



CRIME AND CORRUPTION COMMISSION

TRANSCRIPT OF INVESTIGATIVE HEARING

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FORTITUDE VALLEY WITH RESPECT TO

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OPERATION IMPALA
HEARING NO: 19/0006

20 DAY 6 - MONDAY 18 NOVEMBER 2019
(DURATION: 1HR 0MINS)

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LEGEND

30 PO Presiding Officer – ALAN MACSPORRAN QC
CA Counsel Assisting – JULIE FOTHERINGHAM
HRO Hearing Room Orderly –FALLON SMITH
W Witness – IAN LEAVERS
LR Legal Representative – TROY SCHMIDT for Queensland Police Union

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CA I call Ian LEAVERS.

PO Good afternoon, Mr LEAVERS.

W Good afternoon.

PO Are you taking an oath?

W Yes.

10

PO Thank you.

HRO Can you repeat after me, please. The evidence which I shall give.

W The evidence which I shall give.

HRO In these proceedings.

W In these proceedings.

20

HRO Shall be the truth.

W Shall be the truth.

HRO The whole truth.

W The whole truth.

HRO And nothing but the truth.

30

W And nothing but the truth.

HRO So help me God.

W So help me God.

PO Have a seat, Mr LEAVERS, thanks.

CA Good afternoon, Mr LEAVERS. You were provided with an attendance notice
for today?

40

W That is correct.

CA Yes. May Mr LEAVERS be shown a copy of the attendance notice. Is that the
notice?

W Yes, it is.

CA I tender that document.

PO Exhibit 122.

ADMITTED AND MARKED EXHIBIT 122

CA And also you've provided a statement, a written statement, for the purposes of the public hearings and Operation Impala in general.

10 W Yes, I have.

CA And that statement is dated 15th November 2019?

W Yes.

CA I'll show you a copy of that statement, Mr LEAVERS.

W Yes, that is it.

20 CA Yes. I tender that document.

PO Exhibit 123.

ADMITTED AND MARKED EXHIBIT 123

CA Mr LEAVERS you are the general president of the Queensland Police Union of Employees.

30 W That is-

CA -and have been there since 2013?

W 2009.

CA 2009. And since 2013 held a certain position within the union?

W No, it's-

40 CA That's okay. And then you've also had a lengthy career in the police service?

W Yes, I have.

CA Would you like to speak to the first portion of that statement as it relates to your own career and the union in general, a description?

W Yes, happy to. I started in the – or sworn into the Queensland Police Service in October 1989 and throughout the duration of my policing career I performed duties in the general duties being first response policing, the Criminal

10 Investigation Branch, the Juvenile Aid Bureau, now the Child Protection Investigation Unit. Also for a period of time traffic related duties as well as the Forensic Crash Unit, but it wasn't a formal unit at that stage. But they are the duties that I performed over a period of time as well as training in relation to firearms training for police. In 1997 I became an elected representative for the Ipswich police district for the Queensland Police Union of Employees. In 2005, I was elected to be an executive member of the Queensland Police Union for the southern police region. And in 2008 I was elected as the vice president, and in 2009 I became the acting president in March '09 until I was on the 1st of July 2009 I was elected to the position of general president on the full-time basis t which I currently still hold.

CA Thank you. And could you explain a little bit what the union does and how many members comprise of the membership base?

20 W Yes, we have a density of about 98%. There was 11,000 – I think it was 778, I was going to say – but 76 as of 31st October 2019. And we represent all police from the recruit stage up to including the rank of Senior Sergeant as well as those involved in the Police Pipes and Drums, the assistant watch-house officers and the police liaison officers and also including the TSIPSOs, the Torres Strait Island police officers as well. We are responsible not only for their industrial rights but also their legal rights. And also representing them in every facet, which includes, since I've been the president of the Queensland Police Union, whether it be the formation of legislation or, as the Chair would know, we were certainly heavily involved and got a commitment in relation to current disciplines systems. So it's multi-faceted to what we do at the Queensland Police Union.

30 CA And in your statement, I'll ask if you could expand on this, but I've identified three key areas where you raise concern on behalf of your members with respect to the current practices of the Queensland Police Service with respect to misuse of information and the risks associated with staff committing that offence under section 408E of the Code.

The first one is clear – I've summarised it as a desire for clear consistent policy around specifically the information technology, use of the QPRIME database for preventing misuse of information. Would you like to expand on that summary of that concern raised in your statement?

40 W Yes, the concern I raise is that firstly in the 408 I do not believe that that is what it was designed for and I go back to the Parliamentary readings in 1997 but I'm happy to expand on that.

CA Yes, please do.

W Well it was designed for computer hacking, not for those who are authorised to use a system. And as we would be aware the Police Service Administration Act adequately caters for that.

CA Adequately caters for what, sorry.

W There is an offence under the Police Service Administration for the misuse of the QPS database or whatever it may be at the time of the day.

CA The section 10.1 of the Police Act relates to disclosure of information. It isn't the use and disclosure. It is a disclosure provision. It's not for accessing only.

10 W So be it. I do not believe that 408 was created for that. And I go back to the readings in the Parliamentary notes-

CA Yes.

W -that were accompanying that and it was designed for those hacking into a system not those who are authorised to a system. And I'll stand by that. I've listened to some other evidence in relation to some matters that I raise and I still think there are other offences that can adequately capture that. And which is probably more appropriate than the 408. It was never designed at that point in
20 time. And I look into what happened in 2000, the inquiry by the then Criminal Justice Commission, it was not noted where it needed any more information or legislative reform in relation to that which related to 408. So I go back to that.

And I further go back to the 2000 inquiry, and I know it was come up later on, so I'm happy to mention it now, not much has changed since 2000. There hasn't been much education. We talk about online learning products and screen savers, nothing has been done by neither the now CCC or the Queensland Police Service in relation to further training and education which needs to be
30 scenario-based for police to adequately comprehend the changes with the scenarios when it comes to the use of say now the QPRIME system. It is quite complex. And I go back through the training. It was said at the time QPRIME is quite complex and police grappled with the use of the QPRIME system.

CA When you say "at the time" could you explain exactly when QPRIME first came into being?

W 2006.

40 CA Yes.

W And police were encouraged to use the system so they could familiarise themselves with the system because it was a system that was introduced which was like no other. It wasn't purely follow one point and go through from 1 to 10. It was quite different on how you enter information into the system and how you search with it compared to the previous systems which had been in place probably since the 1980s. A lot of police struggled with the use of it and they were encouraged within the training of the QPRIME to use it and navigate around that system so you can become comfortable with the use of it to

adequately use it not only for reporting mechanisms but also for investigations as well. And there are still police at this point in time who grapple to use the QPRIME system. And I would suggest even further that those in the senior management at this point in time, if you don't use it, you will lose that skill. So it's not a very simple skill like a lot of people would think like other systems work.

10 So we've moved on from 2006 when the implementation came on board more in 2008. And because prior to that there was different systems in place, and that was how it was back then, but it is still not the easiest system in the world. And the education that was required back then was a three-day course to use the QPRIME system and there has been little to no other education in relation to that. And I go back to you need one-on-one training when it comes to using the QPRIME database. But to get back to when you look at the legislation various people have different points of views when it comes to the interpretation of legislation. And I still stand by I do not believe that 408 was created, computer hacking for those who are authorised to access a computer system or information.

20 CA And so the second point you've just covered the need for regular training. You said to actually use the QPRIME database and also specifically around, although you say that section 408E didn't come into being for the purpose for which we are here now talking about it, but it is what it is, currently that is the legislation, and it is used for that purpose and there are public sector employees, including within the Queensland Police Service we've heard today, we've gone through the cases, are being prosecuted for accessing and at times disclosing personal information via that current offence as it stands in the Criminal Code.

30 W Yes. Accessing and disclosing are two different things and the interpretation in relation of 408, great legal minds will have many different views. It is the view that it was not created for that. And there are certainly other offences which certainly cater for that. And whether that be the Police Service Administration Act or you look at section 92 and 92A of the Criminal Code, they probably certainly are more suited in relation to the misuse or the disclosure of information. I still have a firm view and I've spoken with our lawyers in relation to that, and many people have different views, the Chair and I have disagreed on this, and it doesn't mean he's wrong or I am wrong, he may argue that. But we all have different points of views and those within the legal systems will very well disagree on the interpretation of legislation at the time. And I go back to when it was introduced, I do not believe from what I've read with the Parliamentary readings it was introduced for those who are merely accessing the information or disclosing the information. I think it's a blanket charge and that would be my view that is being used at the moment and I don't think it is appropriate.

40

I will go further, and I think when it comes to police we're certainly held to a higher standard than any other industry, but I think the first point of call should not be to always charge – that happened in medieval times. What I'll suggest,

it should be education and training, we should look at the discipline system, then look at the Police Service Administration Act and for those matters which are very serious then we look at the Criminal Code. I don't think that is the case at this point in time.

10 CA It is a – whether or not you – whatever your opinion on how the section 408E came to pass, it is what it is, it is in the Criminal Code, it is an offence which is being used and public sector employees are being prosecuted for it, so given that it is in the Code and it is being used, even though you have your own personal misgivings in relation to its history and intent of the legislators, in summary, if I can summarise your second concern for your members is that you would like regular training around knowing what is and isn't misuse of information on QPRIME?

20 W Absolutely. And I go back to education and training. And the “misgivings”, I think that is wrong, that is a misuse of the word, that's your word, not mine. Education and training is important and as you know with the new discipline system or the discipline system we've adopted that was a commitment I got out of government to create a new system from the last one which was forced upon us in the late 80s. Now that system is based on education and training being foremost. And the Chair was heavily involved in that and I thank him for that. But education and training-

CA When you say that – sorry just to interrupt you, I wouldn't say it is foremost. There is a triaging we heard from Acting Assistant Commissioner MICKELSON of matters and the lower end of the spectrum are what you're saying, there's some managerial action concerned, but the more serious ones they're disciplinary proceedings that still take place.

30 W What I will say is we can, all on the different level, the ones you mentioned before Assistant Commissioner COWDEN in relation to the information of the WorkCover investigation, I think that can be dealt with as a section 92. But be that as it may, what I will say education and training is the discipline system. A lot of people still, and with the online learning products and the screen savers and the emails, I'll say this, police receive that many emails, do they pay attention and read each and every email? Absolutely not. Should they? Yes. But they actually have a job to do outside of reading emails every day when they commence duty.

40 So what I will say, education training and the one-on-one is important. Now, the Chair has been to our conferences where we have debated issues in relation to what is appropriate use in the performance of your duty, the execution of your duty whether you're authorised or justified or excused – all these different terminologies which are across the board nobody really knows and there are many scenarios which we can debate and I think that is healthy. And that is why I go back to, we need the one-on-one training so these examples can be put out. You can have an online learning product and you go with whatever is the correct answer to be able to get through that because that is a requirement for

10 you actually to be able to do that. But we need a scenario-based training system to throw things up. And there was a question asked of the Commissioner before in relation to, "Should a police officer be able to check their own details when they're a victim of an assault police?" Now, she said "Yes" and I agree with that because they will need to provide a statement in relation to that. Is there any ulterior motive? No. But there have been situations where people are reluctant to use that system through fear of the process and they will be charged with a criminal offence in relation to that. And there are supervisors who don't know the answer. And we've had if inquiries go through the Ethical Standards Command where people have debated the rights and the wrongs. So it's not as simple as a lot of people would like to put it. It is quite complex. And what is perceived by one person is certainly different to another. And I think we need to have a good training package so people can fully understand this. Because I do not believe people go to work each and every day thinking I'm going to access the QPRIME system so I can commit an offence or deliberately do something wrong. That is not the nature of police. And police don't know what they can or cannot do at this point in time.

20 And I will give another example. There was a police officer completing an objection to bail. He knew the offender had been arrested recently before that and he sought advice from a supervisor saying, "Can I access what the objection to bail was a few days ago?" And the advice from the supervisor said, "No, that would be computer hacking." Now, for me, I think it is in the performance or the execution of your duty, whatever you may see it. Ah you need to get the information and get the facts and that is why you would access that person's history. Although you were not involved in that investigation, it may be relevant information.

30 And for someone who maybe junior in service, they may not have the records or the information or know how to word it. So I think it is vitally important. And I'll go back to when I started in the police some years ago we had pre-carbonated QP9s and objections to bail as well as you know statements and we kept a hard copy of everything from other people who had done other investigations to use that as reference material. Now, at the end of the day, I'll suggest that is still confidential information and you're accessing that. It just doesn't happen to be a database. You have it in hard copy. So I don't see the difference.

40 CA So under section 408E of the Code it is an offence if there's access to a restricted computer without the consent of the controller. So by password access, that password access is required for QPRIME and the consent of the controller, so not related to a specific work duty. So it is quite clear that if the staff member isn't undertaking a task directly associated with the employment at the QPS, then that is unauthorised access to the QPRIME database.

I'll just show you section 408E of the Code, which is Exhibit 11. Do you see there how the initial – the simplest form of it, without aggravating features, in

section 408E(1) uses a restricted computer without the consent of the controller. That's it. That's the offence.

10 W Yes, absolutely. I go back to the readings. And I go back further police don't know where they stand in relation to because it can be a different point of view as to whether or not it is in the performance or the execution of duty or it is authorised or otherwise. The language is as it is different right across the board and there are so many different manuals and policies and procedures people don't know where they stand. And there's been great debate with police across the State what is lawful and what is otherwise. And certainly we rely people's differing opinions but I've got many examples where people don't know whether or not they can actually do their job. And the default position and my default position is "Don't do it", not that I agree with that. But I want to keep them out of the court. Because I don't think there is a level playing field and I don't think there has been sufficient training, certainly not since 2000, in relation to what is acceptable and what is not acceptable.

20 And there are many circumstances when people are working with with witnesses, complainants, and of the accessing of information. Now, there are some court cases where I will – we have been involved in where we've fully supported the police and they've been challenged and the Magistrates have agreed with us. But certainly the view of the police service and the CCC have differing views of the Magistrate. So to say one is right and one is wrong is very hard. It is very complex. And policing is different to other industries. It is not an exact science. It is not all the same. There are so many different types of scenarios and that's where I say we need scenario-based training so police know where they stand. Because at this current time they don't.

30 And we go back to whether or not you live in the city or the country. What may be acceptable in the country is certainly different to when you're policing in the city. Some of it can be called good police work because at the Commissioner said we're taught to be inquisitive, we are taught to be suspicious, we are taught to be curious. Now, curious is another issue. You can be curious about knowing where the Chair might live. That is unacceptable. But to be curious when you're conducting investigations which lead from one lead to another, that is what police are trained to do. And the lines are not clear. It is not simple for police and they are struggling to come with that.

40 As we know since 2000 there has been very little training and I think it is important to have this training. I cannot underestimate the importance what I believe on one-to-one training is required right around the State of Queensland. I've got many different examples where police don't know what they can or they can't do. An example I can give is in north Queensland where a lot of people camp next to a school. And a police officer said, "Can I go and check those cars?" because they ordinarily do because you don't know who UI when people are itinerant or they're travelling. And if there happens to be someone who has a past for child sex offences, do I think it's a police officer's job to know who is in their patch and what are they doing and if they're camped – if they're next

to a school. Do I think that is important for the confidence of the community and to protect children? Absolutely they do. And I know when you check someone you not only look at their name, then you go through it and see what it is. Now I think the community expect us to do those types of checks especially where you become suspicious or you have that curiosity. Now, the curiosity just to go and check the Chair to find out where he lives, that's in a different field altogether. So I think curiosity we need to divide it up to is merely one is on one side, but then you can look at curiosity which is an investigative technique which we teach police and we want them to do.

10

I think it's, as I say, it is quite complex and we have seen and we're not in medieval times, but the right – the answer is not always to be punitive on each and every occasion. I think education and training is front and foremost. And I look at the entire criminal justice system, it's about keeping people out of the courts. Now, we can accept that whether we like it or not. That's with young people, old people. We're doing cautioning for people who are older now and, look, there are merits in every way, shape or form. But I think the courts should be used as a last resort and where there are other methods, education and training is first. But the Queensland Police discipline system is quite unique. And prior to the new discipline system, pay points or demotion could cost people tens if not hundreds of thousands of dollars. That is quite severe in anyone's view. And I think we need to look at that. So courts are not always the best use but I'm happy to discuss that more.

20

CA When you mean courts aren't always the best use you're talking about pursuing criminal charges as opposed to merely just disciplinary proceedings?

W Absolutely. I think discretion should be used taking into account the circumstances on each and every occasion because it is not a one size fits all.

30

CA But, as was raised earlier today, you'd agree that there is the benefit of criminal prosecutions, the public at large, including the victim of the misuse, are able to see what happens, what the penalty is; whereas with disciplinary proceedings it is closed in secrecy. And then there's the lack of deterrent value and also the – assisting the victim with finding out what has happened.

W I would say our system is flawed because the disciplinary process, there is no reason as to why the complainant should not be advised of the outcome and what has occurred. Now just because someone goes before a court, if we were to adopt that method on each and every person who committed an offence we'd tie up the courts. What is probably best, and you look at whether or not to prosecute or not prosecute, instead of just looking at one or two of the criteria you need to look at it holistically, what is to be gained. Now police don't shy away. The internal discipline is quite severe within the police. Probably like no other. And we are held to a higher account than a lot of other people.

40

However, I will say the internal discipline system can be quite severe, has been quite severe and necessarily to put everyone before the court is probably not an

option. I look at the entire criminal justice system if we're to go by that theory every person would go before the courts regardless and so the entire public would know what occurs. So you look at the deterrent system, as we see in the politicians and many people will say just because you increase the penalty isn't going to stop the crime. We need to get to the root cause of things and look at education and training.

10 But where you have other systems in place which can adequately deal with things, is a criminal prosecution the best option on all occasions? Absolutely not. But I see it as a blanket process at this point in time and police like no others, it is reported every time they are stood down, every time they are charged, and everyone gets to know. We're not about hiding. We are probably one of the more transparent of any occupation I would suggest in Australia. There are other professions where you will never find out the resolve of what has happened internally. Whereas police I will dare say are singled out when they have the most thorough of a discipline system and they have more oversight bodies than any other agency. So to say that police are being let off and they're getting a slap on the wrist I don't agree with you.

20 CA Professor McDONALD gave evidence in these hearings, and in her view – and she was the one who was the Commissioner for the 2014 inquiry into serious invasions of privacy in the digital era with the Australian Law Reform Commission. She was of the view that a breach of privacy with respect to misuse of information is a serious invasion of privacy. And misuse of information, including access and disclosure, formed part of one of the two types of misuse that her inquiry identified as the two main ones requiring attention for the purposes of her lengthy report and subsequent – and including recommendations.

30 So we've had expert evidence in these proceedings that any misuse of information, which includes access, and access and disclosure, is a serious invasion of privacy. So just turning to paragraph 42 of your statement, you say, and I quote, "In my view there have been examples in recent times where such charges, and you refer to section 408E charges there, under the Code have been unnecessary and have involved significant overreach on the part of the QPS and/or CCC."

40 So what are some examples of where you think that it's okay for a public sector employee, in particular with respect to your membership, a member of the Queensland Police Service, to misuse the database?

W You're putting words into my mouth, misuse, there.

LR I object. I object to that. You're putting it to him whether it's okay to misuse the database. I mean it's a double negative even of itself. It's not even a proper question.

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PO Perhaps we can just use the actual circumstances revealed by the statement paragraph.

LR Thank you.

W Okay. The comments by the Professor, I think you have to take into account, just not a snippet, the entirety of all the information and what has occurred at that point in time. I think that is important, it is not black and white. Now, I've never suggested it is appropriate to misuse information. I actually take offence to that. But I'll move onto that.

10 But I go back to a court case in Gatton and the Chair and I may have a different point of view, but I respect his point and I hope he respects mine. But that matter was forward. The Magistrate made a decision and that was alleged that – well he's been found not guilty, so we can leave it at that, that he misused and given information to a person who may very well have been in fear of a person and without that information she may need to make arrangements for her own safety. So the allegation was he's accessed or misused the information. That occurred in Gatton. The officers name was NEUMAN. I would dispute that it is an issue. I believe he has lawfully accessed it and the court decision according gave that result.

20 So just because a complaint is made, it needs a full and proper investigation. It does not mean that just because the complaint's there it's a misuse. You've got to look into the circumstances and the reasons to why at that point in time. And it is still a very, very grey area. And that's why I go back to the training, I cannot under-estimate the training. I think it has been insufficient and I'll I suggest the report of 2000 has been lost. I'm glad it has been raised today and we need to act and look at that importantly. But the misuse, let's just assume that police are going there and deliberately misusing on each and every day. And there a lot of instances where they're using it in the connection of the performance of their duties. But people have differing opinions.

30 CA You talked about the matter of NEUMAN.

W Yes.

CA And an unsuccessful prosecution.

40 W Yes.

CA So there was a finding that there had not been a misuse of information?

W He was found not guilty.

CA That it was not a misuse of information?

W Clearly.

CA So just to clarify, as you use that as an example, when we're talking about paragraph 42 of your statement, where you say, "There have been examples in recent times where such charges have been unnecessary and have involved significant overreach on the part of the QPS and/or CCC." So you are talking about matters that after investigation and prosecution it came to pass that it wasn't a misuse of information?

10 W What I'm saying is the charge shouldn't have been preferred and the judicial officer came to the same finding. And we've had other matters within other courts which have come to the same conclusion. I'm not for once saying that we shouldn't investigate things, but I think we need to take into account the entirety and all the circumstances at that point in time.

CA So when there is a misuse of information in accordance with section 408E of the Code, which is where a Queensland Police Service employee uses their unique password to access the QPRIME database for a purpose that is not related to their work, you're saying that in all those instances that is a matter that needs to be investigated? And it is not an overreach for those matters to be investigated?

20

W Where a complaint goes in, it is investigated. Now, we need to look at the particular circumstances of each and every issue. And to look at what occurred, why did it occur, how did it occur. Now, just because a computer is involved and with the electronic information, our discipline system goes back to education and training, could it be adequately dealt with the discipline system and then you look at other matters. That's where I think it needs to go. It's not all black and white every time someone may allege it's a misuse of the QPRIME system or any other system that the police have in existence. There may be reasons as to why that occurred. And I think we need to look at that, then make a decision. But with a view to charge on each and every occasion, I think is probably unrealistic and being overzealous.

30

CA Just going to a couple of paragraphs in particular of your statement, at paragraph 20 (b), and you're talking about the QPRIME warning screen that comes up prior to access to the system.

W Yes.

40 CA And have some concerns that it needs to be clearer.

W Absolutely.

CA And in (b) you're saying that it is noteworthy from this warning that the reference to criminal consequences only refer to the provisions of the PSAA, not the Criminal Code.

W Yes.

CA And your request is for the reference of the Criminal Code to be included; is that what - what are you meaning by that?

W I think things need to be clear, but what I'm saying is that warning, people don't read the warnings and I think we would be foolish to believe that every time someone enters onto something that they would read that warning day in day out. You could change it tomorrow and it would be white noise. People, when they check in or access it next week wouldn't read that word for word. That simply doesn't happen. That's is like when you sign a contract, you don't read word for word.

I think what we need to do is get back to education and training. To simply say we put a warning up and that will suffice and that will be the thing which will solve everything, I think we're not being realistic when that occurs. It's just not cutting it. The same with an email, there is a death via email of policies, check this, do the online learning product. Now people will do what they have to do to get through the online learning product. Whether or not it's been effective are two different things. That's why I go back to the one on one training. I think it is vitally important. I think a lot of people think will it be expensive? Absolutely to do 11,800 police right across the State of Queensland. But this, if we're fair dinkum about this, we will ensure that there is proper training and people will be able to ask questions which are scenario based so it can become clear for them when doing – because not all checks are a deliberate misuse of the system. People are doing their jobs and they believe they are entitled to do it. Sometimes with some guidance it would be beneficial,.

But whether or not who you're investigating, and the example goes back to a country town. And I've said this to Mr MACSPORRAN. You know who's who in a country town and we talk about community policing and looking after the community that we serve. They will often know more in a country about everyone's history, their traffic history, their criminal history. That is how it happens in a country town. As people move into the town those checks when they come to town, should there be reasons for suspicion or that can be whether you stop them for a traffic check or otherwise, you may do a check to look at someone's history and you're lawfully entitled to do that. But you're in a very difficult situation when you're in a small town because you know everything about everyone. And that is how policing is done. And you take that to the cities, you need to know people within your own area.

Now what is done with that information is vitally important and you have to be very careful. But at this point in time, with the police computer system police are afraid to use it for its full reason or it's full capacity or its benefits because of the fear of prosecution. And we talk about when people may go to court, some people just want to get things over and done with and get back to their everyday life, because we spoke about before or it was spoken about the time delays, in the Police Service, other organisations, and I dare the CCC, timeframes are things which haven't been adhered to in any way, shape or form.

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And all of these detriments with the time, it's not good for the public, they lose confidence as a result. And that's why I'll pursue the new discipline system, so these time delays we talk about, we talk about looking after the public. And that is front and foremost on the minds of police right across the State of Queensland. But these time delays we talk about public confidence, I think other agencies need to have a look at themselves and see what have they done as a result of these continual delays, because they have taken away the public confidence when someone makes a complaint and these things go on forever and a day and sometimes up between two to five years.

10

CA And just moving to paragraph 21 of your statement, you talk about information technology use and the Information Management Manual. Could you explain a little bit more about that paragraph, that information technology is much broader than accessing use of data. Could you just speak to paragraph 21 of your statement?

20

W Yeah, the Information Management Manual along the Standard of Practice, a lot of police would probably not even know they exist. So the system is designed for not only the input of data but also for the retrieval of data and for whatever other purpose it is required. That is what it is there for. But actually can I look at my statement if you don't mind, just for the wording?

CA Yes. Sorry I thought you had it.

W No, I've only got 408E. Thank you.

30

CA Just for example with that, while you're looking at it, information technology use would include the use of the internet and email for personal reasons, potentially.

W Yes.

CA As such doing internet banking or accessing news sites or other sites of personal interest.

LR Yeah, police have been allowed to use it for personal business over a period of time. It's got to be reasonable use, is what people are told.

40

CA So you're saying that the policies and procedures need to be tidied up, made clearer, really identify, even though you say that it's originated in a bad manner at the moment, that's what we have section 408E, that some clear delineation and definition about what unauthorised access and disclosure use under that section is?

W Yes, I think it is vitally important we have a very clear document which police can relate to where it is not ambiguous, it is not confusing and we do not have all different terminology right across the board. As superintendent JOHNSON said in a recent court hearing, I'd be surprised if a lot of police even knew some

of these policies and practices even existed. And I certainly agree with him in relation to that. But I think it needs to come into the modern era because I know police have been allowed to use the system or the internet for some personal use. And it happens in many workplaces.

10 And I know as an employer I don't want people using it for personal use every minute of the day either. But what I will say is it does happen and there are some emails which I know may be personal, but that can be within the organisation to performs one's duties as well, that is what it is used for. But I think it needs to be clearer, because you look at that it's not clearer, it's not clear. And I think we need to move with the modern times. And I will say this as well, the ICT devices for work-related use, it's a bit of both and it probably needs to be updated as well. I know for emails, if you have a private mobile you can receive your work emails on your private mobiles. So perhaps that needs to be included and updated as well to move into the modern times. I think though, all police should be issued with their own phone. That's another issue. But I think it needs to be updated to move in with the modern times. And as we know not much has happened since 2000, which is disappointing to say the least.

20 CA Thank you for that, Mr LEAVERS. Just moving to paragraph 25, do you agree that there are challenges coming up with a single formula of what is permissible as the different policies relate to different types of activity?

W It is challenging. I think we need to be very clear so people understand we shouldn't have to go to one document and then to another document and then to another document to see where we stand. I think it should be clear for everyone across the board. And policing is interesting and I've said it many times, it's not an exact science, you don't go from number one through to number 10 and that's all that happens. There are so many variables in policing and that can be why police may very well do some checks because nothing is just, you know, it doesn't go as according to the plan. So there may be very well and legitimate reasons as to why police use the information which is available to them at that point in time. So we wish it was as simple as some would like it to be, but that's not policing. Policing it quite complex and it is never the same and there are so many variables day in day out.

30

CA So overall less focus on technical descriptions and more practical guidance by way of examples is what you're suggesting is going to be effective?

40 W Yes, and I've suggested that over many years.

CA And just looking at some more of your statement, with paragraph 33, you list a couple of examples, which have come to your attention. And you went through the first one which appears to be work-related and we talked about that earlier.

W Yes, certainly I believe it definitely is work-related. .

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CA And then the second example, what, if in those circumstances the officer is really related to the new partner of his ex-wife and the explanation provided is that it was accessed for training purposes; do you see an issue with that?

W That's a very open-ended question. What, if you realised it related to your ex-wife or your ex-partner or you ex-husband, it would make sense that you wouldn't continue. But you do look at other resources for training, which is certainly important. And I'll go back to an example, some years ago I was investigating a shaken baby and I was looking at the process and what was required to use technology and listening devices in houses. I'd been through detective training, I'd never been taught any of that. So I looked to others to provide me with examples of what they done in the past so I could get that right, because obviously it had to be approved by a judge. It was very hard to get that.

Now, if I looked at someone else's paper, whether it was a hard copy or it was electronic or otherwise, I'm still accessing information. Now, what is the purpose for me accessing that information? I don't want to know about Bill SMITH and what happened there. I want to know with the processes so I can get all the information which is required so I can have a successful application, so the outcome I can get is to do my investigation. And I think that's what I'm talking about when it comes to training. Police aren't interested in the names of people in the past, they just want to know how to do so they can get the job done, because it is not as easy as one says. And I still stand by whether you access it electronically or by hard copy you are still accessing it and it is still the same purpose.

But there seems to be the theory out there, if it is a hard copy there's no problems at all, as long as you don't look at it electronically. I suggest that's not the case and I see in the Standard of Practice, if it is for research and training you can do it. Well, for on the job work for police they will need to look at examples on what may or may not need to be done. Not that they're interested in matters, they just want to get things right and it is quite complex. Whether it's an objection to bail or a QP9 or it's a statement, a dangerous driving statement, me with a background in forensic crash, I can assure you my statements will be far more detailed than another police officer who arrests someone for a dangerous driving. But if you're to look at the forensic crash work I used to do I certainly go into a lot more detail because that's the way I was trained. And I think it wouldn't be unreasonable to share that information with a police officer should they have to prefer a charge on that. I think if we prosecute in policing, we want to have a successful prosecution, that is good for police, it is good for the community, it is good for the complainant. That's what it's about. There is no other ulterior motive.

CA Talking about motive, at paragraph 48, you say. "In my view the vast bulk of cases of alleged misuse of confidential information, particular where there is no sinister motive, can and should be dealt with as opportunities for further training and education" – and then you go on about some more serious cases through the police disciplinary system. So can you explain your definition for sinister

motive, in particular, would it include a deliberate breach of privacy of the member of the public?

10 W Yes, the sinister motive was a matter I think you raised with the Assistant Commissioner of Ethical Standards. Was it O'NEILL? Correct me if I'm wrong. That was the WorkCover investigator. That's very serious and probably one I can go back to. I remember, it was probably in the 90s, it was a Senior Sergeant who was working as a process server and was accessing the information. That is very serious and that is the matter which I would expect there is a benefit and there is a gain, and it is using the information not in the performance of your duties. And that police officer was criminally charged back then. And that is what I'm saying is on the high-end.

20 Now, simply checking someone, and that's why you need investigations to see the reasons as to why the person accessed that information and that is why I think it is really important instead of thinking we have to arrest on each and every occasion, I think the discipline system serves a purpose. But you don't know the reasons as to why that information is accessed. And I think it is vitally important that the investigation take place because it may be very well lawful at that point in time. And the example I give, the Chair, I know who he is. I wouldn't do a check. But if he's driving down the road and a Constable was to check his car and think, that's Mr MACSPORRAN, they wouldn't know who Mr MACSPORRAN is. Well, I hope they wouldn't anyway. But if they were then to go and look at any further information into his driver's licence and other things they're doing that as a result of them performing their duties. There is no sinister thing. Whereas if I was to go and check out of curiosity I see that as a problem. I think we've just got to be careful on that. Not every check is unlawful and I think it has to be taken into account the circumstances at that point in time.

30 CA Just with that in mind, as I said before, Professor McDONALD gave evidence that it is a serious invasion of privacy, any misuse of information, including access only. And if we just have a look at section 408E again of the Code, the section 408E(1) that pertains to access, access only. In your view, would that be an occasion where you would classify it in the sinister category warranting disciplinary-

W -Which example?

40 CA -the section 408E (1) where there is access, that offence?

W Depending upon the circumstances and the reason as to why the access was used. And I'll give an example. It is easy to go by scenarios because legislation is one thing and police like things explained. And Mr MACSPORRAN was at our conference and this question was put to him. And this is where the grey area is and I think it is very important. An example was given in relation to, say I'm stationed at the Lowood Police Station and I access four weeks' recreation leave. I go on leave and I've been policing and there is say an aggrieved who's

had a difficult time. I go on leave. When I come back from work I may very well want to access the information to see what has happened to that person, has anything occurred since I've been on leave. Not that I need to know everything about that person, but that is part of me knowing what is occurring within my community. There's no sinister reason. I do not care about that person. But I need to know has there been any activity, because should action have been taken I may be able to talk to the officers involved and provide them with further information, because the information obtained on the system is not all the information as we know from time to time.

10

Now, that was debated. Now, at the time it was said you could read the hard copy. Well, you're still accessing it regardless. I would suggest that is in the performance of your duties and that is quite lawful. But there may very well be a differing of opinion, and police with that example have grappled over that and they cannot come to a consensus in relation to that, because it has been perceived that there has to be a new activity or a new offence or another call for service must occur before you access any information. And that's where I say it is very grey, so you need to dig into it and see what were the reasons as to why. Now, hopefully nothing would happen, but my reason for access is I'm trying to do the right thing and do my job and protect the community. And we debated that, Mr MACSPORRAN, and we may agree to disagree, but the purpose and why was the check done I think is paramount and we need to take that into account. Because we want police to be armed with all the knowledge to go out and protect the community, not just half of the information which could be detrimental for the victim and the community at large and the safety of police as well.

20

CA Thank you for that. I'll just show you a copy of the Magistrates Court decision you referred to earlier, the *Queensland Police Service v David Brendan NEUMAN*.

30

W Yes.

CA A decision delivered on the 9th of June 2017 at Toowoomba Magistrates Court. That was where we were having a discussion in relation to paragraph 42 of your statement where you say there have been recent examples where charges were unnecessary. And you gave this example, you said NEUMAN where it ended up in an unsuccessful prosecution. I tender that document.

40 PO Exhibit 124.

ADMITTED AND MARKED EXHIBIT 124

CA You see at the very end, page 11, at paragraph 62, and I'll just read that. "The circumstances of this case are somewhat unusual and turn on unique facts. My decision in the circumstances of this case is based on my acceptance of the defendant's evidence that he acted on concerns for Ms QFN's safety and should

not be taken as establishing any general rule that a police officer can access QPRIME outside of the Commissioner's determinations and directions.”

10 W Absolutely. It is what is in the mind of the police officer in performing the function which he's responsible to do. And as I say, policing it is not just one size fits all. There is a lot of grey when it comes to policing. And it was taken into the account the acceptance of Mr NEUMAN's concerns at that point in time. And I know what the concerns were, it was for the safety and the wellbeing of that person involved. That is where I say this is very complex. And I've said many times here today, it is not one size fits all. It is very complex. And that is why I'm suggesting scenario-based training, education and training is absolutely paramount.

20 Now Mr NEUMAN was an experienced detective in a country area for over 30 years. There is a reasonable understanding that he would know most people within that community. And in those circumstances I take that into consideration. So it's not a general rule because the law is very complex and it is very grey. And I'll go further into that. And part of that investigation is that woman was not residing in that local area. But I'll say this, when people deal with a police officer who's looked after matters which they've investigated, whether they're a complainant or otherwise, they may deal with them going into the future. That is not uncommon across the State of Queensland.

30 Now, the problem I see in policing in some ways is with Police Link and trying to ring a local police station, it is impossible to do to be able to get assistance. In fact you go through to message bank and no-one gets back to you. That's a fact of life. Or it goes to Police Link and you deal with someone who doesn't know you. To explain all the circumstances as to the predicament the victim or the aggrieved may very well be in sometimes you need someone who's got the knowledge who can be able to assist and get the best possible outcome. So I don't believe there is anything sinister, I think that is appropriate.

40 And I'll say this, right over the board, is people want to deal with the police that they know. Whether that be policing at Sherwood or at Toogoolawah, it is those relationships and the rapport which is built between police and the community, without explaining themselves time and time again to each individual new person, people, it becomes very complex and some of these issues are very personal in nature and they don't want the whole world to know about it, so that is why they deal with the one police officer who has the prerequisite or the prior knowledge in relation to that. So that was a circumstance where it was accepted on his evidence, he had concerns about her safety. And the primary role of the police officer is to protect life and property, just not within one location, it's across the State of Queensland and in fact I'd suggest it goes right across wherever the jurisdiction may be or in other areas as well.

CA Thank you, Mr LEAVERS I don't have any further questions.

PO Thank you, Ms FOTHERINGHAM. Mr SCHMIDT.

LR Thank you, Chair. It just want to take you to one part of your evidence where you spoke about or it was put to you that the discipline system and taking the proceedings in the discipline system is prone to secrecy, there's a lack of deterrence and the victim is not advised. Do you recall that?

W Yes, I do. .

10 LR You're a Sergeant of police as well as the Union president?

W Yes.

LR You'd be aware of the Discipline Proceeding Policy 2015 section 10 which requires a PPM at the end of a discipline hearing to advise a complainant of the actual outcome of a discipline hearing.

W Yes.

20 LR Including providing the complainant with actual reasons as to what was behind the sanction, if one was imposed?

W Yes.

LR You'd be aware of a number of de-identified case studies being published by the QPS?

W Yes.

30 LR And that published to all members?

W Yes.

LR And that done as an educational means and as a means of deterrent?

W Yes.

LR And that's done on a regular basis?

40 W Yes.

LR And you'd be aware that matters go to QCAT?

W Yes. .

LR Would you be aware that QCAT decisions are published?

W Yes.

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LR And often they are published by The Courier Mail and other media organisations as well?

W Yes. .

LR And that's disseminated throughout the Police Service?

W And even where they're de-identified, can I say this, in an organisation of 12,000 people it's not too hard to work out who was actually involved.

10

LR And my final point is you're aware that the QPS runs its own Facebook page?

W Yes. .

LR Whenever an officer is stood down or suspended as the consequences of any misconduct allegation that's published on the Facebook page?

W Yes, it is.

20

LR And that includes basic details surrounding the reason for the stand down or suspension?

W Yes.

LR And in recent times there's been quite a number of officers who have been subject to a stand-down as a consequence of computer hacking allegations?

W Absolutely, yes.

30

LR Thank you. Thank you, Chair.

PO Thank you, Mr SCHMIDT. Anything arising out of that, Ms FOTHERINGHAM?

CA Just one moment.

PO Thank you.

CA No, thank you, Chair. My Mr LEAVERS be excused?

40

PO Yes. Thank you, Mr LEAVERS for coming. You're excused.

W Thank you. .

CA That concludes the witnesses for today, Chair.

PO 10 tomorrow?

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CA Yes.

HRO All rise. This hearing is now adjourned.

END OF SESSION