Position", did
46 you say?

47



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1 Q. Under "Current Position", it's the fourth line down?
2 A. Oh, yes, I do:

3
4 *Police were delayed in their response by*
5 *other priority 2 incidents occurring in the*
6 *area at the time.*

7
8 Yes, I see that.

9
10 Q. Did you read that and appreciate that that was
11 inaccurate?

12 A. I think that encompasses the Lismore crews as well.

13
14 Q. Right. In terms of the --

15 A. But - I would say at Ballina, that is inaccurate.

16
17 Q. And then do you see there at 7.55:

18
19
20 *... Police patrolled the area but were*
21 *unable to locate anyone. Attempts were*
22 *made to contact the original informant but*
23 *no-one answered the phone.*

24
25 To the extent that one reads that sentence as suggesting
26 that those officers attempted to call the original
27 informant, that's not right, is it?

28 A. Oh, I don't take it from that.

29
30 Q. How do you read that?

31 A. Oh, just attempts were made. It doesn't say that the
32 officers who attended made those attempts.

33
34 Q. Right.

35 A. Yeah.

36
37 THE COMMISSIONER: Q. Can I ask, Superintendent Tanner,
38 would it normally be the case that the attending officers
39 would try and call an informant back or are those --

40 A. No, it's normally the radio operator.

41
42 Q. So that's the radio operators that try to get all the
43 information they can from an informant and then they relay
44 it on?

45 A. Yes. So the attending police would ask radio, "Can
46 you contact the informant back to see if there is any
47 further information?" If they have no luck, on occasions,



1 the officer attending may try and do that themselves but
2 it's been my experience that the majority of the time, it
3 would be the radio operators being asked to do that.
4

5 Q. And so anyone - sorry. Other senior officers reading
6 this sit rep would also have that understanding?
7 A. Absolutely, yeah, and that's, I guess, why we view it
8 differently.
9

10 MS SULLIVAN: Q. Who does the sit rep get disseminated
11 to?
12 A. A variety of people. So it'll go to the senior
13 management team for Richmond, it'll go to homicide, it'll
14 go to the police media, it'll go to the region, it'll go to
15 PSC, and then there's a variety of other ones you can
16 actually tick if you want to add. There's --
17

18 Q. Who's responsible for disseminating it?
19 A. Most of them are just done automatically. Then it's
20 up to the vetting officer to pick any additional ones.
21

22 Q. To go broader than that, I understand.
23 A. Yes. So it'll go to the state coordination unit, in
24 real terms, and that's probably the back-stop. If they
25 pick it up and they go, "Oh, this should have gone to X, Y,
26 Z," they will then forward it on to there as well.
27

28 Q. Can you recall - we're moving on from that document.
29 Can you recall any discussion during the course of
30 5 January with Acting Assistant Commissioner David Driver?
31 A. Yes.
32

33 Q. Of PSC?
34 A. Yes.
35

36 Q. What can you recall about that discussion and when it
37 was?
38 A. So I think I've got an email, if I can refer to an
39 email.
40

41 Q. Yes, please.
42 A. So I did send him both emails that I'd sent to Ma'am
43 Chapman and others.
44

45 Q. Yes. So we can bring that up in your response, that's
46 exhibit 22C, tab 75, and the barcode is 381.
47 A. Yes. So this's one that I received back from - now

1 Assistant Commissioner Driver.



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2
3 Q. 12.15?

4 A. 12.15, yes:

5
6 *Thanks Scott. Appreciate the update. This*
7 *addresses the questions I had.*

8
9 MS SULLIVAN: That's at barcode ending 383. But then --

10
11 THE COMMISSIONER: I think we'll just get that up on the
12 screen, Ms Sullivan.

13
14 MS SULLIVAN: Q. Okay. In fact, that includes the
15 complete exchange so we'll just stay there.

16 A. Yes.

17
18 Q. In fact, you've sent to Acting Assistant Commissioner
19 Driver at 9.54am your email of 3.25am saying:

20
21 *Sir,*
22 *As discussed.*
23 *Thanks.*

24
25 A. Yes.

26
27 Q. Was that after that discussion earlier that morning?

28 A. That's correct.

29
30 Q. Same day?

31 A. So he rang me that morning, from my recollection,
32 because he would have received the sit rep in regards to
33 it. And we had a discussion about the critical incident,
34 like, why wasn't - so there was two discussions, and -
35 I don't know how to approach the second discussion because
36 it involves a member of the family of the deceased.

37
38 Q. Please don't go there.

39 A. Yes.

40
41 Q. We don't need to - there's no discussion in relation
42 to this aspect; is that right?

43 A. No, that's right. So on this particular front, it was
44 just about the decision-making around - or the question was
45 asked about the critical incident and I sent him these two
46 emails and I stepped him through these two emails on the
47 phone and I said, "This is the reasons why".



1

2 Q. So you were on the phone as you were discussing these?
3 A. No.

4

5 Q. You forwarded them whilst --
6 A. No, no, I would have forwarded them - well, I would
7 have forwarded them shortly after the discussion.

8

9 Q. Shortly after, okay.
10 A. Correct.

11

12 Q. All right. And what were the issues that he was
13 raising?

14 A. I don't think it was so much issues. I think he was
15 just questioning - well, how would you put it? The
16 decision about it not being a critical incident, I guess.
17 Yeah, and that's when I've sent him this - these - the
18 information. And his response being, "That addresses the
19 questions I had."

20

21 Q. He was satisfied?
22 A. Yes.

23

24 Q. Did you speak to Acting Assistant Commissioner Chapman
25 about the discussion with PSC?

26 A. I don't know - I would assume I would have.

27

28 Q. Yes.
29 A. I - yeah, I could confidently say that I would have,
30 yes.

31

32 Q. Okay, all right. At around 10am, there's a suggestion
33 that there may have been a discussion between yourself,
34 Acting Assistant Commissioner Chapman and Superintendent
35 Greg Thomas about the independent review by homicide of
36 police actions. Do you recall that occurring?
37 A. I do have a recollection of that, I do, now that I sit
38 here.

39

40 Q. Right, what can you recall about that?
41 A. And that's where I guess I was talking about earlier
42 about the coronial and the discussions that we had with
43 Deputy Pisanos and Ma'am Chapman, that the homicide review
44 or the homicide oversight would also - could potentially
45 also be seen as another layer of independence from the
46 decisions or the information that I provided to
47 Ma'am Chapman about the critical incident. So I do recall



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1 that.

2
3 Q. Level of independence in what respect?
4 A. Well, I guess like any critical - well, for any
5 critical incident, as you know, it's - an independent
6 commander comes in and reviews the actions of the police.
7 So this is my staff, I'm reviewing it. To ensure there was
8 another layer of independence, another layer of review, the
9 homicide squad were going to do that.

10
11 Q. Who had arranged with the homicide squad to do that
12 independent review?

13 A. So if I was on the call with Mr Driver and
14 Mr Thomas --

15
16 Q. It's not Assistant Commissioner Driver on that call;
17 it's Assistant Commissioner Chapman.

18 A. Sorry. Sorry, yes.

19
20 Q. And Superintendent Greg Thomas?

21 A. Okay. So that would be from Ma'am Chapman --

22
23 Q. Yes.

24 A. -- and Superintendent Thomas. Certainly isn't
25 something I would have instigated. I had no - I had no
26 ability to instigate that.

27
28 Q. Not something that you would have instigated --
29 A. No.

30
31 Q. -- did you say?

32 A. No, well, I would have no power or authority to get
33 that appointed. That would be something that would have to
34 come from the region.

35
36 Q. That would have to be Assistant Commissioner Chapman
37 or would Superintendent Thomas have the capacity?

38 A. Could have been him as well. He was the operations
39 manager at the time.

40
41 Q. Do you recall if during - you do recall that meeting?
42 A. I do recall that now that you mention it, yes.

43
44 Q. Do you recall if there was any discussion about
45 providing a review of whether the officers attempted to get
46 to the side of the premises?

47 A. I don't recall that, no, sorry.



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1

2 Q. Or follow-up with the informant at the time?

3 A. I don't recall that, no.

4

5 Q. Okay. Now, just as a matter of completeness, at
6 1.15pm that day, Assistant Commissioner Chapman has a note,
7 which reads to this effect:

8

9 *Spoke with Superintendent Tanner. Awaiting*
10 *officer statement but will prioritise*
11 *review.*

12

13 Q. Okay? So that's a note in her diary?

14 A. Okay.

15

16 Q. It's not a note that you made?

17 A. Yes.

18

19 Q. Does that prompt any recollection on your part?

20 A. What date was that, sorry?

21

22 Q. That is on 5 January.

23 A. So that was on the 5th. Was that - that wasn't the
24 day that I sent the review email through, was it?

25

26 Q. You send the review email on the 4th.

27 A. On the 4th, yes.

28

29 Q. And of course, as I indicated, the chronology we have
30 Ballina 14 preparing his statement on the evening of the
31 4th, and Woodburn 29 on 6 January.

32 A. Yes. I don't recall that, no, I'm sorry.

33

34 Q. Do you remember at any point being aware of
35 a statement from a particular witness who has given
36 evidence in the Supreme Court, Ms Hudson-Moon, about seeing
37 a man standing in that side area next to the Salvation
38 Army, standing up and walking around, swearing, crying out?

39 A. No.

40

41 Q. That statement was never brought to your attention?

42 A. No, it was not.

43

44 Q. That would have been significant to you?

45 A. It would have been. Absolutely. Do you know when
46 that statement was taken?

47



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1 Q. I do know. It was taken on 5 January.

2 A. Yes. I was not aware of that.

3

4 Q. And then, of course, that information would have been
5 put together with the information you did know about the
6 Salvation Army workers attending at 9.30pm?

7 A. Sorry, can I just clarify?

8

9 Q. Please.

10 A. That statement you're talking about, that wasn't the
11 Salvation Army --

12

13 Q. It's not the Salvation Army. It's a person who's
14 walking her dog in a westerly direction on Tamar Street and
15 at 7.20 she makes those observations.

16 A. That's the very first I've heard of that.

17

18 Q. Would that have been relevant to your assessment as to
19 whether or not this might be a critical incident -
20 appreciating you don't make that call?

21 A. Yes. Any further information would have been, yeah,
22 critical.

23

24 Q. But that's of particular significance, isn't it, in
25 terms of the timing about Mr Huber's movements at that
26 point in time?

27 A. So she's saying - not being privy to the statement -
28 she indicated that she saw someone down the side area
29 where --

30

31 Q. Why don't I - instead of me summarising it for you,
32 we're going to pull it up?

33 A. Sorry.

34

35 Q. No, not at all. I should have gone there. So it is
36 at I think tab 39 of the brief, which is barcode 8628996.
37 It is a short statement. So once that has come up - has
38 that come up for you?

39 A. It has, sorry. I'm just reading through it, sorry.
40 Is there a second page to that?

41

42 Q. There should be a second page, yes. If we scroll over
43 to 997.

44 A. Yes. Thank you. So the officer that took that is not
45 attached to Richmond PD. He would have been part of the
46 region response. But yeah, certainly that's the very first
47 I have heard or seen that statement.



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1 Q. That's an important document, isn't it?
2 A. It is an important document.

3
4 MS SULLIVAN: And we might just, while we are here, go to
5 tab 41, please.

6
7 I'm sorry, I should tender that statement.

8
9 THE COMMISSIONER: That will be exhibit 23C.

10
11 MS SULLIVAN: Thank you, Commissioner.

12
13 **EXHIBIT 23C STATEMENT OF LESLEY HUDSON-MOON ON 5 JANUARY**
14 **2023, BARCODED 8628996-8628997**

15
16 MS SULLIVAN: If we can go to tab 41, please. This is
17 a statement of a person who gave evidence in the Supreme
18 Court, so we can say his name. It's Mr Leadbeatter. This
19 is tab 41, barcode 8634089 through to 8634094.

20
21 THE WITNESS: Oh, I'm not going to be able to read that,
22 I'm sorry.

23
24 MS SULLIVAN: Q. No. So there is just a particular
25 page that I want to draw to your attention. 093, please.
26 It's paragraph 12. Do you see there with the - it has
27 a star next to it?

28 A. It's still waiting to come up.

29
30 Q. Oh, sorry.

31 A. Yes.

32
33 Q. So this is a statement, I should indicate on the next
34 page - we can go there in a second, but it's taken at 12pm
35 on 4 January. So if you could just read, please,
36 Superintendent, at paragraph 12 and following. Once you're
37 ready for the next page, let us know.

38 A. Can we just - sorry, can we just go back? I'm a slow
39 reader, sorry.

40
41 THE COMMISSIONER: No, I wasn't there either.

42
43 THE WITNESS: I'm fine when the Commissioner is. Can we
44 go to the next page now. Is that saying "Tim"? Sorry,
45 just for the --

46
47 MS SULLIVAN: Q. It does say "Tim", but it is a reference



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1 to the lady. I understand her nickname was "Kimmy", and so
2 he may have misheard that as "Tim".

3 A. Thank you.

4
5 Q. So that's another significant statement, I suggest?

6 A. So that is the statement which I alluded to in the
7 email.

8
9 Q. So that tells us that Mr Huber was in that gated area
10 from about 7.20 at least to 9.30?

11 A. Correct.

12
13 Q. And that raises the clear possibility, doesn't it,
14 that if police had gotten out of the car and looked down
15 the side, they would have seen him?

16 A. It raises a couple of things, obviously if that
17 information had been provided to police that attended, that
18 would have given them a better location to go and search as
19 well.

20
21 Q. What do you mean by that?

22 A. So if the people - so if this the gentleman who made
23 his statement and the lady who made the other statement
24 called the police on the night and said, "There's a person
25 acting aggressive at the side of the building", that would
26 have given further information to the original call.

27
28 Q. Sure.

29 A. For the police to then focus on that area.

30
31 Q. Sure. There's that aspect, yes. What about my
32 proposition?

33 A. Can you repeat your proposition?

34
35 Q. I can. The fact that Mr Huber is there between 9.20
36 [sic] and 9.30 as per these witnesses, raises the distinct
37 possibility that had the officers gotten out of the car
38 they would have seen him?

39
40 MR SMARTT: I object to this. When, in terms of
41 possibility? When, based on what we know now?

42
43 MS SULLIVAN: I'm very happen to specify.

44
45 Q. Had the officers gotten out of the car when they
46 arrived on scene and looked down the side fence at
47 9.55pm [sic].



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1
2 THE COMMISSIONER: 7.55.
3

4 MS SULLIVAN: I'm sorry, that's my 24-hour clock.
5

6 Q. 7.55pm. There is the distinct possibility they would
7 have seen Mr Huber?

8 A. If he was still there.
9

10 Q. If he was still there. Do you have a doubt about
11 that?
12

13 MR SMARTT: I object to this. I'm not going to say it
14 directly in front of the witness, but we should look at
15 exhibit 1, paragraph 430 of Justice Rothman's judgment
16 about this statement, because it's highly relevant to the
17 question that is being put, and my submission is they are
18 being put on a misleading basis.
19

20 MS SULLIVAN: Perhaps - I think it can be dealt with in
21 very short form and I don't think it's a difficulty that
22 the witness is here, but it's in relation to the position
23 of Mr Huber; it's not in relation to what is said by the
24 female. And the aspect that wasn't accepted by
25 Justice Rothman concerned whether or not there was calling
26 out. So I don't think it changes the basis of the
27 question, with respect.
28

29 THE COMMISSIONER: Do you still press your objection,
30 Mr Smartt?
31

32 MR SMARTT: I do. There is also - again I don't want to
33 say this in front of the witness and --
34

35 THE COMMISSIONER: Do you want me to ask Mr Tanner to step
36 down from the witness box so we can have this conversation?
37

38 MR SMARTT: I think that we can do it quickly and directly
39 without doing that. If you look at paragraph 430 of
40 exhibit 1.
41

42 MS SULLIVAN: I think my friend can clarify, he's just
43 referring to the decision.
44

45 MR SMARTT: Yes.
46

47 MS SULLIVAN: It's not necessary that it be in evidence.

1 It's the decision of *R v Huber* [2025] NSWSC, 714, at
2 paragraph 430.

3
4 THE COMMISSIONER: Don't bring it up on the screen. So
5 paragraph 430.

6
7 MS SULLIVAN: I'm content to read that on to the record
8 just for completeness:

9
10 *While I do not consider that the precise*
11 *time of death is particularly important in*
12 *these proceedings, I do not consider the*
13 *description of Mr Leadbeatter of hearing*
14 *what he thought might have been the*
15 *deceased at 9.30pm reliable.*

16
17 MR SMARTT: And the next bit.

18
19 MS SULLIVAN:

20
21 *It's likely that the deceased died at or*
22 *about 7.20pm but she may well have been*
23 *deceased when Ms Hudson-Moon saw her but it*
24 *may be that she died just after 9.30pm.*

25
26 MR SMARTT: My point is the best evidence that we have, it
27 doesn't seem to be contradicted or sought to be
28 contradicted by counsel assisting, is the deceased is dead
29 by 7.20, so all of these hypotheticals about what police
30 could have done or should have done after, I say, aren't
31 relevant and that's a misleading basis for questions that
32 are being put to this witness, because unless there is some
33 suggestion that it's incorrect or not probable, that's the
34 situation we're working with.

35
36 THE COMMISSIONER: I didn't understand that to be counsel
37 assisting's question. I understood it to be, had police
38 got out of the car at 7.50pm, they might have seen
39 Mr Huber, not that they might - is that correct?

40
41 MS SULLIVAN: That's the precisely the position.

42
43 THE COMMISSIONER: I'm not suggesting that that might have
44 made a difference to Ms Lucena.

45
46 MR SMARTT: All right.

47



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1 THE COMMISSIONER: Simply, would they have seen Mr Huber.
2

3 Have I understood your question correctly, Ms
4 Sullivan?

5
6 MS SULLIVAN: That's right. And Justice Rothman is
7 specifically - he caveats his position in relation to time
8 of death, and that will be the subject of the coronial. So
9 I think it really is up in the air in terms of the
10 complexity of that expert evidence that was heard. And
11 I don't think that matter can be determined on the basis of
12 the material before this inquiry.

13
14 THE COMMISSIONER: Yes. Does that assist, Mr Smartt?

15
16 MR SMARTT: So it just brings us back to my original
17 point, which is I think it should be put to the witness as
18 to what we take out of the statement when the witness was
19 considering this issue of critical inquiry back then,
20 rather than just asserting it's a fact that it may have
21 been the case that Mr Leadbeatter saw Mr Huber at 9.30pm
22 now. It's basically the information he has at the time,
23 rather than seeking to draw inferences that go beyond that
24 out of the information.

25
26 MS SULLIVAN: I think this is not a discussion that should
27 be had in front of the witness. That's the first thing.
28 We've really gone into the details in a way that is
29 undesirable. The second thing is that the question stands.

30
31 THE COMMISSIONER: I don't think - I'm not following, I'm
32 afraid, Mr Smartt. The question, as I understood it, was -
33 there's independent witnesses that see Mr Huber at 7.20;
34 there's independent witnesses that see Mr Huber at about
35 9.30. We know that from their witness statements. They
36 say --

37
38 MR SMARTT: That's the distinction I'm making, that there
39 may be an issue at the end of the day as to whether they
40 actually see Mr Huber at 9.30pm, and so that's why I'm
41 saying it should be put in terms of the information that
42 the officer had rather than facts that are controversial or
43 may be controversial.

44
45 THE COMMISSIONER: So are you suggesting that we should
46 not assume that those witnesses were accurate when they say
47 they saw --



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1

2 MR SMARTT: Yes. And there's no question of dishonesty or
3 anything like that, but Justice Rothman has made at least
4 one key finding that this witness's evidence is unreliable.
5 So at the end of the day there may be an issue as to
6 whether other parts of the evidence are reliable. So all
7 I'm saying is it should be put based on information the
8 officer had and then we can make submissions at the end of
9 the day about what the facts really are.

10

11 THE COMMISSIONER: And the officer you are referring to
12 is --

13

14 MR SMARTT: The witness.

15

16 THE COMMISSIONER: I'm sorry, I misunderstood that.

17

18 Ms Sullivan, do you want to have a go at rephrasing?

19

20 MS SULLIVAN: I think I can just approach it in this way.

21

22 Q. Those two statements are important, aren't they, the
23 two statements that I took you to?

24 A. They are.

25

26 Q. If you'd had that information available to you at the
27 time you were doing your review, it would have squarely
28 raised, again, the issue about a critical incident being of
29 particular concern?

30 A. So the witness said they saw - so the lady that saw
31 him out the front in Tamar Street?

32

33 Q. 7.20?

34 A. 7.20, and the police arrive on scene at 7.55.

35

36 Q. 55?

37 A. So there is no, I guess, indication in the evidence
38 that he was there at 7.55.

39

40 Q. Well, there is no indication that he left. There is,
41 in fact, CCTV footage that suggests - that captures his
42 movements en route to the police station when he goes to
43 report at around 12.30.

44 A. Yes.

45

46 Q. We can show you the helpful screenshots that have been
47 prepared from that CCTV?



1 A. No, no. I don't need to see them, but I guess -
2 because I think the question is - what was the question
3 again, sorry?

4

5 Q. Well, the question is, accepting that there is no
6 evidence that demonstrates that Mr Huber is seen at 7.55 to
7 7.59 in that gated area, do you accept that there is a very
8 reasonable inference that he would have been there, because
9 he's there at 7.20, and he's seen there at 9.30, or
10 reportedly seen there at 9.30 by Mr Leadbeatter.

11

12 MR GOLLAN: I object. Your Honour, this witness should
13 not be asked to infer the kind of assumption upon which
14 that question proceeds, and regardless of what he says,
15 it's not a matter that can assist the Commission with
16 respect to the matters of their inquiry.

17

18 The assumption proceeds on the basis that he's seen
19 there, whether or not it's actually him or someone else
20 I don't know, but he's seen there at 7.20, and then, to
21 book-end that, another assumption is 9.20 or whenever it
22 was - what the question proceeds upon the assumption is
23 that there is a continuity of presence over that period of
24 time. The witness should not be put in that position.

25

26 THE COMMISSIONER: I think - I appreciate where
27 Mr Gollan's coming from.

28

29 Q. I think the question perhaps, Superintendent, is had
30 you had those two - the earlier statement as well as the
31 information about the later apparent identification of
32 Mr Huber, would that have changed your view about whether
33 a critical incident declaration was warranted?

34 A. So we had the information about the second.

35

36 Q. The second one?

37 A. Yes, so that was available.

38

39 Q. Yes.

40 A. I didn't have the information about the first one.

41

42 Q. No.

43 A. I would have provided that information to
44 Ma'am Chapman, which would have, I guess, given her -
45 that's probably a better question for her because that's
46 her decision to make. My view, sitting here now, is that
47 I don't know whether he was there at that time or not, at



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1 the time when the police arrived, if that answers that
2 other part of the question. So I could not say.
3

4 MS SULLIVAN: Q. But you would have been in a position
5 to speak to the OIC about any other evidence about his
6 movements that night; correct?

7 A. As - so the OIC of the homicide?

8

9 Q. Correct.

10 A. Speak to him about the movements of Huber.

11

12 Q. Of Huber, yes.

13 A. I don't know whether I had that conversation with him
14 or not.

15

16 Q. I understand that. And you certainly didn't have the
17 statement of the witness at 7.20, so we appreciate you got
18 an incomplete position. But if you had that statement, and
19 there was a doubt in your mind about whether or not
20 Mr Huber had been there at 7.55pm, you would have been able
21 to undertake inquiries with the OIC about any other
22 evidence --

23 A. I see what you are saying, yes, correct.

24

25 Q. -- to suggest whether or not. And no doubt you would
26 have done that?

27 A. Correct.

28

29 Q. Thank you. I'm coming to the end. Can we, just for
30 completeness, show you a copy of the statements of Ballina
31 14 and Woodburn 29, just to see if that refreshes your
32 memory about whether you did review them?

33 A. Yes, please.

34

35 Q. Tab 3, please, if we could. Exhibit 14C.

36 A. I have got that.

37

38 Q. Go to the next page?

39 A. Yes, please.

40

41 Q. Any of this ringing any bells?

42 A. Not at the moment.

43

44 Q. Okay.

45 A. The next page, please.

46

47 Q. Next page, thank you, monitor. I don't know that we



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1 need to go into the details of the arrival of Mr Huber at
2 the police station?

3 A. Oh, no, I'll just get to the bottom, where the
4 incident - when they, yeah, leave. Yep, that's fine.

5 Q. Does that ring a bell?

6 A. It doesn't ring a bell but it certainly doesn't raise
7 anything different to the view that I formed when I sent
8 the emails to Ma'am Chapman.

9 Q. Okay.

10 A. But as I said, I will undertake a look through my
11 emails to see whether I did --

12 Q. Would you like to see Woodburn 29's or that's unlikely
13 to refresh your memory?

14 A. I don't think it would refresh and I imagine they
15 would be quite similar, unless I'm wrong.

16 Q. They are broadly similar. Right. I just want to ask
17 you some quick questions, just to round out. Did you ever
18 hear the outcome of the DV - of any DV homicide review?

19 A. No, I did not.

20 Q. Were you aware of any formal decision that had been
21 made by Acting Assistant Commissioner not to declare this
22 a critical incident?

23 A. As in a non-declaration form?

24 Q. A non-declaration?

25 A. No, but that's nothing - that's something I wouldn't
26 get as a superintendent anyway.

27 Q. You wouldn't be told?

28 THE COMMISSIONER: Q. Would you be told if it was
29 declared?

30 A. Oh, absolutely, yeah.

31 MS SULLIVAN: Q. But was there a point where you
32 understood that a decision has been - as opposed to
33 a declaration?

34 A. Yes, it hadn't been progressed.

35 Q. A decision had been made that it was not a critical
36 incident?

37 A. Well, that's correct, yes.



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1

2 Q. When do you understand that that decision was made?
3 A. Oh, going on the notes that you have read about
4 Ma'am Chapman, I think some time after the 6th, I would
5 assume. But it's not so much - I guess some people look at
6 it as a progression, as in, okay, we get to the point and
7 now we're going to say, "No critical incident." Others
8 would say, "Let's just keep on going along to see whether
9 it is a critical incident", if that makes sense.

10

11 Q. Yes.

12 A. So I think that it never reached the threshold that it
13 would be called as a critical incident, so therefore, then,
14 I didn't receive any notification back that it wasn't.

15

16 Q. Not a matter for you because you are not declaring it,
17 but it's simpler, in some respects, when there is anxious
18 consideration being given to a critical incident, to
19 declare it and then revoke it when the position becomes
20 clear, can I suggest?

21 A. Could you - sorry, could you just repeat that one?

22

23 Q. Sure. In circumstances where senior police, region
24 commander, superintendent, are giving anxious consideration
25 to whether or not a matter is a critical incident, one
26 course is to declare it and then revoke it if it later
27 becomes clear that it's not actually a critical incident;
28 do you agree with that proposition?

29 A. So declaring - I will get to the answer.

30

31 Q. Yes.

32 A. So declaring a critical incident also places a lot of
33 stress and pressure on the police that are involved.

34

35 Q. Okay.

36 A. And that's got to be balanced up with the public
37 interest and all those other guidelines. So if you are
38 sitting on the fence --

39

40 Q. Because they become involved officers?

41 A. Absolutely and it puts --

42

43 Q. Have to undertake the drug and alcohol testing,
44 interviews?

45 A. Not so much the drug and alcohol testing and the
46 interviews, but I guess it's the assertion that they've
47 done something wrong.



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1

2 Q. I see. Stigma?

3

4 A. Stigma. You know, cumulative effect. You know,
5 someone who's been in the cops for, you know, a long time
6 might have been through numerous of these. So, personally,
7 I would not err on the side of, "Hey, let's just do it and
8 then downgrade it"; I would wait until I'm completely
9 satisfied that it does meet the criteria and then you are
not placing that undue stress on those police.

10

11 Q. That's the central consideration in your mind in terms
12 of that?

13

14 A. That's - no, it is not the central but that is a
consideration; welfare.

15

16 Q. It's an important consideration?

17 A. Yes.

18

19 Q. That's a good point that I must say I hadn't
20 appreciated until you articulated it in those terms,
21 thank you. But in circumstances where something might be
22 sort of in a grey zone for a period --

23 A. Yes.

24

25 Q. -- how significant is that factor in not declaring and
26 then revoking? Is that the primary consideration in
27 that --

28 A. No, and I don't think you lose anything, either.
29 Like, you know, if you were to say today, "We're going to
30 make this a critical incident", I don't think you have
31 lost - you haven't lost any evidence; you haven't lost
32 any - well, evidence, I guess, because there is all the
33 other investigations going along with it which you would
34 draw all your information from.

35

36 Q. Well, can I just challenge you about that in this
37 sense: a critical incident investigation has broader
38 scope, for example, going to systems, policies and
39 procedures like radio operations group, for example?

40 A. Yes. Yes.

41

42 Q. And this Commission has heard from the radio
43 operations group operators who have very frankly conceded
44 a number of breaches of protocols. They are now giving
45 evidence three years after the event, so their evidence is
46 what might be described as "a bit stale"?

47 A. Oh, absolutely. But the evidence is still available.



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1 I guess what I'm getting at is the evidence of the
2 transcripts and the evidence of the CAD logs, that
3 information is all still there. It doesn't disappear.
4

5 Q. Sure. But the quality of the evidence is affected if
6 a critical incident is declared later; do you agree with
7 that?

8 A. It could be, that is correct, but I guess I'm taking
9 it to the extrapolation of a three-year event, but if you
10 are talking about days or weeks, and we are seeing quite
11 a few of these now where, you know, information develops
12 over the time, and sometimes critical incidents are being
13 made, you know, weeks later.

14

15 Q. What's the latest that you are aware of a critical
16 incident being called?

17 A. Oh, gosh, I couldn't tell offhand. I don't know. But
18 certainly - certainly more than a week.

19

20 THE COMMISSIONER: Q. You'd lose effective drug and
21 alcohol testing, though, don't you?

22 A. I guess that's the only thing do you lose, correct.

23

24 Q. And potentially CCTV from local businesses, if they've
25 got, say, a seven-day overwrite sort of function?

26 A. You could, yes.

27

28 Q. But is there anything else in that kind of
29 time-critical bucket?

30 A. Not that I can recall. Memory is pertinent.

31

32 Q. And memory, yes.

33 A. Yes.

34

35 MS SULLIVAN: Unless there was anything else on the
36 critical incident component, Commissioner, I was going to
37 just move to some final quick questions.

38

39 Q. This is your opportunity to speak to us about
40 resourcing and recruitment, Superintendent, and the
41 systemic issues. I know we've drilled down into the
42 granularity about the incident, but we would really like to
43 hear from you, as a very experienced senior officer, about
44 what you think are any systemic matters that have
45 contributed and any learnings?

46 A. So I let my emotions get the better of me earlier on
47 when I suggested - and I don't want to - particularly for



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1 the media: I don't want the community to think there are
2 not police out there available to respond, okay, so that is
3 a very important point I want to make. But it is no
4 secret, and this is an open forum and everyone is aware of
5 it, that there is a shortage of people wanting to join the
6 police. We have the positions available, 2,500, close to
7 3,000.

8

9 Community expects a lot of their police, and
10 rightfully so, but in communities - in regional
11 communities, the ability to have police on every street
12 corner or to respond to every job within minutes is limited
13 by a number of factors, namely, having the people filling
14 those positions. So that's really critical. I just want
15 to make the point that I'm not being critical of the
16 organisation for that. It's a world-wide phenomenon that
17 people aren't joining the police, okay.

18

19 But probably the most important point I want to make
20 is that, you know, to Ms Lucena and her family, this is an
21 absolute tragedy, you know, and as a commander, I take
22 these things very personally, when a person is subjected to
23 this horrific crime.

24

25 I apologise, I'm getting a little bit emotional, but
26 you know, we turn up every day, as cops. You know, my
27 police at Liverpool do over 400 domestic assaults a month.
28 We take it extremely seriously, and one death is too many,
29 and this lady went through absolute hell, not just in this
30 incident but her previous experience, you know, certainly
31 through the floods, which we were all affected by.

32

33 So I really want to just pass on my thoughts to the
34 family, that we all grieve the loss of someone in those
35 circumstances. So that's all I wanted to say on that.

36

37 MS SULLIVAN: Thank you. Nothing further, Commissioner.

38

39 Oh, I'm sorry. After that, I need to now tender
40 tab 41, please, which is barcode 8634089 to 8634094. It's
41 the statement of Mr Leadbeatter.

42

43 THE COMMISSIONER: And you took the officer to - oh, no,
44 the other one was tendered, the statement of Officer C.
45 Tab 41, the statement of Leadbeatter, will be exhibit 24C.

46

47



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1 EXHIBIT #24C STATEMENT OF PETER LEADBETTER, DATED 4 JANUARY
2 2023, BARCODED 8634089-8634094

3
4 THE COMMISSIONER: Q. Can I ask, in a moment of
5 self-reflection, Superintendent Tanner, do you think the
6 kind of scrutiny that this Commission and other parts of
7 the public put the actions of police under - is that
8 something that impacts on people's willingness to join the
9 police force?

10 A. Absolutely, Commissioner. You may or may not recall
11 I was down here for a previous matter some time ago, where
12 four of my police were found no misconduct. All four have
13 now exited. One has lost his marriage. He's in a real bad
14 way. So, you know, no-one asks us to do this job, I'm not
15 asking for sympathy or anything like that, but it does play
16 a big part.

17
18 THE COMMISSIONER: Thank you.
19

20 THE WITNESS: Thank you.
21

22 THE COMMISSIONER: I think we might take the luncheon
23 break and then come back for any examination by other
24 counsel.

25
26 MR GOLLAN: I was going to suggest that, I would like to
27 reflect. I will make the questions as short as I can.
28

29 MS SULLIVAN: I think Superintendent Tanner might prefer
30 that we sit on.
31

32 THE COMMISSIONER: If it is short and, and then we can let
33 the superintendent go back to --
34

35 MR GOLLAN: I'm sorry to do that to Superintendent Tanner,
36 but I would prefer to reflect on it so as to shorten my
37 questions.
38

39 THE WITNESS: I will compose myself, Commissioner, that
40 would be good.
41

42 THE COMMISSIONER: All right. We will take our luncheon
43 break. We will be back at 2. Thank you.
44

45 **LUNCHEON ADJOURNMENT**
46

47 MR GOLLAN: If the Commissioner pleases, I have been asked



1 to move myself up here so I might be more readily
2 understood.

3
4 THE COMMISSIONER: Or at least heard.

5
6 MR GOLLAN: Quite. If it is convenient to the Commission
7 I intend upon now addressing the witness.

8
9 THE COMMISSIONER: Any questions that you have got for the
10 witness, Mr Gollan, thank you.

11
12 MR GOLLAN: Yes, thank you.

13
14 **<EXAMINATION BY MR GOLLAN:**

15
16 MR GOLLAN: Q. Officer, you were asked a couple of
17 questions earlier on about the categorisation of critical
18 incidents, and I understood you to refer to some
19 guidelines. Those are guidelines that are made available
20 through the police force to you?

21 A. Yes.

22
23 Q. And you're aware of the legislation in the Law
24 Enforcement Conduct Commission Act?

25 A. Yes.

26
27 Q. And that they reflect each other?

28 A. They do.

29
30 Q. In that the guidelines reflect upon the legislation
31 itself?

32 A. Yes.

33
34 Q. Now, in this particular circumstance, there can't be
35 anything said that the situation arose out of the discharge
36 of a firearm?

37 A. Correct.

38
39 Q. And there can't be anything said that there was the
40 operation of defensive equipment?

41 A. Correct.

42
43 Q. And there can't be anything said that there was
44 physical force by a member of the police force?

45 A. Correct.

46
47 Q. And there can't be anything said that there was the



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1 misuse or otherwise use of a police vehicle?

2 A. Correct.

3

4 Q. And this person -- well, the circumstances didn't give
5 rise to consideration of someone escaping custody?

6 A. Correct.

7

8 Q. And then the last of, at least, section 110(b)(vi) is:

9

10 11 Q. *Appears to be likely to have resulted from
any police operation.*

12

13 A. Correct.

14

15 Q. Can you just explain to the Commission what your
16 understanding of a police operation is?

17 A. So I - I undertake it to be --

18

19 Q. Address the Commissioner, please.

20 A. -- to be a broad - it can be a broad implication, so
21 it's more along the lines of a coordinated response, so
22 examples such as a, you know, looking for a wanted offender
23 that knows you're looking for him and things like that. So
24 it's more than just a normal day-to-day role or function
25 that the police are performing. It's more of something
26 that takes a bit of coordination.

27

28 Q. If you were to be dispatched to a domestic, as it
29 were, would you regard that as an operation or --

30 A. No.

31

32 Q. -- operating under a police function?

33 A. That's a function.

34

35 Q. And if you were on general duties, which I think
36 you've done in the past --

37 A. Yes.

38

39 Q. -- and you came across a person committing a crime,
40 whether it be vandalism or theft or whatever it may be in
41 public, and you exercised your functions, would you regard
42 that as an operation?

43 A. No, I wouldn't.

44

45 Q. Now, the other matter that was brought to your
46 attention was under section 111, which was the public
47 interest. Do you remember being asked some questions about



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1 that?

2 A. Yes, I do.

3

4 Q. And can I ask, in the context of a critical incident
5 assessment, whether or not it has sufficient public
6 interest, what are the kinds of things that you'd turn your
7 mind to?

8 A. So I think if it's - I guess it's about a high profile
9 person involved, you know, such as a member of parliament
10 or, you know, someone who is well known. If there is
11 a clear failure by police to do something, then certainly
12 that would meet that public interest test. Or in other
13 occasions it's been done about a particular group in the
14 community, whether that's by race or demographic,
15 et cetera.

16

17 Q. If we just move to the second topic that I want to ask
18 you about, and that is when there is a homicide - and we
19 know that that's what we're speaking about in this case -
20 putting aside whether or not it's characterised as being
21 a critical incident, is it incumbent upon the police to
22 obtain and secure all evidence that is available to them?

23 A. Yes.

24

25 THE COMMISSIONER: Q. Relevant to the homicide?

26 A. Yes.

27

28 MR GOLLAN: Q. Would that also include canvassing the
29 area within which the acts that gave rise to that
30 characterisation for things like CCTV footage?

31 A. Yes, it would.

32

33 Q. And you're aware that, in this case, there was some
34 CCTV footage captured?

35 A. Yes.

36

37 Q. And that was in the context of the homicide
38 investigation?

39 A. Correct.

40

41 Q. And there was some discussion with you about whether
42 or not evidence, as it were, got stale if it was a long
43 period of time before it was characterised as a critical
44 incident?

45 A. Correct.

46

47 Q. Is there anything in your mind that you can point the



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1 Commissioner to that would not otherwise be captured in the
2 proper administration and investigation of a homicide?

3 A. No, that - as it would cross over to a critical
4 incident?

5

6 Q. Yes.

7 A. So the only thing I think, as we discussed, would be
8 the drug and alcohol testing.

9

10 Q. Yes.

11 A. And I guess first-hand memory of the people involved.

12

13 Q. Right.

14 A. I guess any other tangible stuff such as your crime
15 scene, your canvassing, your CCTV and things like that,
16 that's - that's set in stone.

17

18 Q. Now, if I can just move to the final subject matter,
19 you were at home on the early hours of the morning that you
20 were called about this matter?

21 A. Correct.

22

23 Q. And I assume that you remember, at least loosely, that
24 you took a phone call that inspired you to get out of bed
25 and get busy and return to your duties?

26 A. Yes.

27

28 Q. Correct?

29 A. Correct.

30

31 Q. Now, having returned to your duties, did I understand
32 your evidence to say that you attended upon the scene where
33 the deceased was?

34 A. Correct.

35

36 Q. Now, having attended upon the scene, can you just tell
37 the Commissioner what you saw when you first arrived on the
38 scene?

39 A. So there was a number of police standing around the
40 rear car park. There was police tape cordoning off that
41 area. Then I walked down to where the deceased was
42 located. I saw there was a lot of clothing and sort of
43 household things that would normally be donated to
44 something like a - like that area, like the Salvation Army.
45 That was all strewn across sort of this - I would call it
46 like a - like an enclosed - like a smoking area or
47 a break-out area for potentially the people that work in



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1 the St Vincent's - in the Salvation Army.

2
3 Q. When you say "enclosed", what enclosed that space?
4 A. So there was two gates and a fence, and I think from
5 memory there was some kind of lean-to potentially across,
6 like a type of roof structure. I can't recall specifically
7 what that was but I have an understanding that there was
8 some kind of shelter.

9
10 Q. Clearly, I don't want to re-traumatise you, but if
11 I can ask you to take your mind back to that particular
12 early hours of the morning and you went through the first
13 gate, I assume?

14 A. Correct.

15
16 Q. And then you were confronted by a space before you got
17 to the next gate?

18 A. Correct.

19
20 Q. Can you estimate for us, from your own mind - we've
21 got a map from previous proceedings, but from your own
22 mind - was it a metre or a couple of metres or --
23 A. It was a few metres. It was more than a metre or two
24 into the second gate, I recall.

25
26 Q. And the second gate, what was the nature of it?

27 A. There was another - there was another area which was
28 several metres sort of long and maybe 2 metres wide.
29 I have a recollection that it might have been like a - I'm
30 trying to indicate with my hands but like an indentation of
31 the building, perhaps. That's the recollection I have.
32 Because I do recall when I walked through that second gate
33 it was still very difficult to identify the person who was
34 deceased.

35
36 Q. Now, the deceased, was she left in situ, as it were?

37 A. She was.

38
39 Q. And did she have any clothes or any of these items
40 that you've discussed on top of her?

41 A. Yes, yes, she did.

42
43 Q. And obviously, given that it had been determined
44 a crime scene, you had an entitlement to enter those
45 inclosed premises?

46 A. Correct.

47

1 Q. In the absence of that, do you have a power to go in
2 there and have a look around?

3 A. No. No, we don't.

4

5 MR GOLLAN: That's the re-examination. Thank you.

6

7 THE COMMISSIONER: Thank you.

8

9 Mr Smartt, did you have any questions you wanted to
10 ask this witness?

11

12 MR SMARTT: No.

13

14 THE COMMISSIONER: Ms Sullivan, did you have any
15 questions?

16

17 MS SULLIVAN: Only very, very briefly.

18

19 <EXAMINATION BY MS SULLIVAN:

20

21 MS SULLIVAN: Q. Superintendent, are you aware that
22 there is a definition of "a police operation" in the LECC
23 Act?

24 A. I could not tell you offhand but I'm sure there would
25 be a definition.

26

27 Q. I will read the definition to you "police operation"
28 means:

29

30 *Any activity engaged in by a police officer*
31 *while exercising the functions of a police*
32 *officer other than an activity for the*
33 *purpose of a search and rescue operation.*

34

35 A. Okay.

36

37 Q. Pretty broad?

38 A. Very broad.

39

40 Q. Not quite in accordance with your understanding, can
41 I suggest?

42 A. Yep. That's fair call.

43

44 MS SULLIVAN: Okay, nothing further.

45

46 THE COMMISSIONER: Q. And Superintendent, you were asked
47 about your right to go into the Salvation Army through the



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1 gates, shall we say?

2 A. Yes.

3

4 Q. And I accept what you say, that as a - you are
5 entitled to go if there is a crime scene. Had those
6 officers attending decided to get out of the car - so let
7 me take you back, they'd had a call from 000 saying, "Woman
8 being bashed behind the Salvation Army building". Had they
9 decided to get out of the car and at least have a look
10 through that pool fence, and if they'd seen Mr Huber
11 further along - and I realise there is a number of --

12 A. Yes.

13

14 Q. -- would they have had the power, do you think, to
15 have gone in?

16 A. Yes, they would, yes.

17

18 Q. And what would be the basis of their power to have
19 gone through that pool fence?

20 A. It could be anything from a prevent a breach of the
21 peace or investigate a breach of the peace to investigate
22 a crime that may have occurred. Clearly if they identified
23 that Mr Huber had no lawful right to be there himself, he
24 was committing a crime.

25

26 Q. I see, yes. I think Officer C has given evidence that
27 he was aware that there were some domestic violence charges
28 against Mr Huber. Would that have been a basis for --

29 A. If they had identified who he was at the time,
30 absolutely, yes --

31

32 Q. Yes. I appreciate that yes.

33 A. To investigate an offence.

34

35 THE COMMISSIONER: Okay, thank you. Anything arising from
36 that?

37

38 MS SULLIVAN: Just apropos of your questioning,
39 Commissioner.

40

41 Q. Just in relation to section 9(1)(b), that's the
42 emergency power to enter --

43

44 THE COMMISSIONER: Of LEPRA?

45

46 MS SULLIVAN: Of LEPRA, I'm sorry.

47



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1 Q. The emergency power where a police officer may enter
2 a premises if they believe on reasonable grounds that
3 a person has suffered significant physical injury.

4 A. Yes.

5

6 Q. So that would have been a very express power?

7 A. Absolutely. Yes.

8

9 MS SULLIVAN: Thank you.

10

11 THE COMMISSIONER: Thank you. I don't think - was there
12 anything from that, Mr Gollan?

13

14 MR GOLLAN: No.

15

16 THE COMMISSIONER: And Superintendent Tanner can be
17 released from his summons, Ms Sullivan?

18

19 MS SULLIVAN: Yes, thank you.

20

21 THE WITNESS: Thank you.

22

23 THE COMMISSIONER: Thank you for coming, Superintendent,
24 and I'm sorry that this is a repeat performance.

25

26 THE WITNESS: That's okay.

27

28 THE COMMISSIONER: Perhaps I can say, I certainly
29 acknowledge from this Commission's experience that these
30 investigations are difficult for the officers that are
31 called, but that any scrutiny of their conduct always
32 causes anxiety and stress. Even if the officers are quite
33 confident that they've done everything that they could,
34 when one's conduct is under intense scrutiny of that kind,
35 it is always difficult. So I appreciate the stress that
36 that perhaps has caused you but that causes any officers
37 who are involved in critical incident investigations.

38

39 THE WITNESS: I appreciate that, Commissioner. Thank you
40 very much.

41

42 THE COMMISSIONER: Thank you very much.

43

44 <THE WITNESS WITHDREW

45

46 MS SULLIVAN: The next witness is Superintendent Tracy
47 Chapman.



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1

2 Commissioner, would you permit me a five-minute break?
3 I simply want to raise one matter, literally five minutes.

4

5 THE COMMISSIONER: Before we go back to --

6

7 MS SULLIVAN: Before we call Superintendent Chapman.

8

9 THE COMMISSIONER: Yes. And there was an application made
10 before the luncheon adjournment, which I was going to
11 provide some brief reasons about.

12

13 Do you want to do that after your break, Ms Sullivan?

14

15 MS SULLIVAN: Yes, if that's convenient, Commissioner,
16 thank you.

17

18 **SHORT ADJOURNMENT**

19

20 MS SULLIVAN: Thank you for that time, Commissioner.

21

22 THE COMMISSIONER: Is that Assistant Commissioner Chapman?
23 In which case, is it appropriate for her to be here while
24 we give these brief reasons? Would you prefer that she is
25 not.

26

27 MS SULLIVAN: It might be preferable, given the position
28 we found ourselves in before, that we don't.

29

30 THE COMMISSIONER: Sorry, Assistant Commissioner, if you
31 give us five minutes, we've just got a procedural matter
32 that arose before lunch and we'll just deal with that and
33 then I'd invite you to come in.

34

35 (Superintendent Chapman leaves the hearing room)

36

37 MR SMARTT: Can I frame what I said earlier before and say
38 something to be of assistance.

39

40 I guess to preface what I'm saying, I understand that
41 we're all in this process and it's in everyone's interests
42 that we get to the truth of what happened and that there's
43 value in exploring things and making sure that any issue
44 that needs to be ventilated is ventilated, and we're coming
45 with that - we're coming at it from this perspective, and
46 we also recognise that for everyone involved it comes with
47 its own stresses and difficulties. So what I'm saying -

1 and my application earlier isn't intended to be critical of
2 anyone for anything because we're all trying in sometimes
3 difficult circumstances.
4

5 The real nub of the concern for my client is I want to
6 say the "surprising", but I don't intend any sting by that,
7 way that the questions have developed by reference to what
8 police could or should have done when they arrived at the
9 scene, because our understanding of the Supreme Court
10 judgment is that Ms Lucena was, unfortunately, deceased by
11 7.20pm.
12

13 A large amount of questions have been put to witnesses
14 on the basis that there are sounds that could have been
15 observed, that there is a man that could have been
16 observed, that there should have been more inspection of
17 the parking lot, and that - and I'm not suggesting
18 deliberately or intentionally or anything like that - comes
19 out of nowhere to us, and why I want the investigation
20 material is because there seems to be a case being
21 developed that these steps could or would have made
22 a difference to the result that is actually important,
23 which is Ms Lucena's death. Why we have an interest in
24 that material is if that case is being developed, we say
25 contrary to Justice Rothman's judgment, then we will need
26 access to information that is outside our records, like the
27 medical evidence of what happened, any discussions that
28 have been --
29

30 THE COMMISSIONER: Perhaps I can bring this to a fairly
31 neat conclusion on that point, then.
32

33 This Commission is not about to traverse Justice
34 Rothman's judgment. I think as I said in my opening
35 remarks, that's not our job. It's also very clearly not
36 our role to consider manner and cause of death. Correct me
37 if I'm wrong, Ms Sullivan, but at the moment, I'm not
38 suggesting that the actions of any of these officers would
39 have prevented Ms Lucena's death. That's speculative. We
40 don't have medical evidence in front of us and we're not
41 proposing to tender any.
42

43 MS SULLIVAN: That's precisely the position, Commissioner.
44 And nor is there a case being developed. This is an
45 investigation where there isn't a case theory, as it were.
46 There's simply an exploration of the evidence.
47



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1 MR SMARTT: Yes.

2
3 THE COMMISSIONER: So it is, perhaps, a case study of
4 opportunities for reflection, any systemic issues that may
5 have occurred, and clearly, if there was failure to perform
6 one's duties as a police officer, whether or not that
7 failure might have prevented a death or simply have been,
8 on its own, an independent failure to perform one's duties
9 as a police officer, that's obviously something this
10 Commission is going to have to consider.

11
12 MR SMARTT: Yes, but that distinction is not made in
13 questions offered. For example, it was put to one witness
14 that maybe what happened could be a case study for new
15 recruits in terms of how they search for things. That
16 question clearly implies that where you have a case study
17 of a woman who died, that a better search may have
18 prevented the outcome. I know it's not explicitly said but
19 that's the clear import of the question.

20
21 MS SULLIVAN: Commissioner, that's a function of the
22 reflections not least from Officer C. It is important to
23 take learnings so that these events are not in vain.

24
25 I have been very clear in the questions about what
26 I have suggested to particular officers might be
27 appropriate steps to have taken. It's very plain that
28 there are concerns about the adequacy of that search, for
29 obvious reasons, and that was the - those were the matters
30 that were put, particularly to Superintendent Tanner, given
31 his extensive experience. We were assisted by his answers
32 in relation to that matter.

33
34 MR SMARTT: But I don't understand --

35
36 THE COMMISSIONER: Mr Smartt, is there anything else that
37 you wanted to raise? Because I think I understand the
38 point that you are making now. I would like to make the
39 decision and move on. So were there any other points that
40 you wanted to make?

41
42 MR SMARTT: Ms Sullivan, with respect, just put it's for
43 obvious reasons that we need to be concerned with this, and
44 "for obvious reasons" can only be taken as a suggestion
45 that what police could have done or should have done could
46 have made a difference, and that takes us back to my
47 application, which is if that suggestion is being made,



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1 then we're going need information that the Commission has
2 access to in order to contradict that suggestion. So
3 that's my application.
4

5 THE COMMISSIONER: So perhaps I can make it clear in
6 giving my decision on your application, which I note was
7 joined by Mr Gollan: these examinations are not court
8 proceedings. It's an investigation. It's an investigation
9 being conducted under part 6.
10

11 MR SMARTT: Yes. I'm standing out of respect, rather
12 than --
13

14 THE COMMISSIONER: I thought you had something else to
15 say. .
16

17 MR SMARTT: No.
18

19 THE COMMISSIONER: You're welcome to sit down, Mr Smartt.
20

21 They are not criminal proceedings, there is no
22 obligation of disclosure, as there is with a prosecutor.
23 They are not coronial proceedings, where a brief's been
24 prepared, and I presume that counsel are familiar with
25 a similar equivalent jurisdiction such as ICAC, where
26 matters unfold and, for appropriate reasons, there may be
27 decisions made not to disclose, and in fact ordinarily,
28 decisions are made not to disclose material to witnesses in
29 advance. Sometimes, as here, material has been provided to
30 witnesses in order to allow them to refresh their memory or
31 to focus their mind or to make the hearings more efficient.
32

33 That much is clear in part 6 of the Law Enforcement
34 Conduct Commission Act. The Commission has a range of
35 powers under part 6 that includes the powers to require
36 documents. It includes the powers to require information.
37 It includes, but does not require, that the Commission uses
38 examinations as part of its investigative functions.
39

40 I think the other aspect of the Commission's functions
41 is looking not only at potential misconduct or agency
42 maladministration - because we don't want to exclude that
43 as a possibility should that arise on the evidence - but
44 fundamentally it is about what happened on this occasion
45 and could things have - should things have happened
46 differently and what are the opportunities for improvement
47 and are there any systems issues in relation to the



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1 operation of the police force, which they may already be
2 aware of, might I add, such as understaffing and
3 resourcing, which could have made a difference in this
4 instance had things gone separately.

5
6 I'm very aware of the importance of not exercising
7 a hindsight bias or using that - casting that backwards
8 shadow on the actions of operational police at the time in
9 order to suggest that they didn't do the appropriate job
10 because we now know what the outcome of that 000 call was.
11 That's something that I'm acutely aware of.

12
13 As you would well know, the rules of evidence don't
14 apply. It's to be conducted with as little formality and
15 technicality. As part of its investigation - and again
16 I emphasise this is a investigation - the Commission has
17 obtained a range of materials, but not all of those
18 materials will be relevant to the questions that are being
19 put to any of the witnesses. Where they are, they will be
20 tendered into evidence and as I said at the outset, the
21 exhibits will be provided to counsel.

22
23 I appreciate it can be difficult when they come up on
24 the screen, so I've taken your application as including but
25 not limited to an application for prompt access to the
26 exhibits and those arrangements have been made by those
27 assisting me.

28
29 You raised also, Mr Smartt - I don't propose, perhaps
30 I can make that express, to provide in advance the
31 investigation materials or a portion of the investigation
32 materials that the Commission has relied on. That's not
33 part of the practice of this Commission but, more to the
34 point, that's not part of the practice of the way in which
35 an investigation is being conducted. But where something
36 is tendered and relied on by this Commission, it will be
37 tendered into evidence, it will become an exhibit and
38 you'll be entitled to have a copy of it.

39
40 Issues of procedural fairness are important but they
41 are less important in an investigatory process as they are
42 in the process by which a conclusion is reached.

43
44 You'll have heard counsel assisting, during the course
45 of the examinations today, put to witnesses propositions
46 that might arise from other material that the Commission
47 has and that's an important part of the procedural fairness



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1 process.

2
3 If you should wish to tender other documents, that
4 arrangement has already been made by counsel who have
5 appeared for other witnesses in this matter. So if there
6 is other material you think we need, you can provide it to
7 us and we'll arrange for it to be uploaded.

8
9 The tabbing and the barcoding is a procedural matter.
10 That just makes it easier for our monitors to find the
11 relevant documents and put them up on the screen for
12 people.

13
14 Obviously, and as I think has already been
15 foreshadowed, there will be an arrangement for written
16 submissions to be made, so you will have the written
17 submissions of counsel assisting and an opportunity to
18 respond to them, and that will be the formal process where
19 procedural fairness will be accorded in relation to any
20 particular matters that arise and any particular potential
21 adverse findings or recommendations in which your clients
22 are involved.

23
24 So for that reason, the application for the so-called
25 bench book - sorry, not "bench book", court book, which is
26 probably better framed as an application for the
27 Commission's investigation brief, is refused, but we will
28 make sure that prompt access to the exhibits is provided.

29
30 MR SMARTT: Thank you.

31
32 MR GOLLAN: Commissioner, could I just move forward for
33 a moment, I'm concerned - sorry, I will stop talking
34 between --

35
36 THE COMMISSIONER: You can sit up the front there, if you
37 would rather, Mr Gollan.

38
39 MR GOLLAN: I have already camped. I'm concerned that the
40 reporter couldn't hear me. Can I foreshadow that at the
41 close of the evidence from counsel assisting, that I will
42 renew the application. It seems that the mischief is that
43 witnesses aren't exposed to certain information, but so
44 that we can form our own opinion about what, amongst the
45 materials, is relevant.

46
47 I foreshadow, and I will have relevant authorities



1 that I have considered in previous proceedings, that once
2 all of the oral evidence has been taken by the Commission,
3 that the documentary material be available to the parties
4 so that they can see whether or not they need contribute to
5 the exhibit list by reference to some of the documents that
6 have not been tendered.

7 I don't mean in any way to cavil with your ruling.
8 I understand the mischief that you are seeking to cure.
9 But it is in light of that that I also just give
10 forewarning, in fairness to everyone that is involved in
11 the proceedings, and least of which yourself, that I will
12 seek access to those materials before the evidence is
13 closed.
14

15 Now, you may be against me on it. We will have that
16 discussion on another occasion. But I just wanted to be
17 courteous --
18

19 THE COMMISSIONER: You can make that application in the
20 future. If you've got a series of authorities that you'd
21 like to refer to, you are welcome to make them available to
22 the Commission, to counsel assisting in advance, and can
23 I suggest as well, Mr Gollan, that you might want to
24 articulate with care and precision what it is that you are
25 actually seeking.
26

27 MR GOLLAN: Yes. I understand that. I need to be in a
28 position where the exhibit list is finished, as it were, on
29 behalf of the Commission, by counsel assisting, for me to
30 then have some optics. And I'm grateful, I've seen the
31 email that was sent over lunch about having access to the
32 exhibits. It was an application that I was going to make
33 and it was --
34

35 THE COMMISSIONER: Well, it was actually offered at the
36 outset.
37

38 MR GOLLAN: I'm not being critical of anyone. I'm saying
39 I'm grateful for that. It will give me an opportunity to
40 look at it over the weekend and I can see whether or not
41 there's anything within that chain of inquiry that might
42 expose a need to consider further materials.
43

44 THE COMMISSIONER: Thank you. Well, we'll look forward to
45 that application on Monday.
46

47

1 MR GOLLAN: Thank you.



2 MS SULLIVAN: Thank you, Commissioner.

3 THE COMMISSIONER: We might invite Ms Chapman to return to
4 the witness box, if someone could please retrieve her.

5 **<TRACY CHAPMAN, affirmed:** [2.32pm]

6 THE COMMISSIONER: Thank you. Have a seat.

7 THE WITNESS: Thank you.

8 THE COMMISSIONER: Mr Gollan, does your client seek an
9 objection?

10 MR GOLLAN: Yes, I'm sorry, Commissioner. You become
11 immune to it to some extent. Yes, she does.

12 THE COMMISSIONER: Thank you.

13 Ms Chapman, I understand that you wish to make an
14 objection to the taking of evidence under section 75 of the
15 Law Enforcement Conduct Commission Act, and as I've said to
16 all of the other witnesses so far, that's a very sensible
17 course of action. It's what people sitting in that chair
18 almost always do.

19 THE WITNESS: Thank you.

20 THE COMMISSIONER: So I will make a declaration pursuant
21 to section 75 of the Law Enforcement Conduct Commission Act
22 that all answers and other things given by you will be
23 regarded as having been given on objection.

24 I'm sure Mr Gollan and those who instruct him have
25 been through that with you, but I just have my own
26 obligation to make sure that you understand what that
27 means.

28 It means that your answers can still be used against
29 you in certain circumstances. Your evidence can still be
30 used against you for proceedings under the Law Enforcement
31 Conduct Commission Act, so it's still - you have an
32 obligation to be truthful, nonetheless. Your evidence can
33 be used for this investigation or to allow the Director of
34 Public Prosecutions to provide us with advice. And it can

1 be used against you in disciplinary proceedings, and I'm
2 sure you're aware of the nature of disciplinary proceedings
3 under the Police Act. I say this to all witnesses, it's
4 not intended to frighten you, but it's sections 173, 181D,
5 or 183A of the Police Act.

6

7 THE WITNESS: Thank you.

8

9 THE COMMISSIONER: The other formality that I do need to
10 go through is the scope and purpose of the examinations.
11 This is the same as the scope and purpose that was attached
12 to your summons. It is to investigate the circumstances
13 surrounding the police response to a 000 call made at 7.03
14 on 3 January 2023, reporting that a woman was being bashed
15 behind the Salvation Army building in Ballina. And the
16 issues that the Commission is considering are: the radio
17 broadcast and dispatch of police in response to that 000
18 call; the response including the timing of NSW Police Force
19 officers to that radio broadcast; the actions of police
20 force officers when attending the location of the alleged
21 assault; and the decision not to declare a critical
22 incident in relation to the death of Lindy Lucena.

23

24 Again, just for clarity, we'll be considering whether
25 any conduct is or could be police misconduct,
26 administrative officer misconduct, serious misconduct or
27 agency maladministration, but we are also very much
28 considering whether any systemic issues arise that could be
29 areas for agency improvement.

30

31 THE WITNESS: Okay.

32

33 THE COMMISSIONER: Thank you, Ms Sullivan.

34

35 **<EXAMINATION BY MS SULLIVAN:**

36

37 MS SULLIVAN: Q. Could I start with your name for the
38 record?

39 A. Tracy Chapman.

40

41 Q. You are a superintendent?

42 A. Correct.

43

44 Q. You are the current commander of Lake Macquarie local
45 area command; is that right?

46 A. Lake Macquarie police district.

47



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1 Q. Thank you. And you've been in that role
2 since November 2023?

3 A. Yes.

4
5 Q. And prior to that, you were the commander of the
6 Hunter Valley police district from March 2021 to November
7 2023?

8 A. Yes.

9
10 Q. And you attested from the academy in '95?

11 A. Yes.

12
13 Q. Have you spent much time in GDs, Superintendent, in
14 general duties?

15 A. Not a significant amount, no.

16
17 Q. For a period in January 2023, you were an acting
18 assistant commissioner serving in the role of acting
19 northern region commander; is that correct?

20 A. Yes.

21
22 Q. What was that period that you were in the role?

23 A. From 2 January - could have been the 1st, sorry,
24 Sunday was the 1st, it would have been 1 January, for
25 a period of two weeks.

26
27 Q. Two weeks. I think there is a hand-back to Assistant
28 Commissioner McKenna on about 15 January?

29 A. Correct.

30
31 Q. Does that sound right?

32 A. (Witness nods).

33
34 Q. Thank you. What's the function of the region
35 commander, just in general terms, can you outline that for
36 us, the mandate?

37 A. I guess a whole range of things but predominantly to
38 oversee and oversight the policing operations across the
39 northern region in this instance. The northern region
40 covers from Gosford or Brisbane Water police district
41 through to Tweed-Byron police district. So there are
42 11 districts and that is predominantly to oversee the
43 functions of policing in that area.

44
45 Q. And the region commander has a particular role or
46 mandate in relation to critical incidents; is that right?

47 A. Correct.



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1

2 Q. We will come to that aspect. You prepared two section
3 54 responses for the purposes of these proceedings. If you
4 would like a copy of your response, very happy for you to
5 have it in front of you, if that would assist you?

6 A. Yes.

7

8 Q. Do you have copies with you, your paper versions?

9 A. I have, yes. I do.

10

11 Q. Perhaps they can be brought to you.

12

13 THE COMMISSIONER: Do you want to come up and approach -
14 bring it to Ms Chapman. It's always easier to have these
15 documents.

16

17 MS SULLIVAN: Just for completeness, we will also bring it
18 up on the screen, tab 87 is Superintendent Chapman's
19 response of 15 November 2025.

20

21 Q. It should come up on the screen as well but you refer
22 to whichever one you prefer.

23 A. Thank you.

24

25 Q. So this is the response of 15 [sic] November 2025.
26 You've no doubt had a chance to review that for these
27 proceedings?

28 A. Yes.

29

30 Q. Any corrections you would like to make?

31 A. No.

32

33 Q. True and correct to the best of your knowledge,
34 information and belief?

35 A. Yes.

36

37 MS SULLIVAN: Commissioner --

38

39 THE COMMISSIONER: Ms Sullivan, I think that's
40 14 November.

41

42 MS SULLIVAN: 14 November, thank you. 14 November.
43 Thank you. I'm grateful for that correction. I tender
44 that response, tab 87. It commences at barcode 8605781
45 through to 8605827.

46

47 THE COMMISSIONER: That will be exhibit 25C.



1
2 EXHIBIT #25C RESPONSE OF TRACY CHAPMAN, DATED 15 NOVEMBER
3 2025, BARCODED 8605781-8605782

4
5 MS SULLIVAN: Q. And there was a further response,
6 Superintendent, dated 1 December 2025; is that right?
7 A. Yes.

8
9 MS SULLIVAN: Commissioner, that's at tab 144, if we could
10 bring that up for completeness. That commences at barcode
11 8647105 through to 8647116. We'll just wait for that to
12 come up. Tab 144, we should be at. 8647105.

13
14 THE COMMISSIONER: That was the right document, I think we
15 just started at the end.

16
17 MS SULLIVAN: At the back end. There it is.

18
19 Q. That response is true and correct to the best of your
20 knowledge, information and belief?
21 A. Yes.

22
23 MS SULLIVAN: Thank you. I tender that second response,
24 Commissioner.

25
26 THE COMMISSIONER: So the second response given under
27 section 54 of the Law Enforcement Conduct Commission Act,
28 dated 1 December, under tab 144, will be exhibit 26C.

29
30 EXHIBIT #26C SECOND RESPONSE OF TRACY CHAPMAN, DATED
31 1 DECEMBER 2025, BARCODED 8647105-8647116

32
33 MS SULLIVAN: And I might also, whilst we're dealing with
34 materials, go to the document at tab 111, if we could bring
35 this up. This is an internal police memorandum dated
36 26 June 2023.

37
38 Q. We'll just bring that up and show that to you. Do you
39 have a hard copy of that memorandum? If you don't have it
40 to hand, we'll just have it on the screen.

41 A. Of a memorandum?

42
43 Q. Of a memorandum, an internal police memorandum?

44 A. A document I authored?

45
46 Q. Yes.

47 A. Yes, I have a copy of that, sorry. We don't call it



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1 a memorandum, sorry. I was confused. It was something --
2

3 THE COMMISSIONER: Q. It's a Godfrey?

4 A. Yes, a Godfrey, thank you

5

6 MS SULLIVAN: Q. A Godfrey, this is the terminology.
7 Thank you. We'll just wait for that to come up. It's up
8 now. So that is tab 111, at barcode 8607889 through to
9 8607899. Is that document, at least the first two pages of
10 that Godfrey memorandum, or Godfrey document, that's
11 authored by you?

12 A. Yes.

13

14 Q. Can I ask, Superintendent, did you see the back pages
15 of that document?

16 A. No.

17

18 Q. You only authored the first two pages?

19 A. Yes.

20

21 Q. And didn't otherwise see it?

22 A. No.

23

24 Q. Okay, thank you for that clarification.

25

26 THE COMMISSIONER: That will be exhibit 27C, but we are
27 tendering the entirety of the document; is that right,
28 Ms Sullivan?

29

30 MS SULLIVAN: Yes, that's so, thank you, for completeness.

31

32 EXHIBIT #27C INTERNAL POLICE MEMORANDUM DATED 26 JUNE 2023,
33 BARCODED 8607889-8607899

34

35 MS SULLIVAN: Q. Can I ask you, firstly, about your
36 experience with critical incidents. Have you ever been
37 a SCII, a senior critical incident investigator, during
38 your career?

39 A. No.

40

41 Q. You no doubt have close familiarity with the
42 NSW Police Force critical incident guidelines?

43 A. Yes.

44

45 Q. When did you first learn about those guidelines?

46 A. I would suggest in 2010.

47



1 Q. In connection with what aspect of your role at that
2 time?
3 A. So in 2010 I transferred to the northern region
4 office. At that point in time, I was an inspector and the
5 HR manager for the region. As part of my role as the HR
6 manager, like all the other inspectors in the region
7 office, I was on call approximately once per month for
8 a week at a time, so I was the person who received the
9 phone calls in relation to critical incidents and briefed
10 the region commander.

11

12 Q. And is it fair to say that you've had exposure to
13 those guidelines ever since in various other different
14 capacities, for example, as a superintendent?

15 A. Yes.

16

17 Q. And more recently as an acting assistant commissioner?

18 A. Correct.

19

20 Q. Did you receive any training in relation to the
21 documentation that should be completed for critical
22 incident matters in your role as an acting assistant
23 commissioner?

24 A. No.

25

26 Q. What about in your role as a superintendent?

27 A. No.

28

29 Q. I'll show you a form called a P1179.

30 A. (Witness nods).

31

32 Q. Are you familiar with that term, the P1179 form?

33 A. I expect so.

34

35 MR SULLIVAN: Okay. It is at tab 52, which is exhibit 4,
36 that's the public exhibit. It's 5. I beg your pardon,
37 exhibit 5.

38

39 THE COMMISSIONER: That was my error from this morning.

40

41 MS SULLIVAN: Q. We have that up on the screen now,
42 thank you. So this is the P1179 document. You've seen
43 this before?

44 A. Yes.

45

46 Q. Have you received any training in your capacity as
47 a superintendent in relation to this document?



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1 A. No.

2
3 Q. Have you ever completed this document to declare
4 a critical incident?

5 A. To declare one?

6
7 Q. To declare one?

8 A. Not to my recollection.

9
10 Q. Have you ever completed one to - by way of
11 non-declaration of a critical incident?

12 A. Yes.

13 Q. You have, okay. Can you tell us about that instance?

14 A. I don't have a strong recollection of it but I am
15 aware that, at some point in time, on at least one occasion
16 whilst I was at the region office as the on-call inspector,
17 I briefed the region commander on a potential critical
18 incident. That critical incident wasn't declared and
19 I completed the incident non-declaration form on behalf of
20 the region commander.

21
22 Q. Okay. So that is - we might flick through to the next
23 page, which is barcode ending 213. Do you remember
24 approximately the timing of that non-declaration?

25 A. I couldn't say with any accuracy.

26
27 Q. Okay. But certainly whilst you were an inspector?

28 A. Correct.

29
30 Q. So if we go to barcode ending 213 and bring up part 3,
31 "Decision of Region Commander" - is that in front of you?

32 A. Yes.

33
34 Q. And do you see there, it sets out:

35
36
37 *Following consideration of the answers to*
38 *the questions in Part 2 above --*

39
40 which relates to, of course, the criterion that are set out
41 in section 111 of the LECC Act. It indicates:

42
43 *... did the Region Commander declare the*
44 *incident a "Critical Incident"?*

45
46 And goes on to ask for "Yes", you tick the box, "for the
47 reasons indicated in ... Part 2 above", or "No" "for the



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1 following reasons", and the reasons are then set out in
2 that box there. Just to be very clear, you've never been
3 given any training in relation to when one would complete
4 that section "No, for the following reasons"?

5 A. No.

6
7 Q. Thank you. And this is a form - if you see on page 1
8 of that form, that's 212, barcode 212:

9
10 *This is a record of --*

11
12 it says at the top --

13
14 *The decision of region commander in*
15 *considering declaring the following*
16 *incident a "critical incident" under*
17 *section 111 ...*

18
19 So this is a form to be completed where there has been
20 consideration about declaring a critical incident. Do you
21 agree with that characterisation?

22 A. Yes.

23
24 Q. Thank you, Superintendent. Have you ever been involved with or heard of a critical incident being declared under that second public interest limb in section 111?

25 A. Not to my recollection.

26
27 Q. Were you aware that actually there's only been two since 2017 to present day under that limb?

28 A. That would seem correct.

29
30 Q. That's not surprising to you?

31 A. No.

32
33 Q. What's your understanding of what that limb relates to, that public interest limb, the type of matter that that would capture?

34 A. Well, in the first instance, I expect it would have the same categorisation as a death or a serious injury to someone.

35
36 Q. Yes.

37 A. And presumably, it's not meeting the criteria, but for whatever reason, as the region commander, you are of the view that there is something particular about the



8649613

1 circumstances of that matter that you think require
2 exploration under the critical incident guidelines.
3

4 Q. Is there difficulty with erring on the side of caution
5 in declaring a critical incident, in the sense that if you
6 are a bit unclear, it's in that sort of grey zone, is it
7 prudent to declare it and then revoke it if it later
8 becomes clear, or to your mind, is there some downside in
9 making that declaration and then revoking subsequently?

10 A. I don't have a view either way. Like, I don't --
11

12 Q. Well, for example, one difficulty might be that if you
13 declare it and then investigate it, for example, for
14 a couple of weeks as a critical incident but then revoke
15 the declaration, one downside might be the impost on the
16 staff or the stigma for the staff; do you agree with that?

17 A. I'm not sure that I agree that it is an impost on the
18 staff.

19 Q. It might raise a welfare concern?
20 A. Or a downside.

21 Q. A downside. Please, you use your language.

22 A. I guess my confusion with this question is in the
23 context of calling a critical incident, investigating for
24 two weeks, and then rescinding that. I'm not - I'm not
25 quite sure I have a view about what that --

26 Q. Very circumstance specific?
27 A. Yes, it would depend on the circumstances.

28 Q. All right. We can come to this example more
29 specifically as we go through.

30 A. Sure.

31 Q. But no doubt, in your role as in HR, you would have
32 seen the impost of critical incidents on officers in terms
33 of welfare concerns; is that fair?

34 A. I think for a whole range of activities but certainly
35 critical incidents, you're mindful of welfare of staff and
36 ensuring that they have appropriate supports around them.
37 That is provided both within the NSW Police but also the
38 Police Association of NSW.

39 Q. Thank you. So we'll come to the events of 4 June
40 [sic] 2023. I appreciate it's almost three years ago and
41 you will have dealt with many incidents since that time.
42



8649614

1 So we do appreciate that we're testing your memory. But as
2 you sit here now, how clear can you recall, in particular,
3 those days following the tragic death of Ms Lucena - that
4 is, from about 4 January through to 15, 14 January, when
5 you hand back to Assistant Commissioner McKenna?

6 A. Okay. Just - so we're talking about the period I was
7 relieving?

8

9 Q. Correct.

10 A. Because at first you said 4 June.

11

12 Q. I beg your pardon. I thought I said 4 January --

13 A. Yes.

14

15 Q. -- through to about 14 or 15 January, that two-week
16 period. How clear is that in your recollection.

17 A. I mean, I feel like I have a reasonable recollection,
18 but it's a recollection that has needed to be assisted
19 through the documentation that I had from that time.

20

21 Q. Okay. And that has refreshed your memory somewhat?

22 A. Yes.

23

24 Q. And is it your practice to take contemporaneous notes
25 about significant matters in your diary?

26 A. It's one of my practices, yes.

27

28 Q. What other practices do you have to keep notes to
29 remind yourself of relevant events?

30 A. Well, for instance, relieving - as a region commander,
31 I commence my hand back the day that I start. And so
32 I expect that the notes in that hand-back written for
33 Mr McKenna were done not at the end of that period but on
34 or around the time that that job occurred.

35

36 Q. So you were keeping that as a contemporaneous live
37 document, as it were?

38 A. Yes.

39

40 Q. Okay. Anything else?

41 A. No.

42

43 Q. Would you - in relation to your diary, would you enter
44 those notes at the end of the day or would you do them as
45 they happened?

46 A. As a general rule, I would try to do them as they
47 occur. There are odd occasions, if you go from one thing



1 to the next, you might do two meetings at once.
2

3 Q. Okay. Thank you. All right. So just in terms of the
4 chronology - and as I say, please, you should feel free to
5 refer to any of your materials if I'm taking you to a time
6 or a date and it seems inaccurate.

7 A. Sure.

8 Q. So we understand from your diary notes that you have
9 prepared - and I'm going to tab 87, which is exhibit 25C,
10 barcode 791, please, and this we understand is an extract
11 from your diary. I will just wait for it to pop up on the
12 screen. Has that come up there?

13 A. (Witness nods)

14 Q. So this is an entry on 3 January but it refers to
15 1.21am. Do you see that? So that should be 4 January?

16 A. The 4th.

17 Q. So the reference is:

18 22 Jones called re: homicide Ballina as per
19 23 notes & email.

20 A. Yes.

21 Q. Can you decode that entry for us?

22 A. Sure. I expect that means at 1.21, that means that
23 Lisa Jones, who was the on-call inspector, phoned me in
24 relation to the homicide. I have written as per notes. My
25 understanding of that would mean as per the on-call
26 officer's notes. So typically, if I get called during the
27 night - so we're on call 24/7, 365 days of the year, except
28 when you are on leave - I won't always make notes on the
29 night. That will depend on what the incident is, and
30 whether anything of concern that would require me to make
31 a decision, like, a high-risk incident, has occurred, and
32 I will make notes.

33 40 If I'm satisfied that the conversation with the
34 41 on-call person is that there's nothing contentious or
35 42 problematic in there, then I will trust their notes.

36 Q. So have you seen those notes?

37 A. No.

38 46 MS SULLIVAN: Commissioner, I think for completeness, we



8649616

1 might just call for a copy of the notes that are referred
2 to, pursuant to section 69(2).
3

4 THE COMMISSIONER: Would that be something that you would
5 be able to obtain, Superintendent Chapman?
6

7 THE WITNESS: Yes.
8

9 THE COMMISSIONER: Ms Jones's notes?
10

11 THE WITNESS: Yes. Well, I could ask her for them.
12

13 THE COMMISSIONER: Could I ask you to obtain them, and
14 I'll make a formal call for those notes under section 69(2)
15 of the Law Enforcement Conduct Commission Act. We can
16 follow up with that.
17

18 Do you have a difficulty with that, Mr Gollan?
19

20 MR GOLLAN: Only in the context of what was said. She
21 said that she could ask her. The court order or the
22 Commission's order would impose an obligation.
23

24 THE COMMISSIONER: Sure. I mean the other option is that
25 we issue a section 55 to Ms Jones to see if we --
26

27 MR GOLLAN: I think that would be the better approach in
28 fairness to the witness.
29

30 THE COMMISSIONER: Perhaps that could be facilitated
31 through the Commissioner's representatives.
32

33 MR GOLLAN: I'm sure the Commissioner won't have any
34 difficulty following it up as a matter of expedition, but
35 just as a prompt --
36

37 THE COMMISSIONER: No, that's fair. A section 55 notice
38 formally will issue in due course but if you could make the
39 arrangements to get them obtained promptly, then we can
40 exchange you for a section 55 once they are available.
41

42 MR SMARTT: Yes.
43

44 MS SULLIVAN: Thank you.
45

46 Q. Do you have a recollection now as to what Inspector
47 Jones said about this incident?
48



8649617

1 A. Not a strong one other than I was obviously made aware
2 that there was a homicide. It's my belief I was advised it
3 was a DV homicide, some brief circumstances of that, but
4 the detail I couldn't with certainty say, and that I was
5 advised that Superintendent Tanner was attending the scene
6 and hence that's the reference to the email. I believe you
7 were provided an email briefing.

8
9 MR SMARTT: We can expedite the position of this. Could
10 I ask for the name and position of Ms Jones?

11
12 MS SULLIVAN: She's an inspector. I understand her full
13 name is --

14
15 THE COMMISSIONER: Lisa Jones, did you say, Ms Chapman?

16
17 THE WITNESS: Yes, ma'am.

18
19 THE COMMISSIONER: Do you know where she is currently
20 stationed?

21
22 THE WITNESS: She is a district inspector at Lake
23 Macquarie police district.

24
25 THE COMMISSIONER: Thank you.

26
27 MS SULLIVAN: Q. So that was a brief conversation was
28 it, I assume, with Inspector Jones?

29 A. I couldn't say.

30
31 Q. And where were you when you received that? At home,
32 in bed?

33 A. In bed.

34
35 Q. Where was your office whilst you were the acting
36 assistant commissioner?

37 A. Newcastle.

38
39 Q. Newcastle. Thank you. Do you recall, after receiving
40 that call from Inspector Jones, having a discussion with
41 Superintendent Tanner whilst he was on scene?

42 A. During the night?

43
44 Q. Yes.

45 A. No.

46
47 Q. Is it possible that happened and you just can't now



8649618

1 recall it?

2 A. Correct.

3

4 Q. Do you recall receiving any photographs from him in a
5 text message from the scene?

6 A. No.

7

8 Q. You don't think that happened?

9 A. I don't recall it happening.

10

11 Q. Would that be unusual, to receive a text message with
12 photos from a scene?

13 A. Not necessarily. If they were relevant for some
14 reason.

15

16 Q. Could we ask you to check, please, your phone records
17 to see if you received from Superintendent Tanner on
18 4 January some photographs from the scene?

19 A. So when you say "phone records" --

20

21 Q. Your phone?

22 A. Actual phone?

23

24 Q. Yes, your --

25 A. I checked that when I was asked - when I received the
26 notice, and I have no messages from Superintendent Tanner
27 in terms of text messages at that time.

28

29 Q. At that time. Which suggests that those messages
30 weren't sent, to your mind?

31 A. I'm not sure whether I could have changed - like,
32 I might have a different phone. I don't recall the last
33 time my phone was changed. I'm not suggesting it didn't
34 occur, just that I don't have a recollection of it and
35 there's no record of that on my phone.

36

37 Q. Okay. As in there's no record of any exchanges with
38 Superintendent Tanner?

39 A. Correct.

40

41 Q. And you might expect that there would have been, if it
42 was the same phone that you had?

43 A. Correct.

44

45 Q. All right. So does that suggest you have changed
46 phones, perhaps unsurprisingly, since that time?

47 A. Yes.



8649619

1

2 Q. Now, can you recall having a conversation with
3 Superintendent Tanner some time later that morning?

4 A. Conversation at 9.15?

5

6 Q. Yes.

7 A. Yes.

8

9 Q. What can you tell us about that conversation?

10 A. He had sent me an email detailing some of the
11 information in relation to the attendance of police at the
12 scene. We discussed that.

13

14 Q. And so you're referring to a diary note that you have
15 set out on the 4th?

16 A. Yes, that's my - I can't recall the conversation
17 without looking at the diary note.

18

19 Q. We'll bring that up. For the record, this is tab 87,
20 exhibit 25C, barcode 792. Perhaps rather than jump back in
21 time, we might start just chronologically with the first
22 entry that is there.

23 A. Yes.

24

25 Q. At 7.40am. Have I read that right?

26 A. Correct.

27

28 Q. Now that's come up on the screen?

29 A. Yes.

30

31 Q. We will come back to Superintendent Tanner and that
32 discussion, but this is a discussion with - is this
33 Superintendent Greg Thomas?

34 A. Correct.

35

36 Q. And perhaps you could just read on to the record for
37 us this entry, if you wouldn't mind?

38 A.

39 *Discussion Thomas re: homicide. Closed*
40 *substantive CM --*

41

42 which is crime manager --

43

44 *is O'Reilly at MNC, which is [Mid North*
45 *Coast]. Do I want to send him for a day to*
46 *look at it? Want to understand level of*
47 *involvement/consultation from homicide. If*



8649620

1 *they are covering 7pm-midnight actions;*
2 *satisfied another oversight not required.*
3 *Initial review by Superintendent Tanner.*
4 *Clarity required on Time of Death from PM.*
5 *Homicide involvement. Caller follow-up?*
6 *Walk through with officers attending at*
7 *8pm.*

8

9 Q. Okay. What was Superintendent Thomas's role?

10 A. He was the operations manager for northern region.

11

12 Q. And what is it that is the purpose of this call with
13 him at that time?

14 A. So this wasn't a phone call. This was in person.

15

16 Q. Okay, thank you.

17 A. Because in that role as the operations manager,
18 Detective Superintendent Thomas had direct contact with
19 state crime command and the homicide squad. He was
20 responsible for organising the region response in terms of
21 resources, and he's also someone significantly experienced
22 in the region role and in the operations manager role and
23 who I discussed the consideration of a critical incident
24 with.

25

26 Q. At that point in time?

27 A. Correct.

28

29 Q. What was that discussion around?

30 A. We discussed that it didn't meet the circumstances,
31 which is why there was then the question mark:

32

33 *Closest substantive [crime manager] is*
34 *O'Reilly at [Mid North Coast]. Do I want*
35 *to send him for a day to look at it?*

36

37 That was a question that I believe he asked of me, because
38 neither of us were of the view that it met a critical
39 incident, and my view was I wanted to understand the level
40 of involvement, consultation, from homicide and whether
41 they're covering those actions from 7pm till midnight, and
42 so it was my expectation that he would clarify that for me
43 because he was the contact with State Crime Command and
44 homicide squad.

45

46 Q. So was the crime manager O'Reilly - is he a detective
47 inspector?



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1 A. Correct.

2
3 Q. Was he involved, to your knowledge, in the matter?
4 Did he become involved at some point?

5 A. No. Well, not that I'm aware.

6
7 Q. Not that you are aware. And was it Detective
8 Superintendent Thomas who engaged with the homicide
9 consultant?

10 A. That's my understanding.

11
12 Q. Inspector Glen Brown, is that who it was or you can't
13 recall?

14 A. I can't recall.

15
16 Q. All right. But there was a concern, I take it, from
17 what you've written there, to ensure that there was
18 a review of the - any potential deficiencies in the initial
19 police response. Is that fair?

20 A. Certainly wanted to understand what had occurred.

21
22 Q. How long was that discussion, to the best of your
23 memory? Are we talking sort of - is this a detailed
24 discussion or is it more a fairly brief one?

25 A. I couldn't say with clarity but I expect - we had an
26 8am briefing so I expect I spoke to him for 20 minutes
27 prior to the briefing.

28
29 Q. Because by that time, you had the benefit of the
30 3.25am email from Superintendent Tanner?

31 A. Mmm-hmm.

32
33 Q. That's right. We'll just go to that to refresh our
34 memory. We've seen this email before and no doubt you
35 have. It's attached to your response at 818 of
36 exhibit 25C.

37 A. Yes.

38
39 Q. Do you have a copy of that? We'll just wait for it to
40 come up too.

41 A. That's fine. I have a copy.

42
43 Q. There's the email from Superintendent Tanner to you at
44 3.25am. I take it you didn't read that until some time
45 later?

46 A. Correct.

47



8649622

1 Q. That's, I think, about 7 o'clock; is that right or --
2 A. I imagine it was earlier than that.

3
4 Q. In fact, I beg your pardon. I think you forward that
5 email to Lachlan Pritchard, who is the staff officer for
6 Deputy Commissioner Pisanos, at 5.27am; is that correct?
7 A. Correct.

8
9 Q. Thank you. That's at barcode 786, for completeness.
10 I don't think that we need to go there. But were you at
11 home when you did that or were you in Newcastle bright and
12 early?

13 A. I believe I was at work.

14
15 Q. Now, just in relation to that email that had been sent
16 by Superintendent Tanner, was there anything in the
17 incident summary that was set out there that gave you cause
18 for concern?

19 A. I certainly wanted to understand what car crews were
20 doing during that period of time between the original call
21 and when police attended.

22
23 Q. The reason for the delay?
24 A. Sure.

25
26 Q. And did you know this premises in Ballina, this
27 Salvation Army in Holden Lane?
28 A. No.

29
30 Q. Do you know Ballina at all?
31 A. I would say no.

32
33 Q. So that your particular concern on reading that was to
34 understand further the delayed police response?
35 A. Correct.

36
37 Q. Thank you. After that email is sent - we've canvassed
38 the discussion with Superintendent Thomas at 7.40. If you
39 go back, please, to your diary entry at 792, now we're at
40 the 9.15 discussion with Superintendent Tanner
41 A. Yes.

42
43 Q. Can I trouble you, please, to read on to the record
44 your entry there? I'm sorry, before we go to that, I'm so
45 sorry, can we just go back to the discussion with
46 Superintendent Thomas. What was proposed in terms of the
47 entry, "Walk through with officers attending at 8pm"? What



8649623

1 did you have in mind in relation to that?

2 A. I - walk through what the circumstances were for them.
3 So for Superintendent Tanner to understand what had
4 occurred.

5

6 Q. That's not an actual walk-through where they go on
7 scene?

8 A. I don't believe that's what I meant by that.

9

10 Q. Okay. What about the reference to "caller follow up?"

11 A. I wanted to ensure that there were inquiries being
12 made to identify the caller who had contacted 000.

13

14 Q. And as set out earlier, you've referred to the notion
15 that if homicide are covering the police actions from 7 to
16 midnight, in your view, "satisfied another oversight is not
17 required"?

18 A. Correct.

19

20 Q. And that was also Superintendent Thomas's view?

21 A. Well, I can't speak for Superintendent Thomas but my
22 understanding was he was of the same view.

23

24 Q. He agreed?

25 A. Yes.

26

27 Q. Thank you. All right. So now we're at the 9.15 entry
28 that you were about to read out, thank you.

29 A.

30 9.15am. [Phone call] Tanner - satisfied
31 police attended as quickly as they could.
32 Have patrolled front & rear with nil find.
33 Victim later located with assistance from
34 POI through 2 gates (side area) where
35 donation etc are. Superintendent Tanner
36 attended scene & indicates difficulty
37 locating her due to environment. Male
38 caller also homeless & not yet located.
39 Witnesses have heard arguing post police
40 attendance.

41

42 Q. Thank you. So on the basis of that entry, you
43 understood from Superintendent Tanner that there had been
44 a patrol of the front and the rear of the Salvation Army
45 building with nil find --

46 A. Correct.

47



8649624

1 Q. -- is that right? Was that understanding ever
2 corrected at any point?

3 A. No.

4
5 Q. Was that always your understanding, that they
6 patrolled the front and the rear?

7 A. Correct.

8
9 Q. Did you have an understanding about whether or not
10 they went into the car park at the Salvation Army building
11 in the car?

12 A. I don't recall that level of detail.

13
14 Q. What do you mean?

15 A. I don't recall if that was discussed specifically or
16 not.

17
18 Q. But at any time did you come to understand whether or
19 not they'd gone into the car park?

20 A. I don't know. I don't recall having a conversation
21 about whether they physically went into the car park or
22 not. So I don't - I don't recall having a conversation.
23 I don't recall having a view.

24
25 THE COMMISSIONER: Q. Did you ever look at a map of what
26 the Ballina Salvation Army building looks like or where
27 it's located or anything of that kind?

28 A. Sure. At some point.

29
30 Q. Right.

31 A. I'm not sure that I ever asked specifically the
32 question about whether they went into the car park or not.
33 I simply don't have a recollection.

34
35 MS SULLIVAN: Q. You would have wanted to understand the
36 nature of the steps that had been taken by those police
37 officers, though, wouldn't you?

38 A. Well, I wanted to understand that Superintendent
39 Tanner had explored those issues and was satisfied that
40 their response was appropriate.

41
42 Q. But you also needed to have an understanding about
43 that, didn't you?

44 A. Well, I needed to have an understanding of, yes, the
45 broader circumstances, the minutiae detail, perhaps not.
46 But I don't recall specifically asking about the car park.
47 I may have. I don't - I simply don't have a recollection.



8649625

1

2 Q. Did you have an understanding about whether the
3 officers had left their vehicle at this point in time?

4 A. So at some point in time I'm aware that I understood
5 they had not left their vehicle. I don't recall at what
6 point I became aware of that.

7

8 Q. And was that a matter that in any respect troubled
9 you?

10 A. Again, it's something that I would want to understand
11 what occurred and whether that was reasonable or not.

12

13 Q. Can you broadly identify whether you became aware that
14 they had not left their vehicles?

15 A. I expect somewhere in those first few days.

16

17 Q. And did you at any point in those first few days or
18 even at any point after, look at their statements?

19 A. I believe I saw one statement.

20

21 Q. Do you remember which statement? And I should say, we
22 haven't indicated to you the pseudonyms that have been
23 allocated. For ease of reference, I'm referring to them by
24 car call sign. So Ballina 14, who was the supervisor?

25 A. I believe that was the one I saw.

26

27 Q. Okay. And the other one is Woodburn 29, just for your
28 reference.

29 A. Yes. Okay.

30

31 Q. That's Officer D.

32 A. The statements of the supervisor.

33

34 Q. And do you think you saw that in the days that
35 followed 4 January?

36 A. Correct.

37

38 Q. So at that point, you would have become aware that
39 Ballina 14 hadn't left his vehicle?

40 A. Correct.

41

42 Q. Do you remember asking any questions of
43 Superintendent Tanner about that aspect?

44 A. I can't specifically recall. I believe I had
45 a conversation about that at some point but I can't
46 specifically recall and I don't have a note.

47



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1 Q. You would have asked some questions because, on its
2 face, that raises concerns that police wouldn't get out of
3 their vehicle in those - in the circumstances in responding
4 to a P2 report of a female being bashed behind the
5 Salvation Army?

6 A. I don't - I don't necessarily agree that that would
7 automatically raise a concern, no.

8
9 Q. Okay. That didn't trouble you, the notion that they
10 hadn't left their vehicles in the circumstances as you
11 understood it?

12 A. When you say it "didn't trouble" me, when I first
13 became aware of it, I expect I wanted to understand it
14 further. But upon review of that statement, I was not
15 concerned with the statement of the officer.

16
17 Q. What is it that gave you comfort?

18 A. I think the officer explained the circumstances and
19 their view of the car park, what they could see at the
20 time, covered a range of issues such as lighting, et cetera.
21 And when you look at a map, for me, I expect that it's
22 reasonable that they could see into that car park. The
23 report was - and bearing in mind there was one report of
24 a female being assaulted, that in itself can be unusual.
25 You would sometimes expect more than one, when you have
26 someone being assaulted in public place. But I was of the
27 view the officer's statement covered the reason he didn't
28 get out and was clear in that he had a full view of the car
29 park, which was the identified location, and I was
30 satisfied with that explanation.

31
32 Q. Is it right, though, that you might only ever get one
33 call from a member of the public about a serious incident?
34 A. Certainly.

35
36 Q. So it's not safe to assume that just because there's
37 one call, that it's not a potentially serious matter?
38 A. Correct.

39
40 Q. Were you shown the crime scene photographs at any
41 point in the days after Ms Lucena's death?

42 A. I have no recollection of that.

43
44 Q. Have you ever --
45 A. So I'm not sure.

46
47 Q. Have you ever seen the crime scene photos?



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1 A. Well, not to my recollection.
2

3 Q. Have you seen the photograph of the fence, the gated
4 area on the left-hand side of the Salvation Army building?

5 A. It's possible, yes. I feel like - and it's quite
6 difficult, it's three years ago. I feel like I've seen
7 a photo of the gates at least.

8 Q. Did you have an understanding that the officers were
9 not able to see beyond those gates --

10 A. That was my understanding.

11 Q. -- on their patrol? Okay. And you had an
12 understanding, did you, that they hadn't gone into the car
13 park and shone lights down the side to see whether they
14 could see anything on the side of the building?

15 A. Sorry, can you ask the question again?

16 Q. I can. You had an understanding - correct me if this
17 is not correct - that they had or they hadn't gone into the
18 car park to shine lights in that area or look down the area
19 where the gated fence was on the left-and side?

20 A. As indicated, I don't have a recollection of having -
21 of knowing exactly whether they went into the car park or
22 not. So it's difficult to answer that question.

23 Q. Based on your understanding of police powers, in
24 response to this scenario, that is, male stated female
25 being bashed behind Salvation Army building, if police had
26 gone to that fence, it's unlocked, on the basis of that
27 scenario, would they have the authority to open the gates
28 and enter and if I can perhaps draw your attention in
29 particular to section 9 of LEPRA, the emergency powers
30 authority?

31 A. I don't have the section in front of me and --

32 Q. That's very fair.

33 A. Having said that, I expect there's a potential they
34 don't have that power. The call was for behind the
35 Salvation Army, not in the Salvation Army or down the side
36 of the Salvation Army. The car park is presumably public
37 space. I expect through the gate is not a public space.

38 Q. Yes.

39 A. So unless there was something in addition to that
40 first call, I don't necessarily agree they would have the
41 power to enter.



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1

2 Q. So that might depend on the circumstances, for
3 example, whether there was someone in that section who
4 raised concerns for them, in that gated section?

5 A. I don't understand --

6

7 Q. So, for example, hypothetically speaking, if they had
8 encountered Mr Huber?

9 A. Yes.

10

11 Q. They may, for example - well, you've read the
12 statement of Ballina 14. You're aware that he knew
13 Mr Huber?

14 A. I don't have a recollection of it.

15

16 Q. So he was involved in the laying of charges on
17 27 December 2022, the DV charges, and his evidence is to
18 the effect that he would have recognised - he did recognise
19 Mr Huber when he came into the police station at 12.30 that
20 night?

21 A. Sure.

22

23 MR GOLLAN: I object. Commissioner, my learned friend has
24 conflated the hindsight bias, as it were, in that we've
25 found out that it was Huber in some later time, with being
26 the assailant, as it were, that is suggested to be the
27 subject matter of the 000 call. The two don't necessarily
28 sit side by side, with respect. So the proposition that is
29 being put lacks the foundation that is probative,
30 sufficient to assist you.

31

32 MS SULLIVAN: It can be put on the assumption that it's
33 Mr Huber and the assumption may or may not be borne out, in
34 my submission, it will be borne out.

35

36 Q. But in any event, on the assumption that Ballina 14
37 saw - sorry, did you --

38

39 THE COMMISSIONER: I'm comfortable with - if the
40 assumption that Mr Huber was behind those gates, if you
41 assume that, and on the assumption that Ballina 14 knew
42 Mr Huber and knew that he had charged him recently with
43 domestic violence offences, would that have given
44 Ballina 14 a lawful justification to enter that gated
45 property?

46

47 MR GOLLAN: Well, with respect, Commissioner, what that



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1 presupposes is that there's any probative value that it is
2 anyone. It doesn't matter whether or not they are
3 recognised. The question only has probative value if you
4 connect the assailant, as it were, or the perpetrator, with
5 Mr Huber.

6
7 Now, if the assumption is that they knew that Mr Huber
8 was the person that was the subject matter of the 000 call,
9 well, then that's fine, because you can identify him as
10 being the perpetrator. But in the absence of that, it
11 elevates the question to him being a criminal, as it were.
12 We all know that's as it turns out, but at the time that
13 the police officer's mind is being inquired of as to the
14 exercise of his power, it's a completely unfair and
15 non-probative question.

16
17 THE COMMISSIONER: So it was known that there was a 000
18 call, "male bashing female"?

19
20 MR GOLLAN: Correct.

21
22 THE COMMISSIONER: And it's known that it's behind the
23 Salvation Army building.

24
25 MR GOLLAN: Correct.

26
27 THE COMMISSIONER: And it's known that Mr Huber has
28 current charges for domestic violence offences against his
29 partner.

30
31 MR GOLLAN: It's not known that Mr Huber is the subject
32 matter of the 000 call.

33
34 THE COMMISSIONER: No, but you know those three things
35 together.

36
37 MR GOLLAN: One of the police officers, yes, I don't cavil
38 with that.

39
40 THE COMMISSIONER: Yes. So with that knowledge, the
41 question for the witness is would that give a sufficient
42 lawful basis to go and speak to Mr Huber, even if it had
43 been behind a gate?

44
45 MR GOLLAN: Speak to him or enter the premises, the
46 inclosed lands?



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1 THE COMMISSIONER: Well, let's start with speak to him and
2 then we'll move to enter the premises.

3

4 THE WITNESS: We're presuming he saw him; is that --

5

6 THE COMMISSIONER: Q. Yes. This is speculative. So
7 we're trying to work out, had the officers got out of the
8 car --

9 A. Right.

10

11 Q. -- and had they seen - so officer Ballina 14 knew
12 Mr Huber and knew that he had a domestic violence offence,
13 and - a domestic violence charge, I should say.

14

15 MS SULLIVAN: And knew there was an AVO in place.

16

17 THE COMMISSIONER: Q. An AVO. And he also knew that
18 a call had come over the radio that, from that location,
19 a man was alleged to have been bashing a woman.

20 A. Okay.

21

22 Q. If he was then to see someone that he knew had an AVO
23 charge, would that give him legal justification to at least
24 approach the gate and speak to Mr Huber?

25 A. We can speak to anyone.

26

27 Q. Would it have given him justification to go in through
28 an unlocked gate, do you think, and search the - and have
29 a look down the side of that Salvation Army property?
30 Nothing's broken, I can add, by doing that.

31 A. Pardon me.

32

33 Q. There's no break and enter; it's a lifting of an
34 unlocked pool gate.

35 A. Based on that information?

36

37 Q. Mmm.

38 A. Unless there were some further - something further in
39 the course of the conversation with that person, I don't
40 necessarily think - you still don't necessarily have power
41 to enter private property.

42

43 THE COMMISSIONER: Okay.

44

45 MS SULLIVAN: We might move on from that.

46

47 Q. Go back to your diary entry at 9.45.

1 A. Yes.



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2 Q. It says:

3 5 Briefed LP as per above.

6 7 Who is LP?

8 A. Lachlan Pritchard.

9 10 Q. Thank you. That's because the deputy commissioner
11 needs to understand what's going on as well?

12 A. Correct.

13 14 Q. All right. And then can you assist us with the entry
15 at 10.55, please?

16 A. So I spoke with Detective Superintendent Thomas re the
17 homicide sit rep. Am I reading this on record or am
18 I giving you my interpretation --

19 20 Q. Please read it on the record and interpret as you see
21 fit.

22 A. As I go or at the end?

23 24 Q. As you go.

25 A. So, yes, I spoke to Detective Superintendent Thomas in
26 relation to the sit rep that had been circulated for the
27 homicide. I wanted more detail. It says, "More detail
28 required". I expect that the initial 000 call, et cetera,
29 should have been included. It should also have included
30 interaction on 29/12. I believe, from memory, that was
31 when he was most recently charged.

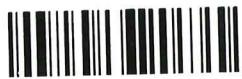
32 33 Q. Yes. And then there's some detail there about some
34 sensitive information that I don't think we need to go to.

35 A. Correct. Okay. And then I wanted to understand what
36 was being done to locate the original informant, and it
37 says, "Can't rule out a second POI". Because at this point
38 in time, there's still nothing to suggest the 000 caller
39 wasn't involved in the matter.

40 41 Q. Yes?

42 A. And that's it.

43 44 Q. Okay, thank you. Do you recall the discussion that
45 morning, or indeed at any stage that day, with Acting
46 Assistant Commissioner David Driver from professional
47 standards command?



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1 A. No.

2
3 Q. Just don't recall? It may have happened but you can't
4 recall it?

5 A. I don't recall having a conversation with him.

6

7 Q. You don't think that did happen?

8 A. I don't know. I don't recall it happening. I haven't
9 made a note of it.

10

11 Q. You haven't made a note. And you likely would have?

12 A. I guess it depended on the call and the nature of the
13 call.

14

15 Q. So you weren't concerned to consult professional
16 standards command to obtain some advice in relation to this
17 matter?

18 A. I don't recall. I mean, I don't have a note of it.

19

20 Q. Okay.

21 A. It's three years ago.

22

23 Q. And at the outset, I indicated that we understood
24 that.

25 A. Yes.

26

27 Q. At 1.10pm you've made a reference to Pisanos. Can you
28 just read that out and give us your best recollection of
29 what that relates to, please?

30 A. So at 1.10pm:

31

32 *Pisanos - confirmed current plan*
33 *[including] region response and holding*
34 *crime scene.*

35

36 Q. Okay. Is that a reference to a Teams meeting that was
37 held?

38 A. I believe so.

39

40 Q. Do you remember who was in attendance at the Teams
41 meeting?

42 A. Well, I remember myself, Deputy Commissioner Pisanos,
43 Superintendent Tanner. I believe Mr Pisanos had at least
44 one or two other people with him, potentially Lachlan
45 Pritchard.

46

47 Q. Yes.



1 A. Not sure if there was a second person. And from
2 memory, Inspector Crotty was with me.

3
4 Q. Was that your staff officer at that point in time?
5 A. Correct.

6
7 Q. And Inspector Crotty was taking notes of the meeting?
8 A. Correct.

9
10 Q. You don't have access to those, you've very clearly
11 set that out in your response.

12
13 MS SULLIVAN: Commissioner, I call for production of those
14 notes pursuant to perhaps - or perhaps a section 55.

15
16 THE COMMISSIONER: We might add that to the section 55 to
17 the Commissioner of Police, which is the notes of Inspector
18 Crotty of the meeting at about 1pm on 4 January.

19
20 MS SULLIVAN: Q. What is his or her first name?
21 A. Matthew.

22
23 Q. Matthew. Thank you. To the best of your
24 recollection, what was discussed at that meeting, that
25 Teams meeting?

26 A. I believe that Mr Pisanos was provided with an
27 overview of what was known at that time by both myself and
28 Superintendent Tanner. I could not with any significant,
29 I guess, clarity indicate who said what. But certainly the
30 circumstances up until that point were provided to
31 Mr Pisanos. There was some discussion in relation to media
32 requirements, discussion in relation to the plan moving
33 forward. And I expect that was mostly it.

34
35 Q. Was there discussion about whether or not the matter
36 should be declared a critical incident?

37 A. I don't have a specific recollection of the critical -
38 the notion of a critical incident being discussed. What
39 I can say with clarity was at no stage was there
40 a suggestion that I should revisit that - a decision to
41 call a critical incident at that point.

42
43 Q. Just in fairness to you and Superintendent Tanner,
44 Superintendent Tanner's recollection is to the effect that
45 one purpose of - one clear purpose of that meeting was for
46 the purpose of discussing whether the matter required to be
47 a critical incident investigation. Do you agree with that?



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1 A. No. I don't - that's not my recollection. As I said,
2 I'm - I don't have the notes from the meeting. I've only
3 the notes in front of me. And if a critical incident was
4 discussed, which, I said may have been, there certainly
5 wasn't an expectation that a critical incident should be
6 called.

7

8 THE COMMISSIONER: Q. And it's your decision, as
9 assistant commissioner and region commander, to call
10 a critical incident?

11

12 A. That responsibility sits with the assistant
13 commissioner. I'm not sure if I were not to call one,
14 whether a deputy commissioner would be able to call one
15 over the top or not. But certainly the responsibility in
16 terms of the guidelines sits with an assistant
17 commissioner, which is the region commander.

18

19 MS SULLIVAN: Q. You don't remember Deputy Commissioner
20 Pisanos expressing a view one way or the other?

21

22 A. Well, I would suggest that if he did express a view,
23 it was that he was satisfied that there was no requirement
24 for a critical incident to be called. I say that on the
25 basis that I was a relieving assistant commissioner and if
26 a deputy commissioner said to me, "You need to think about
27 this being a critical incident", I'm confident there would
28 be further discussion, certainly further notes in relation
29 to that, and potentially look at where we head after that.

30

31 Q. Do you recall whether there was discussion during that
32 Teams meeting about the nature of the patrol that the
33 officers who had attended at 7.55 --

34

A. No.

35

Q. No? There wasn't discussion or you don't recall?

36

A. I don't have that recollection.

37

Q. So after that meeting, is it correct that
38 Superintendent Tanner was asked - or as a function of that
39 meeting, Superintendent Tanner was asked to conduct
40 a review of the workload in the Ballina and Lismore sector?
41 A. Can you ask the question again, sorry?

42

Q. During that Teams meeting, or afterwards, was it
43 decided or did you direct Superintendent Tanner to conduct
44 a review of the Ballina and Lismore staffing and workload?
45 A. I believe that was a discussion at some point.

46

47



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1 Q. But you can't remember if it came out of that
2 meeting --
3 A. No.

4 Q. -- or afterwards. All right. And what was the
5 purpose of that review?
6 A. I don't recall the specifics of the conversation, but
7 I expect the purpose of the review was to understand what
8 car crews were available in that, not just Ballina but more
9 broadly within the Richmond police district at that time.
10

11 Q. To inform the issue of the delayed police response?
12 A. Correct.

13 Q. All right. And so if you could turn, please, to the
14 email on 4 January at 3.11pm - this is still at tab 87,
15 25C, barcode 826, ending 826, please?
16 A. 3.11?

17 Q. 3.11, yes. Has that come up on the screen as well?
18 A. Yes.

19 Q. In front of you, thank you. So this is the email that
20 Superintendent Tanner sent to you, Superintendent Thomas,
21 Deputy Commissioner Pisanos and his staff officer, copied
22 to the OIC and the crime manager; is that right?
23 A. I believe so, yes.

24 Q. And do you see under the heading "Investigation", the
25 second bullet point:

26 *Two workers from the Salvation Army have
27 provided statements.*

28 And it goes on, the third bullet point:

29 *These two workers last saw the POI at
30 9.30pm last night. When they arrived they
31 heard the female yell out to the POI
32 alerting him to the presence of these two
33 workers.*

34 Then it goes on that the two workers did not call police,
35 held no concerns for the welfare of the victim. That
36 information was significant to a consideration about
37 a potential critical incident, wasn't it?
38 A. In what sense?



1

2 Q. Well, in that it suggested that at 9.30pm, the female
3 had been heard to yell out, so she was alive at that time?

4 A. Well, someone - a female yelled out, correct.

5

6 Q. Yes. Yes.

7 A. According to that, yes. I don't know if it's the
8 female.

9

10 Q. If you disagree with me that that's not significant,
11 please explain. I'd be - I wish to give you the
12 opportunity to explain your thinking, but was that
13 significant information for the --

14 A. Well, it's a consideration.

15

16 Q. In what way is it a consideration?

17 A. Well, there's the potential, if that was the female,
18 that she was still alive at 9.30, if that was the deceased.

19

20 Q. Did you see that particular statement - did you have
21 a doubt about that in your mind when you saw that, that it
22 might have been the victim?

23 A. It was a consideration, of course, yes.

24

25 Q. Did you have a doubt as to whether or not that was the
26 victim?

27 A. I certainly didn't necessarily expect it was the
28 victim. It's a female.

29

30 Q. Right. So if there was a question mark about whether
31 that was the victim, did you ask to see the statements?

32 A. No.

33

34 Q. Shouldn't you have done that, if there was a doubt in
35 your mind about whether this female was the victim, if that
36 was unclear?

37 A. It wouldn't be a practice that I would ask for their
38 statements for that. The question was could it have been
39 the female, and I agree that it might have been the female.
40 I'm just saying it wasn't necessarily the female. But at
41 the time, I expected it was likely to be the female. Does
42 that help?

43

44 Q. Well, for the purposes of a critical incident
45 analysis, I suggest that is important information. Do you
46 agree with that?

47 A. Yes, for consideration.



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1

2 Q. Yes. Thank you. All right. It goes on, under the
3 heading "Review:

4

5 *I have reviewed the staffing level and*
6 *workload from last night.*

7

8 Then there's a breakdown of available vehicles and staff?

9 A. Yes.

10

11 Q. You have had a chance to, no doubt, read that in
12 preparation for these proceedings. Were there any
13 concerns, do you recall, when you saw this, about the
14 resources that were operative in the Ballina and the
15 Lismore sector on that shift?

16 A. For the shift more broadly or --

17

18 Q. For the shift, for the relevant period that is covered
19 by this review as referred to by Superintendent Tanner, in
20 accordance with the request from you to undertake this
21 review.

22 A. Okay, yes. And the question is?

23

24 Q. Did you have any concerns in relation to any of the
25 information that has been set out there regarding staffing
26 level and workload from last night?

27 A. Not of significant concerns, no.

28

29 Q. You didn't have significant concerns. Did you have
30 any concerns?

31 A. It's - it's difficult to be clear about what was in my
32 mind at the time I read this --

33

34 Q. Yes.

35 A. -- on 4 January and what now might have, you know,
36 caused you to read something differently. So it is hard to
37 understand what was in my mind at the time.

38

39 Q. Right. Did you have an understanding as to how many
40 priority 2 jobs were operative in the Lismore sector -
41 sorry, in the Ballina sector for the relevant period, let's
42 say from 7 through to --

43 A. So there are two P2 jobs. Is that what you're asking
44 me to confirm?

45

46 Q. Well, did you understand that there were competing
47 priority 2 jobs --



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1 A. Yes.

2 Q. Let me finish the question, if you would.

3 A. Sorry.

4

5 Q. That there were competing priority 2 jobs that
6 prevented the Ballina crews from attending to the Salvation
7 Army incident, competing priority 2 jobs?

8 A. Well, there were competing jobs. The only ones that
9 say priority 2 are the job at 18:38 and the job at 19:03,
10 which was the concern for welfare for a male assaulting
11 a female.

12

13 Q. That's the Salvation Army, yes.

14 A. Correct.

15

16 Q. So if you would accept from me that the record
17 indicates that that is the only P2 that comes in during the
18 period 6.38pm through to 7.41, when there's then two jobs
19 that relate to Casino and another area that is not
20 Ballina - that is the only P2 job. Right? Did you have
21 that understanding, superintendent, from that email?

22 A. I expect I would have, yes.

23

24 Q. What's your understanding of a priority 2 job in terms
25 of the police response that is required?

26 A. A priority 2 job would ordinarily be an urgent
27 response.

28

29 Q. And a priority 3 job?

30 A. So I guess it depends how you frame "urgent". So
31 urgent might be lights and sirens. A priority 3 job is
32 something you need to get to as soon as possible as opposed
33 to a priority 4, which is, I guess, more likely something
34 that can be stood over to another time, like even another
35 day.

36

37 Q. Did you ask Superintendent Tanner any questions about
38 this review, do you recall?

39 A. I don't recall.

40

41 Q. Did you look at any of these incidents for yourself to
42 form a view?

43 A. No.

44

45 Q. And certainly - I'm not suggesting you should have
46 done but I take it you wouldn't have checked any rosters?



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1 A. No.

2
3 Q. You are just relying on his summary?
4 A. Correct.

5
6 Q. Did you at any point listen to the VKG audio for that
7 period --
8 A. No.

9
10 Q. -- the 7 to 8? Is that something you have ever done,
11 listen to VKG transmissions?

12 A. As a district commander, yes.

13
14 Q. That's a helpful insight into the contemporaneous
15 things that are going on during a relevant incident?

16 A. Yes, can be.

17
18 Q. And in fact, the CAD incident log also gives a summary
19 of broadcast information in relation to a job. Are you
20 aware of that?

21 A. Yes.

22
23 Q. Do you have an understanding of radio operation group
24 protocol regarding the frequency for broadcasts in relation
25 to P2 jobs?

26 A. I couldn't cite it.

27
28 Q. Did you know that there is a requirement, if a job
29 hasn't been acknowledged within 90 seconds, it's then to be
30 rebroadcast every 60 seconds --

31 A. No.

32
33 Q. -- by VKG? Does that accord with your experience that
34 you hear unacknowledged P2 jobs continually coming over
35 VKG?

36 A. Every 60 seconds?

37
38 Q. Yes.

39 A. No.

40
41 Q. All right. Just tell us about your experience in that
42 regard?

43 A. So I sit in a - in my office at Lake Macquarie and
44 I have the Lake Macquarie channel running all the time.

45
46 Q. Yes.

47 A. And I would not form the view, albeit I have never sat



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1 and listened and timed, but I would not form the view that
2 a priority 2 job that has not been answered has necessarily
3 been called every 60 seconds.
4

5 Q. Thank you. And I take it you're not aware of the
6 evidence that has come out in relation to noncompliance
7 with radio operation group protocols from this
8 investigation?

9 A. No.

10 Q. Thank you. All right. Now, just in relation to the
11 sit rep that contains more information in accordance with
12 your request, this is at barcode 796 of tab 87, 25C is the
13 exhibit. Has that come up on the screen for you?

14 A. Oh, sorry, I was --

15 Q. Do you see under the heading "Current Position" --
16 A. Yes.

17 Q. -- there is reference to detail in relation to that
18 first attendance by police? Do you see that?

19 A. Yes.

20 Q. Do you see that the fourth sentence:

21 *Police were delayed in their response by*
22 *other priority 2 incidents occurring in the*
23 *area at the time.*

24 A. Yes.

25 Q. Do you see that reference? Was that your
26 understanding at the time that sit rep was sent out?
27 A. I don't recall.

28 Q. All right. Can we go back to your notes, please. In
29 fact, I think we have mercifully covered the 5th. On
30 6 January, you make a note about still waiting for the
31 post-mortem. Do you see that?

32 A. Yes.

33 Q. That is at barcode --

34 THE COMMISSIONER: That's tab 87, still, isn't it?

35 MS SULLIVAN: I am sorry, actually, I haven't - I can do
36 this briefly. I haven't canvassed this.
37



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1

2 Q. This is Thursday, 5 January. There's your entry there
3 at 10am. Could you assist us with unpacking what's written
4 there, please?

5

6 THE COMMISSIONER: We'll just get that brought up on
7 screen.

8

9 MS SULLIVAN: Thank you, that's 793.

10

11 THE COMMISSIONER: Tab 87, barcode 793. Thank you.

12

13 THE WITNESS:

14

15 10am - Present for [phone call] with
16 Thommo/Tanner. Questioned whether we had
17 specifically requested an independent
18 review by Homicide of Police action
19 (Homicide consultant had indicated this).
20 Confirmed that as part of decision making
21 my view included Homicide reviewing
22 evidence/info and should include that
23 within their scope & report any concerns
24 independently. Also requested Tanner
25 review officers' statements covering the
26 initial attendance.

27

28 MS SULLIVAN: Q. Thank you. So what can you recall
29 about that interaction with Superintendent Thompson and
30 Superintendent Tanner, beyond what's written there?

31 A. Sure. So Detective Superintendent Thomas and Tanner
32 had a phone call, I believe it was in the region
33 commander's office. It was on speakerphone. So I was
34 present for that as well. I questioned whether we had
35 specifically requested that independent review process by
36 homicide, and it's my understanding, because it's in
37 brackets, that someone else indicated, "Homicide consultant
38 had indicated this", and I expect that was Detective
39 Superintendent Thomas, because he was generally the person
40 who - that role is the liaison with state crime command.

41

42 Q. Yes.

43 A. And I reaffirmed or confirmed that part of
44 decision-making includes a view that homicide review that
45 evidence and include it within their scope. Should there
46 be concerns, it can be escalated independently of what else
47 was occurring, such as the homicide investigation more



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1 specifically, and clearly asked Mr Tanner to review the
2 officers' statements.

3
4 Q. How was this homicide review of police action to be
5 formalised in some way? Was there to be some scope
6 document prepared by someone that would identify what you
7 had requested there? How was that to occur?

8 A. So it was my understanding that the homicide review
9 process included a review of previous interactions with
10 police, et cetera, and those particular parties. I don't -
11 I'm not aware of whether they have a scope document or not
12 but quite clearly I asked for that to be included in their
13 review process.

14
15 Q. Through Superintendent Thomas?
16 A. Thomas, I believe.

17
18 Q. Not Superintendent Tanner?

19 A. I couldn't say with absolute clarity, but --

20
21 Q. It's Superintendent Thomson who has the connection to
22 - sorry --
23 A. Thomas.

24
25 Q. Thank you. Who has the connection to state crime
26 command, isn't it?

27 A. As a general rule in a homicide investigation, that
28 would be the case. But as a - as a district commander,
29 you're also in that loop as well, particularly in terms of,
30 you know, start of the day briefings, et cetera. As
31 a district commander, if I had a homicide in my command
32 I would expect to be part of that briefing so I would also
33 have that contact with homicide.

34
35 Q. All right. And that final sentence.

36
37 ... requested Tanner review officers'
38 statements covering their initial
39 attendance.

40
41 And then at 1.15 there is the entry --

42 A. Correct.

43
44 Q. -- "[Spoke with] Tanner" - Superintendent Tanner?
45 A. Correct.

46
47 Q.



4 A. Correct.

5
6 Q. Do you have any recollection about the outcome of that
7 review?

8 A. Of him reviewing the statements?

9
10 Q. Yes, and telling you about it.

11 A. It was my - yes, and I don't have a note but it would
12 be my understanding we had a conversation and he raised no
13 concerns about the statement.

14
15 Q. And, to be clear, you do think that you received
16 Ballina 14's statement at some point but you can't recall
17 when?

18 A. Yes, yes.

19
20 Q. But you don't think you received Woodburn 29's
21 statement?

22 A. No, I didn't.

23
24 Q. You definitely didn't?

25 A. I don't have an email with that in it.

26
27 Q. But you do have an email with Ballina 14's statement?

28 A. Yes.

29
30 Q. What's the timing and date of that email?

31 A. It should be in with the statement.

32
33 Q. Pardon?

34 A. It was that week.

35
36 Q. You received it that week?

37 A. Correct.

38
39 Q. Do you have a covering email there?

40 A. No, it's not in my notes.

41
42 Q. Do you have a recollection of receiving it, or you
43 definitely have a recollection of the email; you just don't
44 think that the email is annexed to your response? I'm just
45 trying to understand. I could be mistaken. Please correct
46 me if I warrant correction?

47 A. I believe it came in an email which isn't in my

1 response. The statement is, but the covering email is not.
2

3 Q. The email is not. That's just a simple omission. I'm
4 sure. We'll just for completeness call for production of
5 that email.

6 THE COMMISSIONER: Yes, if you could.
7

8 THE WITNESS: Sure. There's nothing in the email, it's
9 blank - I know, there's nothing in it.
10

11 MS SULLIVAN: Q. I'm not suggesting otherwise.
12 A. It's just a blank email with the statement attached
13 from Superintendent Tanner.
14

15 Q. All it will tell us is the timing to complete the
16 chronology.
17

18 THE COMMISSIONER: If you could provide that to the
19 Commission through your lawyer when --
20

21 THE WITNESS: Yes.
22

23 THE COMMISSIONER: When you get access to your emails
24 again.
25

26 MS SULLIVAN: Q. If we move to 6 January, the next page,
27 that's barcode 794?
28 A. Yes.
29

30 Q. You will see there at 3pm:
31

32 *Post Mortem not yet completed. Will
33 advise.*
34

35 A. Yes.
36

37 Q. Is it correct that you were particularly concerned to
38 receive the post-mortem to understand information that
39 might be provided about possible time of death?
40 A. Yes, I expect so.
41

42 Q. Do you recall ever being updated by the officers
43 undertaking the DV homicide review about their findings in
44 relation to the police actions from 7pm to midnight?
45 A. No, I wasn't.
46



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1 Q. You were never updated?
2 A. No.

3
4 Q. So we come now to your hand-back to Assistant
5 Commissioner McKenna. Now. This is at the same tab,
6 barcode 811, please. That's come up on the screen there.
7 That's the front cover. Is this a pro forma document or is
8 this one of your own?

9 A. It's Mr McKenna's. So his handover to me was this
10 document, and the section that you can see is number 4. So
11 he had each of those points and I, as a - as I went through
12 the course of the two weeks, added something underneath
13 those points if it was relevant to handover.

14
15 Q. I see. Thank you. And you added that, as you say,
16 almost live as it's happening in real-time, rather than at
17 the end?

18 A. I wouldn't say live or real-time but certainly
19 throughout the course of the two weeks.

20
21 Q. Thank you. So point 4 on 813, barcode 813, if we can
22 go through a couple of pages, please, I might not have the
23 right document. Tab 87.

24
25 THE COMMISSIONER: It is there.

26
27 MS SULLIVAN: Barcode 813. Oh, it is there. I'm sorry.

28
29 Q. So you see the heading 4, "Adjudicate on whether
30 a matter reported to you is a Critical Incident or not".
31 That was a prepopulated heading, was it?

32 A. I believe so.

33
34 Q. But you've set out the information that follows below?
35 A. Correct.

36
37 Q. So there is details under that heading
38 "Murder - Richmond", about the homicide matter, if I can
39 put it in those terms, and then there are some bullet
40 points?

41 A. Correct.

42
43 Q. About the specific job at the Salvation Army?
44 A. Yes.

45
46 Q. And then if we go down to - and the content of that
47 section, has that been drawn from the information provided

1 to you by Superintendent Tanner?

2 A. The dot points?

3
4 Q. Yes.

5 A. I expect so.

6
7 Q. And then do you see the next paragraph, it commences:

8
9 *I deemed not to be a critical incident.*

10 A. Correct.

11
12 Q. What did you mean by that?

13 A. I did not declare a critical incident.

14
15 Q. All right, but you've used quite specific language:

16
17 *I deemed not to be a critical incident.*

18 A. Sure. I determined it wasn't a critical incident.

19
20 Q. You gave it close consideration and you formed the
21 view that it was not; is that how we should read that?

22 A. Yes.

23
24 Q. And you go on to say:

25
26 *It did not meet a criteria and whilst
27 acknowledged that as Region Commander I can
28 consider a Critical Incident in
29 circumstances as I see fit, I was of the
30 view that [Superintendent] Tanner was
31 attending and provide a review of the
32 matter via briefing to myself and DCOP.*

33
34 That's deputy commissioner, Mr Pisano?

35 A. Correct.

36
37 Q.

38
39 *There would be a DV homicide review and I
40 requested the scope of the review include
41 the activities between 1900 call and the
42 time the POI enters the station. I was of
43 the view that a further independent review
44 was not required. Requested
45 [Superintendent] Tanner to provide a full
46 review of the activities of attending*



police and any attempt to get to the side of the premises or follow up with informant/caller at the time.



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So, just pausing there, can you explain to us, please, the nature of this request to Superintendent Tanner to provide a full review of the activities of attending police and any attempt to get to the side of the premises or follow up with the informant caller at the time?

A. So I expect when I wrote that part it may well have been true, because of the tense that I use. So when I wrote that, I'd obviously, during my conversations with Superintendent Tanner, asked him to review the activities and, you know, I expect this is a question you asked me previously, "any attempt to get to the side of the premises or follow up with the informant/caller at the time", and they were the two things - well, certainly the "follow up with the informant/caller", so I had obviously asked for follow-up with that, and by those notes I would suggest that I wanted to understand whether they had gotten to the side of the premises or, you know, had gone looking in that direction. My understanding is they didn't.

Q. It's quite specific "any attempt to get to the side of the premises". Without looking - you've used quite particular language there?

A. So as I said, I don't know exactly when these were written.

Q. Yes.

A. But given one of the conversations or the earlier emails from Superintendent Tanner described where the body was located, I expect I've asked him to review whether that initial attendance at 8pm - whether they attempted to get to the side or not, so I could understand what they'd done.

Q. Because that was a matter of concern?

A. It was a matter I wanted to understand.

Q. Because it was of concern in the context of the incident?

A. I don't know if I would frame it that way, but clearly I wanted to understand it, and so that I could consider it in all of the circumstances. That was an information gap.

Q. Did you have an expectation that officers attending a job like this would attempt to call the informant or



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1 caller?

2 A. Officers?

3

4 Q. The officers who attended, at 7.55, did you have an
5 expectation that they would attempt to contact or follow up
6 with the informant or caller at the time?

7 A. Not necessarily, no.

8

9 Q. What does that relate to? Can you just expand on
10 that?

11 A. Well, I think I meant who the informant/caller was at
12 the time, or whether - sorry. Let me read it, if that's
13 okay. Whether they had - I have written whether they
14 followed up with the informant/caller at the time. That
15 might not be them, they might speak to 000, understand what
16 other - whether they'd attempted to call back. I didn't
17 know the circumstances of anyone trying to call back the
18 000 caller. So I wanted to understand what that looked
19 like.

20

21 Q. This would have been - Assistant Commissioner McKenna
22 was going to rely on this by way of an update to put him in
23 the picture when he took over on 15 January, wasn't he?

24 A. What do you mean "by way of an update"?

25

26 Q. Well, it's a hand-back as at 15 January?

27 A. Yes.

28

29 Q. You wouldn't include information that's out of date,
30 as in things have moved on and it's no longer relevant?

31 A. I was explaining what I did at the time to him. So
32 I don't anticipate or expect Assistant Commissioner McKenna
33 would have necessarily followed up any of this. So
34 a hand-back as a reliever, for me, is twofold. One is to
35 let them know what I did, but, two, might be things that
36 require follow up. So there are other things in that
37 handover that might require follow up but there's nothing
38 in that that necessarily requires him to follow up.

39

40 Q. Did you have a discussion with him about this matter
41 after you handed back?

42 A. I don't believe so. So there was a gap. So I didn't
43 hand over directly to him.

44

45 Q. Who did you hand over to?

46 A. Superintendent Tanner.

47



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1 Q. And so he was relieving in that role for a period?
2 A. For two weeks.

3
4 Q. For two weeks. Okay. And so then the last sentence
5 is:

6
7 [Superintendent] Tanner has reviewed
8 statement of attending police and satisfied
9 with their actions when first attending the
10 job.

11
12 Q. Do you see that?
13 A. Yes.

14
15 Q. So that suggests that he did report back to you about
16 the outcome of his statement reviews?
17 A. At some point.

18
19 Q. And he was satisfied. At some point?
20 A. Yes.

21
22 Q. And indeed you had a statement yourself from
23 Ballina 14?
24 A. From - prepared by Ballina 14.

25
26 Q. Yes.
27 A. Yes. Not sent to me by Ballina 14.

28
29 Q. No, I'm sorry. Thank you for that clarification, yes.
30 As in you were a position to indicate otherwise if you had
31 a different view to Superintendent Tanner?
32 A. Correct.

33
34 Q. Because had you seen that statement?
35 A. Correct.

36
37 Q. Thank you. All right. So now we're going to go to
38 the internal - the Godfrey note. This is tab 111,
39 exhibit 27C.

40
41 MR GOLLAN: Commissioner, could I ask for a five-minute
42 break? I'm not tired or anything but --

43
44 THE COMMISSIONER: That's fine. A five-minute break. We
45 will come back at maybe 10 minutes past 4.

46
47 MR GOLLAN: Thank you.



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1
2 **SHORT ADJOURNMENT**
3

4 MR GOLLAN: Thank you for that indulgence, Commissioner.
5

6 MS SULLIVAN: I don't have much more, Superintendent,
7 Chapman. We're getting close to the end.
8

9 THE WITNESS: Thank you.
10

11 MS SULLIVAN: Q. We have this Godfrey memorandum to deal
12 with - Godfrey report?
13 A. Yes.
14

15 MS SULLIVAN: It's tab 111, exhibit 27C, barcode 889, for
16 the record.
17

18 Q. This is a Godfrey report that you have prepared in
19 response to some correspondence received from LECC on
20 7 June 2023 in relation to the non-declaration of
21 a critical incident in Ballina --
22 A. Yes.
23

24 Q. -- in January 2023? And you have set out the
25 background there in the first paragraph; do you see that?
26 A. Yes.
27

28 Q. I'm going to read that for the record:
29

30 *Just after 1900 on 3rd January 2023 police*
31 *received a triple zero call from a male*
32 *advising a woman was being assaulted behind*
33 *the Salvation Army in Ballina. Attempts to*
34 *call male back were unsuccessful.*
35

36 Pausing there, that's the telephonist at 000?
37 A. Yes:
38

39 Q.

40 *Police at the time were unable to*
41 *immediately respond however at*
42 *approximately 1955 police attended the*
43 *location and were unable to identify any*
44 *incident or the original informant who may*
45 *have directed police to a more specific*
46 *location.*
47



1 In relation to police being unable to identify any
2 incident, you're there referring to police patrolling?
3 A. Correct.

4
5 Q. There is no reference in this to police not alighting
6 from the vehicle; correct?
7 A. Correct.

8
9 Q. In fact, there's no reference to that aspect in this
10 memorandum - in this report at any point, can I suggest?
11 A. You can - would you like me to read it?

12
13 Q. You're not familiar with it? You certainly can read
14 it.
15 A. Well, I am, but that's quite specific.

16
17 Q. Yes, please do.
18 A. I don't believe so.

19
20 Q. And the reference to the attending police being unable
21 to identify the original informant who may have directed
22 police to a more specific location, is that a reference to
23 Ballina 14 calling VKG?

24 A. No, it's - for me, it's a reference to when they
25 attended that location, they didn't identify an incident
26 and they didn't identify any other person, such as the
27 original informant, who might have directed them to a more
28 specific location.

29
30 Q. Thank you. It goes on. You have confirmed you were
31 the acting region commander, you did not declare a critical
32 incident?

33 A. Correct.

34
35 Q. Then you have referred to the LECC correspondence.
36 A. Yes.

37
38 Q. And the reference to reconciling the non-declaration
39 in this matter with another DV homicide in the Liverpool
40 local area command - do you see that?

41 A. Yes.

42
43 Q. And so you say:

44
45 *During the course of the morning of*
46 *4th January 2023 this incident was not*
47 *raised with me with respect to a critical*



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4 A. Yes.

6 Q. Pausing there, is that accurate?

7 A. So what I mean by that is no-one - if I can explain my
8 experience in terms of being the on-call officer or
9 a district commander; if an incident occurs within a police
10 district, ordinarily the police commander - district
11 commander's briefed by the duty officer and then one or
12 those other will ring the on-call officer for the region
13 and then ordinarily, the region on-call person will call
14 and say, "There's a potential critical incident for
15 consideration". That did not happen. No-one raised it
16 with me in the context of, "You need to consider this as
17 a potential critical incident."

19 Q. So there was no formal request from an officer for you
20 to turn your mind to that aspect; is that what you are
21 saying?

22 A. Correct, yes.

24 Q.. But there were numerous discussions during the course
25 of the day about whether or not it was a critical incident?

26 A. There were - yes, there were conversations but - and
27 I guess what I was trying to say is, but no-one raised it
28 with me and said, "You need to consider a critical
29 incident". It wasn't raised with me as a critical
30 incident. I may have had discussions about it, but no-one
31 raised it with me. There is a delineation there for me,
32 sorry.

34 Q. I understand what you're saying. But certainly it was
35 under live consideration by you?

36 A. Yes, I did.

38 Q. And then you set out the critical incident guidelines
39 and the reasons why it didn't fall within the scope of
40 section 110, the quite specific subsections that relate to
41 the use of a police firearm, et cetera. We understand
42 that. And then you say:

44 I am of the view that none of these
45 circumstances were met. I am aware that
46 I may also declare a critical incident if
47 I have other grounds for considering it is

1 *in the public interest. At the time*
2 *I caused suitable inquiries to be made into*
3 *the circumstances of police attendance in*
4 *order to determine a course of action.*
5 *I was satisfied with the information*
6 *provided by Superintendent Tanner with*
7 *respect to the initial delay in attendance*
8 *following his thorough and detailed review*
9 *of CAD and all activities being undertaken*
10 *at the time by rostered police.*



11 So, in effect, entirely reliant on Superintendent Tanner to
12 that assessment?

13 A. The detail - review of CAD?

14

15 Q. Yes.

16 A. Yes.

17

18 Q.

19 *I was also briefed by Superintendent Tanner*
20 *with respect to the attendance of police at*
21 *1955 when considering the initial call*
22 *location, and ultimately the location of*
23 *the victim [12.30am]. The initial caller*
24 *indicated rear of Salvation Army,*
25 *Superintendent Tanner advised the victim*
26 *was located at the side, where police*
27 *needed to be taken through 2 gates where*
28 *donations items were kept. The environment*
29 *made it difficult to locate the victim and*
30 *police needed to be directed to her in*
31 *order to locate her.*

32

33 That's when they're on scene after, of course, she has
34 been - Mr Huber has reported to police that she's been
35 found deceased?

36 A. Correct.

37

38 Q. Nowhere in that paragraph do we find reference to the
39 patrolling police not alighting from their vehicle at any
40 point, do we?

41 A. No.

42

43 Q. That was an important factor to set out in this
44 memorandum, I suggest?

45 A. I'm not sure that I agree with that. The
46 correspondence asked me to say why I didn't declare



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1 a critical incident. It didn't ask me for all the
2 circumstances relating to the police. So I provided
3 a summary of why I didn't declare a critical incident.
4 I didn't provide a full summary of everything police did or
5 didn't do.

6

7 Q. No?

8 A. That's not what the correspondence asked me to do.

9

10 Q. Understood. But you have given a number of very
11 particular specifics about the attendance of police at
12 19:55 when considering the initial call location?

13 A. Yes.

14

15 Q. Just not that detail about the fact that police didn't
16 exit their vehicles?

17 A. Correct.

18

19 Q. Well, for completeness, I suggest that ought to have
20 been included in the Godfrey note - report?

21 A. I don't believe so.

22

23 Q. Okay. Now, then you go on to say:

24

*I was satisfied with the information and
review provided by Superintendent Tanner.
I also requested that he ensure the DV
homicide review by State Crime Command
include assessing all matters including the
lead up to locating the victim.*

31

32 Just pausing there --

33 A. Yes.

34

35 Q. -- have you reflected on whether or not that's
36 accurate, that statement?

37 A. I have, and I believe I made - I referenced the
38 handover document when I wrote this report, and six months
39 later, that was my recollection. I don't believe I went
40 back to my original notes, which I obviously have done to
41 prepare my statement, and so I understand that that was in
42 a conversation with both Detective Superintendent Thomas
43 and Superintendent Tanner, and I would not accurately say
44 which one was asked or tasked to do either.

45

46 Q. All right. You go on to say:

47

1 *On this basis I was satisfied that --*



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2
3 Sorry:

4
5 *I also requested that he ensure the DV*
6 *homicide review by State Crime Command*
7 *include assessing all matters including the*
8 *lead up to locating the victim.*

9
10 So that is "all matters", being including any deficiencies
11 in the police response; that's right?

12 A. Yes.

13 Q.

14
15 *On this basis I was satisfied that there*
16 *would be suitable independent review and*
17 *any matters arising would be treated if*
18 *appropriate under Part 8A of the*
19 *Police Act. I maintain this position.*

20
21 Then you go on to say:

22
23 *I note the correspondence draws comparison*
24 *to a matter from Liverpool some months*
25 *later. I am of the view that the*
26 *circumstances, whilst having some*
27 *similarity, are glaringly different on*
28 *a number of fronts.*

29
30 Do you see that?

31 A. Yes.

32
33 Q. Now, you were provided with a copy of the
34 correspondence of course, to give this response - that is,
35 the correspondence from [REDACTED] dated 7 June 2023?

36 A. I don't have that.

37
38 Q. You don't have a copy of that?

39 A. No.

40
41 Q. Did you see - were you not provided with a copy of the
42 correspondence for the purposes of preparing the Godfrey
43 report?

44 A. Yes, but I didn't retain it.

45
46 Q. But you read the article at the time. You must have
47 read the article that was attached to the correspondence at



1 the time in order to form a view about whether or not there
2 were similarities or otherwise?

3 A. I don't recall.

4
5 Q. Well, how else could you form a view about whether or
6 not there were similarities or glaring differences in
7 between the matters?

8 A. Well, I must have had some awareness of the incident.

9
10 Q. Do you now have an awareness of the incident?
11 A. No.

12
13 Q. So for the purposes of giving evidence today, you
14 didn't refresh your memory about that aspect?

15 A. About the incident at Liverpool?

16
17 Q. Yes.
18 A. No.

19
20 Q. Well, I'll do that now in short form. It concerns -
21 this is all in the public domain, so nothing I'm saying is
22 sensitive. It concerns a tragic death of Tatiana
23 Dokhotaru, who made a frantic call - this is from an
24 article that was annexed to the correspondence that was
25 sent by LECC. Frantic - and we can perhaps pull this up
26 whilst I'm reading from it for completeness, so if we go
27 to --

28 A. So just for clarity, I don't believe the
29 correspondence I saw had an attached news - is it
30 a newspaper article?

31
32 Q. Yes. Yes.

33 A. I don't have a recollection of ever seeing a newspaper
34 article.

35
36 MS SULLIVAN: We'll pull it up and just see if it rings
37 any bells. So this is tab 111, exhibit 27C, we can go
38 first to barcode 893.

39
40 Q. All right. So that's the correspondence from LECC.
41 Do you recall that letter, dated 7 June? This is the
42 letter you're responding to?

43 A. I recall responding to a letter.

44
45 Q. Yes.

46 A. I can - if you're telling me this is what it was,
47 I can only assume that.



1

2 Q. Well, it's dated 7 June 2023, and if we look at your
3 memo, you say:

4

5 *Correspondence received from LECC on 7 June*
6 *2023 ...*

7

8 A. So I'm assuming - correct, I'm assuming that, but
9 I haven't read this. I don't have access to this since
10 I wrote the original report.

11

12 Q. I see.

13 A. So this is the first time I'm seeing this for two
14 years.

15

16 Q. Okay, thank you. So please take your time to just -
17 it's only a page and a little bit --

18 A. Sure.

19

20 Q. -- so just take your time to look through that and let
21 us know when you're at the end of that page and we can
22 flick on to the next one.

23 A. Yes.

24

25 Q. Next page, please. That's 894.

26 A. Yes.

27

28 Q. Can we go to the next page, please, 895. So this is
29 an ABC News article. Does this prompt your recollection?

30 A. I'm not convinced I've seen the article but I'm
31 satisfied the letter that you've shown me would have been
32 the letter I was responding to.

33

34 Q. All right. Do you think that the - do you see that
35 the letter attaches the article? Do you see that?

36 A. Yes.

37

38 Q. So it's likely, isn't it, that if you received the
39 letter, you would have seen that it refers to an attachment
40 and you would have wanted to have seen the attachment to
41 form a view about the comparison with the Ballina matter?

42 A. Well, I'm not sure if I had at that time - which
43 I don't currently have now - I'm not sure if I had some
44 knowledge of the Liverpool incident at that time, separate
45 to this newspaper article, whether I had read a sit rep or
46 something else, which may have identified differences.

47



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- 1 Q. All right.
2 A. Does that make sense?
3
4 Q. I think so. But perhaps you can just assist us to the
5 best of your recollection with --
6 A. Sure.
7
8 Q. Would you like an opportunity to read the article, or
9 I can read it to you?
10 A. So yep, I've read, you know, the article.
11
12 Q. You have read it?
13 A. That first page.
14
15 Q. That first page. Can we go to the second page,
16 please?
17 A. Yes.
18
19 Q. And the next page, please.
20 A. Yes.
21
22 Q. And the final page - actually, there are two more
23 pages.
24 A. Yes.
25
26 Q. Having read that article through now, does that prompt
27 your memory about whether you saw it at the time you were
28 responding?
29 A. No.
30
31 Q. You see that you say:
32
33 *I am of the view that the circumstances,
whilst having some similarity, are
glaringly different on a number of fronts.*
34
35
36 A. Yes.
37
38 Q. Can you just explain your thinking in writing that,
39 what you mean?
40 A. I can explain what I think now.
41
42 Q. Yes, of course.
43 A. I can't explain what I thought at the time.
44
45 Q. Do your best.
46 A. Because I don't know what my reference point was at



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1 the time. But just in my reading of that article right
2 now, I expect things such as the victim was the caller, and
3 so you had a victim on the phone calling 000 and indicating
4 what was occurring, as opposed to an anonymous informant.
5 There was a longer delay and then 20 hours before she was
6 discovered. So what occurred during that time?

7
8 Q. Yes.

9 A. There was a - it was a priority 3 job, not
10 a priority 2. So there's three in, you know, the five
11 minutes I've sat here and read that. I expect I had some
12 other knowledge of the job itself, because I do receive all
13 the sit reps and things. I don't know if I'd read
14 something, but just based on that alone tells me they're
15 very different jobs.

16
17 Q. A priority 2 job is a point of distinction but that is
18 a more serious job, isn't it, in terms of the police
19 prioritisation system?

20 A. Correct.

21
22 Q. And as we've established, this was the only priority 2
23 job in the Ballina command from 6.58 to 7.41pm. You would
24 have been aware of that at the time?

25 A. Yes.

26
27 Q. So a delay to a priority 2 job is of great concern
28 relative to a delay to a priority 3 job, other things being
29 equal?

30 A. Yes.

31
32 Q. All right. And the matters that you've just
33 canvassed, are they the reasons why you say that this
34 matter is "vastly different"? That's in the last
35 paragraph there, you say:

36
37 *Given the matter did not fall directly into*
38 *a critical incident category, the*
39 *subjective considerations required for*
40 *"other grounds for considering it is in the*
41 *public interest", should not subsequently*
42 *be compared to a vastly different matter.*

43
44 Do you see that?

45 A. Yes.

46
47 Q. Those are the matters that you say make it vastly



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1 different or is there something else?

2 A. Well, I imagine there were perhaps some other things,
3 such as regional New South Wales versus the metro,
4 availability of resources within the metro. But without
5 more time to digest all of the information, other than
6 showing me this, I don't know what else was on my mind at
7 the time that I wrote the report two years ago.

8

9 Q. All right. You're doing your best to assist us with
10 your thinking at the time.

11 A. Yes.

12

13 Q. Thank you for that. All right. Now, let's come
14 finally, if we can, to - we'll go back to tab 52, which is
15 exhibit 5, public exhibit 5. This is the P1179 form. I'll
16 just wait until that has come up. So this is a form that
17 commences:

18

19 *This is a record of the decision of Region*
20 *Commander in considering declaring the*
21 *following incident a "critical incident"*
22 *under section 111 of the [LECC] Act ...*

23

24 Can I just suggest that given your evidence today, it is
25 apparent that you gave - you gave consideration, in fact,
26 you gave deep consideration, to whether or not this matter
27 should be called a - the Ballina incident should be called
28 a critical incident; do you agree?

29 A. Yes.

30

31 Q. And in light of that, and in the interests of
32 transparency and good record-keeping, part 3, the
33 non-declaration and the reasons for your decision, ought to
34 have been completed; do you accept that?

35 A. Yes.

36

37 Q. And there's a multiplicity of benefits, including that
38 you'd have that document here today to rely upon in giving
39 your evidence?

40 A. Yes.

41

42 Q. It might have made this afternoon a bit quicker.

43 A. Sorry?

44

45 Q. No, it's not a criticism of you. Do you think there's
46 a need for greater training for region commanders in
47 relation to the benefits of completing that part of the



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1 form?

2 A. Well, any additional training is always going to be
3 beneficial. I didn't turn my mind to the form.

4

5 Q. I understand that.

6 A. Yes.

7

8 Q. I understand that. But going forward, there will be
9 heaps of other superintendents in your position who are
10 acting up, and who may not understand this requirement to
11 set out their thinking when they don't declare, but they've
12 actually given the matter anxious consideration. So do you
13 agree that there is benefit in providing training to --
14 A. Yes.

15

16 Q. Yes, right. Are there any other systems issues,
17 because that is a particular concern for the Commission -
18 systems issues or areas for agency improvement that you
19 think are highlighted by the circumstances of this tragic
20 matter?

21 A. None that come to my mind on the spot.

22

23 Q. I'm just going to finish with a very curious question.

24 A. Okay.

25

26 Q. Are you aware of any systems that officers can use to
27 check the existence of interstate warrants?

28 A. I couldn't say with absolute accuracy, but I believe
29 that when we ask for a CNI check on radio, they will tell
30 you whether there is an interstate warrant or not.

31

32 MS SULLIVAN: Thank you for that assistance.

33

34 Nothing further, Commissioner, thank you.

35

36 THE COMMISSIONER: Thank you. Mr Gollan, do you have
37 questions?

38

39 MR GOLLAN: Yes.

40

41 Could I ask the Commission to pull up document barcode
42 8605813, please?

43

44 THE COMMISSIONER: Do we have a tab number for that, one
45 of those assisting the Commission?

46

47 MS SULLIVAN: Oh, sorry.



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1
2 THE COMMISSIONER: Do you remember --
3

4 MR GOLLAN: It was one of the documents that my learned
5 friend showed. It was about that hand-back document.
6

7 THE COMMISSIONER: Okay. So that will be tab 87.
8

9 MR GOLLAN: Yes, maybe. I don't have it.
10

11 MS SULLIVAN: Barcode 811 is the commencement of that
12 document and the substance is at 813.
13

14 THE COMMISSIONER: Tab 87, yes.
15

16 **<EXAMINATION BY MR GOLLAN:**

17 MR GOLLAN: Q. Just while that is being brought up,
18 Ma'am Chapman, it seems to me that a handover and
19 a hand-back is not just what's necessarily current but
20 a reflection upon what might have happened whilst that
21 person was absent from the role; correct?
22

23 A. Correct.
24

25 Q. And that whether you classify this as a critical
26 incident or whether you classify it as a homicide, in
27 simpliciter, it's a matter of significance for
28 the community for the local area commander, the assistant
29 commissioner and all others involved in the chain of
30 command to be aware of?
31

32 A. Correct.

33 Q. And in those circumstances, it would seem to me, and
34 correct me if I'm wrong, that really, what you're doing
35 with the hand-back is you're bringing them up to speed with
36 things that they may have otherwise been aware of if they
37 were still occupying the role?
38

39 A. Yes.

40 Q. Now, if I can just have you have a look at this
41 document that is barcode 8605813 --
42

43 A. Yes.

44 Q. -- and you'll see there is a series of bullet points,
45 and then there's the third-last paragraph:
46

47 *I deemed not to be a critical incident.*



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1

2 Do I take it from that that you turned your mind to it?

3 A. Yes.

4

5 Q. And then the narrative then follows. That speaks of
6 certain tasks and things that were undertaken or pursued,
7 including talking to Superintendent Tanner, also following
8 up with the investigators that they covered across
9 everything that happened at the time?

10 A. Yes.

11

12 Q. I take it that that's something that you were - that
13 you desired, that was to be put fully in the picture: you
14 wanted to know everything that had happened?

15 A. Yes.

16

17 Q. Before you had made any decision, you wanted to know
18 where you were, what you were doing, the CADs being
19 considered, Tanner talking to his troops, things of that
20 nature?

21 A. Correct.

22

23 MR GOLLAN: That can be taken down now.

24

25 Q. I understood from the Godfrey that we had a look at,
26 which I don't need to pull back up, but you set out certain
27 parts of the guidelines that come from section 110 of the
28 LECC Act?

29 A. Yes.

30

31 Q. Correct?

32 A. Yes.

33

34 Q. And then you had reference to 111, being the
35 catch-all, as it were, section 111(1)(b):

36

37 *the Commissioner of Police has other*
38 *grounds for considering that it is in the*
39 *public interest to do so.*

40

41 And you disgorged the reader of that by saying that you
42 considered it, but had come to a different conclusion;
43 correct?

44 A. Yes.

45

46 Q. Now, I just want, if I may, to have you consider
47 section 111(1)(a). You see, 110 are the features of



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1 a critical incident. They're the things that you go
2 looking for, as it were.

3 A. (Witness nods).

4
5 Q. 111(1)(b) is that even if you don't find those
6 features, if it's a matter of public interest, you might
7 exercise your discretion to have it classified as
8 a critical incident. 111(1)(a) reads in these terms:

9
10 *the Commissioner of Police may (verbally or*
11 *in writing) declare an incident to be*
12 *a critical incident for the purposes of*
13 *this part if --*

14 *(a) the Commissioner of Police becomes*
15 *aware that an incident involving a member*
16 *of the NSW Police Force has occurred that*
17 *exhibits the features of a critical*
18 *incident set out in section 110, or.*

19 *(b) the Commissioner of Police has other*
20 *grounds for considering it is in the public*
21 *interest to do so.*

22
23 The chapeau, as it were, to that section grants the
24 Commissioner of Police a discretion that they "may"
25 determine. Did you understand that you had a discretion?

26 A. Yes.

27 Q. And did you understand that you were exercising
28 a discretion?

29 A. Yes.

30 Q. And did you understand to do that, conscientably, that
31 you needed all the of information that you sought from
32 Tanner and others?

33 A. Yes.

34 Q. And having acquired all of that material, you
35 exercised that discretion?

36 A. Yes.

37 Q. MR GOLLAN: Nothing further.

38 A. THE COMMISSIONER: Thank you.

39 Q. Anything from you, Mr Smartt?

40 A. MR SMARTT: No, thank you.



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1
2 THE COMMISSIONER: Is there anything else for this
3 witness?
4

5 MS SULLIVAN: There is nothing further, thank you.
6

7 THE COMMISSIONER: Can Superintendent Chapman be released,
8 apart from the matters that she was going to provide to us
9 on follow-up?
10

11 We can send an email of that to your lawyers.
12

13 MS SULLIVAN: There is just one matter that is presently
14 outstanding that it might be prudent just to wait until we
15 receive that further information before you formally excuse
16 Superintendent Chapman.
17

18 THE COMMISSIONER: We'll just wait to get the last few
19 documents from you, Superintendent Chapman, and then we can
20 make a decision about whether you're excused from your
21 summons.
22

23 THE WITNESS: Okay.
24

25 THE COMMISSIONER: But otherwise, we'll leave the summons
26 in place for the moment. Once we've made a decision about
27 that, we'll let your lawyers know and they'll be able to
28 let you know.
29

30 THE WITNESS: Perfect.
31

32 THE COMMISSIONER: If, unexpectedly, you're required to
33 come back, I think we could almost certainly arrange to do
34 that via an audio-visual link so there wouldn't be a need
35 to come back to Sydney to do it.
36

37 THE WITNESS: Thank you.
38

39 THE COMMISSIONER: I thank everyone very much for their
40 attendance. We will resume at 10 o'clock on Monday unless
41 there was there anything else.
42

43 MS SULLIVAN: No, there is nothing else, thank you,
44 Commissioner.
45

46 **<THE WITNESS WITHDREW**
47 **AT 4.40PM THE COMMISSION WAS ADJOURNED ACCORDINGLY**