

Hearing: Operation Almas

Before Ms Anina Johnson, Commissioner

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

On Monday, 8 December 2025 at 10.05am
(Day 4)

WITNESS INDEX

John Joseph Cassar	470
Peter Cotter	533

1 THE COMMISSIONER: Good morning. Were there any
2 housekeeping matters before we call the first witness for
3 today, Ms Sullivan?

4
5 MS SULLIVAN: No, I don't think so, and to the extent they
6 arise, they can be dealt with after Assistant
7 Commissioner Cassar's evidence, if you're content with
8 that.
9

10 THE COMMISSIONER: And I note, for the record, we have
11 Mr Gollan and those instructing him; Mr Harris; Mr Smartt.
12

13 MR SMARTT: And Mr Falzon.
14

15 THE COMMISSIONER: And Mr Falzon. Yes, and those
16 instructing you, Mr Smartt; and Mr Fishpool here, our
17 regular observer.
18

19 We will call Mr Cassar up to the box. If you would
20 come up to the witness box, please, Assistant Commissioner.
21

22 <JOSEPH JOHN CASSAR, sworn: [10.05am]
23

24 THE COMMISSIONER: Please have a seat.
25

26 THE WITNESS: Thank you.
27

28 THE COMMISSIONER: Does your client seek a declaration,
29 Mr Gollan?
30

31 MR GOLLAN: Yes, please.
32

33 THE COMMISSIONER: I understand that you seek
34 a declaration under section 75 --
35

36 THE WITNESS: Correct.
37

38 THE COMMISSIONER: -- Assistant Commissioner. A very
39 sensible course of action.
40

41 I will make that declaration pursuant to section 75 of
42 the Law Enforcement Conduct Commission Act, that all
43 answers and other things given by this witness will be
44 regarded as having been given on objection.
45

46 Although I'm sure, Mr Gollan and those instructing him
47 have been through this with you, I want to make sure that

1 I go through that arrangement again with you.
2

3 Even though your answers are given on objection, they
4 can still be used against you in certain circumstances, if
5 there is a proceedings brought under the Law Enforcement
6 Conduct Commission Act, for use in this investigation or to
7 get advice from the Director of Public Prosecutions, and
8 also for disciplinary proceedings against you - and you
9 don't need me to spell out what the scope of disciplinary
10 proceedings are under the Police Act, I'm sure you are well
11 aware from your past experience - I should say, not having
12 personally experienced it, so, let me just clarify that -
13 section 173, section 181D or section 183A, so it can
14 obviously be used for any of those proceedings, if needed.
15

16 THE WITNESS: I understand.
17

18 THE COMMISSIONER: Were there any questions?
19

20 THE WITNESS: No, Commissioner.
21

22 THE COMMISSIONER: The only other matter is formally I do
23 need to outline the scope and purpose of the examination.
24 Have you had a chance to review that? It is attached to
25 your summons.
26

27 THE WITNESS: Yes, I have, yes.
28

29 THE COMMISSIONER: Okay. Maybe I don't need to go through
30 that again formally, but it is that one, and we're covering
31 a range of issues arising out of the police response to the
32 000 call on 3 January, and I think your involvement came
33 some time later than that.
34

35 THE WITNESS: Correct.
36

37 THE COMMISSIONER: Thank you.
38

39 MS SULLIVAN: Thank you, Commissioner.
40

41 <EXAMINATION BY MS SULLIVAN:
42

43 MS SULLIVAN: Q. Sir, can I have your full name for the
44 record, please.
45 A. Yes, Joseph John Cassar.
46

47 Q. And your rank?

1 A. It is assistant commissioner.
2

3 Q. You're the current commander of the southern region;
4 is that correct?

5 A. Correct.
6

7 Q. When were you appointed to that role?
8

9 A. I've been there twice. The last time I was -
10 I believe it was the end of February or January last year.
11 So I'm nearing two years. Prior to that, I was at
12 professional standards for two years and then southern
13 region commander there before that for three years.
14

15 Q. Thank you. So what period at professional standards?

16 A. I was there for two years and it would have been -
17 okay, so if I've been there, say, the end of February last
18 year, that was '24. From about March or May '22.
19

20 Q. For a two-year period?
21

22 A. Yeah, thereabouts.
23

24 Q. And prior to that, you were at southern?
25

26 A. Back at southern for three years.
27

28 Q. For three years; is that right?
29

30 A. Yeah, about, yeah.
31

32 Q. Can you just assist us with a general overview of your
33 policing background including when you attested?
34

35 A. Okay. So I attested December 1987. I started my
36 career general duties at the Goulburn police station,
37 transferred to the Port Kembla police station in 1989, I
38 worked general duties in there as an intelligence officer
39 and then became designated as a detective about 1994.
40

41 1995 I transferred to the major crime squad south.
42 I was there, worked as - in the drug squad. Over the
43 proceeding years, drug squad, the child abuse section, and
44 about 1998, the serial violent crime agency was established
45 and I was transferred to the homicide and serial violent
46 crime agencies about, '99, '98. Then I was promoted to
47 detective sergeant at Lake Illawarra, where I spent
48 a number of years. Transferred back to the homicide squad,
49 in - that was in 2000, I made sergeant; 2004 I made
50 detective inspector as a crime manager at Maroubra, Eastern
51 Beaches.
52

1 Q. Yes.
2 A. Keep going?
3
4 Q. Keep going.
5 A. Yes. And then from being the crime manager, I was
6 there for a couple of years and relieved for about a
7 three-year period as a superintendent working as the
8 operations manager at central metro region, 12 months as
9 a commander at Eastern Suburbs, worked three months
10 relieving at the traffic and highway patrol as an
11 operations manager. Twelve months establishing the alcohol
12 licensing enforcement command, and then it was, 2010,
13 promoted to commander at the Cabramatta command, and then
14 was there for a couple of years, transferred --
15
16 Q. Just pausing there, "commander" being superintendent?
17 A. Correct, yes.
18
19 Q. Thank you.
20 A. And then transferred - after a couple of years,
21 transferred to being the commander at the Shoalhaven
22 command, which is down near Nowra, for about three and a
23 half years, transferred across to Wollongong as the
24 commander, that's a superintendent, and then in 2017 I was
25 promoted to assistant commissioner.
26
27 Q. 2017?
28 A. Yes. And the last eight and a bit years I've worked
29 as an assistant commissioner in the capability performance
30 and youth command, south region commander, professional
31 standards commander and back to the south region commander.
32
33 Q. Thank you very much. Have you been a SCII before,
34 a senior critical incident investigator?
35 A. No, no.
36
37 Q. We're just going to come now to the formality of your
38 responses to the section 55 and 54 notice.
39 A. Sure. Am I able to refer to that document that I've
40 brought along?
41
42 Q. Please, do. You have only a copy of that document and
43 that is the section 54 and 5, I take it, Superintendent?
44 A. Yes.
45
46 Q. Thank you.
47 A. I've got all the attachments and the guidelines, but

1 they've all been provided.

2
3 Q. That's fine, thank you. So on 8 November you provide
4 the section 54 response, that is the information --

5 A. Yes.

6
7 Q. You had an opportunity, no doubt, to review that?

8 A. Yeah. There is a couple of amendments and there are
9 just typos.

10
11 Q. Thank you.

12 A. The first --

13
14 Q. Before we go there, I'd like to draw that document on
15 the screen, please, if we could --

16 A. Sure.

17
18 Q. -- so everyone can follow along. This is tab 76 of
19 the investigative brief. That is at barcode 8632690 to
20 8632696. We'll have that document. Has that document come
21 up in front of you on your screen?

22 A. The email has but not my actual response. Yeah, there
23 we go.

24
25 Q. All right. Thank you. Yes, please, you were
26 identifying some corrections.

27 A. Yeah, so the second paragraph where it says
28 "I received this notice on 5 November 2026", that should be
29 2025, obviously.

30
31 Q. Thank you.

32 A. And the only other minor amendment was if you go to
33 the third page.

34
35 Q. Barcode 693?

36 A. Yeah, where it's point number 3, my response, it says
37 "To mu understanding", that should be "to my" - M-Y -
38 "understanding".

39
40 Q. Thank you.

41 A. They're the only amendments that I have.

42
43 Q. Subject to those typographical corrections, this
44 response is true and correct to the best of your knowledge,
45 information and belief?

46 A. Correct.

1 Q. Thank you, sir. You also provide --
2

3 MS SULLIVAN: I tender that document, Commissioner.
4

5 THE COMMISSIONER: That will be exhibit 28C.
6

7 MS SULLIVAN: Thank you.
8

9 **EXHIBIT #28C JOSEPH CASSAR'S RESPONSE TO THE SECTION 54**
10 **NOTICE, BARCODED 8632690-8362696**

11 MS SULLIVAN: Q. You also provided documents in
12 response to the section 55 notice. You provided those
13 under cover of 9 November 2025; correct?
14

15 A. Correct.
16

17 MS SULLIVAN: That is, for the record, tab 7 of the
18 investigative brief, barcode 8632632 to 8632689.
19

20 I tender a copy of that response, Commissioner.
21

22 THE COMMISSIONER: That will be exhibit 29C.
23

24 **EXHIBIT #29C JOSEPH CASSAR'S RESPONSE TO THE SECTION 55**
25 **NOTICE, BARCODED 8632632 TO 8632689**

26 MR GOLLAN: Commissioner, I didn't get to see that last
27 one that is being tendered.
28

29 THE COMMISSIONER: The section 55 documents?
30

31 MR GOLLAN: Yes, thank you.
32

33 THE COMMISSIONER: I presume your client has shown you
34 a copy of them, Mr Gollan.
35

36 MR GOLLAN: It may have been - I would like to have
37 a look, as it is being tendered.
38

39 THE COMMISSIONER: Could we get a copy of tab 77 up on the
40 screen for Mr Gollan, please, and if you could just
41 tab through each page of that document.
42

43 MR GOLLAN: Yes, I see it now. Yes, I've seen that.
44 Could I go to that last page, please?
45

46 MS SULLIVAN: The last page should be the letter from
47

1 Assistant Commissioner Cassar to [REDACTED] dated 4 July
2 2023.

3
4 MR GOLLAN: Thank you.

5
6 THE COMMISSIONER: Any objection, Mr Gollan?

7
8 MR GOLLAN: No objection, I just needed to make sure if it
9 was appropriate in relation to what I had seen.

10
11 MS SULLIVAN: Q. Sir, given your two-year period as the
12 commander of professional standards command, can you
13 outline for us, please, what the mandate of professional
14 standards is within the NSW Police Force, its purpose?

15 A. They're the subject matter expert - I suppose, for the
16 use of a better term, they are the owners of professional
17 standards, anything that goes with it. So when we talk
18 about investigating serious misconduct, as well as
19 establishing - this is in my terms, just general terms --

20
21 Q. Yes.

22 A. -- establishing a criteria for the organisation to
23 follow when we talk about complaints management at - within
24 the whole organisation, no matter what command. So that
25 whole structure of investigators, professional standards
26 managers, professional standards duty officers, complaints
27 management team, timeliness. They've got an internal
28 review panel, so they then look after the serious
29 misconduct, escalate matters to the Commissioner for
30 consideration for either 173 or 181D dismissal. I won't go
31 into that whole process.

32
33 But they also are the corporate owners of the critical
34 incident guidelines. They perform a role within that scope
35 of critical incident guidelines, namely, the investigation
36 arm attached to professional standards command - when
37 a critical incident is declared they come over and
38 oversight the investigation, whether it's being conducted
39 by the homicide squad or whether it's being conducted by
40 the PAC or PD.

41
42 Q. Pausing there, is that primarily undertaken by the
43 review officer, that role of oversight?

44 A. Yes, but that is attached to professional standards
45 command. They review all of them.

46
47 Q. And that review officer will always be of a detective

inspector rank; is that correct?

A. It - optimal, yes. But occasionally, it may be a relieving inspector, but generally it will hold the rank of inspector because of their experience and seniority.

Q. Thank you.

A. But they will bring a team out as well to assist them with that review component. There's a whole - a whole bundle of more responsibilities and duties that they talk about, like, enhancing the awareness of the expectations in regards to mitigating any - sorry, not saying mitigating misconduct, that's a poor use of terms - in regards to preventing misconduct in the first place, to be proactive in, I suppose, identifying some of the catalysts that may lead to misconduct. You know, they do a lot of work in reviewing body-worn videos. There's a tonne of work. But they are the generators of good practice.

Q. All right. And indeed, they promote professional standards within the NSW Police Force?

A. Absolutely. And so does the region commander and the commanders.

Q. Yes. And, indeed, has responsibility for setting standards for performance, conduct and integrity within the organisation --

A. Yes.

Q. -- do you agree with that?

A. A lot of that is in consultation with the Commissioner's executive team. Yes.

Q. And certainly have an important advisory consultancy and review function in relation to critical incident investigation --

A. Correct.

Q. -- as we've canvassed. And also, can I suggest PSC has a role in developing reference materials, standard operating procedures, policies and training that support professional standards and the application of best practice within the organisation?

A. That's correct.

Q. And also PSC serves as an important contact point as between the NSW Police Force and other integrity bodies like this Commission?

1 A. That's correct.

2

3 Q. ICAC?

4 A. Correct.

5

6 Q. And the office of the state coroner?

7 A. Yes.

8

9 Q. All right. Can I just now turn to your experience,
10 your extensive experience in relation to critical
11 incidents. As a commander, you would no doubt have
12 declared a number of critical incidents, that is --

13 A. As region commander.

14

15 Q. As region commander?

16 A. Correct.

17

18 Q. Are you able to estimate how many?

19 A. Lots. No, I couldn't give you a number. So, yeah,
20 I'd say probably about 15. Yeah.

21

22 Q. And you're also aware, no doubt, of the requirement to
23 complete the P1179 form, where consideration is given to
24 whether or not to declare a critical incident but it's not
25 then called?

26 A. That's right, if it hits the criteria of being
27 a critical incident, yes.

28

29 Q. If it hits the - sorry, what do you mean by that?

30 A. Well, there's those certain guidelines that we are all
31 guided by and if there's been a referral up to the region
32 commander, and I speak from my own experience, and if
33 I then deem it not to be a critical incident, then I would
34 complete the 1179.

35

36 Q. So when you give consideration to that issue of
37 whether or not a matter is a critical incident?

38 A. Yes.

39

40 Q. You complete the P1179?

41 A. Correct.

42

43 Q. How many of those forms, approximately, do you think
44 you would have completed during your time as region
45 commander?

46 A. Oh, I couldn't answer that, no.

47

1 Q. Well, upwards of around or in the order of around 15
2 critical incident matters declared?

3 A. Oh, probably - in the single figures, probably less
4 more than more.

5 Q. More than that?

6 A. No, less more than that.

7 Q. Less, I'm sorry.

8 A. Yeah.

9 Q. Okay, less than 15?

10 A. Oh, yeah, absolutely.

11 THE COMMISSIONER: Q. So that's where you've
12 considered --

13 A. That's right.

14 Q. -- the question of whether to declare something
15 a critical incident and have decided it that doesn't meet
16 that criteria?

17 A. Correct.

18 MS SULLIVAN: Q. Do you complete that form yourself or
19 do you direct, for example, your staff officer to --

20 A. No. Okay, so in the region, the structure, we have
21 a professional standards - I've got direct reports. So
22 I've got a staff officer, operations manager, HR manager,
23 business manager. I've got one officer who's an inspector,
24 detective inspector, in my case, who is a professional
25 standards manager. And each of the commands also has
26 obviously the commander and a professional standards duty
27 officer who that's the portfolio. It is the on-call
28 process - and I talk about the southern region, I don't
29 speak for the other five regions.

30 Q. Understood.

31 A. If there's an incident that occurs in the field, the
32 first port of call will usually be through the on-call
33 process. If it is an operations, like high-risk matter,
34 they'll go through the operations manager. He will get -
35 he'll do a lot of the groundwork.

36 Q. Just pausing there, what's a high-risk matter?

37 A. A high risk, say if it's a siege matter. Okay, so
38 this is out of the realms but I'm just giving you an
39 example.

1
2 Q. Yes, thank you, understood.

3 A. Then he or she will contact me and we'll talk about
4 the response. As you know, for high risks I've got the
5 delegated responsibility and accountability for approving
6 special weapons, operations and tactics.

7
8 Q. Yes.

9 A. The same goes for the professional standards. The
10 guidelines are guidelines and, of course, they are
11 available to all commands as the guide. It will - it can -
12 it will be the case where usually the first port of call
13 will be the quick notification to the professional
14 standards manager and - who - who has got a high level of
15 understanding of the critical incident guidelines of
16 misconduct, obviously, because that's their bread and
17 butter. And then if it's a referral, if they are making an
18 actual referral, then he will contact me and say, "Listen,
19 Mr Cassar, A, B, C, D and E has happened", and we'll talk
20 about whether it meets the criteria of the critical
21 incident, and it may be the case that it's a - you know,
22 it's a black and white "Yes", I'll declare a critical
23 incident; there may be instances where I ask for further
24 inquiries to be made.

25
26 Q. Yes.

27 A. For example, if there's an injury, they may contact
28 and there's information from an ambulance officer that
29 says, "He's going to die", and then I'll ask for more
30 information. I may delay the actual declaration of the
31 critical incident until we get some more information from
32 a doctor, for example. And it may be the case that that
33 may not come up for a couple of days and the declaration is
34 made after that.

35
36 Q. Just pausing there, what's the latest that you have
37 declared a critical incident to the best of your memory?

38 A. Oh, it's - me personally, only about 48 hours. But if
39 it's a case that I did, under those circumstances, I would
40 do a 1179 because it has been referred to us for
41 consideration of a critical incident.

42
43 Q. But, sorry, just so I'm clear, referred by the
44 professional standards manager or referred by another
45 officer, for example?

46 A. No, no, no. It comes from the field, consultation
47 with the PSM, who is me, essentially --

1 Q. Your delegate in the field?
2 A. Sorry?
3
4 Q. Your delegate in the field, that is --
5 A. No, my delegate in the region office.
6
7 Q. The region, okay.
8 A. Yeah, so my inspector. I make the declaration.
9
10 Q. I understand.
11 A. He's - I suppose he is the conduit to make sure all
12 the correct information. Sometimes you might get an acting
13 inspector that is very green and it doesn't even come
14 anywhere near the threshold. I wouldn't get the call then
15 because it - it's nowhere near the threshold of the
16 critical --
17
18 Q. Are you talking about an acting inspector being the
19 duty officer?
20 A. Yes.
21
22 Q. Right. So the duty officer consults with the PSM?
23 A. Yes.
24
25 Q. The region PSM?
26 A. Yeah.
27
28 Q. Who may or may not refer it to you for consideration?
29 A. Yes, if there's - if there's any - if it's getting
30 close, anywhere near being a critical incident, he'll
31 contact me because I'm the one that makes the decision --
32
33 Q. Okay.
34 A. -- the determination. He will often field questions.
35 You know, it might be the case that they're - they're
36 ringing them as a safety net. And to be honest, I don't
37 know how many calls that they get. But that's the whole -
38 I suppose that's the essence of having the region subject
39 matter experts on call, so they can provide that support to
40 the field.
41
42 Q. All right. Understood.
43 A. And if it's a case that - if it's grey and I don't
44 declare it, then I'll do a section 1179.
45
46 Q. You said "if it's grey"?

1 A. Well, if it's not that --

2 Q. Clear cut?

3 A. --"I'm declaring it now". Say. If it is, you know
4 what, I want more information and that information says,
5 "Well, I don't think it's a critical incident", then I'll
6 do the 1179.

7 Q. So just the fact that it's been raised for your
8 consideration?

9 A. It's been put up to me for referral --

10 Q. Yes, does not --

11 A. -- for consideration --

12 Q. Does not lead to you completing a P1179, by virtue of
13 being raised for your consideration by the PSM; is that
14 right?

15 A. I don't understand the question. So is it the PSM
16 raising it with me or --

17 Q. Yes, is that the trigger for you to complete a P1179
18 non-declaration?

19 A. Yes, well, that may be one trigger but there may be -
20 it's not to say that a commander may not contact me direct.
21 In fact, on the weekend - I'm not going to go into the
22 case - but I got a call direct from the commander. So
23 there's - and then I made consideration based on that and
24 then I engaged my professional standards manager to let him
25 know this is what I've done.

26 Q. All right. Do you know where those P1179
27 non-declaration forms go after they've been completed by
28 you?

29 A. Well, if I'm the region commander, that will then go
30 back to the professional standards manager, who will then
31 escalate to the right location.

32 Q. Do you have any understanding where the right location
33 is?

34 A. Oh, I couldn't tell you off the top of my head, no.

35 THE COMMISSIONER: Q. So this is the non-declaration
36 form?

37 A. The actual form, yeah.

38 Q. They go back to the PSM to file, do they?

1 A. Well, at - he - I would suggest that they would - that
2 would be sent through to professional standards command,
3 coming from the region, but at that - what I say at my
4 level as the region commander I know what my obligations
5 are, and then I've got direct reports, as my expectation,
6 once that's consistent with my advice and I'm happy with
7 the information contained in it, then it gets escalated,
8 I would expect, to professional standards command. It
9 wouldn't just get filed locally.

10 MS SULLIVAN: Q. When you say "escalated to
11 professional", we're talking about the non-declaration?

12 A. Yeah, yeah. So they're aware of it, yeah.

13 Q. Because it is important information for them to be
14 aware of, do you agree?

15 A. Well, they have - they are the subject matter experts.

16 Q. So yes? It's important for them to have the
17 non-declarations because they're the subject matter
18 experts?

19 A. It is important for them to have access to it, yeah.

20 Q. Do you recall during the two years that you were at
21 professional standards ever accessing --

22 A. No.

23 Q. -- these documents?

24 A. No.

25 Q. Never had --

26 A. But I've got a very - I had two superintendents, quite
27 a number of inspectors. I can't speak on their behalf but
28 as the region - as the inspector in charge of professional
29 standards command, no.

30 Q. Because given that PSC are the subject matter experts,
31 it makes sense, doesn't it, that they would have the
32 repository of all these forms to be able to identify, for
33 example, any trends in decision-making?

34 A. I would say, you know, it's - it's good for them to
35 have access to that information, to identify trends in
36 decision-making. You are talking about region commanders.
37 I wouldn't say - unless - I wouldn't say the objective is
38 to identify trends.

39 Q. It may not be the objective; it might be one

1 objective?

2 A. To identify trends? We're not - I mean, we're talking
3 about assistant commissioners, experienced assistant
4 commissioners making decisions who have the delegated
5 authority to make critical incidents.

6
7 Q. Yes.

8 A. If there were instances that critical incidents
9 weren't being made and we were - and the commander of PSC,
10 if they identified a trend, then I suppose there's avenues
11 to engage them personally and to speak about it, case by
12 case. I certainly haven't had to do it --

13
14 Q. Yes.

15 A. -- and there's certainly - to my experience and
16 knowledge, no trends have been brought to my attention in
17 regards to assistant commissioners.

18
19 Q. Yes. Pausing there, are you familiar with the process
20 in relation to what happens to those non-declarations?
21 I understood from your evidence that that's not something
22 that you had encountered during your two-year period at the
23 PSC?

24 A. Yes, no, I couldn't tell you specifically, I mean, we
25 could find the answer out for you and no doubt the next
26 witness will be able to answer it. But yeah, no, from my
27 point of view, no, I couldn't tell you exactly who gets
28 that escalated to.

29
30 Q. Or whether they're reviewed, in fact, by PSC - that
31 is, the non-declarations?

32 A. You would have to ask the current commander that
33 question.

34
35 Q. I understand that the current commander will indicate
36 that PSC do not receive the non-declarations.

37 A. Well, that, may be the case. Again, I can't tell you
38 where it goes. I know I authorise - when I say I make the
39 decision, once it's - the document's been prepared, it's
40 consistent with our decision-making, it's authorised by me,
41 I couldn't tell you where it stood. I think I made that --

42
43 Q. Sorry to belabour your two-year experience whilst you
44 were the --

45 A. And it was two years ago.

46
47 Q. -- commander of PSC, but is it surprising to you to

1 now discover that Assistant Commissioner Cotter says that
2 the P1179s don't go to PSC for review?

3 A. Well, if that's what he said, then that's his answer.
4 I can only talk about what my --

5 Q. I understand.

6 A. -- awareness was when I was a commander some two years
7 ago.

8 Q. But it was your assumption that it would be reviewed
9 by PSC; is that right?

10 A. You've just asked me the - that's my assumption now.

11 Q. Yes.

12 A. If you had asked me two years ago where I had a handle
13 on that, I probably - possibly would have given you
14 a different answer. But I can only answer --

15 Q. I'm not sure what that means, Assistant Commissioner.

16 A. Well, you are asking me to reflect on what my
17 awareness is on where the 1179 goes.

18 Q. Yes.

19 A. And I've given you an answer insofar as it is put to
20 me, I'm happy with the content, the document is completed
21 and then my professional standards manager will look after
22 it from there. You asked me whether, you know, do I think
23 it went to professional standards command. If you're
24 asking me now, I thought that they would have had access to
25 it, like they would have had access to all our complaints
26 matter.

27 Q. Yes.

28 A. I couldn't even tell what system it's stored on but
29 I know it is - it's an electronic document and it is
30 stored.

31 Q. Somewhere?

32 A. Within the organisation. But a lot of our systems you
33 can have access remotely to them, like, our police COPS
34 system to our complaints management system to our body-worn
35 video system.

36 Q. Can I ask, just again based on your experience at PSC,
37 the two years there, can I just suggest this: it would be
38 of utility for PSC, as the subject matter experts, to have
39 access to the P1179 forms for their review, consideration

1 and analysis; do you agree?

2 A. Yes. Yes.

4 Q. Thank you. Now, just into - we'll go to the form now,
5 if you don't mind. This is the P1179. It's in your
6 statement but we'll also go to a copy that we can bring up
7 on the screen easily. This is tab 52, please.

9 THE COMMISSIONER: It is a public exhibit number 5,
10 I think.

12 MS SULLIVAN: Number 5, thank you. We'll just wait for
13 that to pop up.

15 Q. Is that in front of you there, Assistant Commissioner?

16 A. Yes, correct.

18 Q. Do you see the first sentence of the P1179 form,
19 I should identify it's on page 212, barcode ending 212:

21 *This is a record of the decision of Region
22 Commander in considering declaring the
23 following incident a "critical incident"
24 under section 111 of the Law Enforcement
25 Conduct Commission Act ...*

27 Do you see that?

28 A. Yes.

30 Q. So it is a mandate to the region commander to fill
31 this out where there is consideration as to whether or not
32 to declare. Have I read that right? Do you agree?

33 A. Yes.

35 Q. Right. And this is an important document, isn't it,
36 because it provides a clear and auditable record of why
37 a region commander has declared a critical incident;
38 correct?

39 A. Declared and non-declaration.

41 Q. And also it's an important record in relation to
42 a region commander's determination not to declare
43 a critical incident; agree?

44 A. Correct.

46 Q. It's a record?

47 A. Yes.

1
2 Q. It's a record. And indeed, part 3 counsels that the
3 region commander, where there has been a determination not
4 to declare a critical incident, should set out clear and
5 detailed reasons for the decision not to declare a critical
6 incident, especially where the response is "Yes" to either
7 question in part 2 above? Do you see that?

8 A. Correct, yes.

9
10 Q. Now, the decision not to declare a critical incident
11 has particular consequences in terms of the oversight
12 function, doesn't it?

13 A. Yes. Yes, correct.

14
15 Q. In that this Commission --

16 A. Because it's not a critical incident, yes, that's
17 right.

18
19 Q. This Commission has no review function; correct?

20 A. Correct.

21
22 Q. And the review officer within PSC has no review
23 function?

24 A. Correct. Because it's not a critical incident - it's
25 not deemed to be a critical incident.

26
27 Q. By the region commander. Understood.

28 A. Who's got the delegation, yes.

29
30 Q. Yes. Now, are you aware of any training that is given
31 to assistant commissioners in relation to completing this
32 form?

33 A. No, I'm not aware of any training.

34
35 Q. Are you aware of any guidelines that have been
36 provided to assistant commissioners in relation to the
37 importance of completing part 3, where there has been
38 consideration but non-declaration of a critical incident?

39 A. From a personal point of view, there's the critical
40 incident guidelines, and then, as speaking as a region
41 commander, our professional standards manager does
42 additional training that I wouldn't do as a region
43 commander, and we - I have said, we do rely on that
44 training and expertise.

45
46 Q. So you would have the expectation, for example, where
47 someone is acting in an assistant commissioner role, that

1 it would be the inspector, the PSM, if I can call it that,
2 who might counsel the acting assistant commissioner to
3 complete --

4 A. Well, even me as a seasoned region commander, I still
5 seek advice and consultation with my professional standards
6 manager. It's - yeah. For me, I see that is - as good
7 practice. That's for me. I only speak on behalf of
8 myself.

9
10 Q. Understood, and that's necessarily the case --

11 A. Mmm.

12
13 Q. -- but have you been reminded about the need to
14 complete part 3 - that is, the non-declaration - by your
15 PSM?

16 A. Not really.

17
18 Q. You don't --

19 A. No, not that I recall.

20
21 Q. Because we know in this instance that a P1179 was not
22 completed?

23 A. Correct.

24
25 Q. But it's also clear that Acting Assistant Commissioner
26 Chapman gave consideration to whether or not to declare
27 a critical incident; didn't she?

28 A. I think --

29
30 MR GOLLAN: I object. Commissioner, the proposition needs
31 to be put on the basis of whether or not - look, all
32 incidents are not critical incidents. We can have
33 homicides that are not critical incidents and it might be
34 that one turns their mind to it, but for this question to
35 have any assistance to you, it needs to be put on the
36 proposition that it falls within the terms of 110 on or
37 alternatively 111(1)(b) for it to be a matter that is
38 relevant for consideration, because you wouldn't expect, in
39 circumstances where it doesn't fall within any of those
40 terms, for there to be any document, additional document or
41 any additional consideration. One might consider whether
42 or not it falls within 110 or 111(1)(b), but that doesn't
43 necessarily --

44
45 MS SULLIVAN: Commissioner --

46
47 MR GOLLAN: Excuse me, please.

1 MS SULLIVAN: No, I object to this analysis --
2

3 MR GOLLAN: Excuse me, please
4

5 MS SULLIVAN: -- to this objection being articulated in
6 front of the witness, it's not an appropriate course.
7

8 MR GOLLAN: Well, then, the witness can be excused because
9 it is an important distinction.
10

11 MS SULLIVAN: The witness should be excused if you're to
12 continue the objection in these terms.
13

14 THE COMMISSIONER: Do you want to reframe your question,
15 Ms Sullivan.
16

17 MS SULLIVAN: I am very content, in fact, to come back to
18 it at another point in my examination, but I would ask that
19 my friend take note of the concern I've just conveyed about
20 the manner in which objections are raised in front of
21 witnesses.
22

23 THE COMMISSIONER: I think we were asking about Acting
24 Assistant Commissioner Chapman.
25

26 MS SULLIVAN: I'll come back to that matter at
27 a subsequent point, Commissioner, thank you.
28

29 Q. Have you, in your experience, ever declared a public
30 interest critical incident, if I can call it that, under
31 the limb in section 111(1)(b)?
32

33 A. Yes.
34

35 Q. When was that?
36 A. Can I talk about a recent one that's still current?
37

38 Q. Yes.
39 A. Okay.
40

41 Q. You can.
42 A. On Friday.
43

44 Q. Yes, on Friday.
45 A. Mmm.
46

47 Q. That was the matter concerning the discovery of

1 a 48-year-old outside Illawarra police station?
2 A. Correct, Lake Illawarra.

3
4 MR GOLLAN: Commissioner, this should be the subject of
5 a suppression order. It is an ongoing incident. I'm not
6 being critical of my learned friend --

7
8 THE COMMISSIONER: Well, why don't we hear the evidence
9 and then --

10
11 MR GOLLAN: My concern is if this isn't otherwise known --

12
13 MS SULLIVAN: The assistant commissioner has given a media
14 briefing in relation to this matter and the content of my
15 questioning relates to the media briefing that is in the
16 public domain.

17
18 MR GOLLAN: Look, I'm not seeking to join issue with my
19 learned friend. What I'm asking is that - you can see the
20 reticence of the particular witness. I just want to make
21 sure that it is covered by all of the things that have been
22 said about some things being confidential and other things
23 not.

24
25 THE COMMISSIONER: Why don't we - I hear your concern.
26 We'll hear the answers from the witness and then, if those
27 concerns remain, we can hear any suppression order. But
28 I think let's hear the evidence first. And I understand
29 you've flagged that and the media is aware that that has
30 been flagged as an issue and we'll deal with it at the
31 conclusion of this point.

32
33 MS SULLIVAN: Q. Is that the first one under that limb,
34 Assistant Commissioner, that you have declared in your
35 experience?

36 A. That's the most recent one. I couldn't think of any
37 other ones, not at this time.

38
39 Q. The Commission's statistics compiled since 2017
40 suggest that that would be the third out of 275 critical
41 incidents. Are you aware of any statistics --

42 A. No, I'm not.

43
44 Q. -- along those lines?

45 A. No, I'm not.

46
47 Q. Does that surprise you?

1 A. I - neither here nor there, to be honest. I'm not
2 surprised and I'm not saying that I am surprised because
3 there is certain guidelines that's available to police and
4 that's one of the options, to declare a critical incident.
5

6 Q. But pausing there, when you say "certain guidelines",
7 are you talking about the critical incident guidelines?

8 A. Yes, correct.
9

10 Q. Are you talking about the reference in relation to the
11 guidance to officers --
12 A. Yes.
13

14 Q. -- concerning section 111(1)(b)?
15 A. It's guidance towards the region commanders.
16

17 Q. Would you mind identifying for us what guidelines
18 you're referring to?

19 A. Yes. It is the critical incident guidelines
20 professional standards command, it's available to all
21 police, and then it - under the definition of "What is
22 a critical incident", you go through the --
23

24 Q. Just for the record, I might pause you there. Can we
25 bring up, please, just so that everyone else can follow
26 along, exhibit 29, barcode 674.
27

28 THE COMMISSIONER: 29C, tab 77.
29

30 MS SULLIVAN: Thank you. If we go to 674, that's the
31 commencement of the critical incident guidelines.
32

33 Q. Those are the guidelines that you're referring to,
34 sir?
35 A. Yes, correct.
36

37 Q. All right. So then we go to - where do we find in
38 these guidelines these references?
39 A. Go to about page 5. Page 5 of 12.
40

41 Q. These are the guidelines dated December 2019. Are
42 these --
43 A. Yeah, well, they're the ones that would have been the
44 relevant ones at the time --
45

46 Q. Okay.
47 A. -- I made the --

1
2 Q. The current ones are from February 2024; is that
3 right?

4 A. Yes, they have been reviewed. That's why I thought it
5 was important to reference the ones that were available to
6 me at the time.

7
8 Q. Indeed. We're in furious agreement about that. And,
9 sorry, were you directing us to a particular page?

10 A. So it's page 5 of 12. So go back one. Back one. No,
11 go back a page - sorry. No. That's - that's 4 - are you -
12 is this --

13
14 THE COMMISSIONER: Is that it, the guiding principles?

15
16 THE WITNESS: No, it's - right at the top, it says, "What
17 is a critical incident?" Down the bottom of the document
18 that I've got, which is the ones I scanned -.

19
20 MS SULLIVAN: I think the mischief is that we are missing
21 page 5. So we'll go to another --

22
23 THE WITNESS: Did you want a copy? This is the document

24
25 MS SULLIVAN: We have another version of it. Thank you
26 for identifying the critical page is missing. So we'll go
27 to tab 74, please.

28
29 Just for the record, tab 74, barcode 8630958 to
30 8630969. I will tender for completeness, Commissioner,
31 a copy of the complete 2019 critical incident guidelines.

32
33 THE COMMISSIONER: So the complete 23 December 2019
34 critical incident guidelines under tab 74 will be
35 exhibit 30C.

36
37 **EXHIBIT #30C CRITICAL INCIDENT GUIDELINES, BARCODED**
38 **8630958-8632689**

39
40 MS SULLIVAN: Thank you.

41
42 Q. Assistant Commissioner, you were directing us to what
43 is a critical incident and the penultimate paragraph in
44 section 1; is that right?

45 A. Yes, that's correct.

46
47 Q. Can I just ask you to read that on to the record?

1 A. Sure. So it goes through two, four, six instances
2 where it constitutes - well, it gives you guidance in
3 regards to what constitutes a critical incident. Then
4 there's that additional paragraph which relies on the
5 region commander's discretion to some degree, I suppose:
6

7 *The Region Commander may also make this*
8 *declaration if they have "other grounds for*
9 *considering it is in the public interest to*
10 *do so" (s111(1)(b)). This may include*
11 *where an incident could attract significant*
12 *attention, interest or criticism and the*
13 *public interest is best served by*
14 *investigating the incident as a critical*
15 *incident.*

16 Q. Thank you. So those were the considerations you had
17 in mind in relation to the recent incident on Friday; is
18 that right?

19 A. Correct.

20 Q. Are you able to explain your thinking to us, and I'm
21 going to pause here, your thinking in this regard wouldn't
22 necessarily be on the public matter.

23 So that may be an appropriate matter for a suppression
24 order, Commissioner.

25 THE WITNESS: Okay. So in regards to this particular
26 case, I got - it was unique in that the commander rang me
27 direct at the earliest - the earliest opportunity for him.
28 And then at that point I had a number of questions that
29 I wanted answered.

30 At that point, the body had been discovered in the
31 vehicle where it was parked, in the close vicinity of the
32 front doors of the police station, and it was brought to my
33 attention that it had been there for a number of days, and
34 I wanted further information in regards to the movement of
35 the individual, and that required them to do further
36 inquiries. Because at this point, it was a body in a
37 vehicle parked in close vicinity of the police station.

38 It was a result of that feedback that I received about
39 an hour later that gave me the information that I needed,
40 and that - I mean, this is subject of an investigation so
41 it's important that it - you know --

1
2 THE COMMISSIONER: Q. Can I say, if there is anything
3 that you feel concerned about articulating even in this
4 public setting, even with a suppression order, Assistant
5 Commissioner, you can flag that and talk in euphemisms.

6 A. I want to flag it because my concerns are the
7 individual hasn't been given due process and, to my
8 understanding, hasn't provided a version. That's the
9 police officer. And I don't think it's fair to that
10 individual that I start talking about what I've been -
11 information --

12
13 MS SULLIVAN: Q. We absolutely don't need to go into that
14 level of granularity, if I could just explore your thinking
15 in global terms without descending into the details?

16 A. Well, sure, it provided me information, sufficient
17 information, that certainly didn't fall under the criteria
18 of those six key points above it, but fell under the
19 criteria of the bottom point, and that is it's going to
20 draw significant attention and public interest component,
21 and that says - I mean, those guidelines say "such as" or
22 "may include", but they're certainly two points that I cast
23 my mind to and I thought warranted it to be a critical
24 incident. And I wasn't armed with the fact it was only
25 three in a number of hundreds that had been declared under
26 that. That's news.

27
28 Q. Can I just suggest, again mining your experience at
29 PSC, that it may assist - perhaps less so very experienced
30 officers such as yourself, but acting assistant
31 commissioners, to have some examples nominated there about
32 the types of matters that might fall into that category so
33 they can have a framework in which to consider what the
34 public interest considerations might be?

35 A. I can tell you the cohort of assistant commissioners,
36 and particularly those that have relieved a lot, are
37 exposed to a lot of information sharing, like artificial -
38 when I say "artificial", information that's not documented.
39 And that's - I suppose that's that relationship as the
40 senior executive, the objective is to share experiences
41 with a view of enhancing capability and performance.

42
43 I mean, history has shown that if there is a best
44 practice process in place, it's certainly been beneficial
45 to individuals. But to do it for this - because there is
46 that discretionary power, or the discretionary capability,
47 should I say, for the region commander, two region

1 commanders may look at the situation differently.
2

3 Q. Yes.

4 A. The one thing I would hate to see is a region
5 commander just declaring every matter as a critical
6 incident as opposed to actually doing what they get paid
7 for, and that's to be a region commander, to consider all
8 the information, and to make the appropriate declaration or
9 not declaration, or even consider it - that it doesn't even
10 come near, you know, a critical incident.

11

12 Q. But accepting everything that you say about that, just
13 coming back to my question, can I suggest that some
14 examples might assist. For example, someone like Acting
15 Assistant Commissioner Chapman, who was in the role on an
16 acting basis, to understand the nature of what that
17 particular limb might extend to, given that we know those
18 types of critical incidents are extremely rare?

19

20 MR GOLLAN: I object. He can't say what would have
21 influenced Ma'am Chapman's view of the world.

22

23 MS SULLIVAN: That's not the import of the question.

24

25 MR GOLLAN: It can be put as "Do you think it might assist
26 those who have got access to material", as opposed to the
27 individualisation of Ma'am Chapman.

28

29 MS SULLIVAN: But the point of referring to Ma'am
30 Chapman was that --

31

32 MR GOLLAN: Well, there is -- -

33

34 MS SULLIVAN: Can I finish my response? Was to indicate
35 that she was acting in that role and therefore not
36 a permanent assistant commissioner who might have exposure
37 to this function on a frequent basis, as this officer did
38 and does.

39

40 MR GOLLAN: There is no adversarial inquiry in any forum
41 that would suggest that a witness is in a position to tell
42 you about what the state of mind of another person is,
43 particularly in circumstances where the hypothesis could
44 have been put to Ma'am Chapman and was not.

45

46 MS SULLIVAN: I'm still unclear --

47

1 THE COMMISSIONER: I don't understand that to be the point
2 of the question, I think, but maybe if we take Ma'am
3 Chapman's name out of the --

4
5 MS SULLIVAN: Yes, I'm very content to - thank you.
6

7 THE COMMISSIONER: -- question, Ms Sullivan, and reframe
8 it in terms of an inexperienced assistant commissioner who,
9 sorry --

10
11 MS SULLIVAN: Who may be acting in the role?
12

13 THE COMMISSIONER: Yes, an acting role.
14

15 MS SULLIVAN: Q. The proposition is a basic one, it's
16 just that there is some guidance provided in the second
17 sentence there: Do you agree?

18 A. Correct.
19

20 Q. I'm just suggesting that it may assist those who, in
21 particular, might be acting in the role, to understand the
22 types of matters that that has picked up; do you agree?
23

24 A. That's a double-edged sword. If there is the
25 opportunity for personal engagement where they can do -
26 have the opportunity for exploratory questions, I think
27 that's possibly - yeah, it's a good thing. But if it is
28 a documented, like, dot point as to why or why not, I think
29 the risk there is there's a lot of information that may not
30 be contained in that document. So I would hate to see
31 a mindset, say, that they are relying on this example. And
32 that's why it's - that whole function of the determination
33 or not determination is very complex, as a region
34 commander, and I certainly don't take that lightly.

35 Q. Yes. Thank you. That's a helpful indication. In
36 light of that, perhaps a reference to certain examples with
37 then underscoring or highlighting the need to particularly
38 discuss a matter that may fall into this category, given
39 the complexities you've referred to?

40 A. Yes, I mean, they - the homicide do it all the time.
41 They have case studies that they pull apart, but that's in
42 the learning environment, not so much at the time of making
43 the decision.

44
45 Q. But my point is, given the rarity of these matters,
46 it's difficult for information to immediately be available
47 to an acting assistant or acting region commander in

1 relation to this category - there are only three, since
2 2017; do you agree?

3 A. Sorry, what's the actual question?

5 Q. Well, the rarity of these matters means that it's
6 difficult for the matters that have been declared to be
7 known by way of example to someone who is acting as
8 a region commander?

9 A. Oh, that - yeah, absolutely. If there's only three of
10 them, yeah.

12 Q. So it may assist to --

13 A. It may. Yes.

15 Q. -- set out those matters or provide some examples?

16 A. But it has to be - it has to be tempered with the
17 broader sense of exploring the whys and why nots.

19 Q. Yes.

20 A. I think there are dangers associated to it just being
21 a reference document.

23 Q. Yes. Understood.

24 A. Yes.

26 Q. Thank you. That's helpful.

28 THE COMMISSIONER: Q. Can I ask, Assistant Commissioner,
29 you said that you wouldn't want the guidelines to be too
30 prescriptive so that people felt that only - you know,
31 these examples are the only examples?

32 A. Specific to that paragraph.

34 Q. To that paragraph, if I understood your evidence, and
35 that, instead, you would like it to prompt almost a series
36 of questions, "Think about these options", and then again
37 prompt a new assistant commissioner or an acting assistant
38 commissioner with less experience to have further
39 discussions - have I understood your evidence correctly?

40 A. To get the benefit out of that proposal, yes.

42 Q. Who would an acting assistant commissioner turn to, or
43 who would you turn to, if you were uncertain about whether
44 to declare something a critical incident, particularly in
45 that public interest kind of category?

46 A. Sure. So my first port of call would be my
47 professional standards manager.

1
2 Q. Yes.

3 A. Because bread and butter, and it would be - obviously,
4 the decision-making rests with the region commander, but
5 that doesn't mean that you can't use them as a sounding
6 board, and I use my own experience - I think I relieved for
7 about two years as an assistant commissioner in various
8 locations, and I would often rely on that person. But
9 there is the scope for the individual to reach out to
10 another substantive region commander, and that often is the
11 case, and that's as a result of relationships being built,
12 or, in fact, they could reach out to the deputy
13 commissioner, if that's the case.

14
15 The benefit --

16
17 Q. So someone more experienced --

18 A. Yes, but that --

19
20 Q. -- and more senior sometimes or equivalent - a peer?
21 A. Yes, that they could feel comfortable having these
22 conversations with.

23
24 Q. Sorry, was there anyone else? Did I cut you off?

25 A. No, no, no, that would be - I mean, if they've got
26 contacts with professional standards it may be, in fact,
27 them, but it all depends on the relationships the
28 individual's built. I've - I'm speaking from a personal
29 point of view.

30
31 THE COMMISSIONER: Thank you.

32
33 MS SULLIVAN: Q. Coming now to your involvement in
34 relation to this particular incident --

35 A. Mmm-hmm.

36
37 Q. -- so as set out in your section 54 response, you
38 first - you weren't here at the relevant time?

39 A. I was on leave --

40
41 Q. You were, in fact, on leave?

42 A. -- overseas.

43
44 Q. What period were you on leave for?

45 A. My annual leave - well, it says - my annual leave
46 record says for, I think, 3 January through to the 28th,
47 but because it was so close to Christmas, I think it may

1 have even been a Saturday/Sunday, so I'm really out of play
2 from about 1 January. Flew out of the country on 3 January
3 with my family and I think I returned back maybe three,
4 four weeks later.

5 Q. And who would --

6 A. So I wasn't aware, not even reading in - usually
7 there's something in the media that I would have picked up.
8 I'm not saying being critical incident, but under this
9 case, a homicide investigation, I would expect, would have
10 had some media publicity.

11 Q. And is it correct that Acting Assistant Commissioner
12 Driver was the commander during that period?

13 A. I believe so, yes. He was one of my superintendents
14 and did the bulk of the relieving. That's why I'm assuming
15 that he was the one that did the relieving.

16 Q. And you didn't get any hand-back --

17 A. I got a hand-back but no reference to this.

18 Q. No reference. And you haven't found any records in
19 relation to this matter?

20 A. No, not in mine.

21 Q. And for reasons explained in your response, you didn't
22 ask any staff about their knowledge of this matter in
23 connection with these proceedings?

24 A. No, post receiving the 55 and the 54, no.

25 Q. Thank you. So we know that you received the
26 correspondence from LECC in June 2023; that's right?

27 A. Yes. Yes.

28 Q. And what did you do? And let's go to the letter, just
29 to refresh your memory. This is your response, tab 77,
30 exhibit 29C, the letter is at barcode 637, if we can bring
31 that up.

32 A. That was my letter to [REDACTED]. As in the outcome
33 of it, or the letter that we received?

34 Q. We'll just step it through so everyone has access to
35 this material. Firstly, we'll bring up the letter from
36 LECC that annexed an article. So that's the letter from
37 [REDACTED] to Detective Superintendent Simpkins --

38 A. Yes.

1 Q. -- of professional standards command. You can see
2 that there's an article or you're aware that there's an
3 article, if we scroll through two pages. That's the
4 correspondence that you ultimately responded to; correct?
5 A. Correct.

6 Q. Then if we could go, please, to barcode 644, so this
7 is what is known as a Godfrey report?

8 A. Yes.

9 Q. And we see there a letter or a note from Detective
10 Inspector Harris dated 14 June 2023 raising for the
11 consideration of the chain of command this letter from LECC
12 of 7 June 2023; do you see that?

13 A. Correct.

14 Q. And it comes to you, if we turn over the next page, on
15 16 June 2023.

16 A. Yes.

17 Q. Can you just summarise for us, if you would, your
18 thinking as at June 2023 in relation to responding to this
19 LECC letter?

20 A. Okay. So the - I suppose to put it in some context,
21 Detective Superintendent Paul Simpkins was in charge of the
22 investigation team and then Tony Harris was the inspector
23 that was one of his 5/6 inspectors. So the correspondence
24 would have gone through them, I would suggest primarily
25 because of their role in that whole critical incident
26 investigative process.

27 As further inquiries had to be made, he escalated it,
28 the report, the Godfrey report, through to myself and the
29 best person I found to provide that advice would be the
30 person who had the delegation for declaring it, or not
31 declaring it, which is the normal region commander. I've
32 got Mr McKenna's name there, because he was the substantive
33 region commander, and then I forwarded it on to them to
34 provide me advice in regards to the request from
35 [REDACTED].

36 Q. All right. Thank you. And so then you receive
37 a response, don't you, from Acting Assistant Commissioner
38 Chapman, dated 26 June 2023, if we go to barcode ending
39 646?

40 A. Yes.

41

1 Q. You recall receiving that and reading that document?
2 A. I did.

3
4 Q. Can I just ask, as a matter of form, if you go to the
5 second page of that document, 647, do you see,
6 "Commander" - number 2, it's been noted by, I should say,
7 Acting Deputy Commissioner Greentree, but then
8 "2. Commander professional standards command", that's you?
9 A. Yes, I was commander professional standards command.

10
11 Q. But there is no note or acknowledgement by you in
12 relation to this Godfrey?

13 A. So I originally - so this was the report that,
14 I suppose, was initiated by professional standards command.
15 So the loop had been closed after it had gone through to
16 the acting region commander, obviously Tracy Chapman, and
17 then escalated to Brett Greentree, who was acting as the
18 deputy - it's just the chain of command and it's come back
19 to me.

20
21 It stayed with professional standards because we've -
22 there was no further comment other than the next step of
23 myself making the notification to [REDACTED] in regards to
24 her request for a copy of the 1179.

25
26 Q. All right. We'll come to that response, but
27 thank you. Now, is it correct that you have no
28 recollection of discussing Acting Assistant Commissioner
29 Chapman's response at the time?

30 A. I don't - because it was two years ago, I don't recall
31 picking up the phone and talking to her. She's provided
32 me - and I certainly didn't pick up the phone and talk to
33 her in advance of getting the report, because I actually
34 thought it was Pete McKenna that was going to provide the
35 response. Again, I don't recall having a conversation
36 after I've received this, and certainly haven't spoken to
37 her since receiving the 55 or the 54 and the summons.

38
39 Q. Thank you. Nor do you recall, I take it, any
40 discussion with, for example, Detective Inspector Harris?

41 A. Possibly, and I think I referenced in it that I may
42 have, it is possible that I've had conversations with staff
43 within professional standards command. I certainly don't
44 recall them specifically but it potentially would have been
45 either my professional standards manager, whoever was doing
46 that job at the time, and maybe one of the investigators
47 that handles a lot of these critical incidents, but

1 again --

2

3 Q. That would be very standard for you to have those

4 interactions?

5 A. Well, that's right, because it - well, again, it's

6 like me tapping into my PSM to determine a critical

7 incident. It just assists me with my decision-making and

8 is there anything else that I may have missed.

9

10 Q. Okay, thank you. We're going to go into the substance

11 of the response. This is at --

12 A. My response or --

13

14 Q. No, Assistant Commissioner Chapman. I will take you

15 to your response in due course.

16 A. Yes.

17

18 Q. This is at barcode 646, the page, thank you. So we

19 see there under "Background" - it should be in front of you

20 on the screen too, if that's easier?

21 A. Yes.

22

23 Q. Second paragraph:

24

25 *Just after 1900 on 3rd January 2023 police*

26 *received a triple zero call from a male*

27 *advising a woman was being assaulted behind*

28 *the Salvation Army in Ballina. Attempts to*

29 *call male back were unsuccessful.*

30

31 Just pausing there, you know nothing, I assume, about this

32 particular location in Ballina?

33 A. No, no.

34

35 Q. The Salvation Army?

36 A. No, I still couldn't - if you asked me for a map,

37 I couldn't point it out, no.

38

39 Q. You don't recall drawing up a map to try and get

40 bearings in relation to this particular premise at the

41 time?

42 A. No, because my role wasn't to investigate the matter.

43

44 Q. Okay. What was your role?

45 A. Well, primarily to respond to the correspondence, and

46 based on the response that I got, to do, I suppose,

47 a review of the other material that I had at my disposal,

1 which was the CAD, the guidelines, and, of course, her
2 response.

3
4 Q. All right. It goes on:

5 *Police at the time were unable to*
6 *immediately respond however at*
7 *approximately 1955 police attended the*
8 *location and were unable to identify any*
9 *incident or the original informant who may*
10 *have directed police to a more specific*
11 *location.*

12
13 Q. You see that?

14 A. Mmm-hmm.

15
16 Q. Did you have an understanding, just pausing there,
17 that this was a priority 2 incident?

18 A. No. No. I - no. You're talking two years ago. At
19 that time, I would have looked at the CAD details.

20
21 Q. Yes.

22 A. But I wouldn't have - I couldn't tell you whether
23 I saw - what - whether there was any reference whether it
24 was 2 or 3.

25
26 Q. There's not in this document, but you looking at the
27 CAD incident log would have indicated to you what priority
28 it was?

29 A. I've got the material here.

30
31 Q. Yes.

32 A. I can't specifically say that - I mean, we're talking
33 two years ago - whether I made it a point that I noticed it
34 was a priority 2 or a priority 3 or a priority 1.

35
36 Q. It wouldn't be a priority 1?

37 A. No, but I'm saying - my point is I can't tell what you
38 priority it was, because you're asking me something for two
39 years ago.

40
41 Q. Sure. But in preparing for these proceedings you've
42 reviewed the material that you have provided, haven't you?

43 A. Yes.

44
45 Q. Including the CAD log?

46 A. Yes. Yeah.

1 Q. And that indicates the priority of the job, doesn't
2 it?
3

4 A. Well, can I refresh my memory from the document?
5

6 Q. But you don't know sitting there now?
7

8 A. No, I couldn't tell you.
9

10 Q. Isn't that an important detail?
11

12 A. Well, it is a detail. I think the proceedings are
13 important. But you've got to understand, like, I had
14 another critical incident that I dealt with over the
15 weekend. We've had a protest over Sea Cliff Bridge, we've
16 had high risk matters. So it is - all this information is
17 important. You've asked me a specific question. I mean, I
18 could answer it by having a look at the details now.
19

20 Q. It's a priority 2 job.
21

22 A. Okay.
23

24 Q. We'll come to the CAD. It goes on:
25

26 *At approximately [12:30] on 4th January
27 2023 police were alerted to attend
28 a deceased female at the Salvation Army
29 store in Ballina. The deceased's partner
30 was arrested and charged with murder.*

31 *On this date, I was the Acting Region
32 Commander for Northern Region. I did not
33 declare a critical incident.*

34 Then there's a reference to the LECC correspondence?
35

36 A. Yes.
37

38 Q. And the second sentence states this in connection with
39 the Liverpool matter on 29 May 2023 - that's the death of
40 Tatiana Dokhotaru referred to in the article?
41

42 A. Yes.
43

44 Q. It goes on:
45

46 *This correspondence suggests it is
47 difficult to reconcile the non declaration
for the Ballina matter when there has since
been a decision to declare a critical
incident in Liverpool.*

1
2 Do you see that?
3 A. Yes.
4

5 Q. Then Assistant Commissioner Chapman provides her
6 comment, doesn't she?
7 A. Yes.
8

9 Q. She states this:
10

11 *During the course of the morning of*
12 *4th January 2023 this incident was not*
13 *raised with me with respect to a critical*
14 *incident consideration by any other*
15 *officers.*

16 A. Yes.
17

18 Q.
19 *Notwithstanding, I did turn my mind to the*
20 *circumstances of this incident with respect*
21 *to critical incidents.*

22 So pausing there, she's plainly conveying in this note that
23 she considered whether or not it was a critical incident;
24 do you agree?
25 A. She turned her mind to it, yes.
26

27 Q. That's consideration, I suggest?
28 A. Well, turning your mind to it, I mean, when you -

29 well, my terminology is her terminology. If I was to say
30 I turned my mind to something as opposed to I considered
31 it, in this respect, my consideration would be in line with
32 the guidelines. With - I can't say what was going through
33 Tracy's mind, but I'm - I'm - well --
34

35 Q. Pausing there --
36 A. -- I don't want to say I'm assuming --
37

38 Q. -- you can say that she has indicated in this record
39 that she, "did turn my mind to the circumstances of this
40 incident with respect to critical incidents". I suggest
41 that is plainly her note about considering whether or not
42 this was a critical incident; do you agree?
43 A. Whether - well, that's what she says, so I'm not going
44 to say anything to the contrary.
45

46
47

1 Q. Thank you. She sets out the mandatory criteria?
2 A. Yes.

3
4 Q. And she goes on to say:

5 *I am of the view that none of these*
6 *circumstances were met.*

7
8 A. Yes.

9
10 Q.
11 *I am aware that I may also declare*
12 *a critical incident if I have other grounds*
13 *for considering it is in the public*
14 *interest. At the time I caused suitable*
15 *inquiries to be made into the circumstances*
16 *of police attendance in order to determine*
17 *a course of action.*

18
19 You saw that?

20 A. Yes.

21
22 Q.
23 *I was satisfied with the information*
24 *provided by Superintendent Tanner with*
25 *respect to the initial delay in attendance*
26 *following his thorough and detailed review*
27 *of CAD and all activities being undertaken*
28 *at the time by rostered police.*

29
30 Do you see that?

31 A. Yes.

32
33 Q. Just pausing there, Superintendent Tanner is the
34 police district commander, isn't he?

35 A. Correct. Oh, he was at --

36
37 Q. At the time?

38 A. Yes.

39
40 Q. Thank you. So there's not a - just as a function of
41 his role, there's not an independent review of those
42 matters given that role; do you agree?

43 A. Well, it's not independent because he's the commander,
44 yeah.

45
46 Q. Thank you, yes:

1
2 *I was also briefed by Superintendent Tanner*
3 *with respect to the attendance of police at*
4 *1955 when considering the initial call*
5 *location, and ultimately the location of*
6 *the victim at [12:30]. The initial caller*
7 *indicated rear of Salvation Army,*
8 *Superintendent Tanner advised the victim*
9 *was located at the side, where police*
10 *needed to be taken through 2 gates where*
11 *donation items are kept.*

12
13 THE COMMISSIONER: Hold on a minute, Ms Sullivan, can we
14 just move across to the page --

15
16 MS SULLIVAN: 647, thank you:

17 Q.

18
19 *The environment made it difficult to locate*
20 *the victim and police needed to be directed*
21 *to her in order to locate her.*

22
23 Just pausing there, did you ever have access to any of the
24 crime scene photographs?

25 A. No.

26
27 Q. Didn't ask to see those?

28 A. No.

29
30 Q. That's not part of your review?

31 A. Correct. It's not part of my function. The homicide
32 team would have been investigating that.

33
34 Q. All right. And did you have any understanding as to
35 whether this priority 2 job had other competing P2 jobs at
36 the time that you conducted your review?

37 A. Only that - the reference that she'd made that
38 Mr Tanner had looked at the reasons why there was a time
39 gap from the call to when they arrived, and that both he
40 and she, I believe, were satisfied with those reasons.

41 That's --

42
43 Q. So the only CAD jobs that you looked at related to
44 this incident?

45 A. Yes.

46
47 Q. Not anything else that was occurring at the time?

1 A. No. No.

2
3 Q. Why wasn't that part of your review in relation to the
4 delay?

5 A. Well, it was - when I say "my review" --

6
7 Q. Yes.

8 A. -- there's no structured review process in
9 professional standards command when we talk about
10 declarations or non-declarations. A reason - when I say
11 "reviewed", I reviewed the response. So bearing in mind
12 the catalyst was [REDACTED]'s letter for a copy of the
13 1179, I then took it upon myself to look at the response
14 provided by Assistant Commissioner Chapman and other
15 supporting documents that I've referred to.

16
17 So I'm not reviewing the whole investigation. That is
18 not my - I didn't see that as my function. I just wanted
19 to see - I just wanted to be convinced that the course of
20 action taken by this region commander and the explanation
21 that was provided is consistent with the guidelines.

22
23 Q. All right.

24 A. So I didn't go into details of checking crime scene
25 logs, statements, talking to police or anything like that.
26 That's not my function.

27
28 Q. So it was a limited review that you conducted?

29 A. Correct.

30
31 Q. All right. Now, there's certainly emphasis in this
32 note, isn't there, on difficulties identifying the location
33 of Ms Lucena?

34 A. Yes.

35
36 Q. There's no reference, is there, to whether or not
37 police exited - that is, the attending police exited -
38 their vehicle at any point in time; do you agree?

39 A. No, and I wouldn't expect any detail to be contained
40 in a Godfrey report from the region commander.

41
42 Q. You wouldn't expect that detail?

43 A. No.

44
45 Q. Why not?

46 A. Because she's just - I just wouldn't expect it - to
47 her to go into such detailed explanations on what the

1 police did or didn't, the fact that she's the region
2 commander, she's got the delegated authority, we've got
3 critical incident guidelines there to assist her. She's
4 provided me with a - I would say advice, response, to the
5 considerations, and then I've considered that in line with
6 the guidelines and I was satisfied that she had taken
7 appropriate action. It's not up to me to look at what the
8 police did or didn't do.
9

10 Q. Yes.

11 A. Or, I suppose, the detail of the homicide
12 investigation.

13 Q. It wasn't relevant for you to know whether or not
14 police had exited their vehicles at any point in attending
15 this incident?

16 A. I - I didn't - well, no, I didn't think it was
17 important for me to know. I mean, I could ask for a whole
18 copy of the investigation, the brief of evidence, which was
19 six months old. The objective was for me to be satisfied
20 of - the objective was to respond to [REDACTED]'s request
21 for the P1179, and then she's provided us a response, and
22 then I wanted to satisfy myself, as a commander of PSC,
23 that she was acting within the, I suppose, the directions
24 or the guidance of the critical incident guidelines, and
25 I was satisfied with that.
26

27 Q. Do you have an understanding, as you sit here giving
28 evidence today, whether the officers ever alighted from
29 their vehicles?

30 A. I do now.

31 Q. What's your understanding?

32 A. That they didn't get out of the vehicles.

33 Q. And what's your view about that?

34 A. Well, it's a - I don't feel comfortable with answering
35 it and I preface that with it's very - I don't know the
36 full details as to why they didn't get out of the vehicle.
37 I don't know - I don't have an understanding of the
38 footprint. I do know that: anonymous caller; there was
39 some time to get to the location; that they had patrolled
40 the area; and that they didn't have capability to go back
41 to the anonymous caller to seek further information. But
42 I didn't have any details as to the - you know, any
43 reasons. I mean, what was playing on their mind, what
44 other competing jobs they may have had. There's - I could
45
46
47

1 sit here for a number of minutes and talk about other
2 factors like their safety and wellbeing considerations.
3 I don't know. There's a lot of things that play through
4 individuals' minds when they - especially dark night,
5 remote location. The regional areas you've got to
6 understand --

7
8 Q. Just pausing there, the relevant incident occurs at
9 dusk, so there is light. There is ample light.

10 A. Oh, okay. But there is limited resources as well.

11
12 Q. Just pausing there, the VKG audio indicates that these
13 officers were not under time pressure to respond to other
14 jobs at this time. This was the only P2 job during the
15 period 6.38pm to 7.41pm.

16 A. Okay. And I suppose that's the point of what I'm
17 saying, is I don't know what's playing on these
18 individuals' minds. So I don't know whether, you know, was
19 it or it wasn't important for them to get out. I don't
20 know.

21
22 Q. Just pausing there, those are all relevant matters
23 that inform the issue of whether that police response was
24 adequate; do you agree?

25 A. Well, that would be something that the assistant
26 commissioner as the region commander needs to consider.

27
28 Q. That's not the question, though. Those are all
29 matters that would inform whether or not that police
30 response was adequate, do you agree, all the matters
31 that --

32 A. They would - they would assist in - they would assist,
33 absolutely.

34
35 Q. All right. And if you were the region commander,
36 those are the matters that you would certainly want answers
37 to?

38 A. That - you know, I can't say yes or no to that,
39 because I know - like, I used Friday's examples, it doesn't
40 mean every other assistant commissioner would be asking the
41 same questions. That doesn't mean they did a bad job.

42
43 Q. That's not what I'm asking you. I'm asking about your
44 thinking. You would want to know, as region commander,
45 about those matters in order to inform your decision?

46 A. No, I - I can't say yes or no to that because I'm not
47 asked a question at that time, with limited information.

1 So I'm not comfortable in saying "Yes, that's exactly what
2 I would like to know". My position is, you know, I'd have
3 to be put in that situation at that time, talking to the
4 individual officers or the commander, to know what
5 questions I want to ask or not. You don't get a manual on
6 the list of questions to ask when you're considering
7 critical incidents; you just get this guide.

8
9 Q. So you didn't see it as any function of your role to
10 consider the adequacy of that police response in relation
11 to whether or not the officers alighted from their vehicle?
12 A. Well, consideration would have been the response of
13 the police, yes. I can't say yes or no to whether I would
14 have asked the question about whether they got out of the
15 car or not at that time.

16
17 Q. If this scenario presented now, would you ask those
18 questions?

19 A. Under the circumstances, maybe. I can't say yes or
20 no, unless it happened to me. Like, ask me questions about
21 my considerations on Friday night, I'll give you all the
22 answers in the world. But with this particular one,
23 hypothetically, until it's actually thrown to me, I can't
24 say yes or no.

25
26 THE COMMISSIONER: Q. But you were able just then,
27 Assistant Commissioner, to go through a series of factors
28 that you already had in mind might be relevant to the
29 officers' decision-making at the time?

30 A. Yes.

31
32 Q. So lights, safety --

33 A. And that was just a sample, Commissioner.

34
35 Q. -- other job.

36 A. Yeah.

37
38 Q. So presumably if the answers to those things were -
39 you know, whether they had done a patrol, I think, of the
40 area?

41 A. Yes.

42
43 Q. Do you mean a drive-past patrol?

44 A. A patrol is - as in - in their response, they've gone
45 to the location that they believe it - to the best of their
46 information, and that they've patrolled the area. That
47 could mean driving, that could mean walking.

1
2 Q. So "patrol" doesn't necessarily indicate in a car; it
3 could be on foot?

4 A. That's correct. We actually used to have a foot
5 patrol section, so --

6
7 Q. Okay. So in that sense, those are all the questions
8 that clearly come to your mind, even sitting now, without
9 the full details of the kinds of things that would be
10 relevant to whether the police response at the time was
11 adequate?

12 A. Yes.

13
14 Q. And others you've indicated, there'd be other things
15 you'd be asking?

16 A. Yes.

17
18 Q. And so would you expect another region commander, who
19 is clearly an - would necessarily be someone of
20 considerable policing experience --

21 A. Experience, yes.

22
23 Q. -- to have run through a similar kind of checklist in
24 their mind?

25 A. I would expect, yeah, and I'd be very confident that
26 Acting Assistant Commissioner Chapman would have had a bit
27 of a checklist in her mind in regards to these are the
28 important factors. And sometimes you hang up the phone and
29 then you think, "I'll go back and ask a further question",
30 or you get - you add - you give further consideration to
31 the responses you have been provided and then you might ask
32 some further questions.

33
34 Q. Presumably, part of that might be that you'd see
35 things if you were on foot that you wouldn't necessarily
36 see from the car?

37 A. It may be the case, yes.

38
39 Q. But there might be times when it's not safe to get out
40 of the car?

41 A. That's right. Or you're limited to where you can go,
42 you know what I mean? If it's - if, for example, the
43 complaint was in a private house --

44
45 Q. Right.

46 A. -- a patrol past the front of the - the front road
47 will only give you limited information.

1
2 Q. It tells you not much probably.

3 A. Yes. But it's - a lot of it's - and when they're out
4 of the road driving, they are doing this - it's not
5 a documented risk assessment, but they are looking at all
6 the information --

7
8 Q. Balancing it up, they're using their police
9 experience?

10 A. And part of that is - I know you mentioned it was
11 dusk, but the regional and remote locations, sometimes
12 they're the only officers that are going to be there for
13 some period of time, so the cavalry may not be just coming
14 over the hill. And that - I'm not saying that was the
15 issue, the case, but it may be a consideration playing on
16 their mind. It may not have been.

17
18 Q. So there might be some streets in some locations where
19 you wouldn't get out of the car even if there's two of you?

20 A. Yeah, yeah, absolutely. Only from an officer safety
21 point of view, yeah.

22
23 Q. But then there'd be other places where you may know
24 the location --

25 A. Absolutely.

27
28 Q. -- and you would be quite confident that you could get
29 out, shine a torch around, and there would be no issue?

30 A. Yeah.

31 THE COMMISSIONER: Okay.

33 MS SULLIVAN: Q. When did you first become aware that
34 the officers didn't leave their vehicles?

35 A. Not at this time. Not while I was at professional
36 standards time.

38 Q. No?

39 A. So it was probably - oh, yeah, I couldn't tell you.
40 But I am aware that they didn't get out of the vehicle.
41 Has it been in the media?

43 Q. Yes.

44 A. Maybe it was in the media that I may have seen it.

46 Q. Thank you.

47 A. But it's certainly of recent times. It wasn't two

1 years ago when I was at PSC.
2

3 Q. Thank you. Now, continuing on with the memorandum or
4 the Godfrey report, it goes on, this is Assistant
5 Commissioner Chapman:

6 *I was satisfied with the information and
7 review provided by Superintendent Tanner.
8 I also requested that he ensure the DV
9 homicide review by State Crime Command
10 include assessing all matters including the
11 lead up to locating the victim. On this
12 basis I was satisfied that there would be
13 suitable independent review and any matters
14 arising would be treated if appropriate
15 under Part 8A of the Police Act.
16 I maintain this position.*

17
18 Do you see that?

19 A. Mmm-hmm.
20

21 Q. What's your understanding of this DV homicide review
22 process by the state crime command?

23 A. Oh, I know state crime command is an independent
24 criminal investigation body within the organisation. They
25 are usually the more experienced organised - they
26 investigate serious organised crime. They would have
27 deployed the homicide squad, and I used to work in homicide
28 squad, but I'm assuming that there must be another
29 component, being the reference to the "DV homicide review".
30

31 Yeah, so I - I know we've got a domestic violence
32 superintendent now, Danielle Emerton, and we've got - we've
33 got a different structure at DV now than what was in place
34 when I was in there. So I'm - from what she's written in
35 her report, I'm expecting that she's aware that there's
36 a DV - a DV component to the homicide investigative team.
37

38 Q. All right. Had you come across a DV homicide review
39 process before whilst were you at PSC?

40 A. No.
41

42 Q. So this is the first time you've been aware of this as
43 an avenue for sort of independent review of a police
44 operation as it were?

45 A. I - it's the first time I've heard the reference to
46 the DV homicide review.
47

1
2 Q. Did you, as part of your review, consider following up
3 what the outcome of that DV homicide independent review
4 was?

5 A. No.

6
7 Q. Why not?

8 A. Well, that wasn't part of my function. I didn't see
9 it as part of my function.

10
11 Q. Just explain that, Assistant Commissioner.

12 A. Well, again the catalyst for this was to call for
13 a P1179, not to conduct a full investigation as to why or
14 why not the region commander did or did not declare
15 a critical incident review. Part of the - part of the
16 process was to call for a response or advice from that
17 region commander, which I did.

18
19 Q. Yes.

20 A. It's not my - I don't see it as my function as the PSC
21 commander to pull apart her process.

22
23 Q. Yes.

24 A. She's a fellow assistant commissioner, in my view.

25
26 Q. Understood. All right. Let's go now - and just for
27 completeness, the final paragraph is Assistant Commissioner
28 Chapman's response to the suggestion that there may be
29 a lack of consistency in relation to the decision-making in
30 the Ballina matter and the decision-making in the Liverpool
31 matter. Do you see that she responds and sets out her
32 views there?

33 A. Which paragraph is this?

34
35 Q. That's the penultimate paragraph, where she --

36 A. The "I note the correspondence"; is it that one?

37
38 Q. Yes, that's right, just for completeness, so you're
39 aware of that?

40 A. Yes.

41
42 Q. Let's go now to your response, please. So this is the
43 final page of tab 77, exhibit 29C, barcode 689. All right.
44 So that's your response to [REDACTED]; correct?

45 A. The letter, yes.

46
47 Q. Do you see the date, 29 June 2023, at the top?

1 A. Yes.

2

3 Q. And then we have a date of 4 July 2023?

4 A. Yes.

5

6 Q. The correct date is 4 July 2023; is that right?

7 A. You know what, the - I would have had the policy
8 people draft the letter.

9

10 Q. Yes.

11 A. And then I do the signature and title block. So the
12 4 July would be the correct one. They would have put the
13 date that they typed it on the top. It's my oversight.
14 I probably should have deleted that.

15

16 Q. Okay, that's all right. No, thank you. When you say
17 "the policy people" so one of your staff has drafted this
18 letter for your consideration?

19 A. Yes, so we've got a section that deals with all the
20 correspondence going in and out of LECC. So --

21

22 Q. Before a letter goes out, you have to review it and
23 make sure you're satisfied with it, of course?

24 A. Yes, correct.

25

26 Q. And that it is accurate?

27 A. Yes. It's my signature, yes.

28

29 Q. All right. Now, this correspondence thanks
30 ██████████, firstly, for her letter, which referenced the
31 ABC media report. That's the first sentence. Then you
32 state:

33

34 *Acting Assistant Commissioner Tracy Chapman
35 APM was the Acting Commander of Northern
36 Region at the time. As you have outlined,
37 Acting Assistant Commissioner Chapman did
38 not declare this incident as a critical
39 incident.*

40

41 Do you see that?

42 A. Yes.

43

44 Q.

45 *I have reviewed the matter and I am
46 satisfied the Region response was
47 appropriate.*

1
2 Pausing there, you are solely referring to whether or not
3 Acting Assistant Commissioner Chapman's decision not to
4 declare a critical incident was appropriate?

5 A. Yes.

6
7 Q. It's difficult, isn't it, for you to form that view
8 without access to all the information that she had to
9 inform her decision; do you agree?

10 A. I was satisfied with the information that I had, and
11 that the decision she made was the appropriate decision
12 based on the guidelines and the information that she had,
13 and the information that she provided me.

14
15 Q. But you never saw, for example, the statements from
16 the two responding police?

17 A. No, I didn't.

18
19 Q. I just want to put the proposition again that your
20 satisfaction that the region response was appropriate is
21 problematic in circumstances where you don't have all the
22 relevant information?

23 A. I was very comfortable with the decision that I'd made
24 and the response that I'd provided.

25
26 Q. All right. It goes on:

27
28 *The incident resulted in a prosecution for
29 homicide subsequently the matter will be
30 reviewed by the ODPP, Supreme Court of NSW
31 and ultimately the New South Wales Coroner.*

32
33 You see there?

34 A. Yes.

35
36 Q. What did you mean to convey by referring to those
37 reviews?

38 A. It just means that there's an independent body that's
39 going to be looking at all the information, all the
40 statements provided, all the photographs, all the - and if
41 there is - if there's anything that comes out that
42 constitutes misconduct or anything like that, that will be
43 raised and that will be addressed by - so that's - I tried
44 to give [REDACTED] comfort that there was independence,
45 even though this was six months later, that somebody had
46 been charged, that it's going through the process and there
47 would be the independent body that would be conducting the

1 judicial process.

2

3 Q. Just pausing there, the Supreme Court and the DPP
4 don't have a mandate in relation to any systemic issues
5 that might arise concerning police practice?

6 A. No, but you would have police officers in the court at
7 the time, you'd have the officer in charge, or --

8

9 Q. Yes. But pausing there, he's not telling
10 Justice Rothman about systemic issues in relation to the
11 investigation, is he?

12 A. No, no, no. But if there's any misconduct, they've
13 got an obligation to raise it.

14

15 Q. All right. But part of the critical incident is to
16 identify systems issues, isn't it, systems issues and
17 improvements?

18 A. Part of a critical incident investigation, yes.

19

20 Q. And the office of the state coroner defers, under the
21 Coroner's Act, any consideration of a coronial matter,
22 until such time as the criminal proceedings have been
23 finally determined?

24 A. Correct. Yes, correct.

25

26 Q. So that often means there can be a significant delay
27 in identifying --

28 A. Yes.

29

30 Q. -- systems issues, some years?

31 A. Yes. But that doesn't stop police, if they identify
32 systems issues on the day of a homicide investigation, to
33 put steps in place to rectify.

34

35 Q. All right.

36 A. We don't have to wait two years until the homicide
37 investigation.

38

39 Q. Sure. But those systems issues need to be identified,
40 don't they?

41 A. Yes.

42

43 Q. And it wouldn't be the ordinary mandate of a homicide
44 investigator to identify systems issues, would it?

45 A. No, but it's often the case if they do identify
46 systems issues, they will raise it through their chain of
47 command with a view of improving it.

1 Q. Sure. But it's not their ordinary mandate, is it?
2 A. No, it is not their mandate, no.

3
4 Q. All right. Now, it goes on:

5
6
7 As per the critical incident guidelines,
8 the Region Commander has ultimate
9 responsibility for the declaration, of all
10 critical incidents that have occurred
11 within their region?

12
13 A. Correct.

14
15 Q. That's uncontroversial, that's in the guidelines?
16 A. Yes.

17
18 Q. Then you go on to say this:

19
20 I have declined to provide the P1179
21 related to this incident as there is no
22 obligation to do so within the Law
23 Enforcement Conduct Commission Act 2016.

24
25 A. Yes.

26
27 Q. You see that?

28 A. Yes.

29
30 Q. You knew at the time that you wrote that to LECC, or
31 the Commission, that there was no such P1179; correct?

32 A. Yes. Yes, correct.

33
34 Q. Why did you put it in those terms?

35 A. Because if you go to the letter that I received,
36 that's what [REDACTED] asked for. Just bear with me.

37
38 Q. We can pull up her letter at barcode 637 so everyone
39 can follow.

40 A. Okay. Okay. So - oh, the next one?

41
42 Q. So this is [REDACTED]'s letter?

43 A. Yes.

44
45 Q. And you were about to explain why you --

46 A. So obviously the title to it:

*Request for P1179 relating to
a non-declaration of a critical incident in
Ballina in January 2023 as reported in the
media.*

A. Yes.

Q.

On behalf of our Chief Commissioner I am writing to formally request a copy of the Critical Incident

Declaration/Non-Declaration By Region Commander form (P1179), which may have been completed in relation to an incident which occurred in Ballina in January 2023. If there was no consideration given to whether the incident should have been declared a critical incident, I request advice as to whether consideration ought to have been given to making a declaration.

So there was no request as to whether a P1179 had been completed in this letter. She just asked for a copy of the P1179.

THE COMMISSIONER: Q. Doesn't she say "which may have been completed"? She doesn't presume that one's been completed. She, implicit in that, is asking you -- A. But she asks for - my point is she's asked for a copy of it.

Q. Yes, if it has been completed.

A. She doesn't ask me "Was it completed?"

MS SULLIVAN: Q. But then it goes on, Assistant Commissioner:

If there was no consideration to whether it should have been --

So she is plainly contemplated the scenario where such a form might not exist?

A. Yes. And I've answered that question in the letter that I'm - that I've asked for a response from Assistant Commissioner Chapman, and I'm satisfied that the region commander had acted appropriately. I think I'll just reference that answer.

1 THE COMMISSIONER: Maybe if you go back to the response --

2
3 MS SULLIVAN: That's at 689.

4
5 THE WITNESS:

6
7
8 *I have reviewed the matter and I am*
9 *satisfied the Region response was*
10 *appropriate.*

11
12 So the question wasn't to provide her a copy.

13
14 MS SULLIVAN: Q. I'm sorry --

15 A. So "I formally" - sorry - "I formally request a copy
16 of the P1179", I didn't see that as a formal request to
17 answer the question, "Was one completed or was one not
18 completed?"

19
20 Q. Well, you have --

21 A. If that had been asked, then I would have included
22 that in my response.

23
24 Q. Can I just suggest to you that your response plainly
25 conveys that there is a P1179 relating to this incident.
26 That is quite evident from reference to the definite
27 article "the P1179 related to this incident".

28
29 THE COMMISSIONER: Q. Which you have declined to
30 provide.

31 A. "I have declined to provide the P1179 related to this
32 incident". I mean that, could have been interpreted as
33 that, but my objective was to answer the question. She
34 wanted a copy of the P1179. Not the question was whether
35 a P1179 was completed. The second part to the question
36 that I believe I've answered was the consideration given as
37 to whether the incident should have been declared as
38 a critical incident.

39
40 MS SULLIVAN: Q. Why wouldn't you say, "There is no P1179
41 in relation to this incident"?

42 A. I didn't - I - I believe I answered the question that
43 was in the correspondence.

44
45 Q. Can I suggest to you that that formulation is
46 misleading and it's misleading in this respect: it
47 suggests that a P1179 related to the incident exists --

1 A. No, that wasn't my intention.
2

3 Q. -- do you accept that? It may not have been your
4 intention but do you accept now how that formulation is apt
5 to mislead?

6 A. Oh, I still don't believe it's misleading. Because
7 I - I was thoroughly aware that if you wanted the
8 documents - and there was no follow-up over the last two
9 years from the agency, the Law Enforcement Conduct
10 Commission agency, to ask - to further request detailed
11 information in regards to this matter; it was just that one
12 correspondence. Two years later I receive a 54 and a 55.
13

14 Q. Sure. That's a separate matter to what you've written
15 there, can I suggest? And what you've written there
16 conveys the strong indication that there is "the P1179
17 related to the incident" in existence?

18 A. No, I don't agree with that.
19

20 MS SULLIVAN: Nothing further, Commissioner, thank you.
21

22 THE COMMISSIONER: Q. Assistant Commissioner, can I just
23 take you back a little way. I want to make sure that I'm
24 drawing the right inferences in relation to the matter that
25 was declared on Friday, but subject to the possibility that
26 this will be subject to a suppression order. My
27 understanding is that there was some police contact with
28 the person who's deceased --
29 A. Correct.
30

31 Q. -- before - in the - several days prior to her body
32 being discovered, potentially?

33 A. We don't know the time of death. Oh, absolutely
34 yes --
35

36 Q. Prior to her body being discovered?

37 A. Certainly a number of days to discovery of her.
38

39 Q. Yes, and is that link part of your consideration to
40 declaring a critical incident?

41 A. Yes.
42

43 Q. So it was more than simply a body in the back of
44 a police car park, if I can put it that way?

45 A. Well, that was part of it.
46

47 Q. Okay.

1 A. So, looking at the big picture, we've got a vehicle
2 with a body, sure, it's a secured vehicle, but it's been in
3 the car park, close vicinity of the front door. Then the
4 next - and based on that, I didn't declare it as a critical
5 incident. I wanted more information: primarily, had she
6 gone into the police station, had she spoken to the police
7 officer, and then I used that information to assist me in
8 making the declaration of a critical incident.
9

10 Q. Okay. Thank you. And the other question that I had
11 was you also talked then about assistant commissioners who
12 are perhaps acting in the role or less experienced and who
13 they might go to for advice, and you mentioned people that
14 they've got some collegiate relationships with, so,
15 firstly, their professional standards manager?

16 A. Yes.

17 Q. Then perhaps other assistant commissioners that
18 they've got pre-existing collegiate relationships with,
19 experienced assistant commissioners, perhaps the deputy
20 commissioner, to whom they report?

21 A. That's an option.

22 Q. And I'm not sure if I heard you correctly,
23 professional standards command, would you expect --

24 A. No, but if they've got - like, I feel very
25 comfortable, because I'm very connected to a lot of the
26 commanders and inspectors there, to reach in to get their
27 subject matter expert advice to assist us. But they've
28 got - don't forget they've got their professional standards
29 manager, and I don't know the one at northern region, so
30 I can't comment on them, but I speak on behalf of mine
31 who's very experienced, he's been in the role a lot. This
32 is his bread and butter. So I'm very comfortable reaching
33 in to him as well.

34 Q. But I was just thinking professional standards, you
35 said are, effectively, the subject matter experts for the
36 police force on critical incidents?

37 A. Yes, correct.

38 Q. So that would be an option as well for an assistant
39 commissioner to reach in to them, even if they didn't have
40 pre-existing relationships?

41 A. I would say yes, because - maybe - you may not be able
42 to get them, but there is always an on-call inspector, as
43 you well know, for the reviewing component, so --

1
2 Q. And the professional standards manager would have
3 a route in via their --
4 A. Yes.

5
6 Q. -- inspector's equivalent, effectively?
7 A. Yes.

8
9 THE COMMISSIONER: Anything arising from that?

10 MS SULLIVAN: No.

11 THE COMMISSIONER: Thank you.

12
13 Before Mr Gollan asks his client any questions,
14 it might be an appropriate time for a break, and during
15 that break, we will formulate what we had in mind in terms
16 of non-publication orders in relation to the discussions
17 that have occurred about the matter on Friday and discuss
18 those.

19
20 MR GOLLAN: Commissioner, could I also ask that, through
21 your staff, that I get a copy of one of the 1179 - just in
22 its pro forma form.

23
24 THE COMMISSIONER: The public exhibit?

25
26 MR GOLLAN: Yes, it is an exhibit, but if I could have
27 a copy made available.

28
29 THE COMMISSIONER: I think that has been provided to your
30 instructing solicitor, Mr Gollan.

31
32 MS SULLIVAN: It has been provided.

33
34 MR GOLLAN: I understand that. I'm just inquiring, given
35 the resources are available here, rather than in my
36 chambers --

37
38 THE COMMISSIONER: A printout of it.

39
40 MR GOLLAN: -- could I actually get a copy of a printed
41 1179? It's only two pages.

42
43 THE COMMISSIONER: I just thought that had been provided.
44 Okay. Yes, we can make that arrangement, Mr Gollan.

1 We will adjourn for 20 minutes and can I just indicate
2 to any of the waiting media, for the moment, please don't
3 report anything in relation to that matter on Friday.
4 Thank you.

5
6 **SHORT ADJOURNMENT**
7

8 THE COMMISSIONER: Mr Gollan, did you have questions?
9

10 MR GOLLAN: Yes, just a few questions, if I may.
11

12 **<EXAMINATION BY MR GOLLAN:**
13

14 MR GOLLAN: There's a document that has been referred to
15 as a 1179. I have a copy of it. I understand that it is
16 8634212. I don't know what tab it's under.
17

18 THE COMMISSIONER: It is under tab 52.
19

20 MR GOLLAN: Yes, thank you. If that could be brought up
21 on the screen for the benefit of those who are following
22 the evidence.
23

24 Q. Have you got access to that document?
25 A. I do, yes.
26

27 Q. You were cross-examined about that document --
28 A. Yes.
29

30 Q. -- or asked questions about that document and the
31 absence of Ma'am Chapman having completed one of those
32 documents. Now, if there is simply a homicide, without any
33 police involved, and police attend obviously and they go
34 about their police business, that's not a document that you
35 would expect to see in the file that's made available to
36 you at a later time?
37 A. No. No, I wouldn't.
38

39 Q. If it was simply a break and enter, it's not
40 a document that you would expect --
41 A. No, I wouldn't expect it.
42

43 Q. -- to be confronted with at some later time?
44 A. Mmm.
45

46 Q. If we have a look at this document in its generic form
47 as opposed to anything that's specific to an individual --

1 A. Mmm.

2
3 Q. -- and if we have a look at it, you'll see that there
4 are matters considered by the regional commander, and
5 you'll see that there are a number of issues on page 1
6 under question 1, that arise out of the legislation,
7 although I think that you've identified some guidelines;
8 correct?

9 A. Yes, correct.

10
11 Q. The guidelines are a reflection of the legislation.
12 Do you accept that?

13 A. Yes, I do accept that.

14
15 Q. Section 110 and 111 --

16 A. Yes.

17
18 Q. -- of the LECC Act, as it is generically called?

19 A. Correct.

20
21 Q. Section 110 provides particular provisions that you
22 are obliged to consider and 111 is the operative clause, as
23 it were, in that you then declare, because it has met
24 110 --

25 A. Yes.

26
27 Q. -- or alternatively, under 111(1)(b), even if it
28 hasn't met 110, it might have a public interest?

29 A. Yes, correct.

30
31 Q. Is that as you understand it?

32 A. That's my understanding, yes.

33
34 Q. And there's a discretion in there, in the chapeau to
35 111, that the Commissioner may call for it to be a critical
36 incident?

37 A. Yes, the region commander, yes.

38
39 Q. Yes. There's a discretion. It's not a prescriptive
40 or otherwise mandatory --

41 A. No, absolutely. It is a discretion.

42
43 Q. And if you were to exercise that discretion having met
44 110 or 111(1)(b), you might expect that those that come
45 behind you or those that are considering it, such as LECC,
46 might want to understand the reasoning that you had whilst
47 you've been given a discretion, why did you exercise it in

1 that way?

2 A. Yes.

4 Q. Now, if we have a look at this document, question 1
5 gives rise to considerations in like terms, and
6 particularly question 1(b) of section 110, and if I can ask
7 you to go over the page, you'll see that at the top of the
8 page there --

10 MS SULLIVAN: Can we move that forward one page,
11 thank you.

13 MR GOLLAN: For the transcript, it's 8634213.

15 Q. You'll see at the top of the page, there is:

17 Yes. *To answer yes, there should be at*
18 *least one box checked in (a) and at least*
19 *one box checked in (b). Go to Part 3.*

21 Do you see that?

22 A. Yes, I do.

24 Q. If you say "No", it says, "Go to [Question] 2 below".

25 A. Yes.

27 Q. And in each of those circumstances it gives rise to an
28 exercise of the discretion and then an obligation to
29 explain?

30 A. Yes.

32 Q. But you don't come into the discretion unless you've
33 already navigated your way through 110?

34 A. Correct, yes.

36 Q. Or alternatively, 111 --

37 A. 111, yes.

39 Q. -- (1)(b); correct?

40 A. Correct.

42 Q. And so then if you go down to question 2, and you'll
43 see there that:

45 *[If the answer to 1 above is No] Are there*
46 *grounds to consider that it is in the*
47 *public interest ...*

1
2 So it's inviting a consideration of 111(1)(b); correct?
3 A. Yes, correct.

4
5 Q. So even if you don't meet 110, if you meet 111(1)(b)
6 in those circumstances, it engages you with an explanation
7 for the exercise of your discretion; is that correct?
8 A. Yes.

9
10 Q. And if you go down to 3 it says, "Decision of Region
11 Commander":

12
13 *Following consideration of the answers to
the questions in Part 2 above, did the
Region Commander declare the incident
a Critical Incident?*

14
15 *A matter may be declared a critical
incident if the response is "Yes" to either
question in Part 2. It does not have to be
"Yes" to both.*

21
22 Do you see that?

23 A. Yes.

24
25 Q. Before you answer part 3, is it your understanding
26 that you must have found yourself by reason of the facts
27 and circumstances attracted to an answer, to the preamble,
28 the questions above?

29 A. Correct.

30
31 Q. And so it would only be in circumstances where you
32 determined that you either fell in 110 --

33 A. Yes.

34
35 Q. -- or 111(1)(b), that you would have any cause to
36 answer the questions in 3; is that right?

37 A. Yes, correct.

38
39 Q. And so you would have no cause to consider this
40 document in the absence of you having found yourself in
41 those circumstances?

42 A. Correct.

43
44 MR GOLLAN: Thank you. That's the evidence.

45
46 THE COMMISSIONER: Q. Can I just make sure I understood
47 what you've just said, Assistant Commissioner. And

1 Mr Gollan, you're welcome to ask further questions if I've
2 muddied the waters, but my understanding of your evidence
3 earlier was that you might still complete a P1179 even if,
4 ultimately, you've decided that the situation you're
5 considering is neither within 110, so the sort of six
6 standard --

7 A. Yes.

8
9 Q. -- criteria for declaring a critical incident and nor
10 is it a public interest, but if you've turned your mind to
11 that, and you've decided - landed at "No", you would still
12 complete the P1179?

13 A. Well, that - that would be the reason for the
14 non-declaration.

15
16 Q. Yes, okay.

17 A. Yes. But, yeah, but you would have to consider both
18 110 and 111, yes.

19
20 Q. And can I just clarify something? You said before,
21 I think, this is in electronic form?

22 A. Yes. It's not a --

23
24 Q. So although sometimes those boxes on that print-out
25 look to be quite small --

26 A. Oh, you can expand it.

27
28 Q. -- in terms of the reasons, you could actually
29 expand them --

30 A. Yeah.

31
32 Q. -- within limits, as much as you want?

33 A. Yeah, there is no character limitation, no.

34
35 Q. So sometimes the box "Give reasons no" looks quite
36 short --

37 A. No, you can expand it.

38
39 Q. -- but actually you can give as much reasons as you
40 want. Thank you.

41
42 THE COMMISSIONER: Anything arising?

43
44 MS SULLIVAN: No.

45
46 THE COMMISSIONER: Anything, Mr Smartt?

1 MR SMARTT: No, thank you.
2

3 THE COMMISSIONER: Before you step down, Assistant
4 Commissioner, I think it would be helpful to have the
5 Assistant Commissioner in the box while we clarify the
6 issues of suppression orders while we were on the morning
7 tea break I did have a chance to look at some of the media
8 reporting about Friday's incident.
9

10 My take on it was that the media reporting had
11 included that there had been contact with police --
12

13 THE WITNESS: That wasn't from me in the stand-up, rest
14 assured, Commissioner. What they've reported and what I've
15 said - we've - I think there's reference that there's
16 footage that she's gone into the police station.
17

18 THE COMMISSIONER: Q. The police station from the CCTV
19 footage, yes.
20 A. I mean, one could actually assume that she's actually
21 spoken to a police officer, but I can tell you, as recently
22 as this morning, that that officer still hasn't provided
23 a version.
24

25 Q. I'm not reaching any conclusion about what was - what
26 that exchange was, but I suppose the media reporting
27 indicates that she did more than simply park her car in the
28 car park --
29 A. Yes.
30

31 Q. -- she's gone into the police station, maybe the
32 inference is that she's had some interaction there, and
33 then again the media reporting is that she's exited the
34 police station --
35 A. Yes.
36

37 Q. -- and then some days later her body's been
38 discovered?
39 A. She's been located, yes, correct.
40

41 THE COMMISSIONER: We can wait until the transcript comes
42 out to double-check it, but my understanding is that that's
43 really the sum total of what was canvassed by the assistant
44 commissioner in his evidence.
45

46 Mr Smartt, this is a matter for the Commissioner of
47 Police. Do you --

1
2 MR SMARTT: I think we're comfortable at the moment but we
3 might - I think we should proceed on the basis that we're
4 comfortable at the moment and then if there's a change in
5 that position, we will let you know.

6
7 THE COMMISSIONER: Okay. Why don't we give the parties an
8 opportunity to review the relevant pages of the transcript
9 before they're posted online.

10
11 MR SMARTT: Yes.

12
13 THE COMMISSIONER: Mr Gollan, are you happy with that
14 approach?

15
16 MR GOLLAN: Yes, look, I obviously have a limited
17 representation in respect of the police officers. I notice
18 that this police officer has been mentioned in the media
19 release, and so I would prefer the cautious approach of
20 allowing us to have a look at the transcript.

21
22 THE COMMISSIONER: We can do that.

23
24 MR GOLLAN: We certainly don't want to prejudice any
25 investigation.

26
27 THE COMMISSIONER: Absolutely not, no. So we'll - I think
28 for the immediate purposes of the media here, it would be -
29 reporting of any matters that are already in the existing
30 public domain wouldn't breach any non-publication - the
31 Commission hasn't made a formal non-publication order yet.
32 We ask that - or perhaps we should, Ms Sullivan.

33
34 MS SULLIVAN: An interim order, I think, might be
35 appropriate.

36
37 THE COMMISSIONER: We might make an interim order that no
38 evidence given by this witness in relation to Friday's
39 declaration should be published, and that's not to say that
40 the media might not already be aware of other matters from
41 other matters said by the witness outside of this
42 Commission --

43
44 THE WITNESS: Thank you.

45
46 THE COMMISSIONER: -- should be published under
47 section 176 of the Law Enforcement Conduct Commission Act.

1
2 On the topic of suppression orders, I think -
3 thank you, Assistant Commissioner, you're welcome to step
4 down. Thank you very much for coming to give evidence
5 today.

6
7 THE WITNESS: Thank you, Commissioner.

8
9 <THE WITNESS WITHDREW

10
11 THE COMMISSIONER: [REDACTED]'s name, I know, has been
12 used, and I think my preference would be that she - that
13 her name be given a non-publication order as well.

14
15 Sometimes people in these circumstances can get
16 attached to the names of Commission officers, so there
17 should be no publication of [REDACTED]'s name and
18 nothing that would identify her as a commission officer.
19 But you're welcome to call her as a Law Enforcement Conduct
20 Commission officer if that assists.

21
22 MR GOLLAN: Commissioner, could I just confirm that the
23 witness who has just left the witness box, he is released
24 from his obligations.

25
26 THE COMMISSIONER: Absolutely. He's released from his
27 summons.

28
29 MR GOLLAN: Yes.

30
31 THE COMMISSIONER: Yes, thank you.

32
33 The other thing I would note, Mr Smartt, there were
34 a couple of other witnesses - a couple of other police
35 officers mentioned in passing in Assistant Commissioner
36 Cassar's evidence. I think, from memory, they probably all
37 had the rank of superintendent or above.

38
39 MR SMARTT: Yes.

40
41 THE COMMISSIONER: If there are any concerns about any of
42 that, you are welcome to raise it with the Commission. But
43 for the moment, I won't make any further non-publication
44 orders unless there's something that you --

45
46 MR SMARTT: We are comfortable with that.

1 THE COMMISSIONER: I'll leave that with you to raise with
2 us and it can be done before the transcript goes out.
3

4 MR SMARTT: Yes, thank you very much.
5

6 THE COMMISSIONER: I think those are all of the matters
7 that I needed to deal with. Was there anything else,
8 Ms Sullivan?
9

10 MS SULLIVAN: No, thank you, Commissioner.
11

12 THE COMMISSIONER: In that case, are we ready to hear from
13 Assistant Commissioner Cotter?
14

15 MR SMARTT: While he is coming in, I think, as the
16 assistant commissioner has done previously, he won't be
17 taking the immunity, he won't be taking everything under
18 objection, but, for transparency reasons, we have advised
19 him about that. I just wanted to say that before you go
20 through that with him.
21

22 THE COMMISSIONER: Thank you very much. I'll confirm that
23 with him formally when he comes in.
24

25 MR SMARTT: Yes.
26

27 THE COMMISSIONER: You're welcome to come up to the witness
28 box, Assistant Commissioner.
29

30 <PETER COTTER, sworn: [12.15pm]
31

32 THE COMMISSIONER: Thank you. Have a seat. Mr Cotter,
33 I understand that you're not seeking a declaration on
34 taking an objection in relation to your evidence today?
35

36 THE WITNESS: That is correct, Commissioner.
37

38 THE COMMISSIONER: And you've had an opportunity to speak
39 to Mr Smartt about that decision?
40

41 THE WITNESS: Yes. Yes, I fully understand. Thank you.
42

43 THE COMMISSIONER: Thank you.
44

45 The other formality that I would ordinarily go through
46 is to set out the scope and purpose of the examination, but
47 it's the same as the scope and purpose that was attached to

1 your summons. Have you had an opportunity to review that?
2

3 THE WITNESS: Yes.
4

5 THE COMMISSIONER: In that case, I might skip over reading
6 that out for the benefit of everyone in the room and we
7 will move straight to questions. But if you've GOT any
8 questions about the scope and purpose of your examination,
9 I'm happy to go through it with you.
10

11 THE WITNESS: No, I'm okay at the moment, Commissioner,
12 thank you.
13

14 **<EXAMINATION BY MS SULLIVAN:**
15

16 MS SULLIVAN: Q. Thank you, sir, can we have your full
17 name for the record?
18 A. Peter Cotter, C-O-T-T-E-R, assistant commissioner in
19 the NSW Police Force and currently the commander of the
20 professional standards command.
21

22 Q. Thank you, sir. You attested in 1984?
23 A. Yes, that is absolutely correct, 13 August to be
24 exact.
25

26 Q. And we know you're into your 42nd year of policing?
27 A. Yes.
28

29 Q. You have extensive experience as a criminal
30 investigator, can I suggest?
31 A. Yes. Thank you.
32

33 Q. And you served as the commander of the robbery squad
34 and the homicide squad in state crime command?
35 A. Yes.
36

37 Q. What period was that, sir?
38 A. The robbery squad from the period of 2003 to 2009.
39

40 Q. Yes.
41 A. And the homicide squad, 2010 and 2011, two years.
42

43 Q. Thank you.
44 A. Six years and two years.
45

46 Q. And that role is as superintendent; is that right?
47 A. That's correct.
48

1
2 Q. And you've also served as region commander in the
3 central metropolitan region?

4 A. Yes.

5
6 Q. When was that?

7 A. That was for three months in the early part of 2022.

8
9 Q. And then also regional commander of southern region?

10 A. That was from about April of '22 through to
11 the January of '24 when I took over professional standards.

12
13 Q. Professional standards, all right. And you've been in
14 that role since January 2024; is that right?

15 A. That's correct.

16
17 Q. Thank you. Now, we'll come to your response, but you
18 have started with what I will describe as a very genuine
19 and touching acknowledgment, and if you wouldn't mind, I'd
20 like you to read that acknowledgment out for Ms Lucena's
21 family.

22 A. Certainly. I have a copy here, Ms Sullivan.

23
24 Q. Thank you. Please.

25 A. It's titled, "Acknowledgment to Lindy Lucena."

26
27 *To the late Lindy Lucena, her family and
28 friends, and specifically her daughter,
29 Tehenie, and sister Julie, my sincere and
30 personal condolences and sympathy on this
31 tragic loss of life at the hands of
32 a violent man. May the suffering, pain and
33 grief felt by so many upon the loss of
34 Lindy, a loved mother, sister and
35 companion, never be forgotten and remind us
36 all to always do our very best for those
37 that are vulnerable and need our help.*

38
39 Q. Thank you very much.

40 A. Thank you for the opportunity.

41
42 Q. Now, back to more prosaic matters. You prepared
43 a section 54 response for the assistance of this Commission
44 dated 2 December 2025?

45 A. I did.

46
47 Q. And you also collated documents in response to

1 a section 55 notice?

2 A. Yes.

4 Q. And that is also dated 2 December 2025?

5 A. Correct.

7 MS SULLIVAN: I tender that documentation, Commissioner.
8 That is at tab 147 of the brief. It commences at barcode
9 8629638 and concludes - I should say that is at tab 147,
10 8629638 to 8629714.

11 THE COMMISSIONER: That will be exhibit 31C.

12 MS SULLIVAN: Thank you.

13

14 **EXHIBIT #31C SECTION 54 AND 55 RESPONSES OF ASSISTANT
15 COMMISSIONER PETER COTTER, DATED 2 DECEMBER 2025, BARCODED
16 8629638 TO 8629714**

17 MS SULLIVAN: Q. Assistant Commissioner, can I just ask
18 you to outline in very short form the mandate or purview of
19 professional standards command, please?

20 A. There's basically three arms to it. There's a - the
21 world of prevention, so we're in that identifying trends
22 around misconduct in the organisation and then strategising
23 and getting consent from the executive of the NSW Police
24 Force to put in place education, training, marketing,
25 publications, screensavers, documents, a whole myriad of
26 written material to educate the organisation on what
27 misconduct is, how it's evolving, perhaps, and obviously
28 ways to prevent it and identify it.

29 The second leg of the industry that we run is centred
30 on investigations. So I have a whole investigative arm
31 which does the high-end sensitive, in the public purview
32 type of - and complex type of investigations. So again
33 I have 10 teams of investigators all led by an inspector,
34 with a superintendent over the top of that, and --

35 Q. Pausing there, those are the teams that undertake the
36 critical incident investigations?

37 A. Eight of them are. Two of them you would say are not
38 because they're in the covert side of the world.

39 Q. I see.

40 A. So we carve out two for that type of work. And then
41 the third arm of the business is centred around the back

1 end, the industrial law side of it, determining
2 suspensions, sanctions, getting parity in those types of
3 worlds, presenting matters to the Industrial Relations
4 Court where they're contested, and running panels to set,
5 again, conformity and consistency around sanctions and
6 penalty, and both the front end - so arm 1 and arm 3 - are
7 under the command of a superintendent as well.

8
9 Q. Thank you. Is it fair to say that one of the
10 essential functions of, if I can call it, PSC is to provide
11 advisory consultancy and review services with respect
12 to investigations, critical incidents and complaint
13 management --

14 A. Yes.

15
16 Q. -- do you agree with that? And also to develop or
17 contribute to reference materials, standard operating
18 procedures, policies and training that support professional
19 standards and the application of best practice?

20 A. Yes.

21
22 Q. And also, PSC are an important contact point between
23 the NSW Police Force and integrity bodies like this
24 Commission?

25 A. Yes.

26
27 Q. And ICAC?

28 A. Yes, mainly this - mainly this wonderful establishment
29 here.

30
31 Q. And the office of the --

32
33 THE COMMISSIONER: Flattery won't get you too far,
34 Assistant Commissioner.

35
36 MS SULLIVAN: Q. And the office of the state coroner?

37 A. Yes.

38
39 Q. And in fact, accurate to describe PSC as subject
40 matter experts in relation to critical incidents?

41 A. I think that's the corporate target for us, yes.
42 We're - I'll accept that.

43
44 Q. And indeed, it's PSC who have corporate ownership of
45 the critical incident guidelines?

46 A. Yes.

1 Q. How frequently are those guidelines reviewed, in your
2 experience?

3 A. We were going through a review process literally over
4 the last 12 months. However, I think we're going to have
5 to pause that and no doubt add some things to that that are
6 flowing from my closer review in the last few days, I might
7 say, and literally, no doubt, some recommendations that
8 might follow from this hearing.

9
10 But to answer that question specifically there - and
11 the cause of that most recent review was the five-year
12 review that the LECC had done into critical incidents.

13 Q. Yes.

14 A. Prior to that, I think they were last updated in a
15 technical or cosmetic sense around 2024, the January, and
16 before that I think perhaps 2019. So it's not something
17 that's reviewed every, you know, calendar; it's more when
18 there's a significant body of work or a change in perhaps
19 responsibility, or change in terminology or, equally, some
20 significant moments of good or crisis which might determine
21 us in a different direction.

22
23 Q. Or deep reflection, as in this case?

24 A. Deep reflection.

25 Q. As in this case?

26 A. As in this case.

27 Q. Thank you. All right. Now, it's right, isn't it,
28 that PSC only have a role where a critical incident is
29 declared by a region commander?

30 A. That is correct.

31 Q. And that is entirely within the region commander's
32 discretion?

33 A. Yes.

34 Q. So it's imperative that they have a clear
35 understanding about the operation of the critical incident
36 criteria.

37 A. Yes.

38 Q. Where a critical incident is declared, can you just
39 outline for us - knowing this is a public hearing and
40 people may not have a good understanding - what the role of
41 PSC is with respect to a critical incident investigation?

1 A. Overarching their role is to make sure that the things
2 all the way from the beginning, from the scene, all the way
3 through to the finality, through the coronial jurisdiction
4 and ultimately the completion of the final report, the
5 final investigator's report, from cradle to grave, to use
6 that term, beginning to end, that there is good
7 communication between the professional standards command,
8 not in an investigative setting direction way but certainly
9 a communication way with the senior investigators, whether
10 they be from homicide or whether they be from the field;
11 equally to have a - be a conduit and relationship holder
12 with the Law Enforcement Conduct Commission and their
13 monitoring officer and their capability, and to ensure that
14 all the things in the correct chronology are done, give or
15 take, there's no corners cut, that things are uploaded and
16 documented and recorded so there's a veil of independence,
17 transparency and probity around the investigation.

18
19 Q. Thank you. And the role of the review officer who is
20 central in those tasks, including in terms of the
21 monitoring of integrity or probity concerns; is that right?

22 A. Yes.

23
24 Q. That review officer also has a role in identifying any
25 conflicts of interest?

26 A. Yes.

27
28 Q. And ensuring that the quality and the probity of the
29 investigation is of the highest standard?

30 A. Yes.

31
32 Q. And managing the investigation having regard to public
33 interest considerations, impartiality and transparency; is
34 that right?

35 A. Yes.

36
37 Q. And given your extensive experience, you have - you
38 were a police officer at the time that this Commission
39 commenced its work in 2016?

40 A. Yes.

41
42 Q. A senior police officer, and you certainly understood
43 the concerns that existed in the community prior to that
44 point about police investigating police?

45 A. Yes.

46
47 Q. And this Commission provides a measure of oversight

1 and addresses those public interest concerns; do you agree?
2 A. Yes, I do.

4 Q. And indeed, a review officer has, can I suggest,
5 a very important function in preparing a final report that
6 identifies any deficiencies in a critical incident in terms
7 of systems, policies and procedures?

8 A. Yes.

10 Q. And that's not something that would otherwise be the
11 mandate of a standard homicide investigation; is that
12 right?

13 A. No.

15 Q. The focus of a homicide investigation is on
16 identifying the perpetrator, gathering the evidence and
17 securing a successful prosecution?

18 A. Correct.

20 Q. And can I suggest that the current model which has
21 the - that the critical role of PSC combined with the
22 Commission's oversight, provides protection to the
23 NSW Police Force and involved officers in relation to
24 a critical incident scenario, in this respect: it
25 safeguards against assertions or perceptions of cover-up by
26 the public; do you agree with that?

27 A. I do.

29 Q. And the public can have confidence in that model
30 because of the level of oversight provided by PSC and this
31 Commission?

32 A. I agree.

34 Q. Thank you. Are you aware of the notion of a DV
35 homicide review as an independent review of police
36 operations?

37 A. No. I can't talk to that, to be honest.

39 Q. Not ever heard of that scenario of a DV homicide
40 review?

41 A. I personally have not heard of that.

43 Q. Okay.

44 A. Yeah.

46 Q. You have had an opportunity to familiarise yourself
47 with the documents, key documents, that relate to this

1 inquiry; is that fair?

2 A. I have, yes.

3
4 Q. Were you able to review a Godfrey memorandum that was
5 prepared by Assistant Commissioner Chapman in relation to
6 her role?

7 A. Yes, I have.

8

9 Q. And you will have seen in that document - I can take
10 you to it if it's not immediately front of mind - that her
11 reference --

12 A. It is immediately front of mind.

13

14 Q. Thank you.

15 A. Yes, she refers to a DV homicide review.

16

17 Q. And refers to that as a suitable process to review the
18 police conduct during the relevant period up to the
19 discovery of Ms Lucena's body?

20 A. Yes, she does.

21

22 Q. But that's not a process you're familiar with?

23 A. It's not one I'm familiar with, personally. It's not
24 one I'm personally familiar with.

25

26 Q. And have you ever heard of it in connection with
27 a form of independent review within the NSW Police Force?

28 A. I've not heard of it, that term.

29

30 Q. Can I suggest - and please feel free to disagree. Can
31 I suggest in circumstances where there is consideration
32 about the need for an independent review by police, that
33 that is a telling sign that one may be in the territory of
34 a critical incident?

35 A. Sorry, could you ask that question again?

36

37 MR SMARTT: Sorry - yes.

38

39 MS SULLIVAN: I can. I can try to formulate it a bit
40 better to save my friend. Perhaps let's just go to the
41 memorandum. In fairness, also, to Assistant Commissioner
42 Chapman, could we pull up, please, the memorandum, I think
43 it is tab 111. Tab 111 is in evidence.

44

45 THE COMMISSIONER: 27C.

46

47 MS SULLIVAN: 27C, thank you.

1
2 Q. We'll just wait for that to come up on the screen,
3 Assistant Commissioner. There it is. If we could go,
4 please, to barcode 890, the next page. It's the second
5 paragraph that I was particularly referring to:
6

7 *I also requested that he --*
8

9 that is Superintendent Tanner --
10

11 *ensure the DV homicide review by State*
12 *Crime Command include assessing all matters*
13 *including the lead-up to locating the*
14 *victim. On this basis I was satisfied that*
15 *there would be suitable independent review*
16 *and any matters arising would be treated if*
17 *appropriate under Part 8A of the*
18 *Police Act.*

19
20 Do you see that?

21 A. Yes.

22
23 Q. Can I suggest that, from your perspective as the
24 commander of PSC, when a region commander is looking for
25 a process that requires independent review, that's the
26 point when one should be considering in particular, if
27 we're not in the section 110 mandatory criterion for
28 a critical incident, one would be very concerned about
29 whether section 111(1)(b) might be operative, because as
30 you see there, there's a need for an independent review;
31 would you agree?

32 A. I agree.

33
34 Q. Thank you. To your mind, is it of concern that there
35 is this independent review, this DV homicide review, almost
36 operating as a substitute for a critical incident in this
37 matter?

38 A. I don't understand the remit of a DV homicide review.
39 As I've said, I don't know what one is. I've not heard of
40 it. That might be ignorance on my part, so unless I know
41 what that review mechanism is, I probably can't answer
42 that. But I've not heard of a DV homicide review.

43
44 Q. To the extent that it may be used as a substitute,
45 whatever that process is, you would want to understand more
46 about what the scope of such a review may entail,
47 I understand?

1 A. Yes.

2
3 Q. But on its face, can I suggest you might be troubled
4 by matters being diverted down the DV homicide independent
5 review pathway without PSC's involvement?

6
7 MR GOLLAN: I object. The witness has already said he
8 doesn't understand what the DV review is or its remit, so
9 he can't actually make any statement of any coherence with
10 respect to comparing it to something that otherwise doesn't
11 know about.

12
13 MS SULLIVAN: I think, with respect, that's a fair
14 objection.

15
16 Q. In light of your qualification about the nature of
17 a DV homicide review - and can I indicate to you that we're
18 unclear about what the nature of that process is as well,
19 so we were hoping that you might be in a position to
20 elucidate us, but if it is the case - well, it's important
21 for you - if I put it this way: it's important for you, as
22 the commander of PSC, to understand if other processes are
23 being used in substitute for a critical incident
24 investigation; do you agree?

25 A. Agree.

26
27 Q. I got there.

28
29 THE COMMISSIONER: Q. Can I check, Assistant
30 Commissioner Cotter, this is a bit of a Dorothy Dixer, but
31 the professional standards command, to your knowledge,
32 doesn't have any oversight or review function in relation
33 to a domestic violence homicide review?

34 A. Commissioner, no, we do not. We do not have any role
35 into that DV - into homicide world per se, and certainly
36 into the subset of DV homicide. Our view into the world
37 and reach into the world of criminal investigation is
38 essentially and specifically around critical incidents,
39 other than the investigations we own, which are purely
40 criminal, for example.

41
42 Q. Criminal misconduct investigations?

43 A. Misconduct, yes.

44
45 MS SULLIVAN: Q. But to the extent that there's
46 a reference to this independent review, you would expect
47 that there would be documentation in relation to what that

1 was?

2 A. As in policy or process around what a DV homicide
3 review was? If there were such a process, yes, I would
4 expect there to be some guidelines and at least some advice
5 and structure around that.

6
7 Q. And you see here that this matter, according to
8 Assistant Commissioner Chapman's response, has been
9 referred down the DV homicide review - independent review
10 pathway. Given that, you would expect there to be some
11 documentation in relation to the scope of what that review
12 was, surely?

13 A. Yes, I would, if it existed, and I don't know whether
14 it does or doesn't.

15
16 Q. And nor do we.

17 A. Okay.

18
19 Q. And similarly you would anticipate that there might be
20 a work product - some document that is generated as
21 a function of that request for an independent review by the
22 DV homicide team?

23
24 MR GOLLAN: Commissioner, I object. The witness has
25 already said that he doesn't understand what this process
26 is. So asking him questions about the content of the
27 process or what might be generated by reason of the process
28 is not only unfair to the witness but, with respect, it
29 gives rise to a high level of speculation that doesn't
30 assist you.

31
32 Now, it may be that through other witnesses the
33 Commission comes to a view about what it is or its content
34 and can reconcile it within the parameters of the evidence.
35 But this witness can't give any evidence in circumstances
36 where he says, "I don't understand the creature that I'm
37 dealing with."

38
39 MS SULLIVAN: Well, as a matter of basic record-keeping,
40 one would anticipate, in circumstances where there is an
41 independent review being conducted, that some documentation
42 might be generated. This experienced commander, as the
43 head of PSC, and the setting of standards within the
44 organisation, may well have a view and an expectation about
45 whether records ought to exist of any such review.

46
47 THE COMMISSIONER: I think I'm comfortable with the -

1 bearing on his experience as a police officer of many
2 years, Mr Gollan, that if there was a review conducted -
3 and I accept that Assistant Commissioner Cotter doesn't
4 know what that review might mean, what it might involve -
5 would he expect there to be some record as a result of such
6 a review. I'll tell you why I think it's useful to me,
7 which is: if there is no such record, does that mean that
8 the review wasn't conducted? How else would I draw that
9 conclusion?

10
11 MR GOLLAN: With great respect, we haven't heard from any
12 of the homicide officers.

13
14 THE COMMISSIONER: We haven't heard from, sorry?

15
16 MR GOLLAN: Any of the homicide officers - any of the
17 investigating homicide police officers. So what you're
18 really being asked to accept is, in the absence of evidence
19 not called for and not properly understood by this witness,
20 to come to the conclusion that there is none. That's not
21 only unfair on the police that are involved but it's also,
22 with great respect, a naive approach of the Commission if
23 it be that that is a matter of inquiry - that's the kind of
24 thing that could be sought out.

25
26 MS SULLIVAN: Well, I'm not aware of Mr Gollan's
27 instructions at this point, but inquiries were made and
28 it's my understanding he's been furnished with a document
29 that relates to those inquiries.

30
31 MR GOLLAN: Well, I don't have the brief, as we've
32 discussed earlier.

33
34 MS SULLIVAN: Well, it's not the brief; it's a very
35 specific document, the response to that question.

36
37 MR GOLLAN: The point is that this witness is not in a
38 position to shed any light on those inquiries, given what
39 he has already told you.

40
41 THE COMMISSIONER: I'm happy for the question to be asked
42 and answered. I think Mr Cotter is experienced enough and
43 senior enough to indicate the extent of his knowledge.
44 Thank you, Mr Gollan.

45
46 THE WITNESS: Thank you, Commissioner. Thank you,
47 Mr Gollan.

1
2 Ms Sullivan, I would expect if there is such
3 a structure around a review of this ilk, this importance,
4 that there would be some outcome document which would be
5 a record of the considerations and potentially the review
6 process.

7
8 MS SULLIVAN: Thank you very much. We can move on.
9

10 Q. Just before we do that, can I just suggest - and you,
11 with your extensive knowledge, will no doubt think of some
12 other differences - in terms of the critical incident
13 investigation model, some of the benefits of that, relative
14 to a review process like this, whatever that may be, would
15 include that officers are subject to mandatory drug and
16 alcohol testing as part of a critical incident
17 investigation?

18 A. Yes. Yes, they are, under certain policy
19 arrangements, yes.

20
21 Q. Thank you. And that, of course, almost always tends
22 to exonerate officers?

23
24 THE COMMISSIONER: Q. At least indicates that they
25 weren't under the influence of drugs and alcohol?

26 A. Yes.

27
28 MS SULLIVAN: Q. And it ensures - that is, the critical
29 incident process ensures - that officers are given quite
30 specific directions about not speaking to other involved
31 officers in connection with their evidence?

32 A. Yes.

33
34 Q. And it also includes an emphasis on policies,
35 procedures, systemic improvements that would not be the
36 mandate, I think as we've canvassed, of an ordinary
37 homicide investigation?

38 A. Correct.

39
40 Q. What are the other benefits, to your knowledge, in
41 terms of a critical incident declaration relative to
42 a standard homicide investigation?

43 A. In the overarching sort of definition, again, we've
44 touched on it in evidence: it gives - it ensures there is
45 impartiality; it ensures that there is another body working
46 alongside, as I said, not to provide, "You should do that",
47 "You should do this", sort of thing, it's not about that,

1 although there can be some obviously helpful hints about
2 follow the guidelines, follow the checklists, follow the
3 procedures, "Have you thought about this?" "Have you
4 thought about that?" And again I think, especially for an
5 inexperienced senior critical investigator, not necessarily
6 a homicide one doing a level category 1, but those that
7 might be doing their first one or might be acting in to an
8 inspector's role, it is a good buffer and a good support as
9 well. You know, professional standards are here to support
10 people as well, professionally, not just catch them out or
11 not "Gotcha" moments, it's about supporting people for the
12 greater good here, which is an investigation that we can
13 all rely on and look back on in time and go, "It's a fair
14 representation, a reasonable outcome for whatever occurred
15 that led to the incident," whether it be serious injury or
16 whether it be death, and the actions of the police.
17

18 Q. And independent from the relevant command that may be
19 involved?

20 A. Totally. We're totally independent.
21

22 Q. Thank you. Can I ask you, please, about your
23 experience as a SCII. You, as a senior critical incident
24 investigator, you have conducted many critical incident
25 investigations yourself?

26 A. As a SCII, I completed one, a very notable one in the
27 year 2000, going back a long time, very notable. Yes, very
28 notable.
29

30 Q. Which one was that?

31 A. I ended up charging a police officer with murder.
32 September of 2000. I'm not too sure where you want to take
33 that.
34

35 Q. I don't want to take that anywhere, but --

36 A. So that gives you an idea of, I suppose, what
37 a critical incident can be and so I'm well versed from that
38 side of - and I know the impact that it had on me, not only
39 as a professional and an investigator but also still today
40 emotionally, as I refer to it, and dealing with that
41 officer, and the family of the person that we, as an
42 organisation, shot and killed that night on 5 September
43 2000. And then the organisational pressure and impact that
44 has in a ripple effect to this organisation. And then
45 equally charging someone with murder, as I did.
46

47 And then I go from there into - so that's my notable,

1 personally notable. And I suppose the transparency and
2 learning curve I got around this organisation about the
3 law, about a whole lot of things.

4

5 Q. From that experience?

6 A. From that experience, yes. It's probably one of the
7 great leadership experiences for me personally, on a whole
8 lot of fronts. But that's not what we're here for.

9

10 Obviously in my two years at homicide as the
11 superintendent, I had - and that's where I think we first
12 crossed paths, Ms Sullivan, when you were at the Crown
13 Sols - we had a number of critical incidents during 2010,
14 2011, and we had a number of level 1s, which - category 1s,
15 which awaken the homicide inspectors and the staff, and
16 again, so not being the SCII but certainly being the
17 supervisor of the SCII on a number of them.

18

19 And then I suppose my experience then goes into the
20 region commander role in southern region where, during
21 that time, I declared five critical incidents in that
22 two-year period, three being level 1s, the most notable
23 being Clare Nowland and her passing at the nursing home,
24 and a couple of other very notable ones, too. And so three
25 level 1s and two level 2s. And then for my sins, I arrived
26 at professional standards command and I own the whole
27 thing, apparently.

28

29 Q. But fortunately, with a lot of experience, if I can
30 suggest, in critical incidents?

31 A. A lot of real experience and a lot of learned
32 experience, and I say that with humility because my
33 learnings around this are very humble. Let me assure you,
34 that these are tragic incidents for everyone in the
35 organisation, the officers involved and the impact it has
36 emotionally and psychologically, yes, it sends shock waves
37 everywhere, and that's not to take one iota away from the
38 people that we've hurt in the course of our duties and/or
39 have suffered death.

40

41 Q. And that's a very real consideration for a region
42 commander who is determining when a matter might be in a
43 grey zone - the welfare impost on staff is a key
44 consideration that might tend against declaring and then
45 later revoking, for example; do you agree with that?

46 A. The welfare of our police is omnipresent, and I put
47 that absolutely on the podium. But that has to be

1 absolutely balanced, though, with the probity of an
2 investigation.

3
4 Q. Yes. And it's not in the interests of those involved
5 officers to have public speculation about their role
6 subsequently when a critical incident hasn't been declared
7 and they don't get the protection that's provided by the
8 model as we've just discussed. Do you agree with that?

9 A. It's one of those catch 22s, I suppose, to be honest,
10 but welfare has to be right up there. It has to be up
11 there with probity. But if there has to be a winner - if
12 there has to be a winner - it has to be probity.

13
14 Q. Why do you say that?

15 A. Because of the reputation of the whole process, the
16 integrity of this organisation. We are 163 years old.
17 We're the oldest company, just about, in Australia. And
18 whilst all of us will come and go from this job and
19 companies will come and go, I have little doubt this
20 organisation will be still going in another 163 years, and
21 for it to have its integrity intact is critical. But to
22 balance that, we are not ever about throwing our soldiers
23 into the line of fire unnecessarily. It is a really - it
24 is a really hard precipice sometimes to walk for region
25 commanders. But if there has to be an err on any side of
26 caution, it has to be for transparency, impartiality,
27 probity and integrity.

28
29 Q. Thank you very much. Now, you were provided with some
30 material by way of homework in preparation for these
31 proceedings.

32 A. Thank you for that.

33
34 Q. And it included a bundle of media articles; is that
35 so?

36 A. Yes.

37
38 Q. Have you had an opportunity to familiarise yourself
39 with those articles?

40 A. Yes, I have read one article - oh, there was a whole
41 list of articles. I didn't read them. I had a bit on over
42 the weekend.

43
44 Q. Understood.

45 A. But I have read certainly what was printed for me and
46 I read one article that certainly I think its genesis was
47 the ABC perhaps.

1
2 Q. Yes.
3 A. Yes.
4

5 Q. Okay. What struck you about that article, Assistant
6 Commissioner?

7 A. Well, it was a compare and contrast, I think, with a -
8 if I've got the right article, if we're referring to the
9 right one - around, again, another tragic domestic violence
10 murder, of which I know that violent perpetrator has only
11 been found guilty recently and is up for sentence on
12 19 December. So I think we can --

13 Q. Is that the Dokhotaru --

14 A. Yes, the Tatiana from Liverpool case. So I'm
15 generally conversant with that matter, and I think it was
16 a compare and contrast around general domestic violence and
17 then specifically that and the response of police, and the
18 contrast was whereas that was declared a critical incident
19 and, for example, this matter wasn't.

20 Q. Yes. That's the media raising concerns about the
21 apparent inconsistency in approach; do you agree with that?

22 A. Yes.

23 Q. Do you agree that as a general proposition,
24 consistency in decision-making in terms of the declaration
25 and non-declaration of critical incidents is desirable?

26 A. Absolutely consistency is desirable, but with
27 different humans, just as there's different legal opinion
28 in this room and different opinion on the seven learned
29 judges of the High Court sometimes, sometimes they agree
30 for different reasons, sometimes they agree for the same,
31 sometimes they disagree for totally different reasons,
32 obviously, and then sometimes, five years later, some of
33 those decisions are a new law. So there is a lot of
34 subjectivity into it.

35 Q. Yes.

36 A. And that's what - I think that's what we aim for. We
37 want diversity. But with diversity comes subjectivity, and
38 different experiences and different learnings. You know,
39 first day on the job versus, you know, maybe day 100 on the
40 job, in a metaphorical way but - -

41 Q. Pausing there, though, that's where --

42 A. But obviously we want consistency.

1
2 Q. Thank you. Pausing there, that's where PSC can have
3 a very important function in providing advice to inform
4 region commanders, particularly who might be acting, about
5 matters to consider in exercising that discretion as to
6 whether to declare or not?

7 A. Well, there's two avenues there. A region commander
8 equally has available to them a number of people. They're
9 in a chain of command. They're not in my chain of command.
10 They're not even in the investigations and
11 counter-terrorism directorate, which is where I sit over
12 here under a certain deputy commissioner.

13
14 So in deciding - you know, like any decision, it's
15 mostly best populated by other opinions. They have
16 available to them their professional standards manager, an
17 inspector, who they work hand in glove with in the region
18 office every day of the week, physically or at least
19 remotely. They have available to them a deputy
20 commissioner upwards to bounce ideas off and to seek that
21 wisdom and that opinion and that experience. And they have
22 the superintendent on the ground, the commander, who, in a
23 critical incident, will be called out. Again, tyranny of
24 distance can dictate, and the timing of it can dictate,
25 when that superintendent arrives, for example, but again
26 you would hope that the collective body of those people
27 will thrash things out, will discuss it, will have real
28 conversations around what has occurred.

29
30 But equally I qualify that by saying at any given
31 point in time - and that's why I've said in my statement,
32 it's important to talk early and talk often because things
33 can change. Because things can change.

34
35 Q. You're in favour of those robust discussions between
36 senior police to inform the best possible decision-making?

37 A. I think it's - I think it's a very wise course of
38 action.

39
40 Q. And it will only arise in relation to certain
41 categories of critical incidents, won't it, because they're
42 often very clear cut in terms of exhibiting the features in
43 section 110?

44 A. Yes. Generally, and the statistics will tell you that
45 for the last five years, on my research, your research,
46 going back to the commencement of this Commission, 2017 or
47 so, yes, there's not a lot of grey. It either fits

1 squarely into the 110 criteria, which is quite clear and
2 quite - quite plain English and quite obvious.

3 Q. Yes.

4 A. Or, you know, those words of "in the public interest",
5 which I think lawmakers, legislators and lawyers have been
6 arguing about for many, many years.

7
8 Q. Yes, a protean term; do you agree?

9
10 A. So - yeah.

11
12 Q. So we'll come to the statistics in relation to that,
13 but can I just suggest that consistency in decision-making
14 is entirely consistent with former Commissioner Scipione's
15 critical incident policy statement, which you very
16 helpfully set out in your response at barcode 656?

17 A. Yes. It's in - it's in my papers. I refer to it in
18 my statement. I can't remember what paragraph but I can
19 find it for you. But, yes, on reading that - and again,
20 you know, it's amazing the learnings that you get when you
21 sit down to prepare for something like this, and that
22 document is still alive and has substance to it today, as
23 it was when it was drafted by Mr Scipione, you know, eight
24 or nine years ago.

25
26 THE COMMISSIONER: In fairness to those that are at the
27 Bar table, it might be helpful to pull that up.

28
29 MS SULLIVAN: Sorry. We can pull that up, thank you.
30 It's worthy of being pulled up. It's an impressive
31 statement. It's at 656 of tab 147.

32
33 THE COMMISSIONER: That's tab 147 and barcode ending 656.

34
35 MS SULLIVAN: Yes, 656, thank you.

36
37 Q. So that is the critical incident policy statement
38 dated, down the bottom, we see, January 2016, by former
39 Commissioner Scipione.

40 A. Correct.

41
42 Q. And as indicated, those sentiments remain applicable
43 to the current critical incident environment?

44 A. I believe they do.

45
46 MS SULLIVAN: Thank you. All right. Now, I'm about to go
47 to the P1179. It's 12.57, Commissioner. Would you like me

1 to bat on or would you prefer to take a break?
2

3 THE COMMISSIONER: You won't finish in the next three
4 minutes?

5 MS SULLIVAN: I don't think I'll - I have approximately
6 25, 30 minutes left, I would say.
7

8 THE COMMISSIONER: We might take a break.
9

10 Mr Smartt, did you have something you wanted to raise?
11

12 MR SMARTT: I was going to say if it was five or
13 10 minutes, we could push on, but it doesn't sound like
14 it's going to be.
15

16 MS SULLIVAN: I'm sorry.
17

18 THE COMMISSIONER: I think we might - so we might take the
19 luncheon adjournment and we'll be back at 2 o'clock.
20

21 **LUNCHEON ADJOURNMENT**
22

23 MS SULLIVAN: Thank you, Commissioner.
24

25 Q. So, Assistant Commissioner, we might go now to the
26 P1179 form. We'll bring that up on the screen. This is
27 tab 52, public exhibit 5. That has come up on the screen
28 now. Am I correct in this assessment of when this form is
29 to be completed: it is where a region commander has given
30 consideration as to whether or not to declare a matter
31 a critical incident under the Law Enforcement Conduct
32 Commission Act, including where they have turned their mind
33 to whether or not it should be a critical incident and
34 decided against making such a declaration?
35

36 A. Yes.
37

38 Q. And, indeed, if we can go, please - I'm sorry to jump
39 around - back to exhibit 27C, tab 147. This is in relation
40 to a memorandum that you've helpfully annexed from the
41 former commander of professional standards, Ms Talbot.
42 That's at barcode 661.
43

A. Yes.
44

45 MS SULLIVAN: We'll just wait for that to come up.
46 Thank you.
47

1 THE COMMISSIONER: The tab number for that one is tab --
2

3 MS SULLIVAN: I'm sorry, that's 147, exhibit 27C.
4

5 THE COMMISSIONER: The barcode reference, Ms Sullivan,
6 just to be sure.
7

8 MS SULLIVAN: Page 661 of tab 147, commencing at 8629638.
9

10 THE COMMISSIONER: Thank you.
11

12 MS SULLIVAN: Q. That has come up on the screen. For
13 the purposes of identification, this is a memorandum to all
14 region commanders from Assistant Commissioner Talbot dated
15 25 September 2018 entitled "Critical incident declaration
16 form"; you agree with that?
17

A. Yes. Yes.
18

19 Q. That was a memorandum accompanying the form that was
20 then available on the PSC intranet site, together with some
21 commentary indicating that the form had been developed to
22 ensure consistency in the information provided to this
23 Commission; do you agree?
24

A. Yes.
25

26 Q. And also that it was a formal mechanism to record the
27 reasons underpinning a decision to declare a matter
28 a critical incident?
29

A. Yes.
30

31 Q. But also not to declare in circumstances where
32 a region commander has turned their mind to that matter?
33

A. Yes. It doesn't say those specific words, but I think
34 it's very clear by the mechanism and the document itself,
35 when read together, it means that when you declare or not
36 declare, you give a decision and you give some rationale
37 and reasons for that.
38

39 Q. And in terms of the rationale and reasons for not
40 declaring, what do you see as the importance, if any, of
41 setting out the reasons to not declare?
42

A. It's one of those situations where almost when you
43 don't declare, it's of equal importance, if not perhaps
44 even more importance, to really spell out clearly what
45 you've considered and then give some reasoning as to why
46 you've eliminated that or reduced it in importance, and
47 then holistically give a position, and, you know that's -

1 sometimes all of us as decision-makers, self included, we
2 don't always get that formula right, absolutely. I don't
3 sit here as any perfect decision-maker and/or rationale
4 narrator. But it is important, in our line of work, in our
5 level, on matters of importance, to give a clear decision
6 and then give some type of supporting reasoning to that,
7 whether it is to do or not to do.

8
9 Q. So that, for example, it can be drawn upon in a
10 context like this?

11 A. Yes.

12
13 Q. It's an auditable trail of the region commander's
14 reasons for not declaring, which, of course, has the
15 consequence, doesn't it, that there is no oversight by this
16 body?

17 A. That's right. If not declared, there is no monitoring
18 capability by the LECC.

19
20 Q. And I just want to ask you about your experience in
21 relation to where these forms go. So we understand that
22 they don't go to PSC - that is, the non-declaration forms;
23 is that right?

24 A. Yes. My understanding, they remain with the region
25 command/commander, but essentially with the region command.
26 I would say most likely within their professional standards
27 portfolio led by their inspector, being the professional
28 standards manager.

29
30 Q. But they're not collated in any central repository, to
31 your knowledge.

32 A. No.

33
34 Q. Can I suggest they should be?

35 A. Well, I would say it suggests that they should be
36 absolutely collated by the region, so that the region
37 themselves should have an empirical data set of what
38 they've considered and declared and what they've considered
39 and not declared. Are you talking about a corporate area
40 where all forms would go to?

41
42 Q. Precisely.

43 A. May I ask for what purpose and whose review they
44 perhaps --

45
46 Q. Certainly. Can I suggest this as a potential model,
47 given what you've indicated about where they are currently

1 stored: that they might be stored within the region
2 command as one source, but also collated by PSC as
3 a comprehensive record of all P1179 non-declarations, so,
4 for example, someone like you or one of your experienced
5 investigators can review them, identify any matters of
6 concern, identify any trends, ensure, for example, that
7 they are being filled out completely and correctly?

8 A. I don't think there's any pure opposition to that
9 except that the structure around that needs absolute
10 clarity, because at the moment, as stated before, when
11 declared, PSC have a role.

12 Q. Yes.

13 A. Now, I appreciate I, as in we, own the guidelines.
14 But ultimately, they're a corporate document. So for that
15 process to occur, there has to be change and agreement by
16 the executive as to that change occurring.

17 Q. Yes.

18 A. But I would say to you that there might be some
19 options to at least put that forward and see what the
20 organisation's position is with that.

21 Q. Can I suggest it's difficult to see - from my
22 perspective as counsel assisting - a downside in having PSC
23 undertake what I might loosely term a quality assurance
24 role by becoming the central repository for P1179
25 non-declarations?

26 MR GOLLAN: I object to that. Really, what my learned
27 friend is proposing is her own disposition. The witness
28 has already said that there needs to be some architecture
29 or structure around that. I think that's sufficient for
30 the purposes of the inquiry. Her own personal opinions --

31 THE COMMISSIONER: It's not her own personal opinion,
32 Mr Gollan. That's not how I understood the question to be
33 framed.

34 Q. Perhaps I could say I see some - could you answer, if
35 I was to consider making a recommendation, Assistant
36 Commissioner Cotter, that there would be some utility in
37 having the professional standards command also have a copy
38 of all P1179 forms completed, both declared and
39 non-declared, to allow for the option of some kind of
40 quality assurance process in relation to those forms, what
41 would your view be about a recommendation of that kind?

1 A. I fully understand the question, absolutely, fully
2 understand it. And I will say again that for that to occur
3 I have to have the remit to do it.

4
5 Q. Absolutely.

6 A. Because without the remit, it's just a warehouse.

7
8 Q. And so you'd need to have some guidance as well in
9 those guidelines about what you are meant to do with those
10 forms--

11 A. Absolutely.

12
13 Q. -- beyond simply putting them in a file?

14 A. Absolutely, and then where my - or where our - it's
15 not "my" - where our role begins and ends in that review.
16 So I understand fully the question and I - but I also say
17 at the moment, you are asking me about a state of the world
18 that doesn't exist.

19
20 MS SULLIVAN: Q. Yes.

21 A. And whilst I'm representing the Commissioner here,
22 I don't speak for him or the executive --

23
24 Q. Understood.

25 A. -- in what the future state might look like. I can
26 say if you make a recommendation to that, it will be
27 absolutely appropriately and duly considered, as you would
28 expect.

29
30 THE COMMISSIONER: Q. Do you see any benefit in a
31 quality assurance process of some kind in an effort,
32 perhaps, to ensure that there is consistency in
33 decision-making between the different regions, for example?

34 A. Yes, I do, and I also say two things: professional
35 standards might be the area to do that, but there is also
36 a deputy commissioner above that region commander who, you
37 know, is there as that person all day on every other issue,
38 not just critical incidents, to be that buffer, sounding
39 board, piece of wisdom, review mechanism, quality
40 assurance - whatever terms we would like to use - that
41 maybe there is some scrutiny at that level. Maybe that's
42 the first port of call and then maybe - maybe then
43 professional standards.

44
45 But if you're looking for a warehouse to put them,
46 I can't torpedo that idea, right? But what I can say is at
47 the moment, there is no structure, no imprimatur for me to

1 do anything with that.
2

3 MS SULLIVAN: Q. That's certainly understood. We're
4 just exploring the counterfactual where there might be such
5 a structure and whether you see benefit in that. Can
6 I suggest, for example, the benefit might be that a region
7 commander and the deputy commissioner who sits above that
8 particular region commander might have a particular view of
9 things so that you get an approach taken within that region
10 command. But that could be different to the view of
11 a region commander and his deputy commissioner in another
12 area, so that would enable you, for example, as the subject
13 matter expert in relation to critical incidents, to raise
14 issues that arise from non-declarations that are provided
15 to PSC so, for example, the region commander could have the
16 benefit of those robust discussions that you've very
17 helpfully referred to as being important in driving the
18 best decision-making in your section 54 response; do you
19 agree?

20 A. Yeah, I agree along the lines of put your submission
21 forward, put your recommendations forward, and I think they
22 need to be considered. I don't come with the imprimatur to
23 say yea or nay to that, but I see the merit in what you are
24 saying.

25
26 Q. Thank you. Is it right that because you don't see
27 those forms - that is, the P1179 non-declarations - you
28 don't have a sense as to whether or not they're being
29 routinely completed in relation to non-declarations for
30 critical incidents?

31 A. Yeah, I'm - well, my command is blind to the fact
32 whether one is completed or not upon a non-declaration.

33
34 Q. Are you aware of any training that is provided to
35 assistant commissioners and superintendents, for example,
36 who might act in that role, in relation to the importance
37 of completing the non-declaration?

38 A. I've put in my statement there is no formal training
39 whatsoever to that level of officer around critical
40 incidents.

41
42 Q. Yes.

43 A. -- superintendent or otherwise. There is some courses
44 that might touch on it. We do run a critical incident
45 investigators course, but that's primarily for the
46 investigators and SCIIIs.

1 Q. Yes.

2 A. We don't do one for - at the command level, and then
3 ultimately those people. That is - you know, whether it be
4 a training program or simply a package that spells out
5 clearly - and I will absolutely concede the guidelines need
6 some shake-up with regards to that very specific point.
7 And we'll take care of that, absolutely, because I do see
8 it as something where we can bolster. So, you know --
9

10 Q. Just pausing there, you're referring to the critical
11 incident guidelines themselves?

12 A. Yes. Making reference to the need to complete a 1179
13 when you declare and equally when you don't declare and
14 what you should be, you know, considering. "This is the
15 Act, this is the legislation, 110, 111 primarily". And
16 then emphasising again: make a decision, time and date
17 stamp it and give some reasons for it.

18 Q. So there are those critical incident guidelines, and
19 we've gone to those, but there are also, aren't there, the
20 specific role guidelines for each of the senior officers
21 who have involvement?

22 A. Yes, a checklist - again, there is some nomenclature
23 issues there. Sometimes they're a guideline, sometimes
24 they're a checklist. So I think we need to tidy that up as
25 well as an organisation and make it a checklist so it's
26 distinct from the guidelines, which is the principal
27 document, and the checklists for the respective roles and
28 responsibilities.

29 Q. Thank you. So that's a very good point, and we'll
30 pull these up now, if we could, please. This is at
31 tab 147, exhibit 27C at 671 - I'm sorry, exhibit 31C,
32 thank you. All right. So we see there, "Region Commander
33 Guidelines". That's what you're referring to, is it,
34 the --

35 A. Yes, that's one of the documents, yes, I referred to,
36 but yes, certainly.

37 Q. Do you say that that is better described as
38 a checklist, or is the checklist over the page, perhaps, if
39 we go --

40 A. No, it is called what it is called, "Region Commander
41 Guidelines". What I see that as in reality is more,
42 I suppose, a checklist, or what I see it perhaps developing
43 into is a more prescriptive set of what they must do, when
44 they must do it and how they must do it. I think there

1 needs to be absolutely more assistance provided to those
2 region commanders from us, and I will concede, we at PSC
3 can, you know, readily fix that up. Because I have got to
4 say, I read this and, you know somewhat with a little bit
5 of surprise, you know, found it not meeting the
6 expectations that I want it to.

7
8 Q. Including in terms of the non-reference to the P1179
9 form?

10 A. But one, yes. That's certainly included. It's not
11 included there.

12
13 Q. What are the other things that struck you when you
14 reviewed this?

15 A. Well, I just think it needs to be in, again,
16 a chronological document that takes a region commander
17 through - or any of the other officers below them - from
18 when they first get notified and the step-by-step process
19 they have to do, just go, "Okay, I've done that, I've
20 spoken to my commander, I've spoken to my professional
21 standards manager, I've ensured there is a 1179. I've
22 given dictation over the phone because it is 2 o'clock in
23 the morning, I know there will be a document there
24 completed: "These are my reasons, these are my rationale,
25 who else do I notify, I might talk to my deputy". You
26 know, I'm just ad-libbing here but I'm talking through a
27 little bit of a cheat sheet, checklist, whatever words we
28 want to use. I don't want to call it "guidelines" because
29 the guidelines will be guidelines.

30
31 Q. The guidelines, yes.

32 A. And this will be annexures to that, which is what they
33 are to be, and are, but I just think they need a fresh set
34 of eyes and a fresh set of prescription that is more
35 helpful than perhaps where they are at the moment.

36
37 Q. You're talking about a fairly wholesale review by the
38 sound of things?

39 A. I am.

40
41 Q. Where are these guidelines to be found? I don't
42 understand them to be annexed to the critical incident
43 guidelines?

44 A. They're all on the professional standards website,
45 intranet sites. They're all very findable.

46
47 Q. They are findable, but they're not, as you have

1 indicated, attached in a single spot. So if an acting
2 region commander prints off the critical incident
3 guidelines to look at them, they won't immediately find
4 their own --

5 A. No, no.

6
7 Q. -- checklist?

8 A. No. No.

9
10 Q. And there is utility in combining them in a single
11 document, do you think?

12 A. Yeah.

13
14 Q. That's just one suggestion from the Bar table.

15 A. No, it's - no, I'm a fair believer in, yeah,
16 a one-stop shop, and I think we have a role to equally help
17 better.

18
19 Q. Yes.

20 A. Can we go, please, to the critical incident guidelines
21 just in terms of the section 111(1)(b) public interest
22 matters?

23 A. Yes.

24
25 Q. So that's at the same tab, 647 is the barcode
26 reference, please. I should indicate, we're looking here
27 at the current version of the guidelines, which is February
28 2024. Is that right?

29 A. Yes.

30
31 Q. So do you see there the reference to the public
32 interest criterion. I'll just read it on to the record:

33
34 *The Region Commander may also make this
35 declaration if they have "other grounds for
36 considering it is in the public interest to
37 do so".*

38
39 Reference to section 111(1)(b):

40
41 *This may include where an incident could
42 attract significant attention, interest or
43 criticism and the public interest is best
44 serviced by investigating the incident as
45 a critical incident.*

46
47 Do you see that?

1 A. Yes.

2

3 Q. Has that changed, in your experience, during any

4 iteration of the critical incident guidelines, that

5 formulation?

6 A. I don't know. All I see is what is in front of me,

7 the current version. I might say, this version, or this -

8 once upon a time, way, way back when I was a boy, the

9 critical incident guidelines were very prescriptive,

10 perhaps even overly prescriptive, but I would say a

11 helpful, document. And they were perhaps 80 pages long.

12 I'm talking turn of the century, back in the dinosaur days,

13 and they went through - and then in 2019, they were sent

14 out to, I won't mention - to a law firm to develop a plain

15 English version. And this is no criticism of the law firm

16 involved, because at the end of the day, what we requested

17 came back and we said, "We will accept that".

18

19 I didn't know some of that, I must say, until very

20 recently. So I look at from when I used to do these things

21 for a living and now in a different role, I was a little

22 surprised at perhaps the brevity of it, the structure of

23 it. Again, it doesn't flow from - it sort of flows but

24 I think sometimes you can rationalise too much when you

25 redo these types of documents. I think there needs to be a

26 little bit of old-school thought pattern in it and make it

27 a holistic document which sets out the who, the what, the

28 when, the why for all the people involved to give absolute

29 clarity in that one-stop shop, one document, checklists for

30 ticking purposes, literally, assigned to them.

31

32 So they can pick that up but, of course, I can't make

33 it 87 pages long. So there will be a tussle to get it the

34 right amount of pages. But I think there is some input

35 into these guidelines that we need to buy back.

36

37 Q. Just pausing there, for example in relation to --

38

39 MR SMARTT: Sorry, can I say I didn't object about the

40 discussion of the communications between the law firm so as

41 not to be difficult, but it was fine at that level of

42 generality. I just say the Commissioner of Police

43 maintains the privilege over that, lest there be an

44 indication that my silence was --

45

46 MS SULLIVAN: That's understood.

1 THE COMMISSIONER: That's fine, Mr Smartt. I don't think
2 we have any interest in obtaining that advice.

3
4 MS SULLIVAN: No, not at all.

5
6 THE WITNESS: No, and as I say, they helped us out and we
7 accepted the homework that we got back. So it's on us.

8
9 MS SULLIVAN: Q. I was just going to pause you
10 momentarily to suggest that the missing persons standard
11 operating procedures has a number of checklists in relation
12 to each officer's role for missing persons investigations.

13 A. Yes.

14
15 Q. Are you familiar with that, no doubt?

16 A. Yes.

17
18 Q. Something along those lines - is that what you had in
19 mind in relation to this document?

20 A. Yes.

21
22 Q. It's quite specific, isn't it, that protocol?

23 A. I think it needs - plain English is wonderful and
24 we're not going to lose that, but prescription and absolute
25 what you do at what time and who does it is important.

26
27 Q. Not least because you often have people in acting
28 roles dealing with critical incident matters - for example,
29 an acting duty officer or an acting superintendent?

30 A. All of that and our role as an organisation is to help
31 our people, and part of the way that professional standards
32 can help, part of the way I can personally help and put my,
33 you know, footprint over it, is to make sure that we get
34 the best product out there and I think we - I don't think -
35 we have some work to do to go back and reflect and review
36 this document and the checklists, or whatever we want to
37 call them, and have a better document which helps all our
38 people make the best decision they can.

39
40 Q. Thank you. Against the backdrop of those remarks, can
41 I suggest that this potentially nebulous area of public
42 interest is one where there may well be benefit from
43 fleshing out the thinking in relation to the types of
44 matters that could fall within that category? So, for
45 example, we understand that there have been three, now
46 three, matters under section 111(1)(b) since 2017 out of
47 a total of 297 critical incidents.

1 A. When you say "now three", are you referring to the one
2 from --

3
4 Q. Friday?

5 A. -- the other evening? Yes.

6
7 Q. So that indicates, doesn't it, that the declaration of
8 public interest critical incidents is very, very rare?

9 A. Yes, it does. I think we dug up a couple more where
10 we had shoed out some things like that, referenced in my
11 statement.

12
13 Q. Thank you.

14 A. We can go to that if you wish. But give or take, it
15 is a minutiae of number, isn't it, and that is, as we have
16 discussed before in evidence, that most of the time it is
17 clear cut.

18
19 Q. Yes.

20 A. Via 110 criteria.

21
22 Q. Yes. So the grey zone, if I can call it that, in
23 relation to section 111(1)(b), is where someone, a region
24 commander, making this decision, will need the most help?

25 A. Yes.

26
27 Q. And that's where, can I suggest, it might be of
28 assistance to provide further information, including by way
29 of examples of matters that have been called, to provide
30 something in the nature of a broad framework?

31 A. Certainly there needs to be the - the definition needs
32 to be fleshed out.

33
34 Q. Yes.

35 A. I don't know about a set of prescriptive examples, but
36 I'm certainly open - I think we are certainly open as an
37 organisation to reviewing a very - a very healthy
38 definition for what "public interest" is, bearing in mind
39 the Act itself, owned by LECC, isn't helpful in defining it
40 at all, and it's not necessarily the legislator's role
41 either, but it doesn't help - there is no help given there
42 either.

43
44 Q. Perhaps you have a recommendation for the
45 Commissioner, Assistant Commissioner?

46 A. We can work on that out of session, I'm sure.

47

1 Q. Thank you. All right. We've canvassed the pros and
2 cons of - well, we've canvassed at least the positive
3 components of the critical incident model in terms of the
4 independence that it provides --

5 A. Yes.

6

7 Q. -- amongst other matters. What, to your mind, is the
8 downside, where you're in that grey zone - downside, if
9 any - where you're in that grey zone where it's unclear
10 where a matter is in terms of section 111: what's the
11 downside of declaring the critical incident for abundant
12 caution - that is, erring on the side of caution - and then
13 later revoking it once it becomes apparent what the
14 position is, because that approach gives you the benefit of
15 the critical incident model until you're clear that it's no
16 longer the appropriate course to take?

17 A. I believe we need a criteria which - and I appreciate
18 public interest is that grey area. I think 110, you know,
19 just exudes public interest because of what it is. So
20 there's no greater definition than those criteria, those
21 examples. I equally do not think it is proper to just
22 declare for the sake of declaring.

23

24 Q. Yes.

25 A. I think there has to be some - you know, 110 is clear.
26 I think with proper mechanics and proper consideration,
27 public interest can be explained with, you know, citing
28 whatever criteria we need and I think the organisation is
29 very willing to explore that.

30

31 I spoke to it in some earlier evidence around - it's
32 that balance of the probity and the transparency versus -
33 however we want to say it, critical incidents do have
34 a stigma associated with them.

35

36 Q. Yes.

37 A. The attrition rate to our officers involved, or
38 witness, and to the families of them - and I can talk all
39 day about how it impacts the families of people who have
40 lost police, like, killed in the line of duty - that has
41 ramifications which we could talk for hours on, and I've
42 seen it, I've been involved with a number of them as well.

43

44 I understand, and I've already said it and I'll stand
45 by it, the probity and the transparency must take primacy,
46 it must. We do have to balance that in a really balanced
47 and sensible way with calling critical incidents when they

1 shouldn't be declared. We've got to declare them when they
2 should be declared. That's what we've got to get better
3 at.

4
5 Of course, we can declare and we can revoke, but my
6 position would be - and our position would be - declare
7 right. Declare right the first time.

8
9 Q. And in pursuit of that objective, as I understand your
10 evidence, you think there's more work that can be done to
11 provide greater assistance to region commanders and others
12 in relation to declaring right for public interest critical
13 incidents; is that fair?

14 A. I do. We as an organisation owe it to our
15 decision-makers to help them out and we at PSC and we as an
16 organisation will absolutely try and educate, train better,
17 have more prescription in our documents to help them.

18
19 THE COMMISSIONER: Q. Can I come back to a question that
20 we've asked earlier, and I know it's not for you to say,
21 but would the option of being able to review the declared
22 and the undeclared P1179 forms help inform PSC about
23 whether the guidance they're giving in the critical
24 incident guidelines is kind of hitting the mark? Is
25 consistency one measure of whether those guidelines are
26 effective?

27 A. Yes, and again I understand your question. The issue
28 arises as a peer assistant commissioner to another
29 assistant commissioner. Even if I had such a capability,
30 I could give advice and guidance, opinion: whether they
31 take it or not then comes back to that other position,
32 "Yeah, thanks for your advice, Peter. I'm going to file
33 that under something else."

34
35 So this is why I'm saying the architecture and the
36 structures, as Mr Gollan also said, to use his word, you
37 know, is important. And, you know, because I haven't got
38 that imprimatur and --

39
40 Q. No, I appreciate that.

41 A. And realistically, you know, we could give an opinion,
42 it might have to go to the deputy commissioner, it might
43 have to go crossways and downwards, right, and then it's up
44 to them. You know, I understand --

45
46 Q. I wasn't even thinking, Mr Cotter, necessarily of
47 taking issue with a particular critical incident

1 declaration, but seen as a whole - a review of the 40-odd
2 critical incident declarations in a year or the 80-odd over
3 two years, whether - and that's the declarations, so say
4 there's 50 or 60 a year where they come into consideration,
5 some of which are declared, some aren't. So let's say 50,
6 for example's sake. So if those 50 in a year are reviewed
7 and professional standards command then has an opportunity
8 to see whether there's a general consistency in the pattern
9 of decision-making and if there's real outliers, whether
10 some of those outliers could be addressed by clearer
11 guidance in the guidelines?

12 A. I accept, Commissioner, your principle. That makes
13 a hell of a lot of sense. Whether it's PSC or not, you
14 know, that's like --

15 Q. That's fair.

16 A. I can't - I think what you've said has got merit. How
17 could I not say - I'm very aware of what you're both
18 putting to me. You know, it's got merit. Who, how, with
19 what imprimatur, what do we do with it after someone does
20 review it, who takes notice of it - you know, obviously
21 they're things that need to be worked through.

22 Q. Thank you.

23 A. But the principle itself is sound.

24 THE COMMISSIONER: Thank you.

25 MS SULLIVAN: Q. With respect, they are very meritorious
26 points that you raise as well about the need for any model
27 in which you would have that role, you and your staff, to
28 be clear to other region commanders, lest one be seen to be
29 interfering in the discretion of another region commander?

30 A. As a commander of PSC I don't have many friends as it
31 is. How many more do you want me to lose? No, I say that,
32 obviously, just to break the ice a little.

33 Q. I understand.

34 A. But, look, yeah, it has to be a spirit of cooperation.
35 Professional standards command does have a very good
36 relationship with all our peers; right? We do.

37 Q. Yes. Now, I'm coming to the end of my examination.
38 But you have had an opportunity, haven't you - I can take
39 to you some of the specific articles but you would be aware
40 broadly of the scenes that emerged following Ms Lucena's
41 death in relation to media reports that identified

1 inconsistencies, for example, in relation to Ms Dokhotaru's
2 matter being declared a critical incident?

3 A. Yes.

5 Q. And two other matters, one in Casino and one in
6 St Mary's, also being declared critical incident matters?

7 A. I'm aware of Tatiana's facts. I'm not really sure of
8 the other two you've referenced, I've got to say.

10 Q. Would you like me to bring them up on the screen
11 there?

12 A. Yeah, please.

14 Q. All right.

15 A. Yeah, of course.

17 Q. Yes. Let's go to tab 124, please, this is Ms Drew
18 Douglas. Can we have that. This is an article by Ms Lia
19 Harris of the ABC News entitled, "Drew Douglas died in
20 Sydney after a delayed police response. New figures
21 highlights a growing problem". It's dated 19 August 2023.
22 Barcode reference 8639317 to 8639324. Can we just give
23 Assistant Commissioner Cotter an opportunity to just
24 briefly peruse that to familiarise himself with it, please.

26 MR SMARTT: Could the operator click through it too for
27 us?

29 MS SULLIVAN: I'm so sorry, I thought it was coming up --

31 MR SMARTT: It is --

33 THE COMMISSIONER: When you're ready to turn the page,
34 Assistant Commissioner, let us know.

36 THE WITNESS: My reading has improved. I can go on to
37 page 2. I think I've got a fair idea of the theme,
38 Ms Sullivan, but I'm happy for, obviously, counsel to read
39 it in full.

41 MR SMARTT: No, I'm happy.

43 MS SULLIVAN: Thank you.

45 Q. Can we just go to the next page, I will just point out
46 something at barcode 319. You will see there the reference
47 to:

1
2 *Figures obtained by ABC News under freedom*
3 *of information laws show the average police*
4 *response times to lower priority triple-0*
5 *calls in New South Wales has increased*
6 *significantly in the past year.*

7
8 It goes on to set out those, but it specifically refers to
9 priority 2 calls. The information is as follows:

10
11 *For priority two calls, the average*
12 *response time has also increased slightly,*
13 *from 10 minutes and 50 seconds in the*
14 *2019/20 financial year, to 11 minutes and*
15 *four seconds last year.*

16
17 Do you see that?

18 A. Yes, I do.

19
20 Q. Were you aware in your PSC role of reporting of this
21 nature raising concerns about delayed police response to
22 domestic violence 000 calls?

23 A. In a - in very much a senior officer role, not, say -
24 not absolutely specific to professional standards. But
25 I know it's been a topic of discussion and intent to
26 respond as quickly as we can, with benchmarks, corporate
27 benchmarks, of under 10 minutes I know, for, you know, all
28 jobs, but certainly priority 2s.

29
30 Q. And we can go to it, but if you accept from me that
31 this article - the relevant reference is on page 321 -
32 raises concerns about no critical incident investigation
33 having been called in relation to Ms Lucena's death against
34 the backdrop of Ms Drew's [sic] death where a critical
35 incident investigation was called.

36 A. I think that that article talks about Tatiana's
37 specifically. It might talk about Ms Drew [sic], sorry,
38 Ms Douglas.

39
40 Q. Well where there is a critical incident investigation
41 called, so, for example, on page 318:

42
43 *Police have launched a critical incident*
44 *investigation to examine why officers*
45 *didn't visit the house after the initial*
46 *call to triple-0.*

1 A. Okay, here, fine, thank you, yes.

2 Q. Then it later goes on to note at page 321:

3 *But no critical incident investigation has*
4 *been launched into Ms Lucena's case . . .*

5 A. Okay, I accept what you are saying, yes.

6 Q. So I can take you to another example, in fact, I will
7 do that. That's at tab --

8 MS SULLIVAN: Commissioner, I tender that article before
9 I move on.

10 THE COMMISSIONER: That article - remind me the tab that
11 was under?

12 MS SULLIVAN: That is tab 124 and the barcode reference is
13 8639317 to 8639324.

14 THE COMMISSIONER: That's the ABC report dated 19 August
15 2023?

16 MS SULLIVAN: Correct.

17 THE COMMISSIONER: That will be exhibit 32C.

18 MS SULLIVAN: Thank you.

19 THE COMMISSIONER: It probably doesn't need to be a C,
20 actually, now I think about it. That could easily be
21 a public exhibit. So I will make that public exhibit 6.

22 **EXHIBIT #6 ABC NEWS REPORT RE MS DREW DOUGLAS, DATED**
23 **19 AUGUST 2023, BARCODED 8639317-8639324**

24 MS SULLIVAN: If we could next go, please, to tab 126.
25 This is an article in The Australian dated 29 June 2024.
26 I'll just pull that up. The barcode reference is 8639327.
27 Thank you.

28 Q. Have you seen this article before, Assistant
29 Commissioner?

30 A. No, I haven't, Ms Sullivan, no.

31 Q. All right. This is relatively brief. We might just

1 ask you to look through it.

2 A. Thank you. I have read that first page.

3

4 Q. The next page, please.

5 A. Yes, I accept the tenor of that argument.

6

7 Q. Yes. If I could particularly draw your attention to

8 the remarks of Northern Region Assistant Commissioner Peter

9 McKenna, who referred to the 000 call being made to police

10 shortly after 1.30am, but the police only acknowledged the

11 call at 2.25am. Do you see that?

12 A. Yes.

13

14 Q. And he states:

15

16 *That has given me enough concern to ask for*

17 *an independent review ... what was that*

18 *delay and whether it was justified or*

19 *otherwise," he said on Saturday afternoon.*

20

21 *"What (police) were doing prior to that and*

22 *what other jobs there were will form part*

23 *of that investigation."*

24

25 "that investigation" being a critical incident

26 investigation. Do you see that?

27 A. Yes, I do.

28

29 Q. These articles, I suggest, underscore the importance

30 of that theme of consistency in decision-making in relation

31 to critical incident investigations; do you agree?

32 A. Yes.

33

34 Q. And can I suggest that Ms Lucena's matter does appear

35 to be an outlier against the backdrop of those matters?

36 A. On the time delays, yes, it does, but some of those

37 things which, for example, Mr McKenna spoke to in declaring

38 that were addressed in some emails - in the pack provided

39 by the LECC to me, or yourself to me, where certainly those

40 issues were considered very much about who was on, what

41 were they doing, were they gainfully employed.

42

43 Q. Just pausing there, are you talking about the Godfrey

44 report?

45 A. No. I'm talking about the email - there's an email

46 I think in the afternoon - I've read two emails from Scott

47 Tanner.

1
2 Q. I'm sorry from Superintendent Tanner?

3 A. I beg your pardon.

4
5 Q. Thank you.

6 A. Sorry, he doesn't have a pseudonym, does he?

7
8 Q. He does not have pseudonym, no?

9 A. Mr Tanner wrote to two emails, from my understanding,
10 both addressed at least to Tracy Chapman as well as the
11 second one covering off on a broader range of people,
12 inclusive of his deputy commissioner, I might add.

13
14 Q. Yes. But pausing there, as we've established, he was
15 then the Richmond police district commander, wasn't he?

16 A. Yes, yes.

17
18 Q. So that review is lacking the independence that
19 a critical incident investigation would bring, isn't it?

20 A. Absolutely.

21
22 Q. Sorry --

23 A. But he certainly turned his mind to the very essence
24 of what Mr McKenna has turned his mind to rightfully here,
25 and I would say either Tracy Chapman and/or Scott Tanner
26 rightfully turned their mind to that, hence that
27 description in that email of 3.15 on whatever it is,
28 4 January 2023.

29
30 Q. Yes. But pausing there, can I just indicate to you -
31 you may be aware of this evidence - that Superintendent
32 Tanner did not familiarise himself with the VKG recording
33 of what was happening during the relevant period from 7 to
34 8pm, if you can accept that from me?

35 A. I would absolutely accept that from you.

36
37 Q. And what that recording demonstrates is that there has
38 been noncompliance with the radio operation group protocols
39 for the broadcast of priority 2 incidents in a number of
40 respects?

41 A. Yes.

42
43 Q. Are you aware of that?

44 A. I'm aware of what you - absolutely what you're
45 referring to.

46
47 Q. And can I suggest that that systemic issue is

1 something that a critical incident investigation would have
2 exposed?

3 A. It certainly would have looked into, explored and
4 obviously reviewed all of that, yes.

5 Q. And that really demonstrates, doesn't it, the
6 significant benefit of that model relative to a standard
7 homicide investigation?

8 A. Yes, and a critical incident is to run distinct from,
9 parallel with, but to look at very different things as
10 we've spoken to before.

11 THE COMMISSIONER: We might tender that article in The
12 Australian.

13 MS SULLIVAN: Thank you, Commissioner, yes, please.

14 THE COMMISSIONER: It is 29 June 2024, it is under tab 126
15 and it was barcode 8639327 to 863928.

16 MS SULLIVAN: That is so.

17 THE COMMISSIONER: That will be exhibit 7.

18 **EXHIBIT #7 ARTICLE FROM THE AUSTRALIAN DATED 29 JUNE 2024,**
19 **BARCODED 8639327-863928**

20 MS SULLIVAN: Some very limited questions remaining.

21 Q. Before I conclude, Assistant Commissioner, I would
22 just like to get the benefit of your views about
23 reflections on this matter and what the learnings are from
24 an assistance perspective, please.

25 A. Let me say - let me begin - thank you. Policing is
26 hard, policing is busy, and there's a lot going on a lot of
27 the time. I know that's a very sweeping statement. But it
28 is a truism and I think it was a truism on this particular
29 night in the Ballina Richmond area and north and south of
30 it.

31 What I will say is that from my reading, every
32 officer, whether they be in the radio room at Newcastle,
33 manning the car crews, turning up and dealing with the
34 crime scene and the murder that they discovered - every one
35 of those officers went about their duty with good faith and
36 were doing their best.

1 Perfect is always the enemy of good. Were some of the
2 things that occurred on that night absolutely perfect? In
3 my opinion, and clearly on reflection by the organisation,
4 probably not perfect. But there was certainly no malice,
5 dereliction of duty or anything else, in my opinion.

6 They all tried. They were all working. They were all
7 busy in various ways. Walk a mile in the shoes of that
8 radio room, there were double beeps, there were jobs north,
9 south, east and west of that coast up in that northern
10 area. And unfortunately, things do get missed.
11 I understand there were time frames not met in the original
12 calling of the job, the subsequent callings of the job via
13 the KPIs and the framework that is set.
14

15 Equally, there was decision-making by the police in
16 the field. They were en route to a job on the highway,
17 which came in six or seven or eight minutes before
18 Ms Lucena's call for help. They were almost probably there
19 at that job.
20

21 Q. Not quite.

22 A. They did the job and then came back on. In hindsight
23 and reflection, you know, two went to that job, from my
24 understanding, for officer safety. And we have two bridges
25 north and south of Sydney, one called the Jim Affleck
26 Bridge on the Hume Highway heading to Goulburn, and one the
27 Peter Gordon Wilson Bridge heading to Newcastle. They are
28 constant reminders to police of deaths on our road by
29 police either doing RBT and traffic stops in the case of
30 Mr Wilson, the late Mr Wilson, and in the case of
31 Mr Affleck, putting down, you know, very preliminary road
32 spikes back in the day to stop, you know, a murderer and,
33 you know - or what became a murderer.
34

35 So what I'm saying is we understand it is a realism to
36 say that when police respond to incidents on the highway,
37 officer safety is important too. You've got to balance
38 that, again, against a woman getting the hell bashed out of
39 her, if you believe the description, and I do.
40

41 Probably a lot of people would look at that again and
42 maybe make a different decision, split the car crew,
43 whatever, even though they're in separate cars. But they
44 still did their best with no ill intent.
45

46 Q. Can you take it that that's accepted, Assistant
47

1 Commissioner. Thank you for reminding us about that, but
2 that is certainly accepted that --

3 A. Okay. I'm not sure what's absolutely accepted.

5 Q. No, no, but I just it wouldn't let you know, but
6 thank you.

7 A. And then when they did respond, again, could they have
8 done more? I think anyone would say yes, they could have.
9 What more could have looked like, to give themselves an
10 equal opportunity or more of an opportunity to investigate,
11 discover, still might have ended up with the same outcome.
12 So there are little - I don't say "little" in a demeaning
13 or undermining way. There are little failings across but
14 everyone tried their best to do what they had in front of
15 them for their own safety and ultimately for the safety of
16 Ms Lindy Lucena, who unfortunately nobody could save
17 because of the actions of Mr Huber, who has been convicted,
18 as we know.

20 This is a hard business and again, I just hope -
21 I just hope - I don't see, if I look at it through my lens,
22 I don't see any misconduct. I see areas where we can
23 obviously patch up, bolster - some of that falls to me,
24 some of that falls to the organisation and some of that
25 falls to, yes, the policies and the procedures and some of
26 the systems that we need to absolutely make sure that we
27 classify jobs properly when they come in and that we do
28 have a bit of a hard line with - if it's a 2, it's a 2
29 unless there's absolutely strong underscoring reasons which
30 flip that.

32 And I do believe that we - when we respond to jobs,
33 yes, I think we have to be really vigilant that we have to
34 put ourselves in the shoes of the community watching us,
35 that we will get out and do the very best job we can.

37 MS SULLIVAN: I have no further questions.

39 THE COMMISSIONER: Mr Smartt, do you have any questions
40 that you wanted to ask Assistant Commissioner Cotter?

42 MR SMARTT: No, thank you.

44 THE COMMISSIONER: Mr Gollan?

46 MR GOLLAN: Yes, I do, but could I ask for a five-minute
47 adjournment?

1
2 THE COMMISSIONER: A five-minute adjournment. You can
3 stand down from the witness box, Mr Cotter. We will be
4 back at 5 past 3.

5
6 MR GOLLAN: Thank you, Commissioner.
7

8 **SHORT ADJOURNMENT**
9

10 THE COMMISSIONER: Mr Gollan.
11

12 MR GOLLAN: If the Commissioner pleases, I might start my
13 questions.
14

15 THE COMMISSIONER: Yes.
16

17 **<EXAMINATION BY MR GOLLAN:**
18

19 MR GOLLAN: Q. Do you prefer to be addressed as
20 Assistant Commissioner or Commander? Doesn't matter?
21 A. That's the hardest question I've been asked all day.
22 You can call me anything you like, Mr Gollan.
23

24 Q. With respect, I will call you Assistant Commissioner.
25 As an assistant commissioner, it's a rank that you've
26 earned. Can I ask you a couple of questions: it seemed to
27 me that the history that you gave at the beginning or the
28 commencement of your evidence would demonstrate a very
29 broad, vast level of experience in many facets of police
30 work; agreed?

31 A. Yes, I have had an interesting, diverse and fulfilling
32 career with a lot of stuff in it.
33

34 Q. Yes. And it's from the experience of being a police
35 officer that you can draw on, whether it be intuitive or
36 whether it be that you've actually turned your mind to your
37 previous experiences, that allow you to make decisions all
38 the time on your feet, but also sometimes with the benefit
39 of reflection?

40 A. Yes.
41

42 Q. And generally, police officers with experience have
43 exactly that available to them: if they're well
44 experienced in the field, they put themselves in a position
45 where they can ask themselves intuitive and sometimes
46 direct questions, "What do I do about this scenario in
47 front of me?"

1 A. I agree.

2
3 Q. And there's been some discussion, both during your
4 evidence and before, about the classifications - put aside
5 the classification number 1 but the difference between 2
6 and 3, and don't worry about 4 and 5. And initially, with
7 the material that's available to them, the dispatch gives
8 it a categorisation with the benefit of the information
9 that is given to them?

10 A. Yes.

11
12 Q. And the information that's given to them is limited to
13 the complaint or the call for help, as it were?

14 A. Yes.

15
16 Q. And the police officers that are on the ground get to
17 make further and more informed decisions by what they're
18 confronted with?

19 A. Yes.

20
21 Q. So you might have a category 2 domestic violence, on
22 the ground, and you're able to establish that one of the
23 controversial parties has removed themselves to
24 a neighbour, or something along those lines in a domestic
25 violence situation, and so it might more properly be
26 categorised as a category 3?

27 A. It's - well, it's open - it's open to be - on the
28 facts as they're presented, at the time they're presented,
29 yes, it's open for things to be upgraded, equally, or
30 downgraded.

31
32 Q. Correct. And given that they're dealing with the
33 issue that's in front of them, they might not concern
34 themselves with what's going on with categorisation on the
35 CAD system; rather, they deal with what it is that's there
36 in front of them?

37 A. Yes, that's fair.

38
39 Q. And the police officers that attended upon the
40 accident scene on the highway, you understood that there
41 was a question about police safety. As I understand it,
42 that was something that wasn't foreign to you, and I think
43 you gave us examples of people that have suffered in the
44 context of circumstances that gave rise to a further and
45 lethal circumstance?

46 A. I think any activity by police on a highway has a real
47 and present degree of danger to it, yes.

1
2 Q. Of course it does. And on 3 January, going north over
3 a blind corner and a rise, you might expect that that
4 appreciation by the police officer was not unreasonable,
5 that they would require some help for traffic flow?

6
7 MS SULLIVAN: I object to this. Which police officer? At
8 what point in time? Based on what information? If this
9 line of questioning is to be pursued, it should be done
10 with precision based on the time of relevant events, based
11 on the information that was known, based on the VKG, based
12 on the CAD incident log.

13
14 THE COMMISSIONER: I don't think, Mr Gollan, this has
15 really come up in the course of - I mean, there have been
16 some general comments but nothing that precise for this
17 witness. Can you give me an indication of what you're
18 looking to do?

19
20 MR GOLLAN: Well, the inference that arose by reason of
21 the line of questioning pursued by my learned friend was
22 that there was - and this has been throughout the whole of
23 the proceedings - a category 2 and there's a category 3.
24 Category 2 takes a priority over category 3.

25
26 You heard from the dispatch officers on the first day
27 of my involvement, at least, in this inquiry that there is
28 a moveable feast, as it were, depending upon the
29 information that the police officers on the ground
30 appreciate and what they make of it. I'd like to put that
31 issue to the side because, with great respect, it's
32 a distraction about whether or not it's a 2 or a 3, given
33 that the police officers that were on the ground took
34 a view that there was an imperative for safety not of
35 themselves but of the members of the public.

36
37 THE COMMISSIONER: I think they've given that evidence.
38 I'm not sure that asking Mr Cotter about that is different,
39 unless you wanted to ask him something about whether
40 priority 2 should be upgraded or priority 3 should be
41 upgraded necessarily when an officer uncovers something
42 different on the ground.

43
44 MR GOLLAN: If, Commissioner, you're content that it falls
45 outside of his purview and the other evidence is that which
46 is left for us to interrogate, I'm content with that. But
47 this is a police officer where there were certain

1 propositions put to him that priorities needed to be
2 regarded as priorities. But that's not to be looked at in
3 a vacuum.

4
5 MS SULLIVAN: With respect, my friend should be clear
6 about what has been put. We had the benefit of Assistant
7 Commissioner Cotter's open reflections, and it might be
8 that evidence that you're referring to, but I'm a bit
9 unclear about how this is being formulated and the
10 assistance of it in the absence of all the detail.

11
12 MR GOLLAN: Commissioner, I'm in your hands. As
13 I understand from your response to the objection, you well
14 understand that it is a moveable feast.

15
16 THE COMMISSIONER: I understand the evidence that the
17 officers who attended gave and the evidence of
18 Superintendent Tanner as well as Officer E, that sometimes
19 when you get on the ground, what you find is perhaps
20 different to the nature of the initial VKG response. So
21 I understand that to be the case. I think that's
22 consistent with what Assistant Commissioner Cotter has
23 said. So --

24
25 MR GOLLAN: I note that the assistant commissioner has
26 just nodded his head to your proposition, and I accept that
27 that's the position.

28
29 THE COMMISSIONER: But I think unless you wanted to ask
30 him - the fact remains, though, that despite finding,
31 perhaps, a more serious situation on the ground than they'd
32 anticipated, no-one re-categorised or called for the
33 upgrade of the priority 3 traffic accident.

34
35 MR GOLLAN: That was the question that was objected to,
36 and that was the --

37
38 THE COMMISSIONER: I didn't understand that to be. So
39 perhaps you could ask that question again.

40
41 MR GOLLAN: Q. Do some police officers, rather than go
42 back into the VKG and the CAD system and re-categorise it -
43 do they deal with what it is that is in front of them?

44 A. Yes, they do.

45
46 Q. And particularly in circumstances where they regard
47 there is a risk to the public?

1 A. Yes.

2

3 Q. Thank you. Now, there was a suggestion that there
4 could be an agglomeration, as it were, of the information
5 that might or might not be logged with respect to critical
6 incidents, and I think, in fairness, you suggested, "Well,
7 it would depend upon the architecture around it: what's
8 the benefit of it, we're just not a warehouse but there has
9 to be something meaningful done with it"?

10 A. Yes.

11

12 Q. In your experience as a police officer, the manner
13 with which things are treated is informed obviously by the
14 circumstance but also the environment within which they
15 occur, whether it be in Woolloomooloo or whether it be in
16 somewhere out in the country; correct?

17

18 THE COMMISSIONER: I'm not sure that's helping me very
19 much, Mr Gollan. It's a very general --

20

21 MR GOLLAN: With great respect, the proposition was
22 general, and that's exactly what I intend upon bringing to
23 your attention, so that when we do get to the stage where
24 we're trying to work out what the proper architecture or
25 the better result might be, that it's not forgotten that it
26 is informed by the environment within which the events are
27 occurred.

28

29 THE COMMISSIONER: Are you talking about whether or not to
30 declare a critical incident? Is that what you are --

31

32 MR GOLLAN: No, no, the critical incident is something
33 that is further down the track, as it were. There are
34 things that need to be relevantly considered within the
35 environment within which things happen before you then turn
36 your mind to the legislation. It would be, with respect,
37 erroneous to consider the content of domestic violence or
38 things of that nature in a very high built-up area as
39 opposed to somewhere out in the country where it is
40 informed by the police officers' experience in those areas
41 and the things that they're able to take from their
42 environment.

43

44 MS SULLIVAN: I am loath to interrupt my friend but again
45 we're in that territory of very fulsome articulations of
46 the position that may be prone to influence the evidence.
47 So that's unfortunate and I --

1
2 MR GOLLAN: Oh, please.
3

4 THE COMMISSIONER: I'm sorry, Mr Gollan.
5

6 MR GOLLAN: Please, this police officer has been nothing
7 but frank and honest.
8

9 MS SULLIVAN: I didn't suggest otherwise but it is not
10 appropriate to articulate this level of detail in relation
11 to the evidence that you are seeking to elicit in this
12 manner. And I have raised it before.
13

14 MR GOLLAN: Maybe the police officer might be excused if
15 it is going to take us anywhere.
16

17 THE COMMISSIONER: I think the challenge I have,
18 Mr Gollan, is I think I would prefer that your questions
19 are addressed with more specificity, so general discussions
20 about decision-making in a region versus in a rural area
21 are not assisting me. I'm more than happy for you to ask
22 Assistant Commissioner Cotter about what might be done with
23 a collection of collected P1179 forms.
24

25 MR GOLLAN: Q. Let me put it to you in these terms,
26 Assistant Commissioner. Would the assessment of the
27 information that was gathered by reason of a common
28 database, as it were, be influenced by the areas and area
29 commands within which those events occurred?
30

31 THE COMMISSIONER: Sorry, it needs to relate - it can't
32 just be a broad database; it needs to relate to the
33 critical P1179.
34

35 MR GOLLAN: Can I ask for the witness to be excused for
36 the moment, please.
37

38 MS SULLIVAN: Can I just raise --
39

40 THE COMMISSIONER: Mr Cotter, would you mind just stepping
41 down from the witness box and stepping outside for the
42 moment while we have a discussion, thank you.
43

44 (The witness leaves the hearing room)
45

46 MS SULLIVAN: Commissioner, it is not clear to me how this
47 line of questioning that relates to systems matters is

1 within the purview of Mr Gollan's grant of leave. It's
2 certainly within Mr Smartt's, if he chooses to raise that
3 aspect on behalf of the Commissioner, but I'm somewhat
4 unclear.

5
6 THE COMMISSIONER: I must say, Mr Gollan, I'm not inclined
7 to continue a grant of leave to this general line of
8 questioning. I'm just not understanding it and I don't
9 think it's useful. So I invite you to elaborate for me
10 what it is that you intend to adduce and how that assists
11 the three of your clients.

12
13 MR GOLLAN: What was proposed in my learned friend's
14 questioning and in questions asked by the Commissioner, was
15 whether or not a repository, I think was the turn of phrase
16 that it became, that was a centralisation of all of the
17 information that relates to the forms that relate to
18 critical incidents. What I'm seeking to distinguish,
19 should you come to a conclusion where you think that that's
20 an appropriate course - and I'm not averse to that - but if
21 it's an appropriate course, that it has more complexion
22 than that.

23
24 So the generality of my question, with great respect,
25 is actually more specific in that it directs it to the
26 local area commands rather than you take all of New South
27 Wales' information and put it in a repository.

28
29 If that were the case, with respect, it wouldn't put
30 us in a position where we're any better off without knowing
31 whether or not the environment within which these things
32 occur influenced the outcomes and influenced the manner
33 with which these complaints come in and how they're dealt
34 with, because of the resources that are particular to that
35 particular local area command.

36
37 THE COMMISSIONER: How does that impact your clients,
38 Mr Gollan?

39
40 MR GOLLAN: Well, under section 68, it says that:

41
42 *A person authorised or required to appear
43 in an examination or a person's Australian
44 legal practitioner authorised to appear at
45 an examination may, with leave of the
46 examining Commissioner, examine or
47 cross-examine any witness on any matter*

1 *that the examining Commissioner considers*
2 *relevant.*

3
4 Now, clearly my learned friend, and by reason of the
5 follow-up questions asked by the Commissioner, this
6 question of a repository is a matter that concerns you and
7 it's a matter that you may or may not otherwise have a view
8 about or you might dispose of it because of other
9 considerations. We've got a witness now that has given
10 partial evidence on the issue and said, "Yeah, I can see
11 the benefit of that, but it has to have some architecture
12 or structure around it that would allow it to be
13 meaningfully used." I'm exploring that for the benefit of
14 the Commission, should they be so inclined to turn their
15 mind to that issue.

16
17 THE COMMISSIONER: If I understand the purpose of your
18 questions, it's to denote that any architecture or
19 structure to an audit function for P1179s should have
20 regard to the location at which the event took place or did
21 not take place.

22
23 MR GOLLAN: Yes, and the collateral consideration so far
24 as resources are concerned - whether or not you've got
25 police stations that are half an hour away from each other
26 as opposed to what you might have here in central Sydney,
27 where they can be attended to on foot, if need be, because
28 they're so close. So those matters are relevant
29 considerations.

30
31 THE COMMISSIONER: I think that question can be fairly
32 precisely put. I'm content, Ms Sullivan, to let that
33 question be put.

34
35 MS SULLIVAN: Yes, Commissioner.

36
37 THE COMMISSIONER: Could you put it as precisely as you
38 can, Mr Gollan, because I think it's tight.

39
40 MR GOLLAN: No, no, I understand. It was only a very
41 short compass within which I sought to explore it so that I
42 could move on to matters that are otherwise relevant.

43
44 THE COMMISSIONER: Good, let's move on, shall we. Get
45 Mr Cotter back in and we'll put that question.

46
47 MR GOLLAN: Thank you.

1
2 (The witness returns to the hearing room)
3

4 THE COMMISSIONER: Thank you, Mr Cotter.
5

6 MR GOLLAN: Q. Thank you, Assistant Commissioner.
7 I apologise for putting you to that inconvenience. You
8 recall that there was discussion about a repository, as it
9 were, all of the information coming in to one database
10 rather than it being held at the local area commands?

11 A. Yes.
12

13 Q. For that to be best understood and used to improve
14 things, would some of the considerations involve the
15 resources and the location within which those critical
16 incident considerations arose?

17 A. Just in that little break, which was probably
18 beneficial to everyone in the room, as well as myself, to
19 think about - I think I knew where your question was coming
20 from - and I think everyone's opinion around this room is
21 quite relevant to it, and so is yours, in that if you are
22 going to have some independent review mechanism to it over
23 all the reports declared, or the non-declareds, obviously,
24 you've got to have the independence. You clearly can't
25 make it a home-town decision, because it only goes back to
26 the same perhaps thought pattern. But, to your very valid
27 point, you need that local input into things such as the
28 resourcing, the other calls going on, such as radio logs,
29 the tyranny of distance given country versus city, even
30 though both can be equally busy, and just because you're
31 100 metres away might not mean you're any closer than
32 10 kilometres away. It's all nuanced and balanced against
33 the circumstances and the facts, the geography, the
34 topography, the communities. Everything needs to be taken
35 into account.

36
37 So I would suggest that it's something like, you know,
38 a panel of people, perhaps with input from the people and
39 the decision-makers on the ground perhaps at the time, at
40 the superintendent and the region commander level, to
41 thrash it out in a fair and reasonable way to get to the
42 bottom of: well, what were you thinking at that time; what
43 else was going on in your universe that was so impactful?
44 So it's like a sort of mini review before you - you know,
45 it is what it is, I suppose, a mini review of that. The
46 local considerations and the circumstances operating at any
47 given time, city or country, the nuances, the

1 idiosyncracies absolutely need to be taken into account.
2

3 Q. Thank you. Now, to move on to a separate topic, it
4 was suggested to you that there was a DV homicide review
5 and candidly you said, "Well, I'm not sure what that
6 particularly refers to". But as I understand your
7 experience, you have worked in homicide?

8 A. Four years as a practitioner and two years as
9 a commander.

10 Q. Yes. And so you have a practical understanding, not
11 just a policing understanding from an academic perspective?

12 A. Yes, very practical.

13 Q. Yes. And in a homicide, it's not just about getting
14 the person; it's also about accumulating the evidence?

15 A. Very much so.

16 Q. About what happened before the homicide?

17 A. Victimology, offenderology, a whole lot of "ologies".

18 Q. Yes. And it's across the whole cross-section of
19 before, during and after, so that you can not only have an
20 understanding of evidentially what you can establish and
21 prove, but also an understanding of why it happened?

22 A. Yes.

23 Q. That might, in fact, impact upon the individual as
24 mitigating circumstances, should they find themselves being
25 sentenced?

26 A. It's a big - the investigation is all encompassing, to
27 your point, and it includes, you know, the starting point
28 of any homicide investigation is not the wounds that
29 inflicted the murder, it can be days, years, relationships,
30 depending on the reasoning, the underpinning or, you know,
31 primaevial reason, as I would say, as to why something
32 occurs.

33 Q. And if you, as an investigating homicide police
34 officer, uncover malpractice or matters of concern so far
35 as the integrity of the police officers that may have been
36 involved in the investigation or the accumulation of
37 evidence, you have an obligation under the Police Act to
38 report it, don't you?

39 A. Yes, you do.

40 Q. And LECC has a complete oversight over any complaints

1 of that nature, don't they?

2 A. Yes, any registered investigation that professional
3 standards do or is laid by - commenced by anyone across the
4 organisation. The LECC, via our - their shared access to
5 our system, have optics over it in real time immediately.

6
7 Q. Yes. But as you say, immediately, because the nature
8 of such a complaint or reporting might not be a complaint,
9 it might just be reporting; correct?

10 A. Well, our misconduct database is basically for
11 complaints, yes, that are registered, whether they come
12 from an internal source or they come externally or referred
13 to us from the LECC in some cases. So that's the answer to
14 your question. But can you please clarify what you mean by
15 "reporting", though? I don't understand that.

16
17 Q. Well, if there is a homicide, detectives generally are
18 affected, aren't they?

19 A. Yes.

20
21 Q. So the general duties officer comes across a situation
22 as they did here, which is horrendous on any view of it, it
23 doesn't matter what perspective you look at it from,
24 whether it be just a member of the community, but as
25 a result, then there are detectives that are brought in?

26 A. Mmm-hmm.

27
28 Q. And that gives an independence, as it were, between
29 the person who discovers and also the role of the
30 detective, and that is to start from ground zero and put it
31 all together; correct?

32 A. Yes.

33
34 Q. And if they were to discover any maladministration,
35 misfeasance, wrongful act or whatever else, they have an
36 obligation under the Police Act to report it, don't they?

37 A. Yes, they do.

38
39 Q. And so when we talk about what it was that was in the
40 mind and what was put to you about Ma'am Chapman, her DV -
41 you know that's domestic violence --

42 A. Yes.

43
44 MS SULLIVAN: I'm sorry, my friend needs to articulate his
45 questions with precision. When you say "what was put to
46 you" - I was referring to a document that was prepared by
47 Acting Assistant Commissioner Chapman. That's what I put.

1
2 MR GOLLAN: Q. You didn't seem to have any trouble with
3 it, but let me put it to you in these terms. The document
4 that was shown to you on the screen --

5 A. Yes.

6
7 Q. -- where she said that she expected a DV homicide
8 review in the context of the detectives investigating --
9 A. Yes.

10
11 Q. -- that would encompass an obligation on those
12 detectives that, should they have found any
13 maladministration, misconduct or otherwise, to report it,
14 wouldn't it?

15 A. The investigating homicide investigators - I'm not
16 sure who actually investigated that murder.

17
18 Q. Sure. We're talking about roles --

19 A. I don't know if it was local police or otherwise. I'm
20 not sure. So to narrow - for my benefit, perhaps --

21
22 Q. Sure.

23 A. -- and excuse me, but the investigators, wherever they
24 come from, whether they be the local or the homicide, their
25 role in investigating, if they uncover somebody whose
26 actions - a police officer before them or contemporary to
27 them during that investigation has done something
28 absolutely wrong, as in misconduct and/or criminal,
29 clearly, their job and role is to report that immediately
30 in writing to their supervisor.

31
32 Q. With the expectation that it would then be
33 investigated?

34 A. Yes, it would be - then that complaint, that piece of
35 misconduct and/or criminality would be then independently
36 investigated.

37
38 Q. Just one final thing. The critical incident form that
39 we've all been looking at, P1179 --

40 A. Yes.

41
42 Q. -- and the reasons for why you do and you don't go
43 ahead with categorising it as a critical incident, and you
44 have been, I imagine, exposed to this document many
45 times --

46 A. I've seen it a few times, yes.

1 Q. You had a look at it before you came here?

2 A. Yes.

4 Q. And there's a part 3 that we've discussed at various
5 stages there about the decision of the region commander and
6 why you don't indicate or why you do indicate that it's
7 a critical incident?

8 A. Yes.

10 Q. Before you get to that, you have to find yourself
11 within the confines of section 110 or 111(1)(b), don't you?

12 A. Yes, you do.

14 MR GOLLAN: Thank you. There is nothing further.

16 THE COMMISSIONER: Anything arising, Ms Sullivan?

18 MS SULLIVAN: I don't think so, thank you, Commissioner.

20 THE COMMISSIONER: Mr Smartt?

22 MR SMARTT: No, thank you.

24 THE COMMISSIONER: I think we can release Assistant
25 Commissioner Cotter from his summons?

27 MS SULLIVAN: We can, thank you.

29 THE COMMISSIONER: Thank you. Thank you, Assistant
30 Commissioner. Thank you for coming to give evidence and
31 thank you for the thoughtful way in which you gave your
32 evidence today. It's much appreciated.

34 THE WITNESS: Thank you, Commissioner. Thank you,
35 Ms Sullivan. Thank you, Mr Gollan. Thank you, Mr Smartt
36 and the other gentlemen who I don't know at the back. I'm
37 sorry, sir, but thank you. Thank you for being very fair
38 and very reasonable.

40 <THE WITNESS WITHDREW

42 MS SULLIVAN: Might we have a short five-minute
43 adjournment whilst I attend to some housekeeping matters?

45 THE COMMISSIONER: Yes, absolutely. I might - no, let's
46 do that. We'll have a five-minute adjournment and --

1 MS SULLIVAN: Thank you.

2
3 THE COMMISSIONER: -- we'll come back at - do you want
4 10 minutes, would that be more helpful?

5
6 MS SULLIVAN: Five is perfect. I work fast.

7
8 THE COMMISSIONER: Excellent. 3.37.

9
10 **SHORT ADJOURNMENT**

11
12 MS SULLIVAN: Thank you for that time, Commissioner.

13
14 If I could now tender some further material, which
15 I should indicate has been disseminated to the parties.

16
17 Tab 132, which is the section 54 and 55 response of
18 Deputy Commissioner Pisanos, barcode 8641779 to 8641829.

19
20 THE COMMISSIONER: That will be exhibit 32C.

21
22 MS SULLIVAN: Thank you.

23
24 **EXHIBIT #32C SECTION 54 AND 55 RESPONSE OF DEPUTY
25 COMMISSIONER PISANOS, BARCODED 8641779-8641829**

26
27 MS SULLIVAN: Next I tender the section 54 and 55 response
28 of Assistant Commissioner David Driver, tab 135, barcode
29 8634871 to 8634878.

30
31 THE COMMISSIONER: That will be exhibit 33C.

32
33 MS SULLIVAN: Thank you.

34
35 **EXHIBIT #33C SECTION 54 AND 55 RESPONSE OF ASSISTANT
36 COMMISSIONER DAVID DRIVER, BARCODED 8634871-8634878**

37
38 MS SULLIVAN: Then tab 154, this is the section 55 and 54
39 response of Detective Senior Constable Shaun McKay, dated
40 8 December 2025, that is tab 154, barcode 8629895 through
41 to 8629923.

42
43 THE COMMISSIONER: That will be exhibit 34C.

44
45 **EXHIBIT #34C SECTION 55 AND 54 RESPONSE OF DETECTIVE SENIOR
46 CONSTABLE SHAUN MCKAY, DATED 8 DECEMBER 2025, BARCODED
47 8629895-8629923**

1
2 MS SULLIVAN: Next I tender the notes of Inspector Lisa
3 Jones dated 3 January 2023 that are at tab 155, barcode
4 8607993 through to 8607994.

5
6 THE COMMISSIONER: That's exhibit 35C.
7

8 **EXHIBIT #35C NOTES OF INSPECTOR LISA JONES DATED 3 JANUARY**
9 **2023, BARCODED 8607993-8607994**

10
11 MS SULLIVAN: There is some documentation that has been
12 provided by Superintendent Tanner in response to the call.
13 That hasn't been barcoded as yet. Similarly, there is
14 further documentation from Acting Assistant Commissioner
15 Chapman - or rather Superintendent Chapman. It may be that
16 that material should be barcoded and then circulated and --
17

18 THE COMMISSIONER: I think that's preferable because it
19 allows us to keep that matter - those documents clear for
20 our records.

21
22 MS SULLIVAN: Thank you. We will take that on board.
23

24 THE COMMISSIONER: They've been circulated, as
25 I understand, the responses?

26
27 MS SULLIVAN: No, they haven't been circulated as yet, but
28 they will be.
29

30 THE COMMISSIONER: Thank you.
31

32 Were there any other formalities that you wanted to
33 deal with at this point? We can deal with the tendering of
34 those exhibits in chambers.

35
36 MS SULLIVAN: Thank you. No, but there is an application
37 by the Commissioner of Police that you may wish to deal
38 with now, Commissioner, if convenient.
39

40 THE COMMISSIONER: Yes, I will.
41

42 We've concluded the evidence and I just wanted to say
43 briefly, before we deal with formal applications, of
44 course, any critical incident which involves the death or
45 serious injury to people will necessarily impact those
46 people and their families, and I think this has been really
47 clear from the evidence of all of the police witnesses that

1 have come to give evidence, that it also personally impacts
2 the police officers involved, and they feel very much the
3 personal loss of having lost someone on their turf, and
4 that, for those that have a broader geographical
5 responsibility, can include anywhere in New South Wales.
6

7 We heard a number of officers give their personal
8 condolences to the family, and I just wanted to make it
9 clear that, at times, we've been talking very much about
10 process and about what appear to be bureaucratic processes
11 and things, but in doing so, we certainly have not meant
12 any disrespect to, and we haven't lost sight of, the loss
13 of life that has been the foundation of this investigation,
14 not just Ms Lucena but also Ms Dokhotaru and, most
15 recently, the woman who was found in the car at the end of
16 last week, who has not yet, as I understand it, been
17 formally identified.
18

19 So none of us, and I broadly encompass within that any
20 legal representatives here today as well as officers of the
21 Commission, have intended any disrespect and, indeed, the
22 foundational purpose of our work here today has been to
23 ensure - to limit the possibility of losses of that kind
24 occurring in the future, and to the extent that it sounds
25 like we're engaged in bureaucratic discussion, it's with
26 that very fundamental purpose in mind.
27

28 With those remarks, I am open to other applications.
29 Mr Smartt, I have received your written application, and
30 Mr Gollan, did you have an application that you wanted to
31 press, you have foreshadowed?
32

33 MR GOLLAN: Just before my learned friend makes his
34 application, which is a submission that I will also join
35 in, can I ask that Ma'am Chapman be formally excused now
36 from her summons?
37

38 THE COMMISSIONER: Thank you, yes.
39

40 MR GOLLAN: In the circumstances of having produced the
41 material, my learned friend, as I appreciate what she has
42 said, does not intend upon interrogating her evidence any
43 further. I guess I am asking her through you, as it were.
44

45 THE COMMISSIONER: Is there any reason why --
46

47 MS SULLIVAN: No, there is no reason.

1
2 THE COMMISSIONER: Thank you for reminding, Mr Gollan,
3 Assistant Commissioner Chapman is formally released from
4 her summons and those instructing you can let her know.
5

6 MR GOLLAN: I'm very grateful.
7

8 Insofar as the application for - I think I have
9 reduced it to, rather than "the court book", "the brief",
10 I don't intend upon agitating that application until I see
11 the draft report, as it were, and can make any decision as
12 to whether or not there is something further. But without
13 taking up your time or the utilisation of the state's
14 resources, I think the better course is for me to be more
15 patient about that and wait and see what the situation is.
16

17 THE COMMISSIONER: Thank you for your patience.
18

19 Can I indicate, I wasn't necessarily anticipating that
20 a draft report would be provided for comment of the parties
21 in this particular instance. As was foreshadowed I think
22 in some emails to those that instruct you, the Commission's
23 plan on this occasion was to deal with issues of
24 procedure - to ensure that there's procedural fairness by
25 adopting perhaps what is the more traditional approach,
26 which is the exchange of submissions.
27

28 So the draft report process, which the Commission
29 certainly often uses, is done in circumstances where
30 written submissions are not exchanged beforehand. That was
31 my current plan and intention. I think it's unnecessary
32 and unhelpful to provide a draft report where written
33 submissions have been exchanged.
34

35 MR GOLLAN: I will pause to consider my learned friend's
36 submissions, but I join my learned friend Mr Smartt in his
37 application to speak orally to the submissions when the
38 situation arises.
39

40 THE COMMISSIONER: I have received your written
41 submissions seeking an opportunity to address the
42 Commission orally, and you have I think, Mr Smartt, very
43 helpfully pointed out that section 70 of the Law
44 Enforcement Conduct Commission Act actually specifically
45 provides that the examining Commissioner is required to
46 accept written submissions as far as reasonably possible,
47 and examinations are to be conducted with as little

1 emphasis on an adversarial approach as is possible.
2

3 Did you have anything that you wanted to say in
4 addition to the material that you have provided?

5
6 MR SMARTT: No. I think what I would like to say is that
7 the Commission's concern is a practical one. Obviously
8 this is an investigation, it is not adversarial
9 proceedings. But it's an investigation that is bounded,
10 I say, by special considerations under the LECC Act, and
11 you would be very familiar with them - the objects - and
12 part of those objects, I think, summarised, are public
13 transparency, a cooperative relationship between this
14 Commission and the Commissioner of Police, and the
15 fostering of a positive atmosphere and outlook towards
16 complaints, and that's in addition to procedural fairness.
17

18 Now, in exercising the power to be heard from the
19 different entities, but particularly the Commissioner of
20 Police, we're asking you to have regard to those
21 considerations and we think, based on the evidence that has
22 been given so far, that the Commissioner of Police has done
23 that, has sent people who have given thoughtful evidence
24 and not taken an obstinate or combative approach.

25 THE COMMISSIONER: Mmm-hmm.
26

27
28 MR SMARTT: We think, consistent with what Ms Sullivan has
29 done in her helpful opening address, in giving one
30 perspective or one view of the facts, that fairness and
31 that cooperative relationship and public transparency
32 points towards the Commission exercising its discretion to
33 hear another perspective.

34
35 Now, a possible answer to that is, "Well, you can hear
36 our perspective in written submissions."
37

38 THE COMMISSIONER: You have read my mind.
39

40 MR SMARTT: Yes. And there are a few reasons that's not
41 quite an adequate substitute in this case.
42

43 THE COMMISSIONER: Can I just stop you. Could you address
44 me on the question of why written submissions that might be
45 made public on the Commission's website wouldn't answer the
46 concerns that you're raising?
47

1 MR SMARTT: Yes. So I think there are three reasons. The
2 first reason is that, in a sort of very broad sense,
3 they're available to the public but they're not
4 disseminated in the same way that, for example,
5 Ms Sullivan's opening address was disseminated in the
6 media. The media aren't in attendance. The media - it's
7 not live-streamed, and so there's an easy inference there
8 that whatever is said in public hearing is going to be more
9 accessible to the media and to the public than written
10 submissions that, while they are on a public website, very
11 few people are going to read and report on.

12
13 The second part of that is that there is a practice
14 amongst courts and bodies and agencies to give some
15 deference to the preference of agencies when they want to
16 ask for a procedural concession, and consistent with the
17 relationship between the Commission and the Commissioner,
18 that we've heard extends beyond the black letter of the
19 law, it requires, on one view, for everyone's job to be
20 easier and done more effectively, some goodwill and some
21 cooperation, and it's a modest request, I say, to make oral
22 submissions, especially given that the tenor of the
23 evidence given so far by my client and people on behalf of
24 my client has been cooperative and respectful of this
25 process, and we expect the submissions will continue to be
26 respectful and helpful and give another perspective.
27 Because at the end of the day --

28
29 THE COMMISSIONER: Again, sorry, I get the media bit.
30 I don't understand why that couldn't be achieved through
31 written submissions.

32
33 MR SMARTT: I think there are two points here. One is the
34 difference between oral and written submissions. So oral
35 submissions are apt to clarify misunderstandings. You can
36 answer questions in real time. That's occurred a lot
37 between you and counsel in this case.

38
39 I think it's helpful, where we've covered a large
40 amount of factual territory, to have that opportunity in
41 this case. I think nuance and emphasis are often left out
42 of written submissions and not portrayed in the same way
43 that they are in oral submissions, which is relevant to the
44 media point as well, because, for example, the heartfelt
45 acknowledgment that Mr Cotter gave at the beginning of his
46 evidence was something that was more effectively conveyed
47 in an oral hearing, for example, with the appropriate

1 emotion, rather than just an acknowledgment in written
2 submissions. That would be an example of the kind of thing
3 we're talking about in this case.
4

5 The other point is that to a degree, there is benefit
6 in the relationship I talked about in just giving the
7 Commissioner of Police what he or she is asking for as
8 a concession to that kind of relationship, given the
9 objects of the LECC Act. I mean, it obviously has its
10 limits but the Commissioner of Police has come here in good
11 faith and more than just good faith, has been helpful in
12 cooperating with notices quickly and with sending people
13 who think about things thoughtfully and respectfully.
14 Given the relationship, one concession that might be made
15 is to give the Commissioner of Police what he wants and the
16 ability to make oral submissions. They are my submissions.
17

18 MR GOLLAN: Commissioner, could I just add to that for one
19 moment, please?
20

21 THE COMMISSIONER: Let me just ask Mr Smartt one other
22 question. At a practical level, Mr Smartt, were you
23 expecting that this right would be accorded to all members
24 of the Bar table?
25

26 MR SMARTT: What I will say is that the case is strongest
27 for Commissioner, given the systemic issues and his role
28 and the role of this Commission. A lot of the
29 considerations favour that approach towards the other
30 parties, especially - I suppose their case is stronger on
31 possible misconduct findings and the need to address
32 those - any allegation or any suggestion of misconduct in
33 the same way that was addressed by Ms Sullivan. So it is
34 a question of parity and evenness. But the short answer to
35 your question is yes, but ultimately it's a matter for
36 those parties.
37

38 THE COMMISSIONER: And on that same point, then, were you
39 expecting that the Commission would need to make an
40 arrangement to hear those submissions on a day when all of
41 the counsel would be available?
42

43 MR SMARTT: Yes, so depending on whether they take it up.
44

45 THE COMMISSIONER: Okay. So if that meant that the next
46 time when competing calendars, including those of the
47 Commission, were to intersect, might be potentially months

1 down the track, are you suggesting that the delay to allow
2 for written submissions by all parties would be warranted
3 in the circumstances? I'm just putting - I mean, that
4 seems to me to be - I'm not trying to be difficult but that
5 seems to me to be a real practical challenge and one of the
6 enormous benefits of the written submissions.

7
8 MR SMARTT: Yes. Well, I think there are two responses to
9 that. One, the Commission can just take an approach that
10 courts often take, which is to give some available dates
11 and if counsel can't make them, counsel can't make them and
12 alternative arrangements have to be made.

13
14 I also think that there are a lot of common issues and
15 we can talk cooperatively amongst each other about which
16 counsel will deal with which issues. For example, the two
17 main officers who attended the scene, there's not much
18 difference between them and we can take a sensible approach
19 towards that and ensure that there is no delay because of
20 this proposal.

21
22 THE COMMISSIONER: Because at the moment the time frame
23 for the preparation and exchange of written submissions,
24 I think, anticipated counsel assisting to provide her
25 written submissions before the close of the calendar year
26 and for responses to be provided by the other legal
27 representatives early - towards the end of January or early
28 in February, and that was having regard to the fact that
29 I acknowledge that most counsel will take a break over the
30 summer.

31
32 MR SMARTT: Yes.

33
34 THE COMMISSIONER: And so I, without having decided it,
35 but at a practical level, would be reluctant to make any
36 arrangement that extends that time frame.

37
38 MR SMARTT: Yes. And I would - I mean, I should say as
39 well that the Commissioner is seeking a week extension in
40 his --

41
42 THE COMMISSIONER: I have heard that.

43
44 MR SMARTT: -- response, but certainly we can
45 accommodate - we're happy to accommodate any date
46 in February.

1 THE COMMISSIONER: Mr Gollan, and then I will hear from
2 Ms Sullivan.

4 MR GOLLAN: There is only one thing that I really wanted
5 to add. Look, I will work within whatever timetable, and
6 I am part heard in this case, so it gives me some standing
7 to deal with other cases that might be getting in the road
8 because I appreciate the urgency on one level of putting
9 you in a position where you can reflect upon the evidence
10 and come up with a report.

12 My main and forceful submission with respect to oral
13 submissions after the exchange of written submissions is it
14 allows this, it allows a dialogue, where you can say, "I'm
15 troubled by this", because ultimately --

17 THE COMMISSIONER: Sorry, can I just be clear, you're
18 talking about the exchange of written submissions and then
19 oral submissions?

21 MR GOLLAN: Oral submissions, if anything, behind, and the
22 reason why I say that is because it puts all cards on the
23 table. But ultimately, as I see this inquiry and its
24 utility and, on one view, the very forceful utility is the
25 framework and structure around these kinds of incidents,
26 and that's a collaborative thing. It not only speaks to
27 each of the individuals that I have represented and what
28 role they may or may not have but it also speaks to their
29 wealth of experience through me being in a position where
30 some of the practical differences can be highlighted and
31 some of the things that are suggested can be embraced. But
32 it seems to me that really what we're looking at is not -
33 and I'm not pre-empting anyone's report, please don't
34 misunderstand me. It is not misconduct, in the sense that
35 everyone was trying to do what they were trying to do, and
36 it is difficult for us to walk in their shoes and
37 particularly, as you said at the outset, limiting ourselves
38 from the hindsight bias. So really the benefit and the
39 practicality that arises from the inquiry is how do we do
40 things better going forward, and that will require some
41 architecture and structure, should there be --

43 THE COMMISSIONER: How would that not be achieved through
44 the exchange of written submissions, particularly if
45 counsel, as Mr Smartt indicated, were able to collaborate
46 on a set of agreed recommendations beforehand?

1 MR GOLLAN: I understand that. But there is a reason why
2 the adversarial system has survived and that is because of
3 the exchange that's afforded by the bench saying, "I'm
4 troubled by this. What do you say about that?" Or "How do
5 we practically deal with that? With the experience of the
6 people standing behind you giving instructions, how does
7 that work in reality". Because as I said, the difficult
8 challenge that we have as advocates but also as a
9 commission standing in a position where they can make
10 recommendations is how does this practically work on the
11 ground?

12
13 In my respectful submission by having the exchange of
14 written submissions it will illuminate some of the area of
15 the joinder of issue and it will also illuminate some of
16 the area of the issue of considered outcome but there is
17 practicality and there is architecture that needs to be put
18 in place. In my submission, the better way of doing that
19 is having a discussion.

20
21 THE COMMISSIONER: Thank you. I understand your point.

22
23 Ms Sullivan?

24
25 MS SULLIVAN: I'm really in your hands, Commissioner.
26 Beyond making a response that is necessary I think in
27 relation to the third point in Mr Smartt's submissions.
28 The concern is raised that to date in this inquiry the
29 public has really heard only one perspective, and it's an
30 unfortunate position to take in circumstances where the
31 Commissioner has the opportunity to ask questions of
32 witnesses, if there was a perspective beyond what I sought
33 to elicit from witnesses, if there was a further
34 perspective that was required, then I understood that to be
35 his mandate. So I am somewhat perplexed by that, if I may
36 put it in those terms.

37
38 MR SMARTT: I think it's not my job to make speeches,
39 it's not my job to make an opening address, and the
40 perspective that was put was a 30-minute opening address
41 about the facts, and I haven't put that because I haven't
42 had the opportunity to put it. That's what it is
43 a reference to.

44
45 THE COMMISSIONER: Thanks, Mr Smartt.

46
47 MS SULLIVAN: An opening is, of course, necessarily

1 a preliminary overview of facts as they stand at a certain
2 point in time. The inquiry has had the benefit of nine
3 witnesses to further flesh out the factual matrix since
4 that time, and those matters will be the subject of
5 submissions in a form that you consider appropriate,
6 Commissioner.

7
8 Beyond that, I would simply say that I'm not sure that
9 it's the role of this Commission to formulate the
10 architecture, as Mr Gollan puts it, in terms of the police
11 structure, beyond identifying the systemic issues. It's
12 really a matter for the Commissioner as to how that
13 architecture might ultimately be structured. So I would
14 simply raise that matter for your consideration.

15
16 THE COMMISSIONER: Can I clarify, Mr Smartt, you also are
17 suggesting that there should be written submissions
18 exchanged and then an opportunity for oral submissions?

19
20 MR SMARTT: Yes. Yes, thank you. Obviously the oral
21 submissions could be appropriately limited.

22
23 THE COMMISSIONER: Okay.

24
25 Obviously the question about the - thank you. And
26 you're welcome to sit.

27
28 MR SMARTT: Yes.

29
30 THE COMMISSIONER: The question about how this Commission
31 deals with closing submissions is, as the Act makes clear,
32 very much for this Commission to deal with.

33
34 I am comfortable with making an order that submissions
35 should be made public. I hadn't anticipated making that
36 order because I didn't want to confine counsel, but that
37 seems to - if the concern is about ensuring that the
38 position both of counsel assisting and any responding
39 parties is dealt with appropriately, then it seems to me
40 that that's one simple answer to it.

41
42 It is, frankly, much more helpful for me to have
43 written submissions than to have everything dealt with
44 orally in terms of subsequently relying on those
45 submissions to prepare the report.

46
47 So at this stage, I won't make any further order for

1 an oral argument. I'm afraid, Mr Smartt, I'm against you.
2 I understand the Commissioner of Police has come here, as
3 he should, cooperatively, but I don't think that gives
4 him - it doesn't require me to therefore provide him with
5 a platform for making submissions. He's entitled to take
6 whatever approach he wants to in terms of publicising the
7 response to this Commission's hearing to date and/or in
8 terms of the ultimate report when it's provided, but
9 I don't think that that's a proper use of the Commission's
10 resources, to give a platform for the Commissioner of
11 Police to have oral submissions on that basis alone. So
12 I suppose in that sense, points 1 and 3, I'm very much
13 against you on those arguments. So in short, we will stick
14 with the written submissions.

15

16 If there's anything in those written submissions where
17 I think I would benefit from oral argument, most likely on
18 confined issues, then we can make some arrangements to hear
19 oral argument on those confined issues, but I don't propose
20 at this point, without having seen those written
21 submissions and read those written submissions, to
22 anticipate that decision. I think that's an unnecessary
23 step to take.

24

25 However, I am happy to make an order now, or you can
26 include it in your written submissions if you want: anyone
27 who would like their written submissions to be published on
28 the Commission's website, I'm very happy to do that, and if
29 it would assist you in writing those submissions to have
30 potentially a public version and a supplementary
31 confidential version if there are matters that you need to
32 go into in more detail that can't be included in the public
33 submissions, then certainly I'm very open to that
34 possibility as well.

35

36 So I can leave that decision with you. You can
37 indicate in your written submissions when you provide them
38 whether you wish them to be posted on the Commission's
39 website. I think we will wait for all the submissions to
40 come in before we upload them as a bundle, rather than in
41 the piecemeal fashion, and if there's anything that you
42 wish to say confidentially, you're welcome to do.

43

44 If any of the parties would prefer that their
45 submissions not be included in a public - on the
46 Commission's website, then I would agree to that request
47 because, fundamentally, the purpose of the submissions is

1 to allow me to reach a procedurally fair and informed view
2 about the matters that I should include in the report.
3

4 Was there anything else from that, Ms Sullivan?
5

6 MS SULLIVAN: No, nothing arising.
7

8 THE COMMISSIONER: Anything else?
9

10 MR GOLLAN: No.
11

12 MR SMARTT: No.
13

14 THE COMMISSIONER: We will make sure that that message is
15 communicated to those legal representatives who are not
16 here today.
17

18 Thank you everyone very much for your assistance
19 during the course of --
20

21 MS SULLIVAN: Sorry, Commissioner, there is the matter of
22 the suppression order in relation to the Lake Illawarra - I
23 think we've done that on the interim basis. Are we waiting
24 for the transcript?
25

26 THE COMMISSIONER: I think we will wait - the transcript
27 will probably - let's give ourselves until tomorrow morning
28 to have that transcript ready and we can provide it to the
29 parties. If there's anything that we see in that that
30 warrants the making or the continuation of the suppression
31 order and otherwise we can let - if any of the media
32 representatives want to contact our media liaison person,
33 we can let you know the status of that non-publication
34 order. Does that deal with that, Ms Sullivan?
35

36 MS SULLIVAN: Yes, thank you, Commissioner.
37

38 THE COMMISSIONER: I think everyone would prefer to see
39 the transcript rather than make a decision on the fly.
40

41 MS SULLIVAN: Yes.
42

43 THE COMMISSIONER: Thank you. This Commission stands
44 adjourned.
45

46 **AT 4.08PM THE COMMISSION WAS ADJOURNED ACCORDINGLY**
47