

ROYAL COMMISSION INTO WHETHER THERE HAS BEEN
ANY CORRUPT OR CRIMINAL CONDUCT BY WESTERN
AUSTRALIAN POLICE OFFICERS

COMMISSIONER: G.A. Kennedy AO QC

Held at Perth on the 12th day of September, 2002

Counsel Assisting

Mr K. Pettit SC

Appearances

Mr J.C. Hammond (with him Ms Pepe)

Mr A.J. Power

Mr W.M. Bryant

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AT 9.46 AM HEARING COMMENCED:

COMMISSIONER: Yes, Mr Pettit?

MR PETTIT: Thank you, Commissioner. I call John Brandham.

COMMISSIONER: Could I have your full name, please?

MR BRANDHAM: Francis John Brandham.

COMMISSIONER: Do you have any conscientious objection to taking an oath on the Bible?

MR BRANDHAM: Absolutely not.

COMMISSIONER: Thank you. If you could take the Bible and read the oath aloud, please?

FRANCIS JOHN BRANDHAM sworn:

COMMISSIONER: Yes. Thank you. Sit down, please.

EXAMINED BY MR PETTIT SC:

MR PETTIT: Your full name is Francis John Brandham?---Yes, it is.

But you are commonly called John?---Yes. That's correct.

And you're a serving officer?---Yes, I am.

And your rank is inspector, is it?---Inspector. Yep.

Where are you now stationed?---At the Internal Affairs Unit.

Are you able to - - when did you join the force?---Nineteen seventy - - 1976, as a cadet.

Mm hm?---January 76.

Are you able to give us a short version of your career history in the force?---I was a cadet for 18 months, went through the police school in 1977, went to Victoria Park Police Station for 3 years, 79 Division, joined the CIB as it was then in 1982, served at the Drug Squad, Fremantle detectives, Motor Squad, Major Crime, which then became Homicide Squad, sort of was transferred to Fremantle but then the Macro Taskforce happened and was involved in that. Worked for Bob Kucera for a little while and went down to take over the Shoalwater Taskforce and acted as inspector at Personal Crime Division, promoted to senior sergeant, went out to Cannington for 2 years and then was promoted to inspector about - - just over 2 years ago. And I've served at - - when I was promoted to

inspector I was transferred to Internal Affairs Unit, and in the last - - oh, from September the 1st 2001 I was at the Zircon Taskforce as senior investigating officer.

MR PETTIT: Well, perhaps we should take up the story at the time of your - - I think your addition to the Shoalwater - - Operation Shoalwater?---Yep.

That occurred in 1998?---It did, yes.

About what month?---About May, from recollection. I was working with Mr Kucera at the Metropolitan - - Metropolitan Regional Office as his crime coordinator, and I was told that I was to go down and - - and assume command of the Shoalwater Taskforce which was investigating the murder of Gerard Ross.

And you were to replace Detective Sergeant Miller, I think?--- Detective Senior Sergeant Miller, yes.

And he at that point returned to Child Abuse Unit?---Yes, he did.

And you assumed operational command, was it, of that Operation Shoalwater?---Yes.

That lasted for how long?---I remained operational commander through till the inquiry returned to Perth, basically, which was through till the December, but in - - in September of that year I was assigned other responsibilities as an acting divisional officer at the Personal Crime Division, and I assumed management, I guess, of the Sexual Assault Squad and the Child Abuse Unit.

The Gerard Ross murder inquiry was seen as child abuse-related, I think?---Yes.

Which explains why Detective Senior Sergeant Miller was assigned to it for a period?---I don't know why Senior Sergeant Miller was assigned to it, but yes; it was obviously child abuse-related.

At the time you became an acting inspector, that was in, I think you told us, Personal Crime Division, is it?---Yes.

That was the time at which you assumed responsibility for the Child Abuse Unit?---Yes, that's right.

Where were you physically located in that period - - -

MR PETTIT: - - - physically located in that period?---Up until that time, I'd been down at Rockingham, at the Shoalwater Taskforce, and I think it was about the 5th of September I took up an office which was on the ground floor of the building that Child Abuse and Sexual Assault Squad were housed, which is on Adelaide Terrace.

Is that unusual, for an inspector in the Personal Crime Division, to take up an office in that building?---It hadn't occurred before. Having said that, there was - - there had never been a second divisional officer at the Personal Crime Division until that time. So I was like, I guess, a new inspector's - - a new inspector position and there was simply no accommodation anywhere else.

No accommodation anywhere else?---No, the eighth floor of Curtin House, which is where the administration is housed, was basically full. As I say, it was an extra position. I think it came from the days when an inspector was in charge of the Macro Taskforce.

Were you not placed in that position with instructions to particularly keep your eye on Child Abuse Unit, Sexual Assault Unit?---Mr Caporn and I discussed issues concerning the Child Abuse Unit in particular, and he asked me to go down there and oversee the management of the unit, have a critical look at it.

Isn't that the real reason for your physical location?---No, it wasn't the real reason for me being down there. As I said, it was simply an accommodation thing, but I was there to oversee the operations of the Child Abuse Unit, and Sexual Assault Squad.

So, as from, I think you said, 5 September - -?---Yeah, I think it was.

As from that date, what matters did you have under your responsibility?---I was still actively in charge of the Shoalwater Taskforce and I had oversight of - - or management, I guess, of Senior Sergeant Kevin Looby and his staff at the Sexual Assault Squad and Senior Sergeant Miller and his staff at the Child Abuse Unit. I reported direct to Mr Caporn.

I see. And that's the extent of the portfolio, is it?---That was the extent of my responsibility, yeah. The portfolio also included the Homicide Squad, and I think Major Incident Group, and Missing Persons.

And the chain of command as from 5 September, I presume, is that Mick Miller and - - is it Kevin Looby?---Kevin Looby, yeah.

Kevin Looby reported through you?---Yes, that's correct.

MR PETTIT: And you to Mr Caporn?---Yes. That's correct.

Do you recall when you first became aware of the file involving Q2? You're aware, are you, that during these proceedings we're referring to the original complainant and Q1 and the person complained of as Q2?---Yes.

Try and keep that in mind, if you will?---Yes.

Do you recall when you were first made aware of the file on Q2?---It was early - - it was shortly after I arrived at the Child Abuse Unit, so it would have been within the first week.

And you were briefed by Mick Miller?---No. Actually, from memory, Detective Italiano and Detective Connoley told me about it.

At that briefing, were you told of any concerns that those officers had, apart from the briefing itself, on Q2?---Not - - I'm not sure. I honestly couldn't say.

During the period September through to October, there was a lot of intra-office activity on this file?---Yes.

Memos and so forth?---Yes.

And you briefed Mr Caporn on the matter concerning Q2 regularly - - -

MR PETTIT: - - - matter concerning Q2 regularly?---There was - - not in the form of memos. I mean, there was discussions held between various - - myself and various people and certain things were told to me and I would then pass that on to Mr Caporn; not in the form of memos. Generally in the form of a discussion.

And there must have been a couple of hundred files at Child Abuse Unit?---I cannot remember how many files there were, but there certainly were a lot. In fact, that was part of the - - the - - part of what was examined by a review which was later conducted - -

Yes, I'll come back to that - -?--- - - to examine the number of files on hand.

And you certainly were not briefing Mr Caporn on all of those matters, all of the - -?---Not all of them. Some of them, certainly. Some of the other matters.

But it's fair, isn't it, that the Q2 matter was head and shoulders more interesting to Mr Caporn than the others?---It was a significant inquiry. Yes, for sure.

Why was that?---Oh, because of the person's profile, because of his - - the impact that the investigation was going to have, the media interest that the investigation would have, once - - if it became public.

Why is that a - - well, first of all, is that a sound reason for Mr Caporn and others to take an interest?---Absolutely.

Why?---Because of the impact that - - the importance of getting it right.

Surely it's important to always get it right?---It certainly is but obviously when there's going to be the enormous media attention that this would attract, it's more important to get it right. I mean, this had huge ramifications. I mean, if - - the impact would have just been - - I mean, it would have been in the media for weeks. It would have been the story of the year.

Have you seen, on other occasions in your career, senior officers take an interest purely because the person who is suspected has a high profile?---Well, I - - I mean, I don't know, but I would imagine when - - when Brian Burke was charged by the police, I would imagine that the Commissioner would have been fully briefed on every aspect of the investigation. So - - I mean, I can't say that - - damn. Sorry. I can't say that, but I know there's been instances where - - in homicide investigations, that we have briefed up the chain of command through to the superintendent.

MR PETTIT: Did anyone, apart from yourself - - well, first of all, did you attend personally on Mr Caporn in these briefings through September, October, November?---I'm sorry. I - -

You were briefing Mr Caporn in September and early October?---Yes. Yes.

Was that in person or on the phone?---Oh, it would have been both. Generally in person.

Anybody else attend those meetings?---Oh, the - - Senior Sergeant Miller - - there were a number of people that attended the meetings. Senior Sergeant Miller was present on some occasions. There were a number of occasions between when the matter first came to my attention and when Q2 was interviewed. There was a number of occasions where other officers, including Detective Sergeant Ingham, Detective Italiano, myself, were involved in discussions and briefings with Superintendent Caporn.

During that period - and I mean prior to Mr Caporn calling for a complete copy of the brief - what was the nature of Mr Caporn's interest?---Simply to be advised of what was happening with it.

All right. You were aware that he in turn was briefing Mr Brennan?---I can't say specifically, but I - - I have a recollection that I was told that Mr Brennan had been briefed, yes.

MR PETTIT: Do you recall an occasion on which Detective Senior Constable Connoley and, I think then, Constable Italiano spoke to you about whether to proceed by summons or by arrest in respect of Q2?---It may have happened, yes.

You don't recall something of a heated discussion?---A heated discussion?

Yes?---Between myself and - -

Jo Connoley in particular?---No, definitely not.

Where she was adamant that the proper way to proceed at interview of Q2 was to arrest?---My recollection is that that was the plan. That was the plan up until - - my - - my recollection is that that was the plan, that he was to be arrested, until Mr Caporn reviewed the file.

Do you recall whether you had a view on whether there should be an arrest or to proceed by summons?---We had a discussion and it would be proceeded in accordance with standard procedure, which was - - yeah, just that it would proceed in accordance with standard procedure. I certainly don't remember any heated discussion at all. There was nothing to get heated over. It was a - - I don't recall anything of that nature.

You don't - - excuse me a moment. You don't recall pursuing an instruction that if he were to be charged it would be by way of summons and Miss Connoley being adamant that it should be by arrest?---There - - there was some discussion. Don't get me wrong; there was some discussion over whether he should be arrested or summonsed. There was some discussion over it but not heated discussion, and in the end my recollection is that - - it was he was to be treated like anybody else.

Miss Connoley tells us that she suspects that - - well, let me start again. Miss Connoley tells us that she directly told you that she would proceed to arrest even though it was your view you should proceed by way of summons?---I'm not sure when - - when is this - - if I'm able to ask, when is this supposed to have occurred because - -

In October?---Well, my understanding, and I've got notes that support that, is that Detective Connoley was not - - was not involved in the investigation as it progressed. Detective Sergeant Ingham had been assigned to interview Q2 with Miss Italiano and that occurred long before the decision was made to review the file.

Detective Connoley suspects that she was replaced by Detective Sergeant Ingham precisely because it was her view that there

should be an arrest and - - ?---The decision - -

MR PETTIT: - - that's the reason you replaced her with Ingham?---Well, two parts to that. One, I didn't replace anybody, and the other part is, the decision for Detective Sergeant Ingham to head that investigation was taken by Senior Sergeant Miller. I was there but it was in consultation with the sergeants at the Child Abuse Unit, so I was present when a decision was made, and again I've got notes of that meeting.

Do you recall who was at that meeting?---Well, it certainly - - it was certainly Sergeant Miller and myself. I can't recall who else was there. I can't recall whether it was a decision - - I can't recall whether Sergeant Mansas was there or whether Sergeant Ingham was there - - -

WITNESS: - - - Sergeant Ingham was there, but I know it was -
- it was in at the Child Abuse Unit and the decision was taken
by Sergeant Miller and supported by me, because Mark Ingham
was the obvious choice.

MR PETTIT: Around about 28th of October Superintendent Caporn
decided to review the file in its entirety. Do you recall
that?---Yes.

How did that come to your attention?---Mr Caporn informed me
that he was going to review the evidence.

Did he tell you why?---Not that I can specifically recall, but
I imagine it would have been in relation to the, as I said
before - - the - - the potential impact that this matter could
have on the service.

Were you party to any discussion about whether that should
occur, or were you just told that it was going to occur?---I
was told that it was going to occur, but I fully supported the
fact that it was being done. I mean, it's standard practice
as far as what I'd been used to.

Why didn't you do it?---I don't know. There was a lot going
on at the Child Abuse Unit at that stage. There was the
review had been done, there was issues concerning the Wood
Royal Commission recommendations being implemented; there was
a lot of things. I don't know why Mr Caporn chose to do it
himself.

It would seem logical, wouldn't it, if there's some concern
that it be done correctly, you would be the man to review it?--
--Oh, Mr Caporn is a very hands-on superintendent. I've
worked with him a lot since 95. I've just finished 12 months
with him at Operation Zircon. I was with him for nearly 12
months at Macro. I've seen Mr Caporn review almost every
major line of inquiry in those investigations. I've seen him
spend time reviewing TI transcript, reviewing interviews
between principal persons of interest. It's just the sort of
person that he is. He just takes these things on himself.

Have you worked with him since he's been a superintendent?---
Yes. He was a superintendent when he was officer in overall
command of Operation Zircon.

And your evidence is that, as a superintendent, he gets down
to the level of examining TI transcript?---Absolutely.
Absolutely. In every - - in almost every major line of
inquiry he will review it, provide input, give officers - -
give officers that are planning to do an interview - -
actually involve himself and, you know, give them lines of
inquiry to follow, give them, you know, avenues to - - ways of
interviewing a suspect, that type of thing. It's just the
sort of person that he is.

MR PETTIT: In any event, the file was copied in its entirety and given to you?--My recollection is that I was provided with a fair bit of stuff by Senior Sergeant Miller, but some of it was missed and I think Sergeant Miller took that up himself. There was a - - I took most of it up to Mr Caporn and I think there - - I've got notes of his - - he'd forgotten to give certain things and they were later taken up to Mr Caporn.

The notes you refer to; do you have them here?---I do, yes.

You're welcome to refer to them if you need. Perhaps you should. Now, I take it that from the time the file was provided to Mr Caporn, all other plans were put on hold?---Yes. That's right.

In particular a planned interview was postponed?---Mr Caporn had instructed that nothing was to occur until he'd reviewed the file.

And he did that within a few days?---He did, yes.

And let you know that he had completed his review?---Yes.

And arranged a meeting?---Yes.

Did he tell you anything about his review prior to that meeting?---From memory, he had told me one on one that he had reviewed the file and that it was his view that there was insufficient evidence - - insufficient evidence to support - - support, well, prima facie evidence - - -

WITNESS: - - - prima facie evidence.

MR PETTIT: You, I take it, had not at any stage reviewed the file?---No, I'd been - - I'd been told certain things by members of the Child Abuse Unit, but I'd not reviewed the file myself, not read the evidence of Q1 or reviewed anything else.

Throughout this entire matter, you have not ever turned your mind independently to whether you thought there was sufficient to proceed?---No, I haven't.

A meeting was called on the 10th of November. I think your report actually has it at the 11th, which I suggest to you might be an error?---Yeah, the 10th of the 11th, I have it.

That's a Tuesday, is it?---Tuesday, the 10th of the 11th.

And you took notes of that meeting?---Only brief notes. Just the fact that Mr Caporn briefs all, as in - - and I have himself, Senior Sergeant Miller and Detective Italiano, "Briefs all on review and including Vickers."

Yes. I think you've subsequently made a report about this matter. You reported to Mr Caporn by memo of 8 December. Do you recall that?---Yes, I recall the - -

Perhaps we could have a look at it? It's D1012885. While that's coming up, though, I want to ask you in particular about the instruction that Mr Caporn gave on that day. I think Mr Caporn expressed the view that there was insufficient evidence, you've already told us that?---Yes.

And that it was necessary to proceed to an interview?---Yes.

What instruction did Mr Caporn give about the interview? Or its aftermath, I should say?---I can't specifically recall.

Do you have it noted? If you don't, we can turn to your report, at page 5. Perhaps if we start at page 4 to get the context. You'll see, towards the bottom of the page, you've written, "On Tuesday, November 11 - -" which as I indicated earlier I think should be November 10?---Yes.

Then:

"- - Acting Detective Superintendent Caporn called Detective Senior Sergeant Miller, Detective Italiano and myself to a meeting - -"

Just pausing there, wasn't Detective Sergeant Wibberley also in attendance?---He may have been. I'm not certain.

MR PETTIT:

"- - with him regarding the completion of his review. At that meeting, he outlined the results of review along the following lines."

And you set out a number of dot points. If we go to the next page, the last of the dot points, I think, is the instruction I'm presently concerned with. You've written:

"He further instructed that no matter what came from the interview, no action was to be taken against Q2 until he had further reviewed confessionable material."

WITNESS: Yes, that's correct.

MR PETTIT: "Confessionable material", I presume you mean, if any?---If any, yes.

Now, to outsiders, that does appear an unusual - or I suggest to you it may appear - - an unusual direction, that even if the suspect confesses, he is to be released. Did it not strike you that way?---Not really, no. I mean, under the circumstances - - under the circumstances that prevailed at that time, I found it to be a legitimate instruction.

MR PETTIT: What circumstances?---I believe that the officers involved did not accept the fact that the DPP had reviewed the matter and said that there wasn't sufficient evidence at that stage to proceed. I believe that - - that they had lost perspective in relation to the matter and that they simply couldn't be trusted to do the job properly. So Mr Caporn - - I mean, that's my perception of it; that Mr Caporn made it quite clear that nothing was to happen until he had had a chance to review the material.

Perhaps we should go through all of your dot points in this report. If we go back to page 4 please, the first one is - and the "he" I think refers to Mr Caporn throughout:

"He had examined the evidence and found that these offences had more than likely occurred in the manner described by the complainant, examined all the alleged corroborative material associated with the brief, and found that they did not support the alleged crime. He found that the only evidence against Q2 was a statement of the complainant which had been made more than 20 years after the events concerned. He found there was insufficient evidence to proceed with charges against Q2 at this time in the absence of other supporting evidence. He had raised all the evidence concerning this matter in collaboration with Miss Evelyn Vicker, senior prosecutor with the Office of the Director of Public Prosecutions. Miss Vicker had concurred with his findings. He had questioned as to what other avenues of inquiry could be explored in order to obtain supporting evidence."

Just pausing there, do I understand from that that Mr Caporn questioned those at the meeting about what other avenues of inquiry could be pursued?---I can't specifically recall that, but yes, that's what I imagine would have occurred.

Continuing:

"He stated that in the absence of other supportive material, there was a need to obtain admissions or a confession from Q2 in order for any charges to succeed. He raised serious concerns that the Child Abuse Unit had intended charging Q2 under the current circumstances. Instructed Detective Senior Sergeant Miller to review procedures within his unit in order to ensure that this situation did not occur again. He instructed that Q2 was to be interviewed by members of the Child Abuse Unit with a view to gaining confessional evidence to support the alleged offences."

And then lastly, the one we've mentioned:

"He further instructed that no matter what came from the interview, no action was to be taken against Q2 until he" - that's Mr Caporn - "had further reviewed the confessional material."

Now, in that context, it's your evidence that the last instruction was proper?---Absolutely. Yes.

MR PETTIT: And it was proper in the circumstances - tell me if I've misunderstood you - that he, Mr Caporn, had come to the view that officers had lost perspective, or is that your interpretation?---I suppose it's my - - it is my interpretation because I didn't actually review the file myself. So yes, it would have been Mr Caporn's view, based on what I've said there in the report and also from my - - the way I viewed how - - how everything had unfolded.

Did the other officers present - - that is, Italiano and Miller, was it?---Yes.

Do I understand your evidence to be that they showed resistance to Mr Caporn's statement that Evelyn Vicker agreed with him?---Yes, because they actually went up and had a meeting with John McKechnie over the matter.

Yes, but was something said at this meeting to give you that impression?---I can't recall specifically. I remember there was - - there was a resistance to the review shown by Senior Sergeant Miller in the first instance. So it was natural that if there was a resistance to the review being done, it just flowed on from there - - -

WITNESS: - - - flowed on from there. But I can't recall specifically whether anything was discussed at that meeting.

MR PETTIT: It's been suggested to the Royal Commission that the instruction by Mr Caporn was tantamount to closing the file. What do you say about that?---Absolutely ridiculous. That's rubbish. I mean, it was - - it was to progress properly. Mr Caporn instructed that an interview was to be conducted with Q2, that all other potential avenues of inquiry were to be pursued in an attempt to find some corroboration for Q1's deposition. As it says in my report, Mr Caporn believed that Q1 believed what she was saying in her evidence - in her deposition.

Were you subsequently asked for clarification of that instruction by Detective Italiano?---For clarification. I have a - - I have a note, which is later on in the day, where I spoke with Detective Italiano where it just simply says in my notes that she's very accepting of the decision. Just raises her concerns regarding the covertness of the interview with Q2.

What concern was she expressing there?---I'm not sure. Just simply the fact that - - I assume simply the fact that the date that the interview was to occur would remain in-house.

I see. Her concern was that it be kept a secret?---Yes.

Exactly what does your note say about her concern?---Sorry?

About Ms Italiano's concern?---It simply says:

"Speak with Cris Italiano. Very accepting of decision. Just raises her concern re covertness of interview."

And "accepting of the decision"; it's on the same day as the - - as the - - as Mr Caporn said that the matter was not to proceed further. That he'd done the review, etcetera.

From there, plans were progressed, I take it, to interview Q2?---Yes. That's correct.

You were a party to those?---Not really. As I say, I was just kept informed as to what was happening.

And an interview was planned for very early in the morning of the 17th of November?---That's correct. Yes.

And it was very early in the morning in order to try to keep the fact a secret?---Yes.

MR PETTIT: And just explain to us why that was a concern. Why it should be kept a secret?---Again, it was about the profile of the person. That was one of the concerns that springs to mind. I can't think of any others. It was kept within a very close-knit group within the Child Abuse Unit too, so I think it was - - I have a recollection that it was to be done, you know, so that no one outside of the investigation would know about it as well.

You were present when Q2 was brought in?---Yes, I was.

Why was it necessary for an inspector to be present?---I was just asked to be there by Mr Caporn to oversee proceedings.

Did you oversee proceedings?---In a - - in a non-involved manner. I just basically - - it wasn't my office. I just basically was there.

Were you told why you were to attend to oversee the interview?---Well, it was to make sure Superintendent Caporn's instructions were carried out.

Those instructions being to release Q2 - - ?---Yes.

- - no matter what occurred?---That's correct. And - - and to - - to provide feedback to Superintendent Caporn, had - - had - - you know, on what had occurred - - what occurred on that particular day.

There was a sense, was there - - -

MR PETTIT: - - - a sense, was there, from Mr Caporn that the officers who were to conduct the interview could not be trusted to carry out his instruction?---It's difficult - - it's difficult to say what the exact reason was. I suppose what you're saying is correct. I mean, that's - - I guess that's why I was there, to make sure that his instructions were adhered to.

Well, you'll have to explain that a bit further because I don't think we've heard that evidence before. What was it about the behaviour of Ingham or Italiano or Miller which gave rise to any such concern?---I can't - - I can't honestly say what was in Superintendent Caporn's mind. I think - - there had - -

Let me put it this way: were there differences of view about the sufficiency of the evidence expressed by those officers?-- -Yes, there was. Those officers believed that there was sufficient to charge Q2, even without any admissions.

Is that sufficient to oversee them on the day?---Well, I think so. I mean, that's what - - that's what a supervisor's role is, is to make sure that people are doing as they've been instructed.

What did you intend to do? Watch the interview and as soon as it had finished go into the room and ensure that he wasn't arrested?---No. As I say, my role there was simply - - was purely oversight. It was just to provide feedback to Superintendent Caporn as to what had occurred and to - - just to make sure that things went according to plan, according to the instructions.

Did you sit and watch the interview?---No.

In any event, were you present when the interview was terminated?---Yes, I was.

Did you take the phone call from Mr McPhee?---No, I didn't.

Did you knock on the door?---Not to my knowledge I didn't. I think Detective Senior Sergeant Miller stopped the interview.

Were you present during a conversation between and Ingham? ---No. I wasn't at the interview room when the interview was stopped.

So did you see any of those events?---No.

You were told about them later?---I was in the office. The interview room is at the end of the office. I was somewhere in the office but I wasn't present there when the interview was stopped.

MR PETTIT: Do you have a view on the propriety of terminating the interview at the request of a lawyer?---Absolutely. It's exactly what should be done.

Even though the person being interviewed did not at that point make a request?---The solicitor making the contact made the request and my recollection is that he made the request to speak to his client, and once that occurs, I mean, that's - - it goes without saying that that's what occurs.

Shortly after that interview I think you instructed Detective Italiano to speak to Q1. I may have that wrong actually. That might have been Mr Miller who did that?---I don't recall taking any active part in telling people what to do that day.

Yes. I'll check that. Subsequently, Detective Italiano went on leave and I think the file was transferred to another officer?---Some time later, yes. She was - - Detective Italiano had actually been transferred - - -

WITNESS: - - - had actually been transferred prior to all this occurring. She'd actually been promoted to detective and had actually been transferred, prior to all this occurring, to City Detectives, and she'd actually been retained at the Child Abuse Unit so she could continue with this job. An agreement was made where she went on leave and when she came back from leave, she was to start at her new post.

MR PETTIT: Was any thought given to her retaining the file, notwithstanding the transfer?---Not that I'm aware of, no.

Were you party to the decision to transfer the file to Detective Hawes?---I can't specifically recall. I probably would have been involved in the decision in some way, but it was a decision that was taken within the unit, from my memory.

At that stage, had you known Detective Hawes from earlier contact?---No.

Did you know anything about her?---Not really, no.

Are you aware that she had very limited experience in child abuse cases?---My understanding is, is that she was a senior detective, an experienced investigator and any experienced investigator, no matter what offence is being investigated, knows what is required in relation to the burden of proof, what corroboration is all about. It's not a specific thing that's just associated with child abuse cases. So, she was considered well and truly capable of doing the job.

By you?---Certainly by the group that I was part of when the decision was made.

By you?---My experience with Detective Hawes was that she was competent and capable, but I hadn't had a lot of contact with her.

Thank you, Inspector. I think that completes all I wanted to ask you. Is there anything about the conduct of the matter that you think should be brought to the attention of the Royal Commission, and which you have not so far given evidence about?---Other than to say that - - no, no. Other than to say that it's very fortunate that Mr Caporn decided to review the file. Other than to make that point, no.

And you say that, for what reason?---Oh, because of the impact that this matter would have had on Q1, on Q2 and on the Police Service.

And you say that with the benefit of hindsight?---Absolutely, yes.

MR PETTIT: It wasn't particularly your view at the time, though?---I fully supported the review. I fully supported that - - as I said, I hadn't seen the case, so I don't know what evidence was there, but fully supported the fact that Mr Caporn wanted to review the file.

Thank you.

COMMISSIONER: Yes. Thank you. Mr Hammond? You may cross-examine the witness as to any evidence which impacts upon your clients.

MR HAMMOND: Yes. May it please you, sir.

CROSS-EXAMINED BY MR HAMMOND:

MR HAMMOND: Inspector Brandham, do you personally say that the case officers involved at the Child Sexual Abuse Unit had lost perspective in relation to this matter?---I think that the officers involved believed that there was sufficient evidence to charge Q2 and that they were wrong.

Do you say that they had lost perspective in relation to the matter?---I think I just answered that question.

So, you believe there wasn't enough - - it was your view that there wasn't enough evidence to prosecute this matter?---It was the view of a senior Crown counsel that there wasn't enough evidence to prosecute this matter.

Yeah, but you had never personally reviewed the file?---No, that's right.

Which officers do you say were wrong, that were working on the case?---I was told that - - -

MR HAMMOND: - - - on the case?---I was told that - - that - - specifically that Senior Sergeant Miller believed it was a winnable brief, that Detective Italiano believed that there was sufficient evidence to proceed, and even Detective Sergeant Ingham believed there was sufficient evidence for it to proceed.

And you believed that they were all wrong?---I believed that the Crown counsel - senior Crown counsel made a decision that there was insufficient evidence to charge Q2, and I would say that that person, that senior counsel, is probably in the best position to make that decision.

And you went on to say, and is it your personal position, that these officers couldn't be trusted? Is that your personal position?---It was my position that that - - it was my position that they had to be overseen to make sure that Mr Caporn's instructions were carried out.

Because you couldn't trust them?---It was my position that we had to ensure that Mr Caporn's instructions were carried out.

Are you able to answer this question? Did you trust the case officers working on the file?---In what regard?

That they would do the job efficiently?---Which part of the job are we referring to? If you're referring to their ability to - -

I'm talking about the - - ?--- - - conduct the interview, or you're - - their ability to conduct an investigation, then I'd say yes, they were more than capable of doing that.

What aspect - - did you have any lack of trust in Constable Italiano at the time?---No.

No. In any respect whatsoever in relation to her performance?---No.

Did you have any lack of trust in police officer Connoley at the time?---At the time I'm not sure what Detective Connoley's role was in this.

Did you have any lack of trust in her?---No.

In respect to any aspect of her performance?---No.

Did you have any lack of trust in police officer Miller?---Yes.

In relation to his performance on this file?---Yes.

MR HAMMOND: And what was that lack of trust?---Well, basically he had a problem remembering instructions that were given to him.

So you didn't trust him?---What do you mean by trust?

That you had no faith in him as an officer?---No, that's not true at all.

Did you have any lack of trust in Mr Mansas? Police officer Mansas?---I'm not sure what Mr Mansas's role in this was.

But he was at the Child Sexual Abuse Unit at the time that you were there?---Yes.

Did you have any lack of trust in him?---Again, what do you mean by trust?

You used the word?---Yeah.

Did you have any lack of trust in Mr Mansas?---In relation to the performance of his duty?

Yes?---In this particular matter?

Yes?---I don't know what his role was in this particular matter.

So I can put it to you that you didn't have any lack of confidence in Mr Mansas in relation to this matter because you didn't know what his role was?---I don't know what his role was, no.

So it's not your evidence, is it, that the four officers - - all four officers couldn't be trusted?---I - - did I - - I'm not sure what I said exactly. Was it the fact that I didn't trust all the officers, or did I clarify that later in my evidence to say that I was there to ensure that Mr Caporn's instructions were carried out? Because that's my evidence.

Your evidence was also that you believed that the four officers were not doing the job properly?---Did I say that?

Yes, you did say that?---Specifically?

Can't you remember what you said 10 minutes ago? No, it's a serious question?---Well, I'm - -

I expect a witness - - ?---I'm - - I know it's a serious question but - -

Do you recall saying 10 minute - - do you recall saying - - ?- - - - you're basically trying to put words in my mouth.

MR HAMMOND: - - 10 minutes ago - - ?---Mr Hammond - -
- - that these officers weren't doing their job properly?

COMMISSIONER: Mr Hammond - -

WITNESS: Mr Hammond, I've explained - -

COMMISSIONER: Mr Hammond, if you can just start the question again, please.

MR HAMMOND: Do you recall saying 10 minutes - - ?---If I can say - - if I can say - -

Could you direct the witness, Mr Commissioner, to listen to the question?

COMMISSIONER: If you will put the question, Mr Hammond.

MR HAMMOND: Did you say 10 minutes ago in your evidence in-chief that the officers were not doing the job properly?--- My evidence is - - and if I've said that then I retract that. My evidence is that I was there to ensure that Mr Caporn's instructions were adhered to.

Well, let's get this clear. If you did say that, then you retract it, don't you?---My evidence is is that Senior Sergeant Miller had shown some behaviour which concerned both Mr Caporn and myself, and that I was there to ensure that Mr Caporn's instructions were carried out.

But if you said it in relation to the four officers that they were not doing their job properly, you retract that, don't you?---In relation to - - I've already said I think, in answer to your question - - -

WITNESS: - - - to your question, that I did not have any concerns regarding the competence of Detective Italiano, Detective Connoley or Detective Sergeant Ingham.

MR PETTIT: Commissioner, if it helps - I'm always reluctant to substitute my memory for anyone else's - my memory is that the witness said in this respect that some of the officers had lost perspective, rather than that they were not up to the task.

MR HAMMOND: I wrote it down verbatim, Mr Commissioner.

COMMISSIONER: Well, we'll look at the transcript.

MR HAMMOND: When you came to the Child Sexual Abuse Unit, did you have any experience in sexual abuse matters?---In sexual abuse matters or in child sexual abuse matters?

Child sexual abuse?---No.

And you've been friendly with Superintendent Caporn for a number of years?---Absolutely. Yes.

Close friends?---Oh, work colleagues. Work together.

Socialise together?---On occasion.

And you discussed the case concerning Q1 and Q2 with Mr Caporn on numerous occasions?---As I've said in my evidence, I briefed Superintendent Caporn on any issues that I was briefed on.

You discussed the case on numerous occasions with Mr Caporn?--
-I guess the answer to that is yes, if - - it goes along with what I've just said.

And you've given evidence to the Royal Commission that it was a significant inquiry because of the impact the investigation would have. What was that impact?---In relation to -

The inquiry into Q2. What was the impact that that would have?---Well, charging a person with the profile of this person would have had a significant impact.

And in your view - -?---Which I thought would have been fairly obvious.

And in your view, charging someone of that profile would have been detrimental to the Police Service?---Absolutely not. Where - - I don't know where you got that impression from.

MR HAMMOND: Well, you did say it would have been the story of the year?---Exactly. It would have been.

Do you see that as being detrimental to the Police Service?---It would be if we'd have charged the person with the evidence that was available at that time, as was suggested by the four - - the officers from Child Abuse. As I said in my evidence also, the Police Service can, you know, be thankful that Superintendent Caporn reviewed it. Otherwise the DPP would have nolle'd the prosecution.

You've never disagreed with a direction given to you by Superintendent Caporn, have you?---On many occasions.

And you don't recall a heated discussion with Police Officer Connoley in relation to the arrest of Q2?---I've never had a heated - - well, I've never had a heated discussion with Detective Connoley.

Well, you agreed with Police Officer Connoley, didn't you, that Q2 should be arrested?---There was some discussion as to whether he should be arrested or whether he should be summonsed. I can't specifically recall what the discussion was, but it was a - - if it was between myself and Detective Connoley, it was a discussion - certainly not a heated discussion.

You said a few moments ago to Mr Pettit that you were adamant that it was proper to arrest Q2. Is that still your evidence?---I didn't say "adamant." I never used that word.

Sorry, I withdraw that. You agreed that it was proper to arrest Q2?---As I said a short moment ago, there was some discussion as to whether he should be arrested or summonsed. At the end of the day Mr Caporn instructed, at that stage, that he should be proceeded against the same as everybody else.

And what is "the same as everybody else"?---I'm not 100 per cent sure, to be quite honest with you. I'm thinking now as well, that because this is a matter that's 20 years old - -

You're an inspector. How is everyone else treated in this situation?---As I said, I'm not - - as you pointed out, I'm not experienced in how those specific issues are dealt with at Child Abuse Unit. At the end of the day - -

Superintendent - -?---At the end of the day, it's a decision that's taken at the time. If a matter is historic, it's not improper for a person to be summonsed.

MR HAMMOND: Superintendent Caporn directed you to proceed with Q2 in the same manner as everybody else. Was that the direction?---That was our discussion, yes; the basis of our discussion.

And he directed you to treat Q2 the same as everybody else?---
Not in - - not in - - well, yeah, I suppose a direction.
Yeah. It was a discussion and he said he should be treated the same as everybody else.

MR HAMMOND: And what is being treated like - - and what did you understand that direction to mean, that he be treated like everybody else?---Exactly that, that it would be a decision taken at the time. Bear in mind that this all occurred long before the review was done.

And the decision of the Child Abuse Unit to arrest Q2 was revoked after Mr Caporn reviewed the file?---Mr Caporn reviewed the file and instructed that - - well, and advised everyone that there was insufficient evidence in his view and in the view of the Crown prosecutor - - there was insufficient evidence at that stage to proceed, so of course he wouldn't have been arrested, because at that stage there was insufficient evidence.

Well, you can't shed any light on what it means to be treated like everybody else, what you understood that to mean? ---It means it's a decision taken at the time. As I said, I'm not 100 per cent aware what the decision is. If it's a case that's 20 years old, more than 20 years old, it may be a case that a summons is appropriate. It also maybe a case that in the same circumstances an arrest is appropriate. It's a decision taken at the time.

So there's no definition that can be given to the words "being treated like everybody else", is there?---Well, other than - - other than the general term that he should be treated the same as anybody else, no, I suppose not.

It's meaningless?---I don't think it's meaningless but - -

You can't help?--- - - I'm not going to - - I'm not going to argue with you.

You reported to Superintendent Caporn in your position as inspector?---Yes.

How many files do you envisage you handled whilst you were at the Child Abuse Unit?---What do you mean?

Did you have the conduct of many files while you were there? ---What do you mean? Investigations?

Yes?---No. That role, that managerial role, doesn't do investigations.

But you were there to oversee matters?---Yeah, in the chain of command. Yeah.

And you never - - and would you describe yourself as the most senior officer at the unit at the time?---I wasn't actually at the unit. I was in the same building but, as I said, I was

down on the ground floor which is adjacent to the sexual assault squad.

MR HAMMOND: But you were more senior than any other officer in the unit at the time?---Yes.

And you never reviewed this file?---No.

Superintendent Caporn told you why he wanted to review the file?---I can't specifically recall if he told me why.

He told you that he wanted to review the file because it could impact on the position of the deputy commissioner, Mr Brennan? ---Definitely not.

He never raised with you the sensitivity of charging Q2 in light of Mr Brennan's friendship with Q1?---Definitely not.

Sorry, Q2?---No, definitely not.

COMMISSIONER: This is going beyond the scope of the cross-examination, Mr Hammond.

MR HAMMOND: It's been put by two - - have you any knowledge of the contents of the file in relation to Q1 and Q2? ---Not specifically, no. As I said, I've not reviewed any of the - -

Have you seen the memorandums that have been exchanged between the various police officers on the file?---Not that I can specifically recall, no. They would've probably come - - if they've gone up to Superintendent Caporn they would've gone through me probably, but I've got no specific recollection of them.

Do you have any knowledge of the friendship between the deputy commissioner and Q2?---I still don't.

You don't have any knowledge of it?---I don't have any knowledge whether there's a friendship or not - - -

WITNESS: - - - whether there's a friendship or not.

MR HAMMOND: Could the witness be shown the memorandum that senior counsel referred him to? I think it was D1012885. Do you have your notes there, Inspector Brandham?---I do.

Can I see them, please? You'd agree, Inspector Brandham, that this is a very extensive memorandum concerning the case, to Superintendent Caporn?---Yes.

And you were asked to give him a very extensive memorandum regarding the case?---I was asked to provide a memorandum. That's what I did. I can't remember the exact details of the conversation, as to what I was asked for.

You can't recall or assist the Commission as to why you were asked to produce such an extensive memorandum?---No, I can't. Not off the top of my head, sorry.

Surely, Inspector, you can remember why you received an instruction to produce a memorandum of that detail?---(No audible response.)

If you could flick to page 2, please?---No, as I say, specifically I can't. I may be able to shed some light on that, with reference to my notes, but without reference to them, no.

You were aware at the time that Detective Sergeant Ingham believed that there was enough evidence for charges to be brought?---Yeah. Detective Sergeant Ingham made that point clear.

If we could turn to page 4, please? And you're aware that Detective Senior Sergeant Miller thought there was enough evidence on which to proceed?---Yes.

And you're clear about the instruction from Acting Detective Superintendent Caporn which appears through the middle of page 4, advised that he would fully review the case and instructed that nothing further was to occur until the review is completed. That's correct?---Which paragraph is that?

I think it's six?---Yes, that's correct.

Do you recall why, then, Acting Detective Superintendent Caporn gave that instruction, that nothing was to occur, until he had reviewed the file?---No, I don't recall why. I can assume it was so that he could review the file. To satisfy himself that there was sufficient evidence to proceed.

So, it's fair to say that until that review was conducted, not one further step was to be taken on the matter? All

investigation would cease until that review had been carried out?---Well, the next - - my recollection is that the next planned step, if you like, wasn't for some time - - wasn't going to occur for some time anyway. The next planned step was the interview and - - so it's simply a case of reviewing the file to satisfy himself - - as I say, I'm speculating here, because it's in his mind.

MR HAMMOND: You don't know?---It's in his mind.

At the bottom of page 4, Inspector, the first dot point is:

"He had examined all the evidence."

Is that Superintendent Caporn you're referring to?---Yes.

MR HAMMOND:

"Superintendent Caporn examined all the evidence and found that these offences had more than likely occurred in the manner described by the complainant."

WITNESS: That's correct.

MR HAMMOND: So that was Superintendent Caporn's view, was it?---Yes, it was.

He believed that these offences had occurred?---He believed that the statement of the complainant supported - - yeah, that they'd occurred.

And he made that known to you in discussions as well?---Yes.

MR HAMMOND:

"Superintendent Caporn had examined all the alleged corroborative material associated with the brief, and found that they did not support the alleged crimes."

WITNESS: That's correct.

MR HAMMOND: Isn't it the case that you don't need - - -

MR HAMMOND: - - - that you don't need, on your understanding, corroboration for a successful prosecution?---That's a new one on me. My understanding is that you always seek corroboration to obtain a successful prosecution, particularly in a case that's 20 years old.

But it's not necessary, is it, for a case to succeed that you always - - ?---Absolutely it is.

So your - - ?---I don't know of any instances where you can't - - or I can't think of any specific instances where you wouldn't seek to find corroboration in a criminal matter.

I'm not saying you wouldn't seek to find it. I'm saying a case could be mounted without corroborative material.

COMMISSIONER: You're saying here that the corroborative material wasn't - - didn't support it.

MR HAMMOND: Yes, that's correct. But I was putting a slightly different proposition so - -

COMMISSIONER: I know you were, but there are two aspects; that he believed Q1; that he's pointing out there was no corroborative evidence.

MR HAMMOND: But my proposition, Mr Commissioner, is that even if there is no corroborative evidence - -

COMMISSIONER: It's possible.

MR HAMMOND: Yes.

COMMISSIONER: But it's running a risk.

MR HAMMOND: Well, I suppose - - I mean, the submission we would make in relation to that, Mr Commissioner, that no cases would be brought - - a lot of cases wouldn't be brought, and there are indeed many, where there is no corroborative material in sexual abuse matters.

COMMISSIONER: Well, each one is judged on its circumstances.

MR HAMMOND: Yes.

(TO WITNESS): If we could turn to page 6, thanks. Sorry; 5. The last dot point, Inspector Brandham, is that Superintendent Caporn further instructed that no matter what came from the interview, no action was to be taken against Q2 until he had further reviewed the confessional material?--- Yes. That's correct. It's also worthy of mention, noting those other dot points in there, in that Ms Vicker concurred with his finding that there wasn't sufficient evidence to proceed at that stage.

MR HAMMOND: Yes, I have read that?---And the fact that - - that - - that all other avenues of inquiry should be explored in relation to obtaining supporting evidence.

So the instruction from the superintendent was, regardless of what was said at the interview, Q2 was to be released?--- That's correct.

And I put it to you then that regardless of the risk to any complainant, that he was still to be released. There was no qualification to that statement, was there?---I can't remember the specific instruction.

Well, I put it to you that there was no qualification to Superintendent Caporn's statement regarding the release of Q2?---I can't remember the specific - - the content of the conversation with Mr Caporn.

You'd agree that in the memorandum there's no qualification, is there?---That's correct. Yes.

And Superintendent Caporn told you that he had lost faith in officers at the Child Sexual Abuse Unit? Did Superintendent Caporn tell you that?---I don't recall that.

Did you ever access the file concerning Q2 whilst you were at the Child Sexual Abuse Unit?---No. As I said, I've not - - didn't have anything to do with the file.

And after this memorandum was provided and the briefing took place, what was, as you - - what was the plan in relation to Q2 that was going to be pursued by the Child Sexual Abuse Unit, as you understood it?---I'm sorry?

What was the plan of action in relation - - ?---At what stage are we talking about? Post-interview or - - -

WITNESS: - - - about? Post-interview or - -

MR HAMMOND: Post the interview?---So once the interview is completed?

Yes?---And that his solicitor has stopped the interview and he'd been released?

Yes?---After that?

Yes?---And that all other avenues of inquiry were to be pursued to see if there was any - - any evidence at all that could be gained that would support a prosecution.

Mr Commissioner, there's a few matters that arise from the diary entries. I'm wondering if I could have 2 or 3 minutes to consider those?

COMMISSIONER: All right. We'll adjourn until 11.30.

MR HAMMOND: If it please you, sir.

AT 11.03 AM HEARING ADJOURNED

AT 11.35 AM HEARING RESUMED:

COMMISSIONER: Yes, Mr Hammond?

MR HAMMOND: Yes, thank you, Mr Commissioner, and thank you for allowing that adjournment, and thank you to counsel assisting for the photocopies. I'm wondering if the witness could be shown copies of his diary notes. I don't know whether he has been given a copy or not. I actually have the original.

(TO WITNESS): I'm not sure, inspector, but you should have as the first diary note - - if you could tell me what it is actually, what date it bears?---There's no date on the page. It starts "Liaise Evelyn Vicker" at the top of the page.

Oh, yes, I'm with you now. You kept notes of what you were doing in relation to certain files?---Just, yeah, day journal notes. Yes.

And they were fairly comprehensive notes?---Not really, no. Just points that at the time when I was writing them - -

If you look at that page, for instance, that you have now by way of example, midway through the page you've referred to Cris Italiano and Q2?---Yes.

And you refer to a media release. Can you tell us what that's about?---It was obviously a conversation with Cris Italiano regarding the matter that she was investigating and those were the issues that were discussed.

And there it says: "Mark Ingham is to assess brief." Was he given that responsibility by you?---I can't remember specifically the context of that conversation, just merely that they're the notes that are made so "Mark Ingham to assess brief" may not necessarily have been an instruction that I gave. It just may simply have been that - -

And further down the page, inspector, it says: "Normal media release only." What's that supposed to mean?---Well, it goes along the lines with, as I said, he was to be treated like anybody else.

So it was envisaged at this stage that Q2 would be arrested and a media release would issue?---Not necessarily, no. It was just an issue that was discussed. Bear in mind that at that stage I was being told that there was more than sufficient evidence to charge him, no matter what he said at interview.

If I can move to the next - - before we move on, is it still your evidence that you had no knowledge of any relationship

between the deputy commissioner and Q2?---I have no - - I still have no knowledge of any relationship between the deputy commissioner and Q2.

MR HAMMOND: And is it still your evidence that you had no knowledge of any sensitivity that may arise insofar as charging Q2 was concerned in relation to the deputy commissioner?---I don't believe I've given any evidence in relation to that matter.

Yes, but did you have any knowledge that that may be a sensitive issue for the deputy commissioner?---If you could - - I'm not sure what the question is, sorry.

In October 1998 were you aware that charging or bringing Q2 into the police station may have an impact on the deputy commissioner?---I think my evidence to the Royal Commission has been that should Q2 be charged it would have an impact on the whole service.

But did you believe it would have an impact on the deputy commissioner?---In what regard?

I'm just asking you whether you believed it would have any impact whatsoever?---It would have an impact on the commissioner.

I'll take you to the diary entry of the 23rd of October? ---Yeah.

And that appears five or six lines down the page?---Yeah.

And four dot points down: "Liaise with Cris Italiano re Q2 issue." Do you see that?---Yeah.

Then it goes on to say: "Meet Mick" - that's Miller, is it? ---Yes, it is.

"And Cris re Q2 issue"?---Yes.

"Treat him like all others"?---Yes, it's as I've said - - -

WITNESS: - - - it's as I've said.

MR HAMMOND: "No media leaks"?---Yes.

That was a direction by you, that there was - -?---It's not a direction. This is a discussion, don't forget. This is not - - I'm not - - these are not directions by me. These are things that are discussed.

So, this is a note of a discussion between you, police officer Miller and police officer Italiano?---Yes. I guess, yeah.

"To be kept in-house. Detective Sergeant Ingham to figurehead inquiry"?---Yeah, as I said, that was that, what I mentioned earlier, about the discussion that was had, that he would run the inquiry, that - -

You were happy with that?---Sorry?

And you were happy with that?---Absolutely, yeah.

"Proceed by arrest" and you've already said you had no problem with that?---Yeah.

"Briefing note on issues by Monday"?---Yeah.

"Explain Mr Brennan's interest, professional only"?---Yeah.

What does that mean?---It means that Mr Brennan - - there was a - - there'd been comment that Mr Brennan had been briefed. There was - - if I can recall, there was some comment had been made within the unit that - - about a possible association between Mr Brennan and Q2.

So, you did know at the time that there was a possible association between the deputy commissioner - -?---No, I didn't know anything. I said that it had been - - there'd been a mention of it. I didn't know anything. I said Mr Caporn had told me that he'd briefed Mr Brennan and that there was some comment had been made within the unit.

I won't argue with you, inspector, but I don't recall that being your evidence?---I haven't given any evidence in relation to that.

Well, what was the reason behind those words, "Explain Mr Brennan's interest" - is it supposed to have the word "as" before "interest" and "professional"?---Oh, I don't know. As I said, it's obviously a matter that was discussed at the time.

So you have a memory lapse in relation to why that's there?---I don't have a memory lapse. As I said, there's a lot of

things that you put to me, Mr Hammond, that I haven't had clear recollection on. This is a note that's been made by me on the 23rd of the 10th 1998.

MR HAMMOND: Yeah, we can all see that?---I can't remember specifically the conversation that was had.

Can you explain to the Commissioner what was discussed at that meeting about explaining Mr Brennan's interest, professional only?---Well, it speaks for itself. Explain Mr Brennan's interest, professional only.

And who is that to be explained to?---I'm not sure.

Are you covering up things, inspector?---Oh, please, Mr Hammond.

Do you agree with this proposition, that that is shorthand for saying "Explain to the media that Mr Brennan's interest is only professional"?---Explain to the media? Where did you get that from?

I have put those words to you, as you have abbreviated - -?---There's no mention of the media - -

No, there's no - -?--- - - anywhere in there. In the context of that five, six words, there's no mention of the media in there. I don't know where you get that from. So, the answer is "No".

Well, after the words, "Explain Mr Brennan's interest, professional only - likely to occur", what does "likely to occur" mean?---I have no idea.

So, you've forgotten that as well?---I don't even - -

MR PETTIT: Well, I think it's part of an expression, "likely to occur, Monday 2/11."

COMMISSIONER: Yes.

MR HAMMOND: Is that - - counsel assisting has readily jumped to assist you. Is that the position? Is that right?

MR PETTIT: Well, I haven't jumped to assist. I've jumped to put it in a proper perspective, with respect.

MR HAMMOND: Well, I thought it was this witness giving evidence, not counsel assisting.

COMMISSIONER: Well, I think the question was wrong, because it does follow on, "Monday the 2nd." "Likely to occur, Monday the 2nd."

MR HAMMOND: Can I clarify that, Mr Commissioner?

COMMISSIONER: Yes. Certainly.

MR HAMMOND: Inspector, do you agree with counsel assisting's proposition that "likely to occur, Monday 2 November - -" is that what it says, or "2" something? Do you know what that means?---Again, it's - - all I can suggest was - - is that the - - the interview, as planned at that stage, prior to it being reviewed by Mr Caporn - - the interview was likely to occur on the 2nd of the 11th. I think. I don't know.

"Advise Dave". That's Superintendent Caporn, isn't it?---
Yeah.

"And okay it." Is that right?---That's what it says.

MR HAMMOND: If we go to the next page, Wednesday 28 October, starting at 7.30 am?---Yep.

You've highlighted an entry - just prior to Wednesday 28 October - which says, "1830. Liaise with Dave -" which is Superintendent Caporn?---Yep.

"- and Jo Connoley re Q2 issue - -"?---Yep.

"- - re briefing for Mr Brennan"?---Yep.

What was that briefing about?---No idea.

No idea?---No.

Are you intimidated by the fact that the deputy commissioner is sitting here listening to you?---Do I have to answer that? Because that's ridiculous. It's a ridiculous comment, Mr Hammond.

Well, it's a question?---It's not a question. The answer is "No." If the question is: am I intimidated by Mr Brennan being in the back of the court - no, I'm not, not at all.

You have no idea what that means, that entry?---It seems fairly straightforward to me. "Liaise Dave" - Mr Caporn - "and Jo Connoley, re Q2 issue, re briefing for Mr Brennan."

And what was the briefing about?---I have no idea. Probably in relation to what was to occur in relation to Q2.

So your best estimate is that Mr Brennan was to be briefed in relation to what was to happen to Q2?---I've already said that Mr Brennan was briefed in relation to the matter. As I said, it's an issue that had major ramifications for the Police Service.

Okay. Well, let's go further down under "Wednesday 28 October" six dot point, "To Curtin House and meet Dave re Q2 issue. Has told Brennan he intends reviewing brief"?---Yep.

Do you remember Superintendent Caporn telling you that he had told the deputy commissioner that he would review the brief?--
-No, I don't remember him telling me that, but that's what I wrote down, so he must have.

And further down the page, dot point 2, "Child Abuse Unit." I assume that means you attended there, does it?---Yep.

"And liaise with Mick"?---Yep.

MR HAMMOND: That's Miller, isn't it?---Yep.

The officer in charge?---Yes.

And he was the officer in charge, notwithstanding that you had no - - you didn't trust him, or you believed he wasn't a good officer?---I didn't say - - I haven't said that at all.

Didn't you have problems with Mr Miller?---Did I have problems with Mr Miller?

Yes. Didn't you have a lack of trust in Mr Miller because of his memory?---Yes. Yes.

And he remained in charge of this matter, notwithstanding that?---Well, he was - - I guess he was in charge of the unit, of the Child Abuse Unit.

But you were happy for him to be in charge?---Detective Senior Sergeant Miller is a very experienced officer.

It goes on to say "Discuss Q2 review issue as per Dave's instructions." Do you see that?---Yes.

And it goes on to say "Further" - something is crossed out - "action re charging Q2 put on hold until evidence reviewed." Then there's an asterisk "VIP." Does that stand for Very Important Person?---I guess so, yes.

Dash - "let's make sure it's right"?---Exactly. I mean that makes - - that's the whole crux of this, "Let's make sure it's right."

And if we look at your diary entries - and I won't take you through it verbatim, you'll be pleased to hear - there was considerable time devoted by you, wasn't there, in relation to the supervision of this file?---It was an important issue, yes. It's - - yeah, it was an important issue. There's lots of notes throughout my diary concerning it.

If you turn to the 9th of December 1998, is that your next - - ?---Yep.

About six or seven dot points down, it says "Liaise with Mick re additional memo re Mr Brennan"?---Yep.

And it says something, "I see (...name suppressed...) Do you recall what that was about?---Does that relate to a - - a memo that - - -

WITNESS: - - - a memo that Mr Miller, Senior Sergeant Miller, delivered to Mr Caporn or told Mr Caporn about on that day that had been given to him by Detective Italiano some time earlier.

MR HAMMOND: "It does relate to memos I - - "?---Yes.

So you do recall the issue?---Yes, I know what you're talking about.

So what I want to put to you, inspector, is that you were throughout the course of this inquiry totally cognisant of the fact that this inquiry would have an impact on the deputy commissioner?---I think I've already answered that. It would have an impact on the whole service.

I'd like you to answer the question insofar as it relates to the deputy commissioner?---Well, it would have an impact on the assistant commissioner, Mr Caporn, myself, the deputy commissioner, Brennan, the Commissioner of Police and the rest of the service.

Inspector, you don't mention the commissioner or any other senior ranking officers in these diary notes. You speak about Mr Brennan. Why do you speak about him generally in these diary notes?---Because Mr - - as I said, as I said to you earlier, Mr Caporn said that he briefed him and that there was some innuendo within the office about - - that I know nothing about, about a possible relationship, friendship, whatever, between (...name suppressed...) and Mr - - sorry, Q2 and Mr Brennan.

Which you knew about in October 1998?---What?

The innuendo?---It was going on in October 1998.

Yes?---There was some discussion in the office, yeah.

Which you knew about all along?---There was a - - there were some comments being made within the office.

And those comments were made to you?---I was aware of them, yes.

How were you aware of them?---They must have been said in my presence.

I seek to tender the diary, Mr Commissioner.

COMMISSIONER: Sorry?

MR HAMMOND: I seek to tender those diary entries.

COMMISSIONER: Yes, well, they'll be - -

MR HAMMOND: Actually, I should tender the whole - - the original - -

COMMISSIONER: No, I don't think that's your position actually, but they will be part of the exhibits. No, they are going to be part of a bundle.

MR HAMMOND: Thank you, Mr Commissioner.

COMMISSIONER: Yes, thank you. Yes, Mr Power?

MR POWER: Thank you, Mr Commissioner.

CROSS-EXAMINED BY MR POWER:

MR POWER: There's just one matter that I need to ask you about. You were referred a while ago to a document - -

MR HAMMOND: Sir, I'm wondering what statements this witness has made which are adverse to Mr Power's client.

MR POWER: I would have thought it arises from the cross-examination of my learned friend.

COMMISSIONER: Yes. Mr Power's client is - - there are allegations made against him and he's entitled to pursue those.

MR HAMMOND: Just reading your ruling again this morning, sir, I understood it to be if it didn't come from the words of this - - the mouth of this witness then that can't be - -

COMMISSIONER: I think he has a broader - -

MR HAMMOND: Yes.

COMMISSIONER: He's the one who's subject to inquiry; your clients are not.

MR HAMMOND: Yes.

COMMISSIONER: Yes.

MR POWER: Thank you, Mr Commissioner.

(TO WITNESS): You were referred a moment ago, as I was saying, to a document numbered D1012885. I would like you to look at that again. Can we go to the last page of that to pick up the date? You'll see it's dated the 8th of December 1998?---Yes.

D20/4

POLICE

MR POWER: We know that a written complaint was made to the police on the 1st of December 1998, a week before this memorandum was written by you - - -

MR POWER: - - - was written by you?---I'm not sure when a - -
I'm aware of a complaint, but I'm not sure when it was made.

Well, I think you can take it as read that the complaint was
made to police on the 1st of December 1998 by Q1?---I'll
accept that position.

Wasn't this memorandum, this detailed memorandum, written by
you in response, in effect, to a request for information
following on that complaint?---Specifically, I can't recall,
but that would - - that would answer the reason why this
memorandum was put in.

Yes, and it might also explain why it is so detailed, might it
not?---Absolutely, yeah.

Thank you, Mr Commissioner, I have no need to ask any further
questions.

COMMISSIONER: Yes. Thank you. Mr Pettit, is there anything
you have?

MR PETTIT: No, nothing further, thank you, sir.

NO RE-EXAMINATION

COMMISSIONER: Yes. Thank you very much indeed. You're
excused from any further attendance under the summons. If we
can retain your diary for the time being, thank you.

WITNESS WITHDREW

MR PETTIT: I call Tim Atherton.

COMMISSIONER: Could I have your full name, please?

MR ATHERTON: My full name is Timothy John Atherton.

COMMISSIONER: Do you have any conscientious objection to
taking an oath on the Bible?

MR ATHERTON: None whatsoever.

COMMISSIONER: Thank you. You can take the Bible and read out
the oath, please.

TIMOTHY JOHN ATHERTON sworn:

COMMISSIONER: Sit down, please?---Thank you.

EXAMINED BY MR PETTIT:

MR PETTIT: Your full name is Timothy John Atherton?---That's
correct.

MR PETTIT: And you are an assistant commissioner in the WA Police Force?---Yes, I am.

Your area of responsibility is, I think, metropolitan region?--It is now, since the 29th of July, yes.

Prior to that?---Prior to that, I was the Assistant Commissioner, Crime Investigations Support.

In 1998, you had the Child Abuse Unit within your portfolio?--Yes. I should explain that I took up a commission with the WA Police on the 25th of May 1998. I'd previously been a member of the Queensland Police Service. But, yes, I did have control of - - overall oversight of the Child Abuse Unit, which is within the Major Crime Division.

And do you recall when you were first made aware that there had been allegations made against Q2?---Yes, I do. Shortly after the 18th of August, Acting Superintendent Caporn advised me that there'd been a complaint made, and a person implicated, Q2, had some very loose association with Mr Brennan. I understand that Detective Superintendent Caporn also advised Mr Brennan.

If I can just digress for a moment, what are the arrangements for approval for interstate travel within the Police Force? Is that something that would come to the office of an assistant commissioner?---Yes. The arrangements in Western Australia are a little bit different to those that exist in Queensland. An application for travel would come to me, and I would recommend it. The State Commander would have the final word, and it would then go to the minister's office and the minister approves all interstate travel in relation to police officers.

Is it possible that there were some memos in September dealing with a request for interstate travel, and concerning the investigation of Q2?---September 98?

Yes?---It's possible, yes.

Being a Queenslander, were you independently aware of the status, in this State, of Q2?---No, not at all.

You had to have that explained as well?---I had had that explained to me, yes - - -

WITNESS: - - - explained to me, yes.

MR PETTIT: When you took up your responsibilities in Western Australia did there emerge in the next few months some concerns about the operations of the Child Abuse Unit?---As a matter of fact, the weekend that I arrived in WA, which was the weekend prior to taking up duty on the Monday the 25th, there had been some media coverage regarding a report by a member of the Child Abuse Unit which was a response to a number of recommendations arising out of the Wood Royal Commission in New South Wales. The general gist of the media campaign was that several - - quite a number of recommendations had been made about improving the operations of the Child Abuse Unit, and that report had been lying dormant for some time. And that - - in the - - that my first week was consumed with media interviews; it created a great deal of interest in Western Australia and became quite a political matter later in that week. So that was my welcome to Western Australia, if you like; handling that matter in the first week.

And what did you do about that?---I called in the officer who actually originated the report - a young detective named Peter Branchi - in association with detective or - - and then acting superintendent, Detective Caporn. I got a copy of the report, which was quite an extensive report. I spoke to him about it and, on the instructions of Commissioner Falconer, who was quite concerned about the delay in actioning the recommendations, we set about a process of implementing those recommendations over a period of time.

At that stage there had already been a review completed; is that what you're telling us?---Yes. Yes. I understand the review was conducted in the previous year, 1997, as I say, in response to the recommendations arising out of the Royal Commission in New South Wales.

Yes. Is that a review conducted by three individuals? I think Budge, Prins and Sullivan. Is that the one you're talking about?---No. I'm talking about a report that - - the author, I understood, was a Detective Peter Branchi, who was a member of the Child Abuse Unit. I am - - I am - - I have some knowledge of a review that was done by that group of officers, but the actual report that I was interested in at the time was the recommendations of the - - what I call the Branchi report.

Just so that I can be clear about this, can the witness be shown D1012182?

(TO WITNESS): This is rather a long report - 24 pages - but it's undated. It's headed - - the review was instigated by Acting Detective Inspector Brandham. Approved for action by Acting Detective Superintendent Caporn. That's its front page. Are you familiar with that report?---No. I can't - - I

- - I have some vague recollection of the review but I can't recall that report.

MR PETTIT: In any event, that's not the one you're telling us about?---That's not the one that I was referring to, no.

Could we have a look at D1012228?

(TO WITNESS): That's the document you - - ?---That's the one I'm referring to, yes.

That's a 58-page document, so we won't take you through it?---It's quite comprehensive. There's quite a number of recommendations.

Thank you. Now, after you were informed of the file concerning Q2, you were aware at that stage that Mr Caporn was briefing the deputy commissioner on the matter?---On occasions, yes, I was.

And did you attend any of those briefings?---Not from my recollection, no. But David Caporn was keeping me briefed at the same time about the progress of the investigation, so it wasn't the case of going directly to Mr Brennan. He would brief me concurrently, and that - - that's a practice that's continued in relation to a number of fairly high-level investigations - - -

WITNESS: - - - high-level investigations.

MR PETTIT: You've been in the West Australian Police Force for only 4 years or so?---Just over 4 years, yes.

And prior to that, you had how many years in Queensland?---27 years.

And on leaving Queensland, you had attained what rank?--- Superintendent.

From your experience, here and in Queensland, what can you tell the Commission about the interest taken by police management, where there is an accusation against a public figure?---Well, obviously there is - - there are issues in relation to high-profile figures. I mean, they get treated the same way in terms of deciding whether or not there is sufficient evidence, certainly, but in terms of negative implications for, I suppose, the image of the service, senior management obviously are always concerned that, if charges are going to be preferred against a person who we will call, for want of a better word, high profile, that all the i's are dotted and the t's are crossed. I think that's just human nature, rather than a procedural thing. I mean, I think if we are going to go out and charge, say, a member of Parliament for a fairly serious offence, there would be a fair degree of scrutiny and interest in the matter from senior officers.

Was that the case in Queensland?---Well, I can't say that I've been involved in any matters in Queensland of this nature, so I wouldn't like to comment on that.

Is the Q2 matter in Western Australia unique in this regard, in your experience?---No, no. I would - - I would say that the investigation into the Claremont murders, the same degree of scrutiny in relation to the evidence has been applied in that matter, too. Regardless of the profile of the person of interest.

Mm?---Because of the huge amount of community and media interest in the case.

Well, am I being too cynical in suggesting that the scrutiny by upper management is designed entirely to protect the police force in the media?---I, in the years since this matter came to my notice, have seen no suggestion than that's - - than otherwise that is the case, yes. That it's merely concern that there is no embarrassment to the service by this Q2 being prematurely arrested and charged with what amounts to very serious charges.

You've already told us that Mr Caporn was being briefed and in turn briefed you and the deputy commissioner?---Yes.

MR PETTIT: Were you given advance notice by Mr Caporn that he intended to personally review the file?---No. My recollection was that Superintendent Dave Caporn came to me after he'd reviewed the file and advised me that he had undertaken the review, and that was in November 98, early November 98, and if I paraphrase what he said to me, he said, "I'm glad I did, because they would have rushed out and arrested him and I don't think there's sufficient evidence there at this stage."

And can I say that that level of scrutiny by Detective Superintendent Caporn is not unusual. I've seen that same level of scrutiny in most of the - - this - - the major investigations that he's overseen in the time that he's been under my control.

Are you saying that it's not unusual for Mr Caporn, or it's not unusual for superintendents generally?---I'm saying that Superintendent Caporn is a very diligent and hands-on superintendent. He takes great pride in his work - - -

WITNESS: - - - in his work and would not let, you know, a major investigation going wrong - - he would not let that - - would not want that to impact on his image as an investigator and therefore he takes a great interest in matters under his investigation; hands-on, if you like. He's very hands-on. It's not in terms of interfering. It's simply oversight. He's a very thorough investigator. In fact, I'd go so far as to say - and I preface this by saying that I worked for most of my career in the Police Service in Queensland either with or for detectives - he's unreservedly the most thorough and competent detective I've ever worked with in my police service, and that's 30 years this year.

MR PETTIT: The matter reached your desk, I think, in early December following a letter from the person we're referring to as Q1?---Yes.

I think it was referred to you by the then Commissioner?---Mr Falconer. That's correct.

Mr Falconer?---Yes.

And it was in the nature of a complaint from Q1?---It was.

Did the Commissioner of Police speak directly to you about that matter?---He did.

And asked you to do what?---He asked me to - - to review the case and brief him as to whether there were any consistencies (...on tape...) or matters for concern.

That letter mentioned Mr Brennan's name?---Yes.

Was Mr Brennan advised about the letter?---Not by me.

Did you have any discussions with Mr Brennan about the letter?---No, but my understanding at the time was that Mr Brennan was aware that there was scuttlebutt in the unit that he was allegedly a friend of Q2's. He was aware of that matter.

Did you speak to him about that?---He spoke to me in - - not so long after Superintendent Caporn advised him, as a result of the - - in August, and reassured me that Q2, while he had some association, very informal association, with Q2 through his bicycle riding activities, that he was not a personal friend of Q2's, nor was he related, and that the investigation should take its course. In fact, I remember him saying to me "If there's evidence there, he should be charged."

MR PETTIT: In any event, after speaking to the Commissioner of Police, I think you immediately involved Mr Caporn?---Yes, I did.

With a view to speaking to Q1?---Yes. I firstly spoke to Detective Superintendent Caporn and got quite a comprehensive briefing from him of where the investigation was at and we made arrangements for Q1 to come in, because at that stage we'd received some advice from the DPP that on the evidence at that stage of the investigation there was no - - there was insufficient evidence to press charges against Q2.

We've heard it suggested in evidence that there seemed, from Q1's point of view, to be an inexplicable urgency in her attendance at your office. Was there, to your mind, some urgency?---Well, yes, there was in one regard. I mean, I'd been asked by the Commissioner personally to have a look at the matters that she'd raised in the letter and she had raised some suggestions that there was improper conduct. My brief was to very quickly ascertain from her whether - - what the nature of those concerns were and, if necessary, recommend that further investigation be made.

You and Mr Caporn met her and her husband on the 8th of December?---On the 8th of December, yes.

Tell us generally about that meeting?---She and her husband came in. We then - - basically, Detective Superintendent Caporn gave her and her husband the same briefing that he'd given me a few days before about the whole process of the investigation, and then we explained the advice that had been given to us by the DPP - - -

WITNESS: - - - by the DPP that insufficient evidence at that stage was there to press charges. As a result of that she was still expressing some concerns, personal concerns, that there may have been some improper interference in the investigation.

I made an offer to her for her to go away and consider the matter for as long as she liked and if she still had - - if she was still not satisfied with the advice that we gave her, albeit indirectly from the DPP, that there wasn't sufficient evidence to charge, that I would arrange the DPP counsel personally to come down and speak to her and her husband, and I also reassured her that if she was still unhappy, or still in her own mind unhappy, that there had been some improper conduct, that the matter would be passed on for investigation.

MR PETTIT: Was Mr Brennan mentioned by name in that discussion?---Yes, he was.

Do you remember what was said about him by Q1?---Well, she - - she told me that she had been told, it wasn't direct evidence, it was - - she had been told that (...name suppressed...) - sorry, Q2 - was a good friend of Mr Brennan's and had prior knowledge of the arrival of the investigators and it was her allegation that the alleged association between Q2 and Mr Brennan affected the outcome of the investigation.

Was she given any assurance on that score by you or Mr Caporn? ---No. I didn't see it was my place to give her any reassurance. I mean, I don't have any personal knowledge of the relationship between Mr Brennan and Q2. I simply - - my role there was that if she still felt that there was a matter to be investigated in relation to alleged improper conduct that my duty as a senior officer was to pass that on to an investigating body.

Did Mr Caporn attempt to persuade her that there was nothing in that allegation?---Not in my presence, no. In fact, I recall Mr Caporn being quite supportive of the matter being further investigated if she was still not satisfied.

If she were dissatisfied because she suspected that Mr Brennan had been involved improperly in the investigation and if nothing was said in that regard by you or Mr Caporn to assure her that there was no interference why did you not instigate an investigation immediately? In other words, what is there for her to think about?---Well, the main thing I wanted her to think about was whether she was accepting of the advice regarding the DPP's opinion about the outcome of the investigation. I was quite happy to refer the file to Internal Affairs - professional standards, Internal Affairs at that stage - but I also wanted to be satisfied that she was happy about that outcome because, as I say, I had made an

offer to her that I would get the DPP to send someone down personally to explain their decision to her.

MR PETTIT: Yes, but that's all shutting the gate after the horse has bolted, isn't it? I mean, the concern she expressed to you was that the evidence which was to go to the DPP was deficient precisely because there had been interference in the investigation resulting in Q2 being tipped off, resulting in him being prepared for the interview and ultimately declining to be interviewed?---That's probably the case but, as I say, I mean, at that meeting she was still of a mind that there had been some improper interference. It was always my intention to refer the matter but I gave her that cooling off period first prior to then referring it to the Professional Standards portfolio. I mean, that was a judgment call of mine and I have to take responsibility for it.

No inquiries were made by you or at your direction into whether there was any substance to the allegation that Mr Brennan may have interfered?---Well, I don't think I have a responsibility to do that. My responsibility if I become aware of any allegations of police misconduct is to direct those to the Professional Standards portfolio and then they make the call as to whether it's going to be investigated internally or referred to another agency.

And you didn't do that on the 8th?---I didn't do that on the 8th, no.

And you waited to see whether Q1 would change her mind?
---Yes. Well, I asked her to get back to me within a week but in actual fact she didn't. She took some time to - - -

WITNESS: - - - took some time to return, and in fact, she actually ended up writing a letter back rather than contacting me directly, which was the invitation that was given to her.

MR PETTIT: During that meeting, did Q1 say anything to implicate Mr Caporn?---No.

Did she mention any events in which Mr Caporn would have been involved?---Not that I recall, no.

So, her concern was restricted to the possibility that Mr Brennan had intervened?---Her concern was restricted to matters that she'd been told, in her own words, by the investigating detectives regarding the relationship between Q2 and Mr Brennan, and the fact that Q2 appeared, in her - - and this is the advice that she'd been given, appeared to have had some prior knowledge that he was to be interviewed.

Did you get any indication from Q1's demeanour at the end of the meeting that she was angry?---No, I wouldn't describe it as anger. She - - she was a very traumatised woman. She was probably confused and in her own mind still unhappy that - - well, not unhappy; she was still confused about what had happened and she - - she couldn't - - I don't think she could comprehend that no complaint could be made, and in her own mind, something like that be compromised by what had been told to her as being an association. So, she was uneasy about the alleged association more than the outcome regarding the evidence, the advice of the evidence, but as I say, my call was, give her a week to think about those issues. If she was still unhappy about either or both, then I would take some action at the end of that week.

Do you accept the criticism that, in respect of her suspicions regarding Mr Brennan's interference, she was given nothing further to think on by you or Mr Caporn?---I don't know what you mean by that.

Well, really the effect of sending her away for a week was to see whether she would simply lose interest in that allegation?---No. No, I had no doubt that she was not going to lose interest. I was - - personally, I had no doubt that she would come back, and wanting to continue to press her complaint that she outlined in her letter to Mr Falconer of 1 December. The only - -

Well then, why send her away?---Well, because as I say, it was my judgment call that I gave her the week to decide about the evidence, lack of evidence matter, prior to forwarding the whole file to Professional Standards.

Yes, it seems to be, to me at least - correct me if I'm wrong - two very discrete matters here. One is whether there

was enough evidence to pursue a prosecution of Q2; quite independently of that, there was another issue, whether or not the investigation had been interfered with?---Mm.

MR PETTIT: I can understand, and I would leave to one side the first issue and pursue the second. On that score, your evidence is that you gave Q1 no information, no assurance, simply asked her to think about it?---Well, I couldn't give her any reassurance because the matter, at that stage, hadn't been investigated. The matter was the subject of rumour and innuendo within the Child Abuse Unit, something which had been drawn to my attention. The matter had not yet been investigated, so I mean, I don't see how I could give her any reassurance about the matter. And what would I say? I don't know the relationship between Mr Brennan and Q2. I'd received some assurances about that by Mr Brennan. I had no knowledge of the actual - - what had transpired in relation to the interview with Q2, when the investigators went to speak to him. She - - she alleged in her letter that he had been aware, or allegedly been aware, of their impending arrival, but I had no independent knowledge of that, so I don't see how I could have given her any reassurance, but - -

No, I understand that - -?--- - - I certainly - - I was prepared, if she was still unhappy at that stage, which she clearly was, to refer the matter for further investigation.

Yes. Perhaps I'm wrong in my premise. Perhaps it's not the case that the two matters were completely separate. Would you agree with this; that - - -

MR PETTIT: - - - you agree with this; that should she have explained to her clearly the nature of the investigation and exactly what went on and what was done and what wasn't done and why, she would have faith that there was no interference whatsoever by anybody?---That's - - that's probably quite a fair assumption because, as I say, the briefing that we gave her and her husband was very comprehensive in terms of who was interviewed and what evidence was gathered, so, I mean, I would have hoped that that may have given her some reassurance, but my own assessment of her demeanour at the time was that regardless of the thoroughness of the investigation, she was convinced in her own mind that the outcome had been compromised by - - you know, by the alleged association, and she would press the matter.

All right. But now I have to return to my original point. On that assumption, it rather overlooks the gravamen of her complaint; namely, that the reason there was insufficient evidence was because the process, in her mind, had been corrupted. Do you see the point?---I see that point, and I accept it. And, as I say, I take responsibility for giving her what I was hoping would only be a week to think about the - - the lack of evidence matter before referring it for further investigation. Now, that might have been a bad call on my part, but I can assure you that there was no malice aforethought in regard to that. That was simply a call on my part. It was a major investigation, there was a huge file on it; the matter would - - would be referred through if she was not satisfied with the outcome to DPP or to Internal Investigations in relation to her suspicion. There was never - - never any suggestion that wouldn't happen. Simply I gave her that cooling-off period to consider the advice from the DPP.

In any event, she did not return to you within the week or indeed within the month?---No. It was some time, and I do recall some conversations with Detective Superintendent Caporn, and I asked him to - - to contact Q1 and ask her whether she'd come to a decision about the advice from the DPP.

So he did that at your request?---He did that after discussion with me, yes, on one or two occasions.

And were you aware there were more than - - there was more than one call to Q1?---I believe there were at least two, yes.

Did Mr Caporn report to you about each of those telephone calls?---I can't recall exactly, but he certainly gave me some feedback about one or both of them, and the advice was that she was still considering the matter and she would get back to us as soon as possible.

MR PETTIT: And the next thing that happened I presume is that you received the letter of 4 February in which she elected to take up your suggestion, apparently, that the matter go to the Ombudsman?---No. She said Ombudsman in her letter, but I actually referred it to the professional standards portfolio.

Yes. Well, can you recall whether you mentioned during the meeting of the 8th of December the option of professional standards, Ombudsman, ACC - those sorts of things?---Well, I may have explained to her that the Ombudsman's office oversaw all investigation - - internal investigations by police, but of course if there are any matters of serious - - allegations of serious misconduct almost inevitably they'd be investigated by the Anti-Corruption Commission. So I don't know whether she's misinterpreted my mention of the Ombudsman as saying that the Ombudsman will actually conduct the investigation, but obviously in allegations as serious as these I would expect it would have eventually ended up at the ACC, as I believe they did.

The letter does not say but implies some dissatisfaction with Mr Caporn's telephone call?---Might I refer to the letter if you have a copy of it?

Sure. It's D1012858. Oh, sorry. No, that's not - - it's D1012860. I may have said it was a letter to you. In fact it's a letter addressed to Mr Caporn, but - - -

MR PETTIT: - - - addressed to Mr Caporn, but copied to you?--
-Copied to me, that's right.

MR HAMMOND: I wonder if that could be replicated on our
screens?

MR PETTIT: Yes, it will be.

MR HAMMOND: Thanks.

MR PETTIT: The passage I was referring to is the passage
beginning with the word "Finally." "Finally, I would prefer
further communication to be in writing or in person at a
formal meeting"?---Right.

That's an inference you haven't previously drawn?---She may
have been unhappy at being contacted by telephone. I'm not
sure. I mean, that's probably a matter that would be better
put to her, but - - but certainly she appears to not be happy
with being contacted by telephone.

Did Mr Caporn have, to your knowledge, any more to do with the
matter after receipt of this letter?---Not to my knowledge,
no.

And what did you do about this letter?---I referred the matter
through the - - through the Commissioner to the Professional
Standards portfolio.

And we now know that - -?---With a recommendation that it be
investigated.

And we now know that they in turn referred it to the Anti-
Corruption Commission?---I believe so, yes.

I think that's all I want to ask. Is there anything further
about the matter that you want to volunteer?---No, there's
nothing further that I can volunteer at this stage.

Thank you.

COMMISSIONER: Yes. Thank you. Yes, Mr Hammond?

MR HAMMOND: No, no questions, sir.

NO CROSS-EXAMINATION BY MR HAMMOND

COMMISSIONER: Mr Power?

MR POWER: Thank you.

CROSS-EXAMINED BY MR POWER:

MR POWER: Mr Atherton, was one of the reasons why you were keen for a timely response from Q1 on her decision about whether to take the matter further or not, the serious nature of the allegation?---Yes, obviously. And of course, as I said, a matter that - - I spoke to Mr Falconer and he referred the communication letter to me and asked me to investigate it. You know, one doesn't sit on commissioner's files for too long before getting a - - particularly with Mr Falconer. So it implied rapid response.

Right. When you indicated to Q1 that you would like a response within a week, did she indicate to you in any way that she would attempt to do that?---Yes, she did. She said she'd think about the matter and get back to me within the week.

Yes. Thank you, Mr Commissioner.

COMMISSIONER: Thank you. You have no further questions?

NO RE-EXAMINATION

COMMISSIONER: Thank you very much. You're excused from any further attendance under the summons. Thank you?---Thank you, Commissioner.

WITNESS WITHDREW

MR PETTIT: Call Bruce Brennan.

COMMISSIONER: Could I have your full name please?

MR BRENNAN: Yes, sir. My name is Bruce John Brennan.

COMMISSIONER: Do you have any conscientious objection to taking an oath on the Bible?

MR BRENNAN: I do not.

COMMISSIONER: Thank you.

BRUCE JOHN BRENNAN sworn:

COMMISSIONER: Thank you. Sit down, please.

EXAMINED BY MR PETTIT:

MR PETTIT: Your full name is Bruce John Brennan?---Yes.

MR PETTIT: You are deputy commissioner in the West Australian Police Force?---Deputy commissioner, operations.

And you have been for some time?---Yes. Since February 96.

You've had how many years in the force?---I'm into my 38th year now.

I won't ask you to run through career history. I want to go directly to the matter at hand. You, as at 1998, were acquainted with the person we've been referring to in these proceedings as Q2?---Yes.

MR PETTIT: Do you recall when you first met Q2?---Yes, I do. It would have been in about June of 1996. It was in relation to a charity bike ride that he was asked to attend as a celebrity. I was asked to attend as a deputy commissioner supporting the troops on the ride - and by "troops" I mean police officers and other community-minded people on that charity ride - and I was introduced to Q2 by a person who was known to me, a very prominent (...name suppressed...), and that was my first meeting.

That was a charity ride connected with the police?---It was a bike ride that was for Police Legacy. They were to be the beneficiaries of any moneys that were generated from that ride.

And that's a charity directed towards assisting the families of police officers in one form of difficulty or another? ---Yes. Families of police officers who had passed away and children or widows and that type of thing.

You say you were introduced but did any other social interaction, apart from shaking hands and saying "Hello" occur on that occasion?---The nature of those rides means you ride in teams and as I recall on that occasion there were two teams of 15 riders. At that stage I hadn't ridden a bicycle for 25 years, so my involvement on the bike was minimal, may I say. Q2 was a rider of some note and I didn't see a great deal of him, to be frank, and occasionally throughout the course of when the two teams met I would see him and, you know, there was probably some chat but nothing specific.

Have you encountered Q2 in other organised charity rides? ---Yes, I have. There are a couple of major rides that are associated with Police Legacy. One is the Karratha-Broome ride, the other is the Albany to Perth ride. They are what is termed "marathon relays" where you work in teams and you have a period of time out on the bike. You can ride - - it's usually split into segments of 100 K per segment and you can ride it all or you can ride some of it. Now, I was associated with him on one of those rides, in 98 I think the first one was, and I had been on one other ride - that wasn't a charity ride, it was a social ride - when he called around to Police Headquarters one day with two associates and we went for a ride around the river.

All right. I'll come back to that second matter later. You say there are two charity rides for Police Legacy. Are they annual events, are they?---Yes, they are.

And since 96 you have entered only two in which Q2 has also entered?---Yes, I think - I think there's only two. Maybe a third but I - - I'm uncertain.

MR PETTIT: Well, are you uncertain how many you've ridden in?---Yes, because I've done other rides and there are certainly two that he was there. Could have been a third but I'm not sure.

The second of those, the Perth to - - sorry, the Albany to Perth - - ?---Yes.

Do you recall the riders meeting in Albany prior to setting off?---Yes, I do. As usual, there's a - - there is a muster and that was at the - - on the foreshore down near the Foodland grocery chain's parking area. There was an assembly at 6.30 am - - -

WITNESS: - - - assembly at 6.30 am for the riders and the support crews, and that entailed having breakfast, coffee or tea and just generally making sure that your equipment was right, that your gear was where you wanted it to be, accessible, and making sure that the team tactics were sorted out. So, and on that occasion in 98, I did mingle with Q2, as I did with many others, because that was my - - that was expected of me as deputy commissioner and representing the police hierarchy.

MR PETTIT: At that point, you had established something of a history, though, of interaction with Q2 in other matters than charity rides?---Yes. Following our first meeting on the Broome ride, he advised me that he was involved with dealing with indigenous communities, remote communities, with dysfunctional families, dysfunctional youth in particular, and that he was seeking a degree of cooperation through the Police Service with some of the key players out in remote areas, and I think the first one he referred to was Laverton or somewhere out that way, near the central lands, and I believe on a number of occasions that we had discussions about this. I think I recall having telephoned the local police and said that this fellow and an associate of his were going to Laverton and that I would like them to assist them in their community work, because essentially it would benefit us, in a very pro-active way, because an ounce of prevention is better than a pound of correction, a pound of correction later. And so it seemed to be a good issue to pursue and our people were keen, and I'm told, cooperative.

All right. Well, I'll come back to those interactions, but at the moment I just needed you to explain that on the occasion of the bike ride from Albany to Perth, Q2 by that stage was quite well-known to you?---Yes.

And I think there was a photograph of you taken?---That is right.

Is that something that you organised?---No, I didn't. I wasn't aware that there were going to be any particular photographs taken and it was during this assembly, muster, in the Foodland car park that we were having breakfast. I was a bit late there, a lot of other people had eaten their breakfast, and I got a bowl of cereal and - -

I think we've actually got the photograph, so you can speak to it. Can we have D1013398?

(TO WITNESS): You were saying that there was some breakfast?--There was some breakfast. I came a little late. I got a bowl of cereal and we were geared up in the appropriate sponsors' shirts and gear and so on, and Q2 was standing near a patrol car that was going to escort us on this ride, and I got a spoon containing some of the cereal and said to (...name suppressed...) because it was - -

MR PETTIT: Q2; we'll have that corrected?---Q2, thank you. Said to him that because of the fact that he was a fairly ordinary rider, he probably needed to get some extra calories on board to assist him in the ride. I mentioned carbohydrate packing or something, and there was a photo taken of that. Later, I saw that photograph reproduced in "Newsbeat" which is an internal police magazine. It's a method of us communicating certain things with our people. Now, that photograph was in the back of the "Newsbeat" magazine and there was a competition being run by the "Newsbeat" people, internally, that if you can put a caption - - -

WITNESS: - - - if you can put a caption in to the photograph that reflected what they thought could be being said by the two people at the time, then you could win a specified prize.

So that was run in our Newsbeat. There was quite a few entries and - - and the one that - - and I - - and I chose the winner. The one that won it was a person from down at our media and public affairs, because of the clever captions that he had included on it. Because our former Commissioner, Mr Bob Falconer, had a saying, and it was to do with the huge change programme that we were undergoing at that time within the organisation, and the saying was that, "We don't have to work harder. We have to work harder and smarter" or "smarter and harder", so hence the caption.

MR PETTIT: And hence also the reference to Delta?---And hence the reference to Delta. And I thought it was a very clever caption and that same person from our media and public affairs sent me a copy of that photograph with Q2 and myself and a few other people in the background, and I put it on the wall along with some other photographs that I have.

It was - - this bike ride, I can tell you, was on the 1st of August 1998?---It was August.

And on the 20th of August the photo I think was on your wall?---It could well have been. It was - - it wasn't a lot of time involved in - - when it appeared, but I don't know who - - who could give you that advice that it was on my - - my wall on the 20th of August. I don't even know that myself.

We've finished with the photos, thanks.

(TO WITNESS): Now, going back to the interactions between you and Q2 in the intervening period - that is, from 96 when you met him and 98 when this bike ride occurred - in what respects was there interaction? I think you've told us about Q2's work with remote communities?---Yes.

Were there any other contexts?---Well, there was one - - one other. He was always wanting me to come for a - - a ride with him, and at that stage he was several levels above my ability as a bike rider, and I kept stalling him. We'd talk about remote communities and his involvement and - - and tee up whatever else was necessary to be teed up. It was either with him or the person that was working in direct association with him with the - - a (...name suppressed...) which he operates.

And on many occasions he would - - he would ask me to come for a ride with him when I've got time. Well, time's not something that I have a lot of, but eventually one day I did go for a ride with him, another guy that I was told was an Australian champion bike rider and - - and his associate who had only just started riding. And we went for a ride around the river. It probably took us about an hour. And they went their way and I went my way at the conclusion. And there

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were, over a period of time, a number of phone calls, but all
- - all to do with our association and work-related matters.

MR PETTIT: In response to a summons to you you provided to
the Royal Commission your journals?---Yes, I did.

I want to take you to some entries. Can we first have D10122
- - sorry; 2664.

MR PETTIT: I'm sorry, I've not given the public version of that. It should be D1012872.

(TO WITNESS): It's your habit, I think, to keep at least a very neat journal, and quite amply entered, I think?---Yes. I - - I do keep a journal, from which I leave sufficient information. If I have to backtrack for whatever reason, there is some - - some reasonable reference there. Sometimes the entries are not as comprehensive as I would like them to be, but time permitting, I do do it when I can.

I think this is a reference to - - and I'm not sure why any of this is blacked out, but I can tell you that it reads, "Met with Police Legacy people re charity bike ride, Albany/Perth." That's on Friday, the 31st of July?---Yes.

Who are the Police Legacy people?---That was - - that was at Albany. They were down there. They were essentially John Weaver, who was the president of Police Legacy, there was Senior Constable Michael Robinson, who was the manager of Legacy. There were various Legacy employees and the idea of that meeting was to meet the other people in the team that you were going to ride with on that particular occasion.

I see. The second is D1012873. You refer to yourself as "BJB"?---Yeah, I do.

And you refer to the Commissioner of Police as "COP"?---Yes, I do. Or by his initials, but usually COP. It's easier to write that.

Again, our - - seems to have been slightly overzealous with the blacking out. Perhaps I can read it to you. It says:

"COP plus BJB met with Q2 re Aboriginal Youth Reserves metro and country."

That's on the 21st of August?---Yes.

Do you recall that?---I do recall it, yes.

And the Commissioner of Police himself was involved?---Yes, he was. He came into the room and I was telling him about this type of work that these people were doing, Q2 and his associates, and it was just a general familiarisation for the commissioner of the day with the sorts of things that were going on. He was keen on the pro-active issue and aspects of policing, and that was one of those ventures that I believed that we could set up an alliance. One of our strategic intentions as an organisation at that time was to foster partnerships and strategic alliances, and this was one such alliance that I thought was well worth pursuing.

MR PETTIT: Yes, but Mr Brennan, what strikes one as noteworthy about that meeting is that on the evidence we have, it occurred the very next day after you had been briefed by Superintendent Caporn about allegations made against Q2. Did you not think it wise to - - unwise to proceed with a meeting, in those circumstances?---No, I didn't think it wise or unwise. I mean, the meeting had been scheduled and I would have, without a doubt, mentioned it to the commissioner at that time, that there was some allegation, but there are many allegations made and not all of them reach fruition, so at that stage, we carried on with business as usual. He was aware that there was an allegation, but that is all.

MR PETTIT: By "he" you mean the Commissioner?---Yes.

The next one is D1012874. It reads: "Meeting with Q2" and another person. You know that other person?---Yes, I do.

"Re assistance with dysfunctional families and cooperation with" another person "from the minister's Aboriginal Advisory Council." Do you recall that meeting?---Yes, I do.

And is that to do with the remote communities?---Yes, it is.

And do you recall what was the purpose of the meeting?
---Not specifically, but it would have been in furtherance of Q2's involvement and his associate's involvement with, as it says there, dysfunctional families and trying to work with Pamela Walsh, who was the chair of the minister's Aboriginal Advisory Council at that time, trying to keep everybody in the loop so people knew what was going on.

I want to go back to the few days prior to that. Can we have D1012667?

(TO WITNESS): There's been some evidence - - incidentally, have you been following the evidence in these proceedings?
---Not - - not totally, no.

Have you read the evidence of Q2?---Yes, I have.

We've heard evidence, which you may be aware of, to the effect that you were overheard at a meeting making reference to Q2. Have you read about that evidence?---Yes, I have.

You were at a meeting of the Police and Nurses' Credit Society at 1700 hours on Monday, the 24th of August 1998, according to your diary?---Yes.

It is, we assume, at that meeting that you were relating the experience of your bike ride from Albany to Perth?---The meeting was held, conducted, and as was the custom after the meeting people stayed on and either had drinks or coffee or whatever they wanted. It wasn't something that I particularly liked doing because I had the drive home, or get home and there was plenty on, so I usually excused myself from those meetings and moved out. As I recall, at one of those meetings my phone sounded off and I just put it on hold. A message was left, and on the way down in the lift at the Police and Nurses' Credit Society building in Adelaide Terrace in Perth I've turned this phone on and recovered the message from that Messagebank and it was a message to ring Q2. So the person or persons that I was riding down in the lift with questioned me in relation to Q2 and I told them that I had been associated with him on a few bike rides and so on and we had been dealing with matters to do with the indigenous communities, and just

generally chatted in a fairly light-hearted way because here am I listening to this telephone call and everybody is watching with some expectation, even though it's none of their business but, you know, I just - - as is my style, just let them know why I was taking a phone call and not talking to them. So - - or accessing the Messagebank. So that was about the size of it.

MR PETTIT: We know also that you did in fact make a phone call at 8 o'clock that evening?---Yes. I don't specifically remember making it, but - - -

WITNESS: - - - remember making it, but - - but I - - I did return that call. If it was 8 o'clock, then that would be right. It's available for - - through CC Arts. So - - and - - and that telephone call would have been in relation to some indigenous issues that - - and meeting - - and meeting with a community that Q2 and his associate had in mind. I note some time further on, and you may well refer to it, in my diary, my day book, that I did have a meeting with him a couple of days subsequent to that telephone call.

MR PETTIT: Yes.

COMMISSIONER: Would that be a convenient time, Mr Pettit?

MR PETTIT: Yes, it would. Thank you, sir.

COMMISSIONER: We'll adjourn until 2 o'clock.

AT 1.02 PM HEARING ADJOURNED

AT 2.04 PM HEARING RESUMED:

COMMISSIONER: Yes, Mr Pettit?

MR PETTIT: Mr Brennan, before lunch we were canvassing the telephone call we know from CCRs to have been made on the evening of the 24th of August and I think you had intimated that it was - - although you don't recall the conversation it's likely to have concerned the meeting which you subsequently had 2 days later on the 26th?---That is so.

Should we draw the inference that Q2 had your mobile number available to him?---If he rang it then either I would have given it to him or he may have got it from one of my staff, but I can't recall giving it to him. I don't - - I don't give it to everybody, as you can well imagine, but it's likely that a staff member in a genuine gesture would have given him my mobile number.

How was contact between the two of you for the purposes of Q2's professional activities usually instigated?---Usually from him to my secretary or my staff officer, but he wouldn't know my direct line, the one that goes straight through to my desk.

I just want to take you through some other entries in your journal - if we could have - - we've already dealt with a meeting on the 26th. If we could go now to D1012875.
(TO WITNESS): You will see at the foot of the page that reads Q2 and a female associate of Q2 "meets (...name suppressed...) re assistance with children involved in criminal activities".
It's a bit hard for you to discern that but perhaps there's no reason why you can't refer directly to your journal?---Yes, I see that entry.

Now, does that have to do with the same general topic - that is, remote communities' difficulties - or is that something different?---No, I don't think it's anything different.

And could we have D1012876?

(TO WITNESS): For your benefit, Mr Brennan, that's an entry on Thursday, 17 September 98 at the foot of the page, page 46.
Again the female associate plus Q2, something to do with Boyup Brook?---Yes. That is Q2 and his associate re Boyup Brook and assistance required by police. He was going down that way. He wanted the assistance of local police to do some community-related activities, and again that was to do with indigenous people.

And next 2878, please.

(TO WITNESS): Mr Brennan, that's page 94, the foot of the page. This, I think, is an entry of a different nature?
---Yes.

MR PETTIT: You appear to have discussed Q2 with
Mr Ayton. Is that correct?---No, no. No, the top dot point
is: "Q2 issues - discuss with COP."

I see?---And then you'll see another dot point where I've
- - -

WITNESS: - - - where I've spoken to Mr Ayton in relation to another matter.

MR PETTIT: What issues on the 9th of November did you discuss with the commissioner. Do you recall?---In general terms. I don't specifically recall word-for-word, but in general terms I would have told him that this person had been - - had been - - had allegations made against him and that they'd reached a certain stage. Specifically, I don't know what, but no, that was just an entry to say that I've kept the commissioner informed of the issues involving Q2.

Did the commissioner know of your association with Q2?---Yes.

Did he express any opinion about the matter?---Did he?

Yes?---No, he did not.

No direction to you about the matter?---No.

Next, could we have 2881? That's page 96. "Meeting Acting Superintendent Caporn re Macro briefing"?---Yes.

"Shoalwater briefing"?---Yes.

We know about those, and so on, and then over the page, 97, "Also briefed re Q2 inquiry and allegations"?---Yes.

Now, the date of that is significant, in that we've heard evidence that it is the date on which Mr Caporn called a meeting of the officers concerned and told them the results of his review. Were you aware that Mr Caporn was going to conduct his own review of the file?---Yes, I was.

Did you instruct him to do so?---No, I didn't, no. It was at his initiation, but I certainly supported that. I said that would be a sound practice.

And why is that a sound practice, on that occasion?---When he first advised me in relation to the matter involving Q2, my comments were to the effect that - - and that there was a serious allegation made against him, or allegations. I said, "All right, pursue it and make sure that you've got the evidence. If the evidence is there, charge him, but make sure you have it." And to that, he replied, "Well, I intend to do a review of it anyway", so I thought that was sound practice. because we'd been bitten previously in relation to matters, not to do with the Child Abuse Unit specifically, but other matters that had gained a certain amount of publicity over issues and the - - when it got to the Crown, they nolle prosequi the issue, so it caused some consternation and embarrassment and has done so, so because of this, the profile of this issue, I said, "Well, yeah, I agree. Review it."

MR PETTIT: I take it from the entry in the far right of page 97, that you advised the commissioner?---Yes. That is so.

Have you heard the opinions, or read of the opinions expressed in these proceedings concerning the appropriateness of interest taken by the upper levels of police management in matters simply on account of anticipated press?---Yes, I have heard that.

What's your view?---Well, my view is that if David Caporn, who I believe is a very astute and capable officer, saw fit to mention to me that this person was going to be interviewed and pursued in relation to allegations of - - well, of sexual abuse, then I certainly agreed with the fact that, as a - - an add-on to a Macro briefing and another briefing about some significant investigations that were occurring at that time, then he should - - it was quite right that he should mention this to me. It wasn't anything out of the ordinary, because with Macro and Shoalwater and some other serious investigations that were occurring about that time, I required David Caporn to brief me directly on any developments, of exactly what was going on, because there's a little bit of quality assurance comes there, too. It was a chance for him to reflect some of his thoughts and focus; and the general direction and objectives of what he was trying to do with these serious inquiries, past me. He is totally aware that I have an investigative background and that I was involved in some fairly major crimes over the - - over the time, and - - -

WITNESS: - - - over the time, and he used me as a sounding board, I would - - I would suggest, and - -

MR PETTIT: Yes. Well, that - -?--- - - that was quite proper.

Yes. What I was really after, though, is your view on a superintendent personally conducting a thorough review of an investigation?---No, that's - -

A ground level investigation?---Yeah. It's not hugely unusual. You know, I think the context here is - this particular one in relation to Q2 being a - - a person of some considerable profile - that he was going to make sure - as is his style - that things were adequately and thoroughly canvassed before any charges were preferred and I quite supported that.

Could we next look at 2979? That's page 121?---Yes.

2979? We'll have to struggle on without it. It reads:

"Q2. (...name suppressed...) re letter of support for his programme with Aboriginal youth. Done."

WITNESS: Yes.

MR PETTIT: Do I take it from that that you had been requested to write a letter of support?---Yes. My recollection is that he asked me to write a letter of support. I'm not sure to whom it was addressed, but possibly the (...name suppressed...) or the other group that he was seeking to become involved with, and that I - - the police service - and me, as the senior representative - was happy to support the sort of work that he was doing with Aboriginal youth. And the "Done" refers to the - - the request was from Q2 and then the "Done" is that I've done the letter. It's completed.

Was it a letter of support for Q2 personally or - -?---I think it was more in terms of the project or the programme with which he was involved, rather than him personally. I mean, Q2 stood alone in that sense, I thought. He - - he was - - he was a mentor and - - and somewhat of a leadership figure to these types of youth.

It didn't strike you as at least ironic, if not dangerous, to be writing a letter of support for a person on the 16th of December, who you knew was in the middle of allegations concerning child abuse and in particular to write such a letter in respect of his work with youth and community services?---No, it didn't - - didn't strike me as being

dangerous or unusual at the time. I - - I dealt with he and his associate on face value and the work that they were doing, and I was satisfied that that programme was a genuine and meaningful programme that could work, and it was something that police could be involved in.

MR PETTIT: Can you see, at least with hindsight, that it might have been imprudent?--Oh, yes, I can see with hindsight, but isn't that a great benefit?

It didn't occur to you at the time, bearing in mind that you had been briefed a few days earlier, 4 days earlier, about the matter, and you chose to write a letter of support for the same person?---I did choose to write the letter and no, at the time I wrote it in good faith and without question.

You can see at least how it's conduct on your part that might fuel disquiet about the process?---With the benefit of hindsight, I can see how that might fuel that sort of speculation.

I haven't yet canvassed - and I shall do so now - any other relationship between you and Q2. In the period we've been examining, middle of 1998 and towards its end, are there other instances where you and he met or had interaction?---Could quite well have been, yes, but in a business sense only, I would suggest.

Well, let me ask some specific details. Have you ever been to Q2's home?---No.

Has he been to yours?---No.

Do you know his wife?---Not well. I think I've met her once.

Does he know your wife?---Don't think so.

Have you ever had lunch with Q2?---No.

Have you ever had any meal with Q2, apart from the breakfast at Albany - - -

MR PETTIT: - - - apart from the breakfast at Albany?---No. No. Maybe - - maybe there was the - - the odd snack on a bike ride or something, but not that I can, you know, specifically refer to as having lunch with. There was no - - none of that social interaction in that sense.

Do the pair of you sit on any committees or boards?---No. Not together.

Play any sport together?---No.

Go to the (...suppressed...) together?---Never been to the (...suppressed...) with him.

Nothing else about your association with Q2 that we should know?---No. I think you've - - you've canvassed it fairly well. I mean, my association with him was pleasant and professional.

Going back to the issue I questioned you on a moment ago, whether it crossed your mind that it was at least imprudent to continue an association in the middle of an allegation against Q2, did you turn your mind to that issue?---No, I didn't turn my mind to that issue specifically. I was aware that there was an allegation made and that that allegation ought to run its course. If there was evidence to substantiate it then he should be charged, like everybody else should be charged, if evidence exists, but that matter was ongoing and from that point of view I did not and have not ever discussed the allegation with Q2. In fact, I would suggest to you that up until this matter broke he didn't know that I knew that he was being investigated. We haven't discussed it at any stage, even up to now.

What I want to put to you is that - - well, first of all, you were made aware that his interview on the 17th of November was interrupted - terminated?---I don't think I - - I was advised in those specific terms. I - - you know, as far as getting down to some of the material that I've heard this morning, that - - that didn't get to my level. That didn't bubble through to me. And it had no need to in that sense. I mean, was he to be charged then I would have been no doubt advised, or had he been charged. In other words, if it was - - if - - if his charging was about to happen, no doubt I would have been advised. Or - - or indeed, if it was - - if it had happened then, in retrospect, depending on the - - the timings and the availability of me and - - and the people doing the important inquiry, then that would probably be as a - - as an event that happened afterwards. But I didn't really get down to the day to day workings. In fact, some of the things that I've heard here today and read in previous transcripts about it are revelations to me.

MR PETTIT: I wonder if you would check your diary for the 17th of November and see if - - I don't have a copy of it here - - and see if there is an entry in respect of Q2. First of all, does it have a tag?---It doesn't have a tag, but I haven't tagged everything. I notice there's a few extra tags from what I - -

Yes; they're mine?--- - - I attempted to gather in.

They're mine, yes?---Okay. No, I can't see any - -

All right?--- - - any mention here of it at all.

But as at November, end of - - well, as at November you were aware that the investigation of Q2 was ongoing?---Oh, yes. I was aware of it, you know, as from that time in August that it was an ongoing issue; that they were looking to get as much evidence as they could. I knew that through being briefed at one stage or some stages by David Caporn that - - that corroboration was something that they were seeking, and they felt that it was important - - -

WITNESS: - - - it was important due to the nature of it but that was their business.

MR PETTIT: Now, you've mentioned before that you went on a social bike ride?---Yes.

And you've told us that Q2, what, turned up one day and asked - - ?---Rang up.

Rang up?---Rang up and said, you know, "I've got this guy who's - - who was an Australian champion cyclist", you know, and he said, "We'll go for a ride", and I said, "Well, I hope you don't tear off at a rate of knots and leave me in the dust" and he said, "Oh, no, no. We'll - - we'll wait for you." So I went out there at the pre-arranged time, right out the front of Police Headquarters, and there was his associate, his woman associate that he works with, colleague, and away we went and it was mainly he and the Australian champion cyclist moving along in front and the female colleague and myself bringing up the rear and chatting as we went, but we - -

We've heard evidence - well, we've seen evidence - that might suggest that bike ride was first planned for one day and postponed to another. Do you have any recollection of that? ---Not specifically, no.

At this stage did you have, do you recall, any sensitivity on your part about your ongoing association with Q2?---No. No, I didn't, because I - - I wasn't going to at any stage compromise any investigation. I wasn't going to let him know that I knew that he was under investigation or anything like that. I was keeping that very much to myself because, I mean, confidentiality in these sorts of things is important and - -

You could easily have fobbed him off on a social bike ride though, couldn't you?---Had he brought this matter up?

No. You wouldn't have given the plot away by simply declining to go on a social bike ride - - ?---Oh, you mean saying, "No, I don't want to go for a ride with you"?

Yes?---Yeah, I could've but I didn't. I mean, it's on record that I went for the ride and that's a fact and I'm quite - -

Well, if we could bring up 2880.

(TO WITNESS): You'll find that, Mr Brennan, on your page 130. It is singularly uninformative on the screen but - - ?

---Yes.

- -that, we have heard from Q2, is the day of the social bike ride?---Yes. Could be - could have been, quite conceivably.

MR PETTIT: You, on the other hand, have chosen to make the entry in these terms:

"Meet" - Q2 - "female associate, youth and community services."

WITNESS: "And community issues."

MR PETTIT: "Community issues"?---Mm.

That hardly reflects a social bike ride?---Well, you know, as they say, there's more that gets done on a quail shoot than just shooting quail and that's the case here. We spoke business most of the way - - -

WITNESS: - - - business most of the way - that is, his associate and myself.

MR PETTIT: This is a diary which records things as they happen, is it?---This is a day book.

Day book?---This is my personal day book and the way I choose to put entries in is the way I choose to put the entries in. That - - the fact that I went on a social bike ride is by-the-by. I don't hide that. I mean, to all intents and purposes, the commissioner probably saw me going out the door in my gear, because I'm in an office exactly attached to his and there's a connecting door, so there's no attempt to cloud the issues. As I said to you earlier on, sometimes the entries as just two-liners, or as I - - they're not contemporaneous at times. Sometimes they're entries that are made some time later. Not days but, you know, hours.

Does it not show, as at 16 December, a growing sensitivity on your part and a disinclination to record the social nature of your contact with Q2?---The very fact that it's there at all, I would suggest, no.

We've also heard evidence that you've had a telephone conversation with Q2 as recently as 3 weeks ago?---Yes, I - - yes, I did. An unusual conversation, actually.

Tell us about it?---Well, it was my secretary rang through and said she had Q2 on the line, who wanted to speak to me, and this is probably a couple of days before this whole - - even maybe just one day before this matter became fairly high profile and public, and he - - he spoke about, you know, had I been riding very much and I said, "Oh, yeah, I've been riding every day. I'm training up for an event" and he sort of - - there was a bit of banter on his part about what amount of training I was doing and how much I was using my bike and then he said that he had been talking to a person who is a human movement specialist, and as I recall, he was doing some research on people of, let's say, fairly mature age; eg, my age, and Q2's age, and that he was interested in running the tape over me and just seeing how fit I was and how my body - - the pinch test and the rate of percentage of fat and all this nonsense, and I just said, "Oh, yeah, right", you know, and it was a nothing phone call and I very quickly terminated the call. I wouldn't have thought it'd gone for a minute. And that was that. At the time I thought, "Well, that's a strange sort of a phone call", but I did have a sensitivity at that stage to - - at that time, to developments.

Because you were aware of the possibility of it being aired in these proceedings?---Yes.

And you were aware of that because it was a matter referred to us by the police service?---Yes.

MR PETTIT: And you were party to the decision to include this matter on the list of matters the police service thought might entertain us - - might be entertained by us?---I don't think this matter came up for - - as one of the ones that we thought ought to be included, but there are several matters with which I've been involved that could have appeared on that list, and that I was totally happy to come to this Commission, if necessary, and discuss fully and frankly what I knew and what my involvement may have been.

MR PETTIT: It's certainly true, isn't it, that you could have distanced yourself much more from Q2 than you did?--Well, I would suggest that for you to say that, for me to distance myself, let me say to distance yourself from somebody you have to be close to them in the first place. I had no closeness to this person. He was simply a business associate, one of whom I knew that there was an inquiry progressing on. I wasn't going to telegraph any punches or in any way give him suspicion that I knew or - - or had involvement of any description with the matter.

There's another matter that I'm bound to ask you about, Mr Brennan. It's been suggested that you and Mr Looby attended the ACC in respect of this same matter; is that true?--Not at all. I don't know where that would have come from.

It's been suggested in these proceedings that you and Mr Looby did attend for the purpose of bringing pressure to bear on the ACC?--That would be a very dangerous move, and I would also hope that if any such contact was made that a suitable record was kept of that contact. I don't think I would have been party to that.

In 1999 the (...name suppressed...) applied for and was given a grant. Are you aware of that?--Not specifically, but there - - there are some - - some vague recollections of that, yes.

It was a considerable grant, I'm led to believe. Were you involved in any way in the acquisition of that grant, or in its recommendation?--I don't think so, unless that letter of support was somehow or other used. But I can't recall that I specifically was.

Just excuse me a moment. No further questions, thank you.

COMMISSIONER: Yes. Thank you. Mr Hammond, do you have any questions?

MR HAMMOND: No, sir.

NO CROSS-EXAMINATION BY MR HAMMOND

COMMISSIONER: Yes. Mr Power?

MR POWER: No, sir, I don't, thank you.

NO CROSS-EXAMINATION BY MR POWER

COMMISSIONER: Thank you very much?--Thank you, Commissioner.

You're excused from any further attendance under the summons?--Thank you.

WITNESS WITHDREW

MR PETTIT: I call David John Caporn.

COMMISSIONER: Could I have your full name, please, Mr Caporn?

MR CAPORN: David John Caporn.

COMMISSIONER: Do you have any objection - - conscientious objection to taking an oath on the Bible?

MR CAPORN: No, I don't.

COMMISSIONER: Thank you. If you would take the Bible and read the oath aloud, please.

DAVID JOHN CAPORN sworn:

COMMISSIONER: Thank you. Sit down.

EXAMINED BY MR PETTIT SC:

MR PETTIT: Your full name is David John Caporn and you are district superintendent in charge of West Metropolitan?---That is correct, yes.

And you have been for a mere couple of weeks - - months?---No. Well, I was initially appointed there in January, but because of my command role in Operation Zircon I was held over. Then I had some leave. I've actually only been there for 2 weeks, half of which I've been tied up in this matter.

Yes. And I think you joined the police force in 77?---In - - yes; in January 1977 I joined as a police cadet.

Which means you've been in the force for 25 years-odd?--- That's correct.

How long have you been a commissioned officer - - -

MR PETTIT: - - - a commissioned officer?---I've been a commissioned officer for the last 6 years.

And I don't want to go back over the 25 years, but can you tell us in brief the areas in your service as - - you were previously a detective, I think?---Yes. I've been - - well, I was a detective right up until the time I've taken up the position at West Metropolitan. So I was a detective up until 2 weeks ago.

What are the areas that you've worked in as a detective?---I've been 18 years as a detective. In that time - - or the last 9 years specifically have been spent in the investigation of major crime. Prior to that, suburban detectives, etcetera, etcetera. The usual movement around the detective branch, but the last 9 years specifically I've spent in the Major Crime Investigations area. I've also, in that time, been appointed as the - - to take command - - well, after the disappearance of Ciara Glennon, I was given command of the Macro Taskforce. That was in April 1997 when I was promoted to inspector, and also on the 1st of September last year I was removed from all divisional duties and appointed as operational command for Operation Zircon. In respect of my divisional office, it was the 22nd of June in 1998 that I was removed from full-time duties at Macro, to take up the position in charge of the Personal Crime Division as an acting superintendent.

Yes. That's the point at which I want to take up the story really. Personal Crime Division encompasses obviously child abuse and sexual assault, but what else?---There's four areas - Child Abuse Investigation Unit, Sexual Assault Squad, the Homicide Squad at the time. I mean, bearing in mind that Personal Crime Division has changed now, at the time it was Homicide Squad, the Missing Persons Investigation Unit. An additional role that I had there was, I also remained in command of Macro. So I had the four business areas plus the command of Macro, and at the time I moved up into Personal Crime I appointed an operations manager to help me manage that issue.

I think at the time you took up that appointment almost immediately you were asked to look at some particular problems at Child Abuse Unit?---It was the reason the decision was made in the first place. At the end of May in - -

Sorry. Which decision?---The decision to put me in the position as acting superintendent of Personal Crime. At the end of May 1998 there were some major issues which have been discussed in earlier evidence about the Personal Crime Division Child Abuse Investigation Unit. It is as a result of

those issues that I was summonsed by Mr Atherton and appointed as the acting superintendent at Personal Crime Division and one of my primary tasks was to conduct analysis and reform in the Child Abuse Investigation Unit.

MR PETTIT: And you set about that?---I beg your pardon?

And you implemented some kind of review?---Yes, I did. It wasn't the only unit, as you've heard. There was a number of units there, but it was certainly a significant part of my role, particularly in the first 12 months that I was the superintendent in charge of the Personal Crime Division. One of the things that I did in relation to that was, I had my acting inspector, John Brandham, stationed down at the Child Abuse Investigation Unit and he was doing a range of things for me in relation to those issues as well as some other measures that I was taking.

Did you particularly want Mr Brandham situated physically at the Child Abuse Unit?---That was certainly my intention; absolutely.

And just tell us again your purpose in doing so?---A little bit of water had already passed under the bridge by the time I made that decision. John Brandham wasn't my acting inspector at the time I took up that appointment. I only had one acting inspector initially. But at the time, the whole agency was going through - - what they called the investigative practice review was starting to be implemented, etcetera, etcetera, and by the time John Brandham come to me as an acting inspector I'd already had - - -

WITNESS: - - - I'd already had 2½ months to have a bit of a look at what I saw to be the issues down there and when he come on board, I placed him down in that building and I'd already briefed him on several of the issues that were occurring in the area.

MR PETTIT: A formal review was instigated, too, I think?---He hadn't been there for very long before he come back to me and said that it would be - - oh, he recommended to me that we put in place a formal, independent review of the area to help identify the causal factors for some of the issues. I want to make it quite clear at this point, I'm not talking about a whole group of people down there at the Child Abuse Unit not doing their job properly. That's not my point at all, but the fact was, out of what had occurred in late May, prior to me being appointed, there was identified a major backlog in investigations. There was some 300 investigations outstanding and there was also a number of other issues that we really needed to drill down to, find out what the causal factors were, and start to put in place some better mechanisms, and if so, resources, which turned out to be also the case, to make the area function better.

Could we have a look at D1012182? The review that you spoke of: the panel members were Gary Budge, Kasey Prins and Peter Sullivan?---That is correct, yes.

The document you're about to see doesn't appear to me, at least, to have a date. Could you help us in that respect?---Yes, it was in October 1998, and whilst that document doesn't have a date, it actually has specific things in there, like it'll demonstrate the arrest rates over the preceding 4 years and then you will see - - and you're very right, sir, in saying it doesn't have a date, but if you actually go through the document you will see it highlights things and the end date on them was October 98, because that was when they actually did the review. And the document I'm looking at, yes, is certainly the review document. That was the final document that they compiled at the end of their review. They were given eight terms of reference which basically myself and John Brandham had fleshed out, that we best believed would address the issue. It's - - the issue of independent review is not something new to me; it's something that I've instigated in other areas of command where I've been involved, and I'm trying to drill down to what's causing something happening.

And did you have briefings along the way, during this review?---Yes, I had. I had - - certainly had one major interim briefing and that was in October, because this - - this particular review was both - - well, it was suggested, scoped, the members were selected, it was conducted, concluded and reported on all in the same month. You know, we were

getting on with business and, you know, once we decided this was a good idea, we got on and had it completed.

MR PETTIT: I want to now go through the chronology of events concerning the investigation of Q2. The first one I want to go to is that you were given a memo, I think, by Mick Miller which had been written by Cristina Italiano, with a very brief outline of the investigation. It's dated the 18th of August. Do you recall the memo?---Yes, I do, and I've certainly referred to it in the last couple of weeks.

And what was your understanding of the purpose in forwarding it to you?---Perhaps that would be best if I explained the situation, in that certainly the benchmark that I set, in having my four business areas and Macro, report issues to me.

It's specifically with the four business areas. They were to report to me any investigations of significance. Now, you can't draw a line in the sand with those issues. That's a situational basis, and really, that's left up to the OIC and his team to decide, well, what is an issue of significance that we need to advise our divisional officer, and I took this memorandum that I received on that date, to be exactly that. This is something that would happen, I would suggest, 15 times a month. Not from that area, but from within the four areas.

I'd probably get about 15 of these, either briefing notes or memorandums a month, about significant investigations either commencing or the progress of them - - -

WITNESS: - - - progress of them, and I would provide a copy or certainly a briefing to the AC Crime and he would certainly in most cases, I would suggest, forward that on to the DC Crime - DC Operations.

MR PETTIT: In this case though I think it was yourself who passed it on to DC Operations?---That's right, and the situation was there - - was when I took up command of Macro Taskforce in April 1997 that then gave me a direct reporting role even as an inspector to the Deputy Commissioner Operations and that reporting role continued on the basis of Macro after I attended Personal Crime. At that stage Macro was still a very large investigation and, in fact, when I was first appointed to Personal Crime the first three of the first six weeks I was actually in the United States of America pursuing various strategies that we were putting in place in relation to some things that we were doing on Macro. So, you know, whilst - - as I said, I maintained command of Macro and at that stage I certainly also had a direct reporting relationship to the DC Ops.

On the occasion of your reporting to the DC Ops, which I think we are agreed was the 20th of August - - ?---That's correct.

- - you were aware, firstly, that Mr Brennan had some form of association with Q2?---Look, not to any great depth. There was no mention of it in that memorandum. It's very hard to put your mind back to exactly as it was on the 20th of August 1998 but I can assure you it was no more than perhaps I'd seen something of him being involved in a bike ride or something like that. That was about the extent of it.

Did you discuss that issue with Mr Brennan?---I certainly don't recall discussing that issue with him. I can tell you that there was a pre-arranged meeting. It was because I'd only just arrived back from the United States - I think I'd only been back in the country for about a week. I think - - I'm certain I had other officers with me for the start of that because it was about the Macro Taskforce investigation. I would've had Detective Sergeant Paul Zanetti, who travelled with me to the United States and Detective Sergeant Steve Brown, who I had instituted as operations manager on Macro with me. There would've been three of us there when we briefed Mr Brennan, and that would've been largely about the United States, and it was following that briefing I would've had probably no more than 10 - - 5 to 10 minutes with him where I would've touched on some issues and that was one of them.

Did he make any observation about it - that is, the Q2 issue? ---Nothing of significance. It was nothing more than the usual noting in support that I would get at that stage,

bearing in mind it was basically saying, "There's been an investigation commenced."

MR PETTIT: Now, moving forward a little in the chronology, and you've already told us about this - you asked Detective, or Acting Detective Brandham to assume some oversight of the Child Abuse Unit, and you've told us the reasons?---That's correct.

Is there a sense in which it's correct to say that he was installed in order to report directly to you on the operation of the Child Abuse Unit?---No doubt. I mean, absolutely. Sexual Assault Squad was functioning at a level that was - - that I could see certainly in my first few months that was acceptable to me. There were a number of issues of Child Abuse Investigation Unit and, as I say, and I reiterate again, I'm not talking about people; I'm talking about processes. There was a number of issues down there that needed to be addressed and they were certainly highlighted in the October review of the area by Budge, Prins and Sullivan.

Which we can read to pick up those issues?---Absolutely.

Now, on the 21st of October Mr Brandham came to you, I think, and discussed - - -

MR PETTIT: - - - I think, and discussed the investigation of Q2?---21st of October he certainly did, yes.

And I think he told you that everything was going according to plan and that an arrest may be made?---This in fact was the first time probably that I'd heard about that investigation since August. The - - on the 21st of October basically it had got to the stage, as I recall, that they were in the throes, not - - they hadn't actually planned but they were in the - - the team I'm talking about; the team were in the throes of finalising a plan. And really, I can tell you Mr Brandham was actually sounding me out on the 21st of October about some of those issues. And my recollection of it is that those issues concerned whether he be arrested or summonsed, and about the type of media that would go with that. There had been some suggestion that there be a media conference held after he was arrested. Now, they were the primary two issues that I spoke to him about on the 21st of October.

And what view did you express on each issue?---Well, firstly I said I want a briefing note in relation to what's - - where we're at. And the second issue - - well, sorry. That was firstly what I said to him. In relation to the other two issues I certainly questioned him a bit in relation to the arrest versus summons, you know, as to what the thinking was there, and he did convey to me what the thinking was there. It was some issues in relation to the complainant that I think have already been canvassed here well enough, and I didn't disagree at that point in time with that particular issue. But in relation to the media I was absolutely against having a press conference about it. I wanted it to be handled in the normal process that we would handle any other arrest of that nature.

Shortly after that I think you took the view that you ought yourself review the file. What led you to that decision?---There was another significant event between that and that time. It was the 26th of October I then received the briefing note that I'd been asking for in - - in - - the briefing notes in those - - at that particular time from the area were coming up in the form of memorandums, and the briefing note on the 26th of October basically outlined the situation in relation to evidence, and in relation to charges that were going to be laid, as I recall. On face value when I received that briefing note, my immediate - - and I just flicked through it initially, was that, "Yep. Sounds okay to me." That was my immediate face-value thought on it. But I did spend a fair deal of time over the next 24 to 48 hours having another look at that. One thing that I will say right now, when briefing notes hit my desk I always look at the issues in relation to adding value to them. I'm certainly not a post-box in relation to briefing notes where I just pass them on or whatever the case may be, in a chain of command. I'm always

looking at what issues are here, and if I can add any value I will certainly be on the front foot about advising and that. Now, in this particular memorandum, sir, when I had a closer examination of it and then had time to think about it, I just simply was not convinced that the briefing note was telling me that we had sufficient evidence to go out and arrest this person even if he didn't say anything. And that's what the briefing note was saying to me. So specifically it was the - - within that briefing note the fact that it didn't tell me what the - - well, it certainly didn't give me confidence that there was this evidence to charge this person with these offences that happened 20 years ago. To balance that though, and it's probably why, on face value, I initially said yes, was there was - - there was actually three briefing notes. There was a covering from Sergeant - - there was a briefing note from Italiano to Miller. There was a small covering note from Miller which didn't add anything additional. It was just like, "Forwarded," or something like that. And then there was a third briefing note from John Brandham, as I recall. Now, if you look at the documents it would be - - I could confirm that, but that's how I recall it. Now, on the briefing note from Brandham to me, he said that Miller, Connoley and perhaps Ingham had all assessed the brief and thought it was a strong brief or something to that extent. So that sort of balanced it in respect of the junior officer, Italiano, who in my understanding was a constable, interviewing officer at the time she started the inquiry - - -

WITNESS: - - - started the inquiry. That balanced it a little, but nevertheless I still was not happy and certainly in the next 48 hours - - and I can't draw a line in the sand.

I don't know whether it was after 36 or 37, but certainly in the next 48 hours I decided that I was going to do a review of this brief before we went ahead with an arrest.

MR PETTIT: Is that a decision you discussed - - well, prior to making that decision, did you discuss it with any of your superiors?---I didn't discuss it with anybody. I made the decision myself, and the first one I was to advise of that was Mr Brennan.

You advised Mr Brennan after you'd made the decision?--- Absolutely.

Did you advise him before or after you had sought a copy of the brief - -?---Oh, no, no.

Copy of the file?---This was before. It was before. It was all on the same day, because we're only talking about 2 days here. We're talking about the 26th of October and the 28th of October. On the afternoon of the 28th of October I again had a meeting with him and I am certain it wasn't about personal crime issues. It was about Macro issues, and that this was also tacked on the end as before. I mean, that's my - - my strong - - strong recollection of it. And I advised him that it appeared that we had sufficient evidence to arrest him on the advice I'd been given, but that I was going to conduct a review of that file.

And did he approve of that decision?---Oh, he had no problems with that. In fact, he said to me - - and this is certainly reported in my notes in relation to the meeting with Q1 that happened in December. He used the words "Leave no stone unturned in finding evidence to support the allegation." And I've got to say that's nothing new. I've been, you know, involved in many many briefings on many many major and large investigations in relation to issues both before and after this incident and they are words that have been said to me in one form or another by Mr Brennan on many many occasions.

All right. You called for the file from Mr Brandham, did you, or from Mr Miller?---I told Mr Brandham first and called for the file and it wasn't delivered to me on that day but it was - - it was delivered on the Monday, I think, or the 2nd of November, which was the original planned arrest day.

Yes, that is the evidence. And you took a week or so to review the file?---I gave them an undertaking, because - - I do recall some conversation between myself and Mr Brandham. I don't know whether it was on the day that I actually told him I was going to do the review or whether it was a telephone

call later, but there was certainly some resistance to it in the business area in Child Abuse, and I'd certainly given them an undertaking that I would complete my review the next week.

So that any decision to deal with this matter was only going to be delayed by 7 days at the most.

MR PETTIT: The resistance was reported to you by Detective Senior Sergeant Miller?---No, by - - well - - no, I recall it as being by John Brandham.

And the resistance was to any delay in their plans, was it?--- It was more - - yeah, there was - - there was a couple of things that were mentioned to me about why and about, you know, wanting to get on with it because of Q1's - - you know, want to get this matter settled. It had been investigated for some time. I mean, those sorts of things in effect were the things that were said to me, but I'd made up my mind and I also think it's - - you know, people like Senior Sergeant Miller wouldn't have been used to - - I mean, I'd only just been there for a short while. I'd been away on an ADC course for several weeks. I'd been in the United States. I mean, he's probably only had a short exposure to me, plus a short exposure when he worked on Macro for a little while and you know, that's - - that's how I do business.

The association between you and him in other areas was less than happy?---Oh, no, no, not at all. In fact - - let me just give a little bit of history. The first time I ever worked - - are you talking about Sergeant Miller?

Yes?---The first time I ever worked with Sergeant Miller when he was basically - - come down to work with me on Macro for a while and he performed the job as a projects - - special projects officer for us in relation to special things that we were doing. We had a good relationship in that regard - - -

WITNESS: - - - relationship in that regard, be it that it was brief. Certainly there were some - - a number of issues from the time I took over the Child Abuse - but I mean, I certainly didn't take them as being personal issues - that were a number of issues - - and you know, there was some health issues canvassed and I really believed that was behind all of this. I don't think it was any - - anything else than that.

MR PETTIT: Right. Now, after taking a few days to review the file, I think you saw fit to contact the DPP?---Yes. I spent a few days on the file and I'd like to say something about that, if I can?

Sure?---The process that I followed in relation to that, and let me say this, and I think it's important I put it on the table, is that I have reviewed in the last 5, 6, 7 years - - I've reviewed, you know, 20 or 30 major investigations, ones that I haven't been involved in, but that I've taken a reviewing role in, and in that process - - or, this particular file was a quite small file to what I was used to. The most time-consuming part of my analysis of the evidence and the brief was the working through the diaries of Q1. I worked - - I read every diary and I correlated the deposition given by Q1 to every corresponding entry in the diary, and that was probably the longest thing. The depositions and the medical reports and the other issues didn't take me that long really.

That is extraordinary for a superintendent to embark upon, wouldn't you agree?---No, not in my case. I had been appointed as a superintendent, the youngest superintendent in the police service. I have a significant background in major investigations, and if you look at my 6 years as a commissioned officer, there's - - I don't think any other superintendent's been given the operational command roles that I've been given. I mean, it's just been a fact, and my view on that matter is, and I know others have different views - - my views on that matter is, is that if I can add value to anything, because of my experience and background, I will not hesitate to add it, whether I'm a superintendent or a sergeant or a senior constable, or whatever the case may be. And you know, the fact was, I had - - let me tell you, people like Mr Brandham would have had a hundred things on his plate because of things that I'd delegated him to do, and so would everyone else that's working for me and sometimes I make a decision I'll do that. I know I'll knock that over in 2 or 3 days; I'll spend the extra time doing it, and the job's done.

In your opinion, does an officer require experience specifically in child abuse cases in order to be able to properly assess the evidence in such a file?---Absolutely not. I found this one of the most simplistic investigations I've ever reviewed, in respect of that review. You know, I - - myself, the time that I - - 18 years as a detective investigator, 9 years in Major Crime; I've been sent to North

America for stints in relation to investigative training; I've been sent to the Eastern States. I lecture on investigative training. I've been asked to go to the Management of Serious Crime Courses, to lecture on investigative training. I have duxed every single investigative detective course that I've done in my career. I am a prolific reader in furthering my investigative knowledge.

This was a very simple brief for me to review, because additionally, the first thing you had to work out with this particular inquiry was: was there corroboration or not? If you found with these offences, particularly the ones over 20 years old, it had become a very simplistic matter. First, if there's no support, if there's no corroboration in relation to those offences, that's the first test. If it doesn't pass that test, it's not going any further. Having said that, I gave it all tests. It actually becomes more tricky once any admissions have been made. Then it becomes tricky because once you get admissions, once you get corroboration, then you have to take in factors like consent, you have to take into factors like the different statute law that applied, and you have to take into factors the age of the complainant at the various times, etcetera, etcetera. That actually becomes a little bit more tricky after that. And I applied all tests, but certainly the first test was the support.

MR PETTIT: Did you have a working knowledge of legislative changes over the last couple of decades?---Oh, reasonable. I mean, in respect of knowing every single one of them, I certainly wouldn't have known that, but look, that did not impede me one iota in relation to what I was doing. Because it didn't pass the first test anyway - - -

WITNESS: - - - the first test anyway.

MR PETTIT: In any event, you had perhaps not complete confidence because you did seek the advice of the DPP?--- Absolutely. I want to say a bit about that too. I did that because of the issue you just said. Not - - actually, complete confidence is not the word, but because it was a historic child abuse matter, but also because this investigative team had told me that they thought there was a brief, and that was a little concerning to me. And they put a lot of work and commitment into this, and I knew it was going to be disappointing to them and disappointing to Q1. I sought the advice of Ms Evelyn Vickers.

Yes. You'd known her from previous advices or was this the first time you'd met her?---No. No. I'd known her for some time. Not - - I mean, I can't tell you exactly when I met her, but obviously in the field that I've worked, I've worked with the DPP a lot in various investigations. So I certainly knew her to pick up the phone and ring her.

This area was something of a specialty of hers?---Absolutely. I mean, I will put this on the table now. She would be the foremost expert in Western Australia on sexual prosecutions of this nature, in my opinion.

You left the matter with her for some time?---I went over and spoke to her. I spoke to her on the phone. We had some discussion. I don't know what the extent of that was on the phone. I took the brief over and went and met with Ms Vickers. I found out in that meeting that she'd actually spoken to - - and I didn't know who at that stage but she told me that members of the Child Abuse Investigation Unit had spoken to her without telling her the name of the person, and this had just been a very recent thing. She'd been told some things that I'd actually been told along the way, and certainly were contained in briefing notes. And a couple of those things were that - - one, that the diaries corroborated, supported - - and I use "corroborated, supported" because it's a little bit less than corroboration in those sort of matters. The events. That was one major issue. The other major issue is that there was an alleged confession in some statements that were made by Q2 to Q1's mother. And what I will tell you on that is that I don't even think there's a veiled admission in that. And I'm not saying and suggesting anything about the veracity of what the complainant's had to say, or suggesting anything other than, as far as evidence goes, my assessment of it was at best it could be argued that there may be some sort of veiled admission to something in there, let alone the offences that were intended to be charged with.

And as to the diaries, what was your conclusion?---The diaries supported very strongly that there was a relationship in respect of friendship between the families and - - and Q1 and

Q2, but the significant issues were, one, they didn't particularise any of the offences. There was no particularisation at all in the diaries that - - that I found.

Secondly was that in some of the cases there were some entries that were actually contrary. I've been - - heard the word "damned", "damning". I wouldn't use that word "damning" but they were contrary in respect, and one - - I mean, one example I remember, it was about a confrontational situation and basically it said it was good to see Q2 and - - and blah, blah, blah. It was quite contrary to the deposition. So first and foremost it wasn't particularised, and secondly there were some entries that were contrary to what the complainant was saying. And again, I have an understanding of behavioural dynamics of these sort of issues and I'm not suggesting it's any more than those behavioural dynamics - - I'm not saying anything about the veracity of what Q1 said.

MR PETTIT: And I think there was also - - we've heard evidence - perhaps you can add your view - in respect of a DPP policy about - - ?---Yes.

- - older prosecutions from 20 years or more ago. Is that something - - ?---This is - -

Sorry. Go ahead?---I think this is where - - an area where there's a little bit been confused as well, because, yes; there's a policy certainly in place, as I was aware and been told, that 20 years plus offences need to be supported/corroborated. Where I think when some people say, "Well, there are offences that go ahead on less," it's to deal with recency. It's a big issue in this. If - - if this was a young girl who'd come forward and it had happened a week ago it would be a far different story than someone telling us about something that happened 20 years ago - - -

WITNESS: - - - happened 20 years ago, and that's a big issue in this, in relation to this matter.

MR PETTIT: In any event, I think - it's Ms Vicker, I might add too, without an "s" - - but she gave you her view?
---Not immediately, of course. She certainly took charge of the evidence. I think it was within 24 to 48 hours that she got back to me with a response in relation to that matter and basically - - I can't remember exactly what she said but she certainly concurred with my findings in relation to - - and my analysis of the brief.

From then you called - - well, perhaps you should tell us. What did you do upon receipt of her advice?---Upon receipt of her advice I then obviously turned my mind to the team. I asked Inspector Brandham to arrange a meeting between myself - - I wanted the key players in the team that had been involved there, and it was - - a meeting was arranged for the 10th of November and that was between myself, Detective Senior Sergeant Miller, Detective Italiano, as it was then, and I had Inspector Brandham, and Wibberley was there as well. I think he was my acting inspector at the time as well. My other - - from my other side of the division.

Yes. He actually had nothing to do with these events, did he?---No. Not that I recall, no. He was certainly present at that meeting. Can I say I knew this would not be well received. I specifically requested I wanted my inspectors there. I knew that what I was going to tell Senior Sergeant Miller and Detective Italiano was not going to be well received.

Is that why Mr Wibberley was there?---Absolutely.

And you related your view and related to them that you had sought the view of Ms Vicker and you issued an instruction?
---Yes. There was some other discussion in that meeting but - - do you want to know about that or you're not - -

Well, not at the moment?---Okay.

The instruction you will have heard - - you've been in the hearing room since the outset and you will have heard various versions of it and various interpretations of it. What did you intend to order?---Well, let me just say right up front, at no stage did I say or have effect to my instructions to being that if this person confessed he was never going to be charged. I mean, that's absolutely ridiculous. What I put forward was that I was not prepared to hand full carriage back to these people, to the team, in relation to this matter. I instructed that he needed to be interviewed. I did discuss with them at some length as to what other avenues have we got

to get information, and I know that there were a number of discussions in relation to that - as to, you know, "We can't go here because he'll tell him" and etcetera, etcetera. There was a confidentiality issue in going out into the community, etcetera, but I certainly then said, "Go ahead in relation to the interview, but nothing is to be done in relation to charging this person until I've had a chance to reassess the evidence. There is no question that that was something that I put forward. As a senior manager when I had identified the deficiencies and what was going to occur it would have been absolutely wrong of me then to hand full carriage back immediately to the team who basically, it was quite obvious, disagreed in relation to my assessment and that of Miss Vicker.

MR PETTIT: Is there something else you want to tell us about that meeting?---Yes. In that meeting there was - - there were a couple of things about that meeting. One, I questioned Sergeant Miller and Detective Italiano about the diaries at quite some length, because when you look at the briefing notes and you look at what I'd been told and then you look at those diaries, I'm afraid they do not corroborate the complainant in respect of the particularisation of the offences. Both admitted to me that they had not read the diaries closely - -

-

WITNESS: - - - read the diaries closely. Both admitted that. Both admitted to me that they were not aware of the DPP policy in relation to the 20 years. We had some significant discussion in relation to Q2's conversation, alleged confession with Q1's mother, and I was astounded to - - to see that that could even be termed as a confession and be relied upon, and we also - - after that meeting I also asked Sergeant Miller to - - to remain back and one on one I counselled Senior Sergeant Miller in relation to this issue. My primary concern was there that this matter had gone so far and we were on the eve of going out and arresting this person and there was insufficient evidence to charge him, and the offences would not have been prosecuted by the DPP. I asked him to immediately take measures and put checks and balances in place so this didn't happen again, and that's all about checking and supervision.

MR PETTIT: You don't resile from the suggestion made that your orders would stand - that is, no charge, you to reassess the evidence - even in the event that Q2 confessed or made admissions?---As I pointed out, one of the main talking points that we had in relation to this is, what amounts to a confession? What amounts to an admission? Because all the time in the memorandum it talks about "a confession" and we haven't even spoken about admission. See, I believe that this person could have been charged if he'd have made some admissions, let alone a confession, but the fact is - - is that I was not confident at that point in time that it would be objectively assessed as to what he did say, and I wanted to have a hand in assessing that. Now, on that basis that business would have been done within a couple of days. I would say, on the absolute outside, if we had to involve the DPP again, 7 days. If he did make a full and open confession it could have been - - could have been dealt with on that day because, as I say, I reassessed the evidence. If I get a phone call from Inspector John Brandham and he says "Oh, he's just gone the whole hog. He's admitted to everything" etcetera, etcetera, probably the only issue I would then still want to really draw down to is the statute issues and things like that. That would be the main principle of getting that right, because the first memorandum put up to me on the - - not the first memorandum but the memorandum put up to me on the 26th of October talked about 12 to 14 offences. If you look at the chronology of documents after that, you will see very quickly that went down to 5 offences even when they still believed he should have been charged. So there was many offences there that were statute barred when that was put up to me. So that bridge hadn't even been crossed. So I wanted a hand in this. I was not prepared to leave full carriage back with the investigation team at that stage.

MR PETTIT: Have there been other occasions in your experience when you've either ordered or participated - - that a person not be charged following an interview, even if admissions are made?---Oh, many times in the work that I do. I'm involved and have been involved for 9 years in the real upper end of major crime. I would suggest I've been involved, in that time, in over 80 of the state's most major investigations, including the two biggest investigations conducted in the last 20 years in this state, and that is not uncommon at the level that I'm working that you would do that. When we talk about admissions and confessions, I mean, you have got a huge range there, you know. The word "confession" keeps on getting used.

I would have been happy if we'd have got some admissions. Some admissions would have taken us to court perhaps, depending on what actions those admissions were about.

You were aware that Q2 was to be interviewed shortly after that?---Yes.

Did you issue any instruction to Mr Brandham to attend?---Yes.

I asked - - I actually gave a couple of instructions to Mr Brandham after that meeting. One was, I wanted him to have some oversight in relation to the actual operational plan of doing it all. So I wanted him to have some involvement in that, and secondly, I wanted him around on the day; not to do anything in particular, more of a troubleshooter. And Inspector Brandham and I have worked together enough to - - you know, I didn't have to actually drill down and say "I want you to do A to Z." He's a very experienced officer. Just sending him, just him being there, I knew that he could add value.

You received a report, I think, of the outcome of the interview?---Yes, I did; verbal, I believe, initially.

From John Brandham?---John Brandham, yes.

And did you offer any advice or give any instructions after that?---Yes. I mean, it was, "Well, let's get on with it. Let's complete the investigation. Let's do all the avenues now that they've been talking about and that we haven't pursued, and also make sure that the complainant is advised and in the loop of what's occurred" and that includes what's occurred in relation to what I had - - my actions and also the actions of the DPP, which was something that was quite disturbing, because when I later had a meeting with Q1 she didn't know about those two issues - - -

WITNESS: - - - didn't know about those two issues.

MR PETTIT: Is there anything of significance that occurred between that day, the 17th, and the time you were advised Q1 had made - - had written to the Commissioner of Police?---Not that I can recall at this point of - -

All right. I might come back to that in a moment, but in any event, I think Mr Atherton contacted you to say that a letter had been received?---I'm not actually sure whether I heard it from Mr Atherton. I think Sergeant Miller might have told me, because a copy of that letter was cc'd to him, or to the officer in charge of the Child Abuse Investigation Unit.

In any event, Mr Atherton did contact you?---Yes.

And asked you to arrange a meeting?---Yes. Yes, he did.

Was there some urgency about that?---I would have treated it as an immediate thing to do. I don't know that he gave me any urgency about it, but I certainly would - - I mean, I had seen the letter and I would deal with that immediately. I mean, you will notice, with every document that's been tendered in this evidence, that everything that has hit my desk has been dealt with in one or two days, if I was able to do that.

You appear to have requested from officers concerned a report of the events?---That was after the complaint had been received.

Yes?---Because - - and those memorandums were in relation to, of course now, the complaint by Q1. I requested a report from all of the officers who had involvement in relation to Q1's complaint and the investigation into Q2, and those memorandums were about putting together a - - basically what was a complaint file.

Both Mr Brandham and Ms Italiano seemed not sure what were the purposes of their reports. You heard that evidence?---Yes, and I mean, I can only put that down to their memory, but I know absolutely what they were for. The complaint was received on the 7th of December. I think you'll find the first of the reports for those was dated the 8th of December.

So, you've got nothing between that period there, other than some correspondence between Miller and Italiano. The first time I've called for a report is basically after the complaint has been received.

You've heard also the evidence from Q1 that there was a degree - - you phoned Q1 to organise a meeting?---I - - it's - - yeah, very possible that I did that, yes.

Yes, and you heard her evidence that she felt there was some inexplicable urgency in your request?---That's her

interpretation. Yes, I've certainly heard that, yeah. And let me say this, I mean - - I mean, you've already heard the responsibilities at that time. I had four business areas that were the highest end of Major Crime, plus I had command of the Macro Taskforce. You know, my business is certainly about getting on with business, so yeah, I could have certainly given the impression that it was urgent.

MR PETTIT: She and her husband attended - -?---Yes, they did. - - the meeting with you and Mr Atherton; you explained the nature of the investigation, as you then understood it?--- Primarily, my discussions in that were all about going through from A to Z what happened with the case. There had been allegations made in that letter, in relation to interference and Mr Brennan's name had been mentioned. Now, Mr Brennan was certainly mentioned in that meeting that I had with Q1 and Mr Atherton. My role primarily, and what I spent a lot of time talking about, is her deposition, about the alleged confession to the mother - - -

WITNESS: - - - to the mother, about the diaries and explaining things about my review, about Evelyn Vicker and her second opinion, and they were the primary things I spoke about. Mr Atherton's role was more so, sort of, talking about, sort of, just corporate issues in relation to it and, you know, the niceties of the situation and all that sort of thing. I don't detract from his role but I'm just saying I was the one who had the knowledge of the investigation file.

MR PETTIT: And she and her husband left at the end of that meeting, and how would you describe the understanding reached when she had departed?---Absolutely at that meeting she - - had said at that meeting that she wished - - or has expressed a desire that the complaint go no further during the meeting.

I - - I - -

That's the complaint of police - - ?---Complaint against police. Complaint against police, yes. A couple of things. One, up until that meeting she did not know about my review of the investigation and she did not know about the second opinion I obtained from Evelyn Vicker, and I was quite disappointed that she didn't know those two issues because I see them as being extremely important in the context of her perception. When she walked out the door it wasn't with the withdrawn complaint. Mr Atherton gave her a cooling off period in relation to that issue. He wouldn't let her withdraw her complaint at that point and I think that was a very wise thing to do, and it was on the understanding that she get back to us. Now, I don't remember a time frame being attached to actually - - for the complainant, or for Q1, to get back to us but I do know that she was to get back to us and let us know about that.

Since you have been sitting in the hearing room throughout you will have heard the questions I directed at Mr Atherton - - ?
---Yes.

- - on this score?---Yes.

And to repeat them, or repeat it, the crux of Q1's complaint, and perhaps I'm articulating it now in a way which it wasn't at the time - - ?---Mm.

- - is that there was an association between Mr Brennan and Q2, there was a perhaps dramatic, certainly unexpected, interruption of the interview upon which her hopes were pinned - - ?---Yes.

- - so that the advice of the DPP was neither here nor there because the crux of her complaint was there should have been, and, were it not for the interference, would have been more evidence?---I mean, I saw it much broader than that. I - - I mean, basically when you look at my actions on that particular

day of the meeting with Q1 and her husband - - I went through the whole box and dice. We spoke about all of the issues in relation to that matter and that would have gone from everything from the interview being stopped right through to the potential that Mr Brennan might have contacted any person in relation to this matter. I mean, that was all canvassed in that meeting.

MR PETTIT: That issue, the possibility that Mr Brennan had contacted Q2, was specifically discussed?---That anyone contacted the person or that he had any notice. It was discussed. I don't know at what length or depth but every - - Mr Brennan's name was mentioned in the letter, you know, and the fact that he could have been - - and I think it was in the letter also, if I recall rightly, that the officers had said that he was expecting them. How could we not discuss it in that meeting? I mean, it was all discussed in that meeting.

I think Q1's evidence - I may be corrected on this but I think Q1's evidence - was that it was not discussed?---I mean, I can't really deal with that, sir. I mean, in my recollection, it was all discussed in that meeting.

Not something you deliberately avoided because of the sensitivity of dealing with a superior officer of yours?
---Absolutely not.

She and her husband left with the understanding you've explained and you heard no more for 4 weeks or so?---It was about six to seven weeks and I hadn't heard anything. I didn't sit on my hands. I, as you know, on that same day as the meeting with Q1 - or even the day before, perhaps I'd already started - I was already calling for reports, I was already receiving reports in relation to the matter. I know some of the reports I didn't get until January because of leave situations and that, but I was already doing the standard procedure in relation to calling for reports and getting everyone's information on it, so the file was being collated because even if - - at the end of the day if Q1 had have withdrawn her complaint at that time I still would have forwarded a file to Professional Standards to record this matter with all the reports. The other issue is I would have looked through all those reports and made some recommendations of my own in relation to the matter - - -

WITNESS: - - - in relation to the matter, bearing in mind there was no allegations about me at that point in time, and there was no suggestion that I'd acted improperly. So I was - - you know, I was - - I was already in the process of doing that. Whether she'd made a complaint, gone through with the complaint or not, that file would have been forwarded on; maybe not for investigation. It would have been with a recommendation that it be - - any action that I recommended be taken plus then it would be filed.

MR PETTIT: Yes. I was going to ask you about that. There was no - - I take it on the 8th there was no intimation by any person that you had acted improperly?---No.

Can you tell us when was the first time you were aware that such an implication had been made by anybody?---I went to the ACC over this matter, but I don't ever remember than an - - I'm not ever remembering whether there was an allegation made directly about me, or whether I was more so being questioned about Detective - - sorry; about Deputy Commissioner Brennan, so I'm unclear on that matter. But I - - I think the first time I heard that there was an allegation about me was corridor whispers in relation to this matter. Because I think, as has been affected to, there's been corridor whispers about this matter for the last number of years, and there's certainly been a number of media people buzzing around the box trying to make a scandal out of it, which of course, as it's turned out - -

COMMISSIONER: Where were the corridor whispers?---Look, I can't put it to any particular person, but certainly within the police service.

Yes?---And - - and there was media contacts. There's a media contact - they were looked at about 2 weeks ago - that dates back to perhaps 1997 where I think a reporter from The West has made - - asked certain questions about it. Something like that.

MR PETTIT: One issue I haven't dealt with yet in my attempts to deal with it chronologically was that I think you became aware around about 8th or 9th of December that Ms Italiano had prepared a memo, dated 25th of August, in which she outlined her information about a meeting attended by Commissioner Brennan - - Deputy Commissioner Brennan. Now, that was forwarded to you by Detective Sergeant Miller, and I think you were more than irritated about its late arrival. What did you do about that?---I'll just correct something I said. I said 1997. Of course that was before? - -

COMMISSIONER: Yes?---I'm sorry, Commissioner. Obviously 99, 2000. I don't know. Okay. In relation to that issue, yes. Now, they report that on the 8th of December I asked Senior

Sergeant Miller for a full report in relation to his involvement, actions, management, etcetera, in relation to the inquiry. Now, this is in relation to the complaint by Q1, so this is not a memorandum for the investigation. It's a memorandum for the complaint investigation. I received that memorandum and it did not answer some questions that I wanted answered, which were things like, "Okay. Where are we going with this file?" and there's another memorandum I sent back to him to say, "What investigations have we got left? Why haven't we done them?" etcetera, etcetera. On the day that I sent that out I also received another two memorandums; one from Miller with a memorandum that you talk about, August 25, attached to it, and one from Brandham on top of that, giving me a bit of an explanation about it. Senior Sergeant Miller put on his that because I'd asked for this other report he now felt obliged to tell me about the allegations/perception that had been created at August 25, 1998, some 3½ months previous. And this was - - this wasn't received by me until a couple of days after I'd spoken to Q1 and Q2 - - Q1 and her husband. Yes; irritated is a - - is a good word to use to describe how I felt about that. I believe this is a - - was a significant issue. It explained a lot of things to me. It - - it started to answer the questions - - -

WITNESS: - - - to answer the questions to me why perhaps people like Q1 hadn't been told about my review and about the DPP second opinion. It was basically telling me that there had been a perception on behalf of the complainant and a perception on behalf of Constable Italiano, at the very least, that Mr Brennan would have some impropriety in relation to this matter. And when you balance that with the fact that - - then this investigation, basically as has already been canvassed, Detective Sergeant Miller kept that between the two of them, the investigation continues with these concerns not addressed. Then you have a situation where basically the junior officer, Detective Italiano, is told that she's got a good brief and we're going to go in and arrest this person and we're going to charge him with 12 to 14 offences and everything's a hundred mile an hour go, and then just before that's about to happen, I, as a superintendent, say, "I want to review the file", and then after my review of the file, after she's been told by those other officers that there is evidence there, that I come back and say there is no evidence, that I can - - it's like a snowball effect. And I was - - yes, I was very irate that I wasn't aware of this because there would have been additional actions that I would have taken for transparency, had I been aware that this significant perception existed between the complainant and Detective Italiano. I fired an immediate memorandum back to Mr Miller and I've asked him four⁷ very specific questions about what actions he did with that particular memorandum, because I certainly have a view as to what should have happened about it.

MR PETTIT: Just in passing, Mr Caporn, I should ask you to have a look at D1012890. Is this the memo you mentioned earlier, by which you sought reports from each of the officers concerned?---No. This is the memorandum that I sent to - - no. These are the issues that were canvassed - - I'm - - I'm almost certain that the - - this was sent by me after I'd received the first memorandum from Senior Sergeant Miller concerning the complaint. So, what I'm saying is this; I've asked for - - just verbally asked for memorandums from everyone. Senior Sergeant Miller's was one of the first ones that was in, but it didn't answer - - and this is before I've received the August 25 memorandum, but this, his memorandum that gave me his overview of involvement, didn't answer these three very important questions about the inquiry, and that is, what investigations have been conducted to further it; are there any avenues of inquiry that have not been pursued, and if so, why not; and if inquiries had been exhausted, what action is now recommended? It must be remembered that now we've already travelled another 3½ weeks since the interview, so I'm basically saying here "In your previous report, you haven't given me this information and I want that information because that's a part of this. I want to know where this file's going". It was after this went out that I, at the same time,

almost simultaneously got the other one in relation to, "I'm obliged to give you this, that, and have them back on August 25."

MR PETTIT: The 25th of August, yes?---Yeah.

After the five or six weeks had expired from the meeting of the 8th of December, you telephoned Q1?---Yes, I did.

Of your own accord?---Yes, I did.

And said, what?---Well - -

Well, first of all, how many phone calls did you make?---I remember it was more than one. I mean, the situation was this; the - - I had pretty much got all the reports in by that time. I mean, I'd had them well and truly, you know, had them well and truly in by that time. I had let Christmas go by - - -

WITNESS: - - - Christmas go by. I still had not heard in relation to the final decision that Q1 wanted to make in relation to this matter. If it had have been about another issue I would have been on a phone a lot quicker than that but because of the sensitivity of the whole issue I left it until about the 19th of January, that I recall, to make my first phone call in relation to the matter. The only real recollection I have of it is that I did not get an answer in one phone call. That's basically - - but when I say "the only recollection", that's - - as to whether it was one or two or three or four I don't know. I remember leaving a message on an answering machine at some stage. What I do certainly remember is that my only canvass in relation to this inquiry with Q1 was, "What is your decision in relation to this?" and we would have certainly discussed the fact that I am sitting on this, basically, complaint against the deputy commissioner. You know, I've got to deal with this issue. Now, as I say, I would have sent it to professional standards anyway but do I send it to them with the recommendations to forward this inquiry or deal with this inquiry by way of ACC or whatever? Or do I send a recommendation to say, "I've done this. This is what my findings were" and etcetera, because, as you will see in my report, I actually have done a comprehensive report and given them my thoughts and findings and also made two very important recommendations.

MR PETTIT: Q1 says that in your last telephone call you were pressing her in some way. Is that your recollection of it? ---Look, it is possible that I could be perceived as pressing her, not in a - - I could be perceived as anything. Anyone could be perceived as anything. I'll get this right. I was certainly chasing a decision, you know. I had a very busy position. I had been sitting on that file for some time, and I was certainly chasing a decision. Absolutely no way I was chasing, "I want you to withdraw this complaint" or anything like - - no way in the world. I had already done the file. It was all ready to go. If you look at when I got that letter from (...name suppressed...), I think that letter was sent on the 1st of February to me, so I don't think the relationship was too bad; but it was sent to me on the 1st of February so I wouldn't have received it on the 1st of February but you will notice that my comprehensive report and 21 attachments is finished by the 4th of February and off and gone. So, you know, if you don't operate like that in doing the job that I do you will drown.

And you received a letter from Q1 early February and, really, is there anything more to your account of events after that that we should know about? The matter was referred to professional standards?---Yes. The 4th of February my report went off. It was referred to professional standards. I certainly was called in by the ACC.

MR PETTIT: They in turn made the decision to send it to the ACC?---Yes.

The ACC contacted you - - ?---Yes.

- - to come and give them evidence?---Yes.

Which you did?---I certainly gave them evidence, yes.

Just finally, when Detective Italiano returned from leave she was to prepare a report, submit it to you personally, which she did, and you also had a conversation with her?---Yes, I did.

Did you request a conversation with her?---Yes. I - - I can't remember exactly requesting it but I would have wanted to have had a conversation with her.

Why?---Well, the first thing I - - as I said to you, when I received that August 25 memorandum in December it answered a lot of questions for me in relation to certain issues. I wanted to sit Detective Italiano down and go through the whole process and make sure that she was satisfied. I've heard the word "transparent" mentioned many times and I've used it. I do use that all the time. I like - - I want things - - I know I need things to be transparent in relation to what I do and I wanted to make it clear on a number of points that I didn't get that memorandum and what I felt should have happened with the memorandum - if it had have been brought to my attention what would have happened with it. There were issues like the fact that she hadn't advised Q1 of my review or the independent assessment by the DPP, instead advising, "Oh, go to the Ombudsman or the ACC", which - - -

WITNESS: " - - - or the ACC", which, you know, to me, I would like - - I've no problems about persons being given those options, but I believe that she also should have been given these very important facts about her case and what was done by a senior officer and the oversight by the DPP, because it gives a far more complete picture, I think, as we've already heard in Q1's evidence when she did meet with myself and Mr Atherton. And I mean, I - - I've - - well, I recorded in my February 4 report. I had absolutely no doubt that Detective Italiano felt that there was intervention. I recorded it in my report of February 4. I asked her direct questions about it. I did my level very best to get her to put it on the table so we could deal with it, which she didn't do. Now, hearing her assertions, I probably have a better understanding as to why she didn't.

MR PETTIT: The letter from Q1 and Detective Italiano's report to you and all other reports received by you, fail to make any mention adverse to yourself?---That's right.

Why did you ask Ms Italiano whether she thought you were corrupt?---No.

Well, first of all, did you ask that?---No, I did not. Absolutely not.

You've heard her evidence that you did?---I don't know that she said that, actually.

Well, perhaps I'm wrong?---Oh, she said in this proceedings that I'm corrupt, but I don't think she actually said that, that I asked her if I was corrupt. I asked her if anyone was corrupt, and I think that was what she said. If anyone was corrupt in this matter, or something. And that's what certainly I've seen on the running sheet as well, since I've reviewed the running sheet.

Yes. I apologise. I think you could be right about that?---Yeah.

And did she offer an explanation to you, whether she thought any person was corrupt?---I could not get her to put it on the table and I detailed that in that February 4 report. I've certainly detailed that I felt that - - that she believed there'd been some intervention, that I certainly had seen no evidence of intervention in relation to the matter, but that she still harboured it. And the other thing I mention, and I still believe this today, although I have even more of an insight after sitting in this proceedings, I still believe that the non-action on the August 25 memorandum had an impact on this whole event. I believe if that had have been dealt with in a transparent way, if that had have been - - right, put it on the table, let's investigate this. Let's test this information, in August 25, and either blow it in or blow it

out of the water, then I think that the complainant would have been happier and I believe that Detective Italiano would have been happier, and I certainly would have been happier; and you will note that the day I received that report, and I don't think there's any other terms you can put it, that Mr Miller got that rocket from me in relation to this issue, and you will also see in my February 4 report that I recommended that he receive a formal counselling for not dealing with the August 25 memorandum.

MR PETTIT: Did you say to Ms Italiano in that conference in January something to the effect that you would have lost your position or your job?---Yes. There was certainly something like that. We've spent some time talking around a whole lot of issues. One of the - - all pertaining to this, of course. One of the other issues that I went at length to her to explain was the brief, the evidence, the consequences of charging people with offences that are going to be nolle, and I made some comment like, "I'd be looking for a new job if you'd have put this one through. If I hadn't have done my review, if I had have let you go out and arrest this person, I'd be looking for a new job", you know? And it was in that context, in respect of, you know, nothing to do with the deputy commissioner or the commissioner. I'm talking about the consequences of a superintendent allowing something like that to go through to the keeper, when I should be having - - if I don't do it myself, certainly having the checks and balances in place that we don't make mistakes like that.

Thank you.

COMMISSIONER: Yes. Mr Hammond?

CROSS-EXAMINED BY MR HAMMOND:

MR HAMMOND: Superintendent Caporn, is it the case that Deputy Commissioner Brennan told you to leave no stone unturned in the investigation of Q2?---Yes, it is. In finding evidence. I don't know if he said the words, "investigation in finding evidence."

In finding evidence?---Mm.

And have you familiarised yourself with the file of Q2?---Well, I certainly did a review of the brief of evidence.

You've conducted an extensive review, haven't you?---Of the brief of evidence, absolutely.

And even for the purposes of coming here today to testify - -
-

MR HAMMOND: - - - to testify?---I've certainly had a look at all the memorandums and all those other issues; absolutely.

And you would be aware then that Detective Italiano sought approval to travel to the eastern states to visit a possible second complainant?---I have no knowledge of that whatsoever.

I do have knowledge of a memorandum, and there's a couple of memorandums that I've seen of Detective Italiano wanting to travel to the eastern states to interview a psychologist, but I have no knowledge of her wanting to travel and see a second complainant. Not at all.

So you did see a memorandum where Detective Italiano sought approval to go over to the eastern states to interview a psychologist?---Yeah. But I saw it about 3 weeks ago. I also saw a covering memorandum on that from Sergeant Miller giving her an alternative action as to he believed that she should do with that - -

And are you aware that in your review of the file now that Detective Italiano was refused permission to attend on the psychologist and to attend on the possible second complainant?---I know nothing about the second complainant. I've already put that on the table. But I'm certainly aware that - - and this was only been aware 3 weeks ago when I looked at memorandums in relation to it, because that's not what I reviewed in my brief of evidence. But I'm certainly aware of a memorandum from Detective Italiano to - - might have been directed to Sergeant Miller, but there was also a handwritten memorandum from Sergeant Miller saying that he had exhausted the budget or - - sorry; they had exhausted their budget and that he believed this could be dealt with by telephone, and he recommended that if need be that he would - - he would talk to the person themselves.

I'm wondering if - -

WITNESS: I think also there's a - -

MR HAMMOND: - - memorandum D1012278 can be called up.

WITNESS: I think there's also some sort of corresponding entry on the running sheet about that somewhere.

MR PETTIT: You'll have to bring that up in restricted fashion. You have a copy of it.

MR HAMMOND: I do, but it's probably not in the - - I only have one copy.

MR PETTIT: As long as you've got a copy.

MR HAMMOND: Yes. Thank you.

(TO WITNESS): Do you have the memorandum?---Yep.

MR HAMMOND: Yep. And do you recall reading this memorandum before?---I'm not sure whether this is it. I mean, certainly this memorandum and certainly the discussion of the psychologist, whether it be 2 weeks or 3 weeks ago, but 2 weeks ago when I've looked at the - - gone to have a look at the memorandums on the file is the first time I've seen this.

I'm not sure whether this is the exact one, but the one that I saw also had a handwritten memorandum on top of it from Sergeant Miller back to - - to Italiano, giving her a direction in relation to the matter.

In 1998 when you were extensively supervising this matter, you would have been aware of this request to visit the possible second complainant?---Let's clarify your "extensively supervising". First thing, I wasn't aware of this at all. At all. At all. I was not aware of this. I also note on the file that at the time this happened, when I had a look at this a couple of weeks ago, that at the time that this particular event occurred and that Sergeant Miller gave her direction to deal with issues by phone, I also note that I was on officer development course during the entire period of those memorandums. And I also note that they never went to the divisional office. They were contained within the Child Abuse Investigation Unit.

So you didn't see these memorandums when you were extensively reviewing the diaries, for instance?---What would the memorandums be doing in the diaries?

I'm not saying that they were with the diaries, but you didn't have access to these memorandums in October or November 1998?--I reviewed the brief of evidence. I didn't review memorandums. I reviewed depositions, medical reports and diaries.

So if you weren't reviewing the memorandums you wouldn't have had much of an idea of what the officers were saying in relation to this case?---How can you say that - - -

WITNESS: - - - you say that?

MR HAMMOND: Well, you were unaware, for example, that a request was made to travel to the eastern states to visit a possible second complainant?---Yeah, but that's a quantum leap to say - - I mean, I reviewed all the brief of evidence. Memorandums - - my job, when I decided to do the review, was to review - -

I'm not asking you about your job. I just asked - -?---Okay.

- - were you aware of the request by Constable Italiano to visit a possible second complainant - -?---I - -

- - in December 1998?---And I've already answered that.

And the answer is "No"?---That's right.

Were you aware in December 1998 that Constable Italiano wanted to visit a psychologist who resided in New South Wales?---I was review - - I was aware a couple of weeks ago about that one particular - -

You weren't aware in 1998?---No, I was not.

December 1998. And you weren't aware, were you, that in relation to both of those matters Constable Italiano's application to go to the east had been refused?---No, I was not aware of that.

COMMISSIONER: Would that be a convenient time, Mr Hammond?

MR HAMMOND: Yes. Thank you, sir.

COMMISSIONER: We'll adjourn until - -

MR PETTIT: Commissioner, until when? Tomorrow morning, or till Monday?

COMMISSIONER: Monday. Monday morning at 9.45.

MR HAMMOND: If it please you, Mr Commissioner.

WITNESS WITHDREW

AT 4.03 PM HEARING ADJOURNED UNTIL 9.45 AM

MONDAY, 16TH SEPTEMBER 2002