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TRANSCRIPT OF PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

WEDNESDAY 27 FEBRUARY 2019

(14th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Jack Rush QC

Ms Catherine Boston

OPERATION GLOUCESTER INVESTIGATION

PUBLIC EXAMINATIONS PURSUANT TO PART 6 OF THE INDEPENDENT  
BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011

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Any inaccuracies will be corrected as soon as possible.*

1 COMMISSIONER: Yes, Mr Rush.

2 MR RUSH: Commissioner, I think the first witness we desire  
3 to call is Acting Inspector Rowe. I've asked that  
4 Mr Casey also be in the hearing room at the same time  
5 to facilitate the evidence during the course of the  
6 morning.

7 COMMISSIONER: Yes, thank you. Mr Hay you appear for both  
8 witnesses?

9 MR HAY: I do, Commissioner.

10 COMMISSIONER: Mr Hay, having read their statements, as I  
11 see it, neither witness is intending to take issue with  
12 particular facts that have been ventilated thus far in  
13 the public hearing, so it wasn't my intention to  
14 require either of them to take an oath or affirmation  
15 and rather treat them as expert witnesses. Is there  
16 any reason why - - -

17 MR HAY: Yes, Commissioner, we've treated it in that way and  
18 in that respect we've provided the two statements along  
19 the lines that they're being called to give overarching  
20 expert views rather than being witnesses of fact.  
21 Thank you, Commissioner.

22 COMMISSIONER: Yes, we'll proceed that way. Mr Rowe, would  
23 you come forward. It might be convenient - yes, you  
24 can take your notes with you, Mr Rowe. It might be  
25 convenient if we do that via the witness box. Mr Rowe,  
26 have a seat, please.

27 <TREVOR ROWE, examined:

28 COMMISSIONER: Mr Rowe, I think that you weren't personally  
29 summonsed in any event, the summons was directed to the

1 Victorian Government Solicitor, but all of this has  
2 been done at my request of the Chief Commissioner, that  
3 he provide some people to assist us in our  
4 inquiry?---Yes.

5 Yes, Mr Rush.

6 MR RUSH: Mr Rowe, your full name is Trevor Rowe?---That's  
7 correct.

8 You're a detective acting inspector of Victoria  
9 Police?---Correct.

10 Could you just indicate your current role and  
11 responsibilities to the Commissioner?---Yes. So, I'm  
12 currently detective acting inspector at the Centre For  
13 Crime Investigation, which is well-known as Detective  
14 Training School; I've been in that role for  
15 three months. I'm a detective senior sergeant by rank  
16 and I've been at the Academy in that role since January  
17 2018. My role has been, in the past year, almost a  
18 project manager in terms of reforming and redesigning  
19 Detective Training School to a more modulised-type  
20 course.

21 Formally, for the purposes of giving evidence today, did you  
22 prepare a statement with 17 attachments?---Yes, that's  
23 correct.

24 I tender the statement and attachments, Commissioner.

25 #EXHIBIT GG - Statement of Detective Acting Inspector Rowe.

26 What you just raised then in setting out your current  
27 responsibilities; can you just explain, with the  
28 Detective Training School, just explain how personnel  
29 come to have a role of instructors either at the Police

1 Academy if you're aware of it, or within the Detective  
2 Training School, what they go through and what the  
3 process of selection is?---In terms of students or in  
4 terms of people that are teaching, sir?

5 Teaching?---Yeah, sorry. So, I can speak on behalf of  
6 CCI/Detective Training School, is, obviously we're  
7 looking towards getting people that are subject matter  
8 experts that certainly can come in and enhance, I  
9 suppose, the training element to our students that are  
10 obviously coming through the new advanced diploma in  
11 police investigation.

12 I'm just wondering if you could put the microphone just a  
13 little bit closer?---Oh, yeah, sorry, sorry.

14 I saw there have been some instances where people on  
15 promotion, for example, have become instructors either  
16 at the Academy or within the Detective Training  
17 School?---Yeah, again, on behalf of - like, Detective  
18 Training School I speak on behalf of: yes, they could  
19 be sergeants in uniform or preferably detective  
20 sergeants with experience that they can then pass on to  
21 the students.

22 Have you, Mr Rowe, had the opportunity either of reading or  
23 having brought to your attention some of the practices  
24 that have been identified during the course of the  
25 public hearings?---Yes, I have.

26 Speaking again very generally as to the practices that have  
27 been identified, do you have a comment about it?---No,  
28 but I see it as an opportunity for us to learn and  
29 continue to improve our course.

1 I guess one of the things that you identify in the  
2 statement, if we went to Attachment 1 of your  
3 statement, 670; are you familiar with it?---Yes, I am.  
4 I know, you can pick it up on the screen. It's p.89 out of  
5 what?---90 pages.

6 Dealing with what?---That's all around notes, sir, from my  
7 recollection; it was notes that were put together by a  
8 detective senior sergeant at the time, John Hill.

9 So that takes it back into the 1990s, as I understand it,  
10 the late 1990s?---Yes, as best we know, we believe  
11 around 1993, sir.

12 What you've identified in your statement which is on the  
13 following page, at p.90, a bit further down the  
14 page commencing: "Offender descriptions are better left  
15 general rather than specific. You might make them  
16 specific on the crime report depending on what the  
17 witness is saying about the description, as witnesses  
18 may be guessing about height and build or not really  
19 being in a position to judge accurately or, at best,  
20 only at a fleeting glimpse of the offender they are  
21 trying to describe." If one was to look at that and  
22 then consider the evidence that is before IBAC from  
23 detectives and police about not putting offender  
24 descriptions in statements, there is some basis for  
25 that in this learning?---That's all I could find from  
26 the material that I reviewed that was anything close to  
27 what's being heard here, sir.

28 Whilst that indicates the potential at least for that  
29 practice, some of what is said in addition to what may

1 be in the course materials and the like can be  
2 dependent upon the detective sergeant or the sergeant,  
3 or the law instructor that is actually responsible for  
4 the class?---In terms of, sorry?

5 Just looking at it at the moment, specifically in relation  
6 to not putting descriptions of offenders in initial  
7 statements?---Our syllabus says to, but what individual  
8 people say is, yeah, is certainly subject to their -  
9 what they say at the time.

10 We heard evidence yesterday from a former police prosecutor  
11 who left and came to the Bar who was at the Police  
12 Academy, I think in 1985, who indicated that - she  
13 referred to it, her instructor in law: the one thing  
14 that she recalled was being instructed not to put  
15 details of offenders in statements. Now, you're not  
16 going to find that in the class materials, I  
17 suggest?---We haven't been able to, no.

18 But I mean, the likelihood of it being there is remote?---I  
19 agree.

20 Because, if it was written down in those plain terms from -  
21 I appreciate we're going back a long time - but even to  
22 go back at that time, it would be a practice to - you  
23 would say, I suggest - to most police that would be -  
24 well, to many police that would not be  
25 acceptable?---Yes.

26 I suppose what I'm driving at is that that is part of the  
27 problem. Whilst in, I think your statement, you say  
28 you have not found any course materials that suggest  
29 the backdating of statements or the improvement of

1 statements or the like, that is not going to appear in  
2 those course materials?---All I can say is, what I  
3 looked for for the Commission to assist was, there was  
4 no material in relation to that.

5 COMMISSIONER: Which is not surprising, Mr Rowe. You  
6 wouldn't expect course materials to contain an  
7 instruction of an improper practice?---Agree.

8 MR RUSH: So, in that sense, and again, the evidence  
9 yesterday from two police prosecutors of constables  
10 preparing briefs and being instructed by their  
11 sergeants to put something in the brief, put material,  
12 make it better - and the word used was "improve  
13 statements" - as a course of conduct within that  
14 environment, the preparation of briefs in police  
15 stations around Victoria; if that exists, and on the  
16 evidence yesterday it still does, how is that to be  
17 addressed?---I can only speak on behalf of myself, it's  
18 hard to speak on behalf of obviously yesterday, but  
19 certainly - yeah, I'm not sure I could. If you could  
20 rephrase the question?

21 The evidence we had yesterday is from  
22 prosecutors - - -?---Yes.

23 - - - who see this on a daily basis in the courts, that  
24 improving of notes at the direction of a supervisor  
25 was, from their perspective, commonly seen in the way  
26 in which police were bringing prosecutions to court.  
27 And indeed, that it was an increasing problem rather  
28 than a reducing problem from the experience of a very  
29 experienced prosecutor that we heard from yesterday.

1 The way in which that was brought to their attention  
2 was both seeing it at court and, more particularly,  
3 when they were asked to go back for example to the  
4 Academy, or they had people coming in and wanting to be  
5 prosecutors, it would be raised as a real problem that  
6 young police were having pressure put on them by their  
7 sergeants to improve the statements?---Well, sir, I can  
8 only answer on, I suppose, my experiences.

9 COMMISSIONER: Which is?---Certainly on my perspective - and  
10 DDS with all the notes over 80 years is, we agree, we  
11 should be taking lots of notes, and a lot of the  
12 problems that were raised yesterday, and I've read the  
13 transcript, is around making sure we take notes at the  
14 time.

15 We really now have already touched on three different issues  
16 in the space of the first ten minutes, but just in  
17 relation to this notion of improving the  
18 brief - - -?---Yes.

19 - - - we heard from very senior officers earlier this week  
20 about the standard process, particularly with summary  
21 matters, where the informant, the senior constable,  
22 provides the sergeant with an unsigned statement of  
23 what he's proposing to give evidence about, and the  
24 sergeant then makes a number of suggestions about what  
25 should not be in it or what should be in it, and the  
26 informant or the senior constable goes away, amends the  
27 draft, and that process might be duplicated a number of  
28 times until the supervisor is satisfied that it's in  
29 its proper condition and then it's signed?---Yes.



1 That's a common course, is it not?---Yes, it's common to do  
2 draft statements, yes.

3 And - - -?---I suppose I speak on behalf of myself and my  
4 practices over 25 years.

5 But as someone who's now got a responsibility for the  
6 content of training courses, that informs your judgment  
7 about what sort of training's necessary?---Yes.

8 Is there anything in any of the training material that  
9 stipulates or addresses the question, in what  
10 circumstances is it appropriate for the sergeant to say  
11 to the junior officer, go away and correct this part of  
12 your statement or add this to your statement? Is there  
13 anything in any of the training programs that explains  
14 what sort of things is it appropriate to do and what  
15 sort of things is it not appropriate to do?---Not that  
16 I recall off the top of my head.

17 So, it would really then be left to the discretion of the  
18 individual sergeant, and no doubt there would be a  
19 unanimity of view, "I don't see anything wrong with  
20 pointing out to the senior constable that he needs to  
21 include in his statement the time of day at which the  
22 event occurred" or something like that. But what about  
23 if the supervisor says to the constable, "Look, you've  
24 really left an absolutely critical part of your account  
25 out. Where's the evidence or information about this or  
26 that?" Is it all right for the constable to amend the  
27 statement to address something really important and  
28 significant?---Sir, I - my experience is that it's the  
29 person who's writing that statement's statement, so

1           it's critical that that's the person that says that's  
2           true and correct.

3       Yes?---Now, there's grammar and administrative and  
4           professional document part of drafts, so I think that's  
5           important, but again, that is a guide for prosecution  
6           and defence for court, and again the critical element  
7           here is what's in their notes and what that person, the  
8           author, states.

9       Yes, but I'm just trying to explore at the moment at what  
10          level the training currently exists. There's no  
11          training that descends to an examination of what sort  
12          of things it's okay to say to the more junior officer,  
13          "Go away and fix this up", and what sort of things it's  
14          not okay to address?---Yes. The Investigative  
15          Interview Unit that sits under myself at the moment  
16          teaches - has just picked up a lot of curriculum in the  
17          witness statement taking of recruits and we do it at  
18          Detective Training School, they go through all of this  
19          in terms of process and it will be an appendix to my  
20          statement to the nth degree, and again, it's important  
21          that they understand that's their statement they've got  
22          to give, and it's got to be truthful and correct. And  
23          again, we talk about acknowledgments and jurats, and we  
24          talk about all of that type of thing with our recruits,  
25          but we've just recently really picked up and enhanced  
26          that part of our training. I can't speak for the past.  
27        Does that mean, Mr Rowe, that so long as the junior officer  
28          understands that they're only to insert truthful things  
29          into the statement, that there could be quite an

1 extensive ongoing process between the junior officer  
2 and the sergeant at which the statement is continually  
3 improved and added to before it's finally signed off  
4 on?---Yeah, I wouldn't say, like, say "improved" or  
5 "enhanced", like, I wouldn't say that; I wouldn't say  
6 that, I would just say, their statement should reflect  
7 what's occurred.

8 Of course, but assuming that that condition remains  
9 throughout, that it must only be truthful evidence,  
10 there's nothing at the moment in training that suggests  
11 there's any inhibition in the extent to which the  
12 initial draft statement might be altered/added to, so  
13 long as it continues to be the truth?---And again, sir,  
14 I'm happy to check that for you, I'm not 100 per cent  
15 sure around that, you know, back and forth and around  
16 the sergeant checking side of things. We have a BQAC  
17 sergeant checking course as well which doesn't sit  
18 under my position.

19 So, the reason I'm focusing on that is because, if that's  
20 the experience of the sergeant and the junior officer,  
21 that there can be this improvement in the condition of  
22 the statements so long as it remains a truthful  
23 account, then that approach to the improvement of  
24 statements will permeate through both the sergeant and  
25 the junior officer's life in the force?---And,  
26 Commissioner, you keep saying "improvement"; I  
27 say - - -

28 No - - - ?--- - - - you know, the statement should be  
29 truthful to what the notes are and the recollection of

1           that author of that statement, if that makes sense.  
2       Yes?---So, improvement in, it could be grammar, it could be  
3           those type of things, it's important to actually  
4           present - - -  
5       Well, they're not actually my words, Mr Rowe, they're the  
6           words of various witnesses?---Yes.  
7       Like Superintendent Sheridan's words yesterday were "to  
8           enhance the statement"?---Yes.  
9       It's not intended in a pejorative sense?---No, no, yes.  
10      But it's a process of adding to the statement, if it's  
11           incomplete, so long as it's truthful. What I'm really  
12           drawing to your attention is, if that's the process  
13           that the sergeant and the junior officer goes through  
14           on a regular basis early in the junior officer's  
15           career, then that approach will continue on through  
16           their career as their seniority increases and they move  
17           to more serious investigation of crime in different  
18           squads?---Yeah, that's fair.  
19      MR RUSH: Just to put you a bit in the picture, if we could  
20           have a look at Exhibit 649, which is a letter  
21           of February 2009 to what was the OPI, written by  
22           Sergeant Ian Dunn, a police prosecutor. If we go to  
23           the second page - - -  
24      COMMISSIONER: Just a moment. Mr Casey, are you able to see  
25           the screen?  
26      MR CASEY: (Inaudible).  
27      COMMISSIONER: Because I'd like you to be able to follow the  
28           evidence. If you want to, you're welcome to sit at the  
29           Bar table.

1 (Mr Casey sits at Bar table.)

2 MR RUSH: So, you see a little bit further down the page,  
3 the paragraph commencing: "Members of my unit are  
4 frequently reminded the extent of the problem when they  
5 speak to probationary constables at the Academy. We  
6 tell them what we expect of witnesses. When we mention  
7 the absolute importance of telling the truth some  
8 always ask what they should do when they are required  
9 to improve their statements. The junior constables are  
10 caught in a very difficult situation; if they disobey  
11 their supervisors their careers will be at risk; if  
12 they obey them, they'll be making false statements and  
13 would probably be committed to giving false evidence.  
14 The requirement that junior constables should choose  
15 between their job and their integrity is very hard to  
16 reconcile with the claim so often made about  
17 professionalism and integrity of the Force." Now, I  
18 guess that puts it in fairly graphic terms, but it was  
19 a concern that a very senior prosecutor experienced  
20 over decades. Firstly, from the perspective of Police  
21 Command, identifying that practice, I take it, would be  
22 very hard?---I can't speak on behalf of the Command,  
23 but my experience in Detective Training School, I  
24 agree.

25 And addressing it is obviously very hard - but I guess it  
26 may be a question directed more at Mr Casey - but from  
27 your perspective, having regard to your experience, is  
28 there a mechanism to get on top of it on the basis that  
29 it still exists?---And again, sir, that's Mr Dunn's

1 position yesterday. Again, my role currently and the  
2 material that I've provided the Commission, we work  
3 very hard to continue to improve our course, we see  
4 this hearing as something we can continue and evolve  
5 from and I'm thinking of that all the time.

6 I think the position is highlighted by perhaps what has gone  
7 on here in the last three weeks?---Yes, sir.

8 But for a statement being made publicly available in 2017  
9 that clearly demonstrated a practice in that statement  
10 of backdating statements and inserting very, very  
11 important further detail into the statement, this  
12 investigation of police practices would not be taking  
13 place; in a sense, what has been uncovered would not  
14 have been uncovered in relation to those practices.  
15 So, on the basis that the resources and the time cannot  
16 go into that sort of investigation, is it education  
17 that is necessary, and continued education?---Yeah, I  
18 think Victoria Police is always trying to continue to  
19 educate and training our members, definitely.

20 I guess here what is identified - not just through this  
21 witness - is the importance of sergeants in connection  
22 with junior police?---Sergeants ranks is very  
23 important.

24 So, are you just looking at your career - - -?---Yes.  
25 - - - able to detail to the Commissioner how it is that  
26 sergeants are kept up-to-date, how they're monitored  
27 and, importantly, what the nature of the - to use the  
28 word "constancy" of the education process is with  
29 sergeants?---Yeah, that's a very wide-ranging question.

1 Certainly, we have different sergeant courses and  
2 things like that, but certainly it's a big  
3 organisation, sir, so I'm sort of not exactly sure what  
4 you're after there.

5 I think what I'm after in relation specifically is in  
6 relation to this area, of what is a very important  
7 police responsibility, the preparation of briefs for  
8 appearances in court?---Yes.

9 And the importance of the manner in which that is done. Is  
10 there any form, to your knowledge, of regular  
11 instruction and reminding of sergeants in relation to  
12 that?---Yes, and I think that's always a challenge,  
13 sir. There's a BQAC course which a prosecutor could  
14 speak at, but that's a really good course for  
15 sergeants. Again, that continual development and  
16 teaching for sergeants and all ranks is always a  
17 challenge, I think, for any organisations, especially  
18 something as big as Victoria Police.

19 COMMISSIONER: Mr Rowe, which of those courses is it that  
20 you are now speaking about?---Ah, there's the BQAC - a  
21 course that I have done, sir, it's a brief checking  
22 course that you do as part of your sergeant's course.  
23 What's it called? This is a current course, is it?---It's a  
24 current course, yep, from 2001.

25 What's it called?---It's a BQAC - sorry, I should say, it's  
26 the Brief Quality Assurance Course.

27 Have you referred to that as a course in the statements you  
28 made?---No, sorry, sir.

29 So, what is it, it's a brief?---Quality assurance course.

1 Yes. Who is that directed at?---Sergeants.

2 And how extensively are sergeants required to participate in  
3 that course?---Yes, sir, I believe it's part of their  
4 qualification to become a sergeant.

5 Yes, thank you.

6 MR RUSH: And, after completing that course and a person  
7 becomes a sergeant within Victoria Police, just again  
8 from your experience, is there a system of reminding  
9 and updating and, if you like, a continuing education  
10 program?---Um, not that I could say, sorry, right at  
11 this moment, sir, it just doesn't come to my  
12 recollection.

13 I could put it to you like this: as barristers we are  
14 required to get a certain number of points every year  
15 concerning continuing education; is there anything like  
16 that for police?---No, there isn't.

17 Is there scope for it in your opinion?---Um, I think it's  
18 something I've turned my mind to in the education  
19 position I'm in. Pilates instructors have to continue  
20 to improve and develop each year.

21 COMMISSIONER: Just focusing on this question of the  
22 enhancement/improvement of a police officer's  
23 statement. Both Mr Collins and Mr Sheridan in their  
24 evidence recognise that, for the purposes of disclosure  
25 to prosecution and defence for a court case, it's not  
26 only necessary that, if a police witness has made more  
27 than one signed statement, they should all be produced  
28 as part of a brief; but they added that, if a police  
29 officer has an unsigned statement and over a period of



1 time that unsigned statement is improved/enhanced by  
2 the inclusion of important additional information - I'm  
3 not now speaking about changing the time of an event or  
4 putting in the name of the road where an incident  
5 occurred, but some important additional information -  
6 they both said that disclosure requirements would  
7 involve the production of the unsigned statement before  
8 it becomes a signed statement containing that important  
9 additional information. Firstly, do you agree that  
10 that is part of the disclosure obligations?---It's  
11 something I've reflected on in the last two weeks. I  
12 think certainly my experience has been drafting and -  
13 you know, drafting and getting a statement to the  
14 quality you would expect to sign off as true and  
15 correct. What's been mentioned here, that's something  
16 I've turned my mind to because I've personally seen a  
17 draft statement and making sure it's true and correct  
18 as something that's part of that statement, if that  
19 makes sense.

20 But, I'm just trying to get clarification from your  
21 perspective as someone involved in training and the  
22 form that training programs should take, do you agree  
23 that part of the training should include making clear  
24 to officers that, if there's an unsigned statement and  
25 that at some point of time immediately after that  
26 unsigned statement is first put together - let me go  
27 back. The officer's sitting there preparing a  
28 statement; someone looks over their shoulder and says,  
29 "Look, you've left that out, this out", and they make

1 changes to the document as they're going, nobody  
2 suggests that it needs to be kept in its original form,  
3 it's part of the process - - - ?---Statement taking,  
4 yes.

5 - - - creating the unsigned statement. But if there's a  
6 significant lapse of time between the first draft and  
7 the time when the officer goes back and inserts some  
8 important additional information, the view that's been  
9 expressed by the senior officers is, disclosure would  
10 require that initial - do you agree with that?---Yes.

11 So, is there anything currently in training that makes that  
12 clear to officers?---Not that I'm aware of, sir, but  
13 it's certainly been drawn to our attention.

14 The fact that there isn't or there's this level of  
15 uncertainty about that seems to have fed into the  
16 process that was followed in Lorimer; that it was  
17 thought that, so long as what was being put into a  
18 final statement was the truth, it didn't matter that  
19 earlier versions of the document weren't produced. You  
20 can see how the practice evolves to the end result that  
21 even signed statements were not produced?---Yeah, I  
22 agree with what you said.

23 MR RUSH: If we could have a look at Exhibit 689 behind  
24 tab 15 in the statement that you produced, and it's an  
25 extract from the Victoria Police Manual concerning  
26 briefs of evidence. While it's coming up, what the  
27 manual sets out is that every brief has to be  
28 authorised, every prosecutorial brief has to be  
29 authorised, and that's normally authorised by a senior

1 sergeant?---I can't see that, sorry, sir, but um, if  
2 you're telling me that is what's in there.

3 I'm sorry, can we try Exhibit 688.

4 COMMISSIONER: Which attachment to Mr Rowe's statement is  
5 it?

6 MR RUSH: It's attachment 15.

7 COMMISSIONER: Thank you. Do you have your documents there,  
8 Mr Rowe?---Yeah, I'll try and have a look at it, sir.

9 MR RUSH: This is the manual concerning briefs of evidence.  
10 If we could go down a couple of pages, a bit further to  
11 paragraph 4, and on the previous page, at 4.1 at the  
12 bottom. So, here there is reference in the manual to  
13 the checking and authorising of briefs and it requires  
14 a senior sergeant or above to authorise the briefs.  
15 Then over the page, at 4.2, it sets out the  
16 authorisation process and it requires that: "The brief  
17 has been checked as described before the brief is  
18 authorised or not authorised." I take it, if we go  
19 down to 4.3 at the bottom of that page: "That requires  
20 the authoriser to check that the brief is accurate,  
21 includes sufficient admissible evidence to cover all  
22 points of proof relevant to each charge and that there  
23 is a reasonable prospect of conviction being secured."  
24 So, in relation to the senior sergeant that is  
25 authorising the brief, it requires a reading of the  
26 statements?---Yes. Yes, there's the preliminary brief  
27 process as well, sir.

28 Indeed, it's a process that we've heard over the course of  
29 these hearings that is carried out in relation to any

1 police investigation of whatever size, that the  
2 statements will be gone through and checked; that would  
3 be normal procedure for any investigation?---Yes.

4 And the checker of the statements will then look at the  
5 statements to see if there is any correction necessary  
6 by looking at the statements in the brief - just  
7 dealing with police at the moment - whether a  
8 particular witness has left out material that should be  
9 in, whether there is material that should or may be  
10 considered irrelevant, and that a direction may be  
11 given to the member to adjust the statement in the  
12 terms that the checking sergeant or the checking  
13 officer has found as a consequence of the role that  
14 that officer is responsible for?---I can't speak for  
15 other people, I can only say that, if you were to look  
16 at any statement or brief, I can only say that you're  
17 certainly looking to make sure that whatever the notes  
18 and the statement are, are correct to that author;  
19 that's how, like, I would - I can't speak on behalf of,  
20 I suppose, every other person or how they do it or what  
21 their method is to that.

22 Looking at what is required in the manual, that type of  
23 checking process is what is being directed to?---Yes.

24 For example, if there is not enough evidence to obtain a  
25 reasonable prospect of conviction, then either the  
26 senior sergeant in this case will say "brief not to be  
27 proceeded with", or he will send back a note to the  
28 informant to say, this is what is necessary?---Or  
29 there's a multitude of sort of things there, I suppose.

1 So, but on the - if that brief needs administrative  
2 work or if something doesn't marry up with the notes  
3 et cetera, there may be a memo attachment to certainly  
4 do that, and then there's a brief head which says "go  
5 back to the informant", yes.

6 COMMISSIONER: So, what struck me, Mr Rowe, from looking at  
7 the two parts of the manual that you produced: (1) as  
8 you say is concerned with preparation of the brief at  
9 the preliminary stage?---Yes.

10 And the second for the actual hearing; while it focuses on  
11 the supervisor's responsibilities at 3.2 and then again  
12 at 4.1, the passage that you've just been shown,  
13 there's nothing in any of that direction about the  
14 supervisor ensuring that there's a proper audit trail  
15 of the sequence in which information is being provided  
16 or imposing any obligation on the supervisor to ensure  
17 that the brief contains necessary disclosure. Am I  
18 right in saying that, there's nothing in either of  
19 those sections of the manual that talks about that  
20 responsibility?---In terms of the manual, I haven't  
21 gone right - - -

22 If you look at three point - - -?---Yeah, in that part.

23 Understandably, a primary focus is on looking at the brief  
24 to see whether or not the material relied on is going  
25 to prove the case or is sufficient?---Yes.

26 Understandable. But I'm pointing out that the other aspect  
27 of evaluation of the brief is to ensure there's full  
28 disclosure, and I couldn't see anything in either of  
29 those parts of the manual that makes that point?---I

1 agree with you.

2 MR RUSH: And I guess it's stating the obvious, with that  
3 type of instruction in the manual, it is at least a  
4 reminder to both the informant and the person  
5 responsible for checking of the obligations that we've  
6 been discussing?---Sorry, disclosure, the obligation?  
7 Yeah?---Yes.

8 Having that, as the Commissioner described it, that audit  
9 trail in connection with the changes that may be made  
10 to the brief?---Yeah, and again, I can only speak on my  
11 behalf, but the brief head does have an audit trail to  
12 an extent; it will say it's been put in for checking,  
13 sent back, and that's been as long as I know in my  
14 career.

15 That's on the front of the brief?---Brief head, correct.

16 COMMISSIONER: The difficulty, as you would appreciate,  
17 Mr Rowe, is that, once you're into the litigation  
18 process and the prosecutor and the defence are looking  
19 at statements, if there's no audit trail of how - the  
20 sequence in which information found its way into a  
21 statement, it's impossible to tell from the statement  
22 what the process was?---Yeah, I understand.

23 MR RUSH: Can we just bring up Exhibit 633, page 10528.  
24 This is a letter that has become an exhibit with the  
25 Commission of July 2002 from the then Acting  
26 Superintendent at the Prosecution Division to the  
27 Deputy Commissioner of Specialist Operations written as  
28 a consequence of the concern which is identified in the  
29 third paragraph on the first page, commencing: "There

1 may be a significant proportion of members of the Force  
2 who may not always prepare contemporaneous notes. Even  
3 where such notes are prepared, there may be a practice  
4 of these notes being amended for various reasons,  
5 perhaps on occasions at the instance of supervisors.  
6 This may be an established cultural practice, may not  
7 be capable of being addressed merely through the agency  
8 of training courses. There is a legitimate cause for  
9 concern that the above issue may constitute a risk to  
10 this organisation both in monetary terms and general  
11 reputation of the Force." And what it related to is  
12 evidence, again that the Commission has, of constables  
13 going to court and referring to notes that are not  
14 contemporaneous notes, that are added to during the  
15 course of the investigation, even being prepared on the  
16 day of the court. And the evidence - rather a long  
17 question - but the evidence that we have is that this  
18 practice identified here in this letter has continued,  
19 even increased over a period of time, put down to the  
20 pressure that is on police in their general duties.  
21 Now again, I'm sure you will say, "Well, that is not a  
22 practice I'm aware of", but it's certainly one that the  
23 prosecutors have given evidence of. In that sense,  
24 again looking at the notes that have been produced, it  
25 is quite clear that the notes that have been extant at  
26 the Academy refer to the importance of contemporaneous  
27 notes?---Yes, talks consistently about notes; if it's  
28 worth a mental note, it's worth a written note. The  
29 longest memory - the shortest - the shortest note will

1 outlast the longest memory; we've ingrained this into  
2 our detectives for decades. So, I'm not sure of your  
3 question, but I can only say that has been something  
4 that has been certainly taught at Detective Training  
5 School for many years.

6 But any police officer appearing in any court across the  
7 state that is relying on notes will appreciate the  
8 importance of contemporaneous notes?---Correct, it's  
9 about credibility.

10 COMMISSIONER: In the paragraph Mr Rush just drew your  
11 attention to, where the experienced prosecutor is  
12 opining that the contemporaneous notes may not in fact  
13 be contemporaneous, and opines that established  
14 cultural practice may explain this, and it won't be  
15 capable of being addressed merely through training  
16 processes; I construe that as meaning that it won't  
17 necessarily be that the officer who produces notes and  
18 they're not really contemporaneous didn't understand  
19 the obligation, but rather, notwithstanding they  
20 understand the obligation, they still don't do it; they  
21 produce notes saying they're contemporaneous, knowing  
22 they're not and knowing they shouldn't describe them as  
23 such. Assume that that's right, Mr Rowe, that there's  
24 a cultural issue involved also here: do you agree then  
25 with the notion, that's not merely going to be  
26 addressed by having the right training program which  
27 explains what contemporaneous notes must mean; how do  
28 we address that cultural issue if there be one?---I  
29 don't want to assume in here, but - - -



1 No, I'm asking you to assume that?---Yeah. For us, at the  
2 end of the day, as I've explained in my earlier answer,  
3 Detective Training School is proud of how much effort  
4 we do put into notes, so again, that's my - our - I  
5 suppose my position and where I sit in my career.

6 But what I'm really putting to you is, one thing is  
7 learning, one thing is knowing what is the right thing  
8 to do; another thing is ensuring that people who do  
9 know what the right thing to do is continue to do it.  
10 How do we address that latter problem?---Correct, and  
11 it's such a big organisation, that's continual  
12 challenges, I'm sure, to - continually to train and  
13 make sure that what's best practice, that they're  
14 taught, that that's continued through people's careers.

15 I mean, the notion of contemporaneity means essentially,  
16 whilst fresh in the memory, and as has been recognised  
17 that doesn't mean instantaneous recording but within a  
18 short timeframe, within days after the event. So,  
19 that, if the allegation is correct that officers have  
20 frequently produced notes that couldn't possibly meet  
21 the character of being contemporaneous, how do we  
22 address that problem?---Well, whatever notes are taken  
23 at - I suppose it comes back to the magistrate or  
24 Honour to decide whether those notes, why and how  
25 they're accepted. But certainly, best practice and  
26 training with our recruits in witness statement taking  
27 et cetera and Detective Training School is, as you said  
28 earlier, while they're fresh in your mind your memory  
29 drops away, you've got to get them as soon as possible

1 because we want the most accurate available evidence  
2 that we can put in there.

3 MR RUSH: The Commission also has some evidence of police in  
4 court cases, of a failure to disclose highly relevant  
5 material to the defence in the course of preparation of  
6 the brief - putting aside Operation Lorimer - recent  
7 examples where that has been the subject of a superior  
8 court, Court of Appeal and Supreme Court judges' very,  
9 very direct commentary to police about the failure of  
10 disclosure. Is there any system that you're aware of  
11 where that sort of conduct is the subject of criticism,  
12 that that is brought to the attention of police?---Um,  
13 I assume you're talking about Operation Mothballing?

14 That's one of them?---Yeah, certainly, sir, part of  
15 last year's review was to do a training needs analysis,  
16 so part of that review definitely identified that  
17 disclosure was something that's become more and more  
18 prominent to the detectives, and so as a part of that  
19 for the development and improvement of our course,  
20 we've identified that and we're definitely putting a  
21 lot more in in relation to that. We do have judicial  
22 day where we have all the OPP, VGSO, magistrates,  
23 County Court judges speak to our young detectives or  
24 new detectives. But it has been identified, so we went  
25 out to the state and captured that through online  
26 surveys, et cetera, so that's how we went about that  
27 last year to try and continue to improve around  
28 disclosure.

29 So, what you're identifying is that, without specifically

1 referring to officers that may be involved, but the  
2 manner in which that's come to the attention of the  
3 court, what was involved in the defects in process are  
4 pointed out, you say, to detectives across the  
5 state?---Not so much that, it was just, what are the  
6 needs of, you know, the new detective coming through?  
7 It's a lot different to when I did Detective Training  
8 School, technology et cetera, so we just want to make  
9 sure that we're contemporary to the training needs of  
10 the workplace.

11 I guess one of the things that that question was directed  
12 at, if you're talking about how it is used in the  
13 training of detectives and the importance of  
14 that?---Yes.

15 But across the state I would suggest there would be many  
16 police that are completely unaware - you just picked  
17 Operation Mothballing - but completely unaware of the  
18 ire, for want of a better word, of the courts in  
19 relation to that sort of practice and the importance of  
20 some form of communication to indicate to police this  
21 is what's happened?---As I sit here, sir, I suppose I'm  
22 responsible for a certain area of the Police Force, so  
23 it's hard for me to speak on behalf of other areas, if  
24 that makes sense.

25 That might be better directed to Mr Casey.

26 COMMISSIONER: Just while we're on Operation Mothballing,  
27 there are three quite distinct issues that come out of  
28 that analysis of the operation. The first was that the  
29 principal officer, the informant concerned, did not

1 have an appropriate understanding of what the concept  
2 of relevance was to a prosecution; namely, proceeded on  
3 the basis that if it wasn't information that would be  
4 adduced to assist the prosecution case, it wasn't  
5 relevant. So, that on its face suggested some  
6 inadequacy in training for her at least. Second was  
7 her failure to recognise therefore an obligation to  
8 disclose; that is, material which wasn't to be adduced  
9 as part of the prosecution case but nonetheless should  
10 be disclosed. And the third was the failure by any of  
11 the officers around her, including her immediate  
12 superior, to recognise that there was an inadequacy of  
13 disclosure in relation to an important matter; namely,  
14 the fact that a face-fit had been done by the principal  
15 victim, it wasn't produced because it was thought it  
16 didn't bear sufficient resemblance to those charged.  
17 All of those matters will need to be addressed, won't  
18 they?---Yes.

19 And the failure of the supervisor to address the  
20 non-disclosure comes back to my point, that I can't see  
21 enough in the material that has been produced that  
22 makes very clear that part of the supervisor's  
23 reviewing process must be to ensure adequate  
24 disclosure?---Um, we do IMC, which is that (indistinct)  
25 management course. So, again, where we currently sit  
26 is, we have topics on disclosure, but - and again,  
27 we're always looking to enhance and improve that, if  
28 that makes sense, sir.

29 Yes. And, while it's nice to be able to stand in front of a

1 group of sergeants or young constables and have the  
2 benefit of an example such as Mothball, which attracted  
3 great indignation by the County Court Judge about what  
4 had emerged, that can't ever be the yardstick for  
5 improvement, because 99 per cent of the time the court  
6 will not know that there's a deficiency of this order,  
7 it won't come to light. A magistrate may be very  
8 uneasy about the sworn testimony being given by a  
9 police officer, may have grave suspicions about whether  
10 a note's contemporaneous, but no basis for making a  
11 finding that it's not, so we need to move well beyond  
12 those individual cases where a court has found a  
13 glaring example of this. Agreed?---Yes.

14 MR RUSH: Again, this may be a bit better left with  
15 Mr Casey, are you aware of anything by way of survey or  
16 investigation to just get some idea of whether  
17 constables - I've taken you back to material that is a  
18 decade old - just in relation to whether the practice  
19 still exists, whether constables have the time to  
20 complete notes, whether they're still being instructed  
21 in relation to changes to statements?---I can't answer  
22 that.

23 COMMISSIONER: You've noted in your statement that you've  
24 identified from training needs analysis and other  
25 material that the disclosure obligation needs enhanced  
26 training?---Ah, in Detective Training School, which is  
27 what this was targeted at, that's correct, sir, which I  
28 mentioned earlier.

29 MR RUSH: Did you say, I think at the outset, since you have

1 taken up your current position that you are in a  
2 process of reviewing the instructional  
3 material?---Yeah, the whole advanced diploma of police  
4 investigation we've reviewed and we're currently  
5 rolling out.

6 Is it changing in any substantive way?---Yes.

7 And, in what way?---We identified that, if you go on the  
8 70/20/10 sort of concept of learning: 70 per cent, they  
9 say, is in the workplace; 20 per cent off others; and  
10 10 per cent in education. We did a survey which asked  
11 the question, "Where did you learn the fundamental  
12 skills to be a detective?", and 85.9 per cent said in  
13 the workplace or off others. So, what we've  
14 implemented is a coaching process with each student to  
15 ensure that we as detective sergeants, detective senior  
16 sergeants at DDS in fact get out to the workplaces a  
17 lot more into this year and the future to, again,  
18 hopefully influence and engage in the workplace a lot  
19 more, if that makes sense.

20 On the basis that what you're identifying is that, you can  
21 go to the Police Academy or go to the Detective  
22 Training School, but really, your skills are picked up  
23 on the job?---Yes.

24 And there again, the sergeant or the senior sergeant becomes  
25 a very, very important person in relation to the nature  
26 of the manner in which you will go about  
27 investigating?---Their development, yes.

28 I think finally, Mr Rowe, you refer at attachment 4, which  
29 is Exhibit 673 - - -

1 COMMISSIONER: You can have a look in your documents, if you  
2 like, Mr Rowe.

3 MR RUSH: If we go to p.8, it would be a bit hard to pick up  
4 on the screen, but at p.8 there is specific reference  
5 to the task of compiling a supplementary witness  
6 statement?---Correct.

7 Can you just indicate what the nature of this teaching  
8 material is?---In terms of how that?  
9 Where it's used and - - -?---Yeah, sorry. So, our  
10 investigative interview unit team have picked up this -  
11 these sessions and they've - what they're doing is,  
12 obviously obtaining a written statement and then in the  
13 practical element of this is getting the witness in the  
14 assessment to come back and provide further  
15 information, and going through the correct processes of  
16 a supplementary statement with each recruit.

17 So, is this recruit or detective?---This is recruit, this  
18 session plan there, sir.

19 So what they are specifically taken to is, at the bottom of  
20 page 8: "Once a statement is made they exist for all  
21 time in the original state. A witness or police  
22 officer can make multiple statements." Then, at the  
23 next page, the process is there set out for the making  
24 of that additional statement. What I want to take you  
25 to is, though: "Before the process is set out what  
26 would you do in relation to supplementary statement?  
27 Destroy the first statement? No. Write on the end of  
28 the first statement? No. If a typed statement, open  
29 the document and adjust the info? No." So they're

1 clearly, as far as the training goes, addressing what  
2 you can't do. And, whilst that makes very clear the  
3 importance and the nature of a supplementary statement,  
4 on the materials that are before the Commission I think  
5 it's the only area where it's indicated to police when  
6 being educated what you can't do. It's the only  
7 written area of what you cannot do.

8 COMMISSIONER: I think what counsel's putting to you is,  
9 that's a very useful tool that you've employed there  
10 for saying, postulating a series of things that you  
11 must not do. But what he's pointing out is, we could  
12 not find any other area where that mechanism of  
13 instruction's been utilised?---If I could say, there is  
14 definitely material that we have provided around  
15 photo boards, you know, in the identification area,  
16 where it says that if the person isn't identified, that  
17 still needs to be disclosed to obviously defence.  
18 There's also our affidavit part of the hand up brief,  
19 I believe, where it talks about, the fact is you must  
20 have exculpatory evidence and, you know, we're all  
21 about that transparency. So, again, we have lots of  
22 assessments in the field where we say, what happens if  
23 a member touches an exhibit, what are you to do? And  
24 we challenge them, and these are also written  
25 assessments. We say, best practice, you must take a  
26 note, you mustn't hide it, you must make a statement  
27 because - so, and again, there's plenty that I - you  
28 know, they're just a couple of examples where I think  
29 we actually try to make sure that that is covered.



1 We might at some later date come back to you, Mr Rowe, to  
2 give us some assistance in those other areas because it  
3 does seem to me to be a very useful educative tool to  
4 be identifying things that you must not do?---Yes.

5 MR RUSH: I think they are the matters specific to Mr Rowe.

6 COMMISSIONER: I've just got a couple of additional matters,  
7 Mr Rush. Could you look at document 12 in your bundle,  
8 which is the document headed, "Hand up brief."  
9 Page 10978, thank you. This set of instructions is  
10 contained where, Mr Rowe?---My understanding, sir, is  
11 that's on the Judicial College website, but I may be  
12 mistaken.

13 It's your Attachment 12 which, you said, is part of the  
14 Centre for Criminal Investigation training course,  
15 day 8 of phase 2, hand up brief session; is that where  
16 it comes from?---I'm just trying to look at that.

17 Have a look at paragraph 32 of your statement,

18 Mr Rowe?---Yes, sorry. Yes, sorry, sir.

19 So it's part of the material which the Judicial College has  
20 prepared and you use it as part of that training  
21 course?---That's my understanding, sir.

22 If we can just go to that document, the hand up brief. The  
23 question that arises is whether or not that makes  
24 sufficiently clear that if there's been a proper audit  
25 trail kept by the officer responsible for preparing the  
26 brief, and if the supervisor is made aware of that  
27 audit trail, that it's clear that previous statements  
28 made by a witness should also be produced. You see, it  
29 only talks about the statement the prosecution intends

1 to tender at the hearing, so if there's a second or  
2 third statement which contains additional material and  
3 that becomes the witness's statement, that's going to  
4 be the statement that's tendered, not earlier  
5 statements?---Yes. Would I be mistaken, at the bottom  
6 of that - sorry - document.

7 It talks about "any other relevant information in the  
8 possession of the prosecution"?---Yes, right at the  
9 bottom - - -

10 But then it talks about a list of persons who have made  
11 statements that the prosecution doesn't intend to call  
12 or any relevant documents that it doesn't intend to  
13 tender. I wonder whether the question of previous  
14 statements made by a witness that you do intend to  
15 call, whether that's going to get lost in that set of  
16 instructions?---Yes, sir. Certainly, even - we've  
17 reviewed this and the s.30 document, because yes, it  
18 would be certainly better if things were clearer, from  
19 memory, and that's something we've definitely turned  
20 our mind to.

21 Yes. Then coming back to your paragraph 32, if you've still  
22 got it open there, you referred in paragraph 32(c) to  
23 the advanced diploma of police investigation, and  
24 underneath that sub-para you've said: "Discussion  
25 around the disclosure of unsuccessful photo boards. If  
26 you show a photo board and no identification it must be  
27 disclosed. Recent cases have highlighted this as an  
28 issue." What cases were they, Mr Rowe?---I couldn't  
29 answer that off the top of my head, sir. That's the

1 SME - - -

2 But you're aware that there have been recent cases where  
3 there hasn't been a disclosure of an unsuccessful  
4 photo board identification?---Yeah, I could - other  
5 than to say, I rely on people that are taking that  
6 topic to research and make sure that - - -

7 And that's what you've been told?---Yes, and it's in the  
8 session plans too, sorry, sir.

9 Again, that might be something that we explore with you  
10 later. Just finally, at a couple of points in your  
11 statement, if you go perhaps to p.10703, Exhibit 652.  
12 It's p.8 of your statement, Mr Rowe?---I have it, sir.

13 You've referred there and at some other point in your  
14 statement to something with appears in some of the  
15 training modules, this one's in relation to the piece  
16 model: "The statement should be an accurate account of  
17 the evidence that is expected to be given by the  
18 witness in the box." Again, I just wonder what your  
19 comment is, Mr Rowe: might that be misunderstood as not  
20 including, therefore, material which might be relevant  
21 to the case but which the prosecution wasn't proposing  
22 to rely on?---Yeah, sorry, what paragraph is that?

23 It's at the very bottom of the page?---Sorry, just a minute.

24 "An accurate account of the evidence ..." I take your  
25 point, sir.

26 And that appears in some other aspects; again it appears at,  
27 same exhibit, p.10706, in the advanced diploma of  
28 police investigation. The capacity for  
29 misunderstanding there is reflected, I think, by some

1 of the evidence we got from quite senior officers who,  
2 when asked why something would be omitted, said, well,  
3 it wasn't going to be part of the evidence that the  
4 prosecution was going to rely on. Whereas, you would  
5 say, if you're saying to the junior officer or the  
6 investigator, you have to put everything into a  
7 statement which is relevant, and that will include an  
8 account by the witness or part of an account by the  
9 witness which doesn't fit with what the prosecution  
10 contends is the fact?---Correct. All our documents  
11 talk about putting in everything that the witness says,  
12 that's their account, and in detail piece we've taught  
13 this now for a long time and more than ever it's got to  
14 be their, you know, free narrative.

15 Thank you.

16 MR RUSH: There is one matter.

17 COMMISSIONER: Yes, Mr Rush.

18 MR RUSH: At paragraph 2 of your statement, Mr Rowe, you  
19 indicate that in 2011 you were a sergeant at Heidelberg  
20 Uniform Brief and Investigation Support Centre. What  
21 was your experience there in relation to the sort of  
22 issues and practices that we've been asking you  
23 about?---My experiences, sir, were preliminary briefs,  
24 checking preliminary briefs. And again, I've read  
25 Mr Dunn's evidence, but my evidence is that I'm there  
26 to assist junior members in developing and educating  
27 them in terms of putting a brief of evidence together  
28 professionally. I would never tell them to put  
29 something in there that was not true or correct because

1 I'm putting them up for perjury.  
2 Accepting that, were you made aware at the time of any  
3 problems?---No, I wasn't.  
4 Those are the matters.  
5 COMMISSIONER: Thank you, Mr Rush.  
6 MR RUSH: Insofar as it's necessary, can Mr Rowe be excused?  
7 COMMISSIONER: Yes, certainly. Mr Hay have you got  
8 any - - -  
9 MR HAY: Commissioner, could I just make one brief point?  
10 COMMISSIONER: Yes, of course.  
11 MR HAY: There's been reference to - I think it was called  
12 the BQAC, or the Brief Quality Assurance Program.  
13 COMMISSIONER: Yes.  
14 MR HAY: As I'm instructed, that's dealt with under a  
15 different division, not within Mr Rowe's division.  
16 COMMISSIONER: Oh, thank you. Who's that dealt with by?  
17 MR HAY: It may be that we can provide some further material  
18 that covers what is dealt with in that course, because  
19 it does seem relevant to questions that the  
20 Commissioner has been asking, and we'd probably just  
21 seek leave to do that by a further submission or  
22 document later.  
23 COMMISSIONER: Thank you, Mr Hay.  
24 MR HAY: Thank you, Commissioner.  
25 COMMISSIONER: Well, that completes your evidence, Mr Rowe,  
26 thank you very much for your assistance. You're  
27 welcome to stay, but you're excused.  
28 <(THE WITNESS WITHDREW)  
29 COMMISSIONER: Mr Casey.

1 MR RUSH: Commissioner, can I ask for a short break?  
2 COMMISSIONER: You want a short break?  
3 MR RUSH: A short break.  
4 COMMISSIONER: Ten minutes?  
5 MR RUSH: Ten minutes.  
6 COMMISSIONER: Thank you.  
7 Hearing adjourns: [11.27 am]  
8 Hearing resumes: [11.41 am]  
9 MR RUSH: Mr Casey.  
10 <KEVIN CASEY, examined:  
11 COMMISSIONER: Assistant Commissioner, thank you for your  
12 cooperation and assistance. Obviously, the matters we  
13 are exploring can only be successfully addressed with  
14 the full cooperation of you and the Chief  
15 Commissioner?---I understand, thank you.  
16 MR RUSH: Mr Casey, your name is Kevin Casey?---That's  
17 right.  
18 You have provided a statement with, I think in total, 17  
19 attachments for the purposes of giving evidence at  
20 IBAC?---Yes.  
21 I tender the statement, Commissioner.  
22 #EXHIBIT HH - Statement of Assistant Commissioner Casey and  
23 attachments.  
24 You indicate in the statement, Mr Casey, that you have a  
25 responsibility for a delivery division, I think?---I'm  
26 in charge of the People Development Command, which is  
27 primarily based at the Academy with four delivery  
28 divisions within that Command.  
29 In that sense, is that an overall responsibility for

1 education and training?---I'm probably referred to  
2 often as the head of practice for training across  
3 Victoria Police, but that doesn't include all the  
4 training that's undertaken across the organisation.  
5 Does it include the Academy?---Yes, it does. So, there are  
6 four divisions: one's at Airlie at South Yarra which is  
7 the leadership area; there's a foundation division  
8 which does recruits, PSOs and custody officers; there's  
9 a capability division which does specialist detectives,  
10 intel practitioners, road policing, family violence,  
11 promotional programs, centre incident emergency  
12 management, and there's the operational safety training  
13 division.

14 You refer in your statement to Victoria Police having become  
15 a registered training organisation?---That's correct.

16 And I think you indicate that that was in 1997?---Yes.

17 As a consequence of that, trainers or educators need to be  
18 qualified under that regime?---That's correct.

19 And so, does that include all the instructors at the  
20 Academy?---Yes.

21 Also, does that require the courses that are delivered at  
22 the Academy to be in some way authorised or checked by  
23 the regime that is responsible for the  
24 qualification?---Yeah, just to clarify, there's five  
25 registered training organisation qualifications on  
26 scope. My Command actually deliver into three of them,  
27 which is the foundation police diploma, the advanced  
28 diploma of police investigation which Mr Rowe has  
29 talked about at Detective Training School, and the

1 third one is the diploma of intelligence practice;  
2 there are two other diplomas that are taught that I'm  
3 responsible for under the RTO which is the prosecutors  
4 course, a certificate IV I think, as well as a crime  
5 scene examiner's course which is operated out of  
6 forensic science at Macleod. Now, there are a whole  
7 range of other courses that we deliver, they're not  
8 accredited qualification courses, they're  
9 self-accredited courses.

10 So, the course conducted at the Academy for police recruits  
11 is a self-assessment course?---No, that's actually a  
12 qualification.

13 And what is the qualification coming out of that?---It's a  
14 diploma of policing.

15 Sorry?---It's a diploma of policing.

16 Diploma of policing, thank you. So, when a sergeant is  
17 seconded to the Academy for the purposes of taking a  
18 particular course or unit, what does the sergeant go  
19 through to get that accreditation?---So, we - there's  
20 two streams of people, or three streams as you've just  
21 said there. So, we actually have civilian Victorian  
22 public servant instructors as well as police  
23 instructors. Both of those are required when they're  
24 training into the qualification courses to have a  
25 Certificate IV in training and assessment. We do have  
26 people who are seconded in from time to time, they come  
27 off another place that they're attached to and work  
28 with us. The difference there is that they actually  
29 can't assess and they can't evaluate assessments as



1           such, they need to be qualified.

2       I take it, you too have been brought up-to-date with the  
3           nature of the evidence around police investigation  
4           practices that have been the subject of interest here  
5           in the Commission?---Yes, I am.

6       Overall, in relation generally to the practices that have  
7           been the subject of that interest, do you have any  
8           general comment to make about their existence or  
9           non-existence, whether they continue or whether they  
10          don't?---Well, I'm concerned at what has been elicited  
11          from the hearings to the extent that I would need to go  
12          back and actually see what further we can do to address  
13          those issues that have been ventilated here.

14       When you say go back to see what you can do, do you in your  
15          position have anything specific in mind?---Mr Rush, the  
16          one thing that often concerns me is that all roads and  
17          all faults lead to training. There's not one enquiry  
18          or one fault that occurs out there that isn't seen as a  
19          remedy through training. So, when I actually say that  
20          I - I turned my mind to this before I actually - the  
21          hearing started, obviously, and I think I first became  
22          alerted in your opening address when there was some  
23          form of mention of training, so that attracted my  
24          attention very early. So, sometimes training isn't the  
25          only answer, because people just think that we can have  
26          a group of people in the classroom and someone will  
27          stand up the front and they'll be taught the rights and  
28          wrongs - there's a cultural dimension to this, so  
29          that's why I say that we probably need to give some

1 thought as to what options we have from what's been  
2 learned by this series of hearings.

3 As I understand the nature, or one of the tasks that you  
4 performed in relation to preparation for giving  
5 evidence, it was to go back to see what existed in the  
6 files at the Academy in relation to training?---That's  
7 right.

8 I think the earliest that you can go to is the early  
9 1990s?---As far as the foundation course goes, yes.

10 One of the documents that you came across is at tab 12 of  
11 your statement which is at Exhibit 664?---So,  
12 paragraph 12, is it?

13 Tab 4. I think you may have referred to it in your  
14 statement, but I was just going to bring it up on the  
15 screen. If we can go in a couple of pages.

16 COMMISSIONER: There to your right, Mr Casey?---Yes, they  
17 look like detective training notes that I've extracted.

18 MR RUSH: Yes, this concerns armed robbery?---Yes.

19 If we go into I think what would be the third page, the next  
20 page and the next page, and down the bottom - the  
21 previous page. Down the bottom of that page it says:  
22 "The investigation of armed robbery demands persistent  
23 painstaking police work. The success of such  
24 investigation depends upon the ability of victims and  
25 witnesses to describe offenders." Then, over the page,  
26 it speaks about the way in which witnesses can act  
27 after an armed robbery. At about the sixth-last line  
28 what is underlined: "Until the arrival of the police  
29 little or no thought is given to the matters of

1 paramount importance to the investigation, descriptions  
2 of offenders and registration number of the getaway  
3 car. If descriptions are discussed at all, witnesses  
4 tend to accept details suggested by other witnesses.  
5 The result is that the police receive a garbled  
6 composite description." Here, as you've probably -  
7 that is, before IBAC as you probably understand,  
8 dealing with specifically the Armed Robbery Squad, the  
9 practice that has been identified when taking  
10 descriptions from people the subject of armed robberies  
11 was not to put detailed descriptions at all in first  
12 statements, which would rather fit in with the training  
13 that was extant at the time of this document at the  
14 Academy?---So, I've got no independent recollection of  
15 the practices of the Armed Robbery Squad. My reading  
16 of that actually is about isolating and detaining of  
17 recording witnesses at the first opportunity, of being  
18 alert to the fact that before the police may get there  
19 witnesses could be contaminated. So, that's an  
20 important consideration when you first get there, to  
21 try and avoid that contamination effect.

22 Save that, what is set out in the following pages of this  
23 particular document does not indicate separation of  
24 witnesses, it talks about some form of personal  
25 description form that should be left with bank tellers  
26 and the like that were the subject of armed robbers.  
27 Then sets out, on the following page, it does set out  
28 witnesses at the scene, locate, separate, detain.  
29 Obtain names and addresses, further descriptions,

1 statements, identification of offenders by physical  
2 features, clothing, masks, weapons and the like. The  
3 importance of statements, descriptions in statements,  
4 when one analyses between what we've gone to and what  
5 is here, what I'm putting to you is that it may be  
6 thought there's some leeway between the way in which we  
7 recognise a proper statement should be taken and the  
8 way in which police are being instructed; that  
9 witnesses at the scene of an armed robbery are probably  
10 going to provide police with a garbled composite  
11 description of offenders?---So, my recollection going  
12 back into the 1980s is that bank robberies and TABs,  
13 and there were large scale armed robbery - there was an  
14 epidemic I think in those days. One of the banks were  
15 actually quite proactive in their staff. The banks  
16 would give their staff description pads in the form of,  
17 you know, a body identification and prompters there.  
18 My understanding is that the staff there, that is the  
19 first thing that they would be required to do after a  
20 robbery, so the banks were actually quite proactive to  
21 try and ensure the witnesses were focused on writing a  
22 description down as quickly as they could; that's that  
23 bit. And then the role of the police officer obviously  
24 would be, when they came, to initial panic description,  
25 and that could be a composite of a number - you know, a  
26 number of descriptions that are provided to them so  
27 they can put it over the air, but then at some point in  
28 time a statement would be taken from them.

29 You're no doubt aware, and as recently as yesterday, we've

1 had evidence from police officers and former police  
2 officers that they were taught at the Police Academy  
3 not to put descriptions of offenders in first  
4 statements. I think you've indicated that you were  
5 there in 1979, at the Police Academy?---Yeah, I  
6 graduated in 1978, yeah.

7 And you don't recall being instructed along those  
8 lines?---No.

9 You agree that it's not a proper practice?---I agree it's  
10 not a proper practice.

11 Then, accepting the evidence of the officers, from Homicide  
12 Squad officers, to a person yesterday who was there in  
13 1985, and she indicated one thing that she remembered  
14 about the course was that instruction. How does it  
15 happen?---Doesn't make sense to me.

16 But, accepting - I appreciate it doesn't make sense, and the  
17 instruction no doubt doesn't make sense on any  
18 legitimate basis, my question really is, how does it  
19 happen that people attending the Academy can give  
20 evidence that that is what they were instructed?

21 Accepting that they were, how can it happen that an  
22 instructor can give that form of education to potential  
23 police officers?---Well, I obviously can't contradict  
24 the evidence that's been provided that some people did  
25 learn it at the Academy. As to how that did happen,  
26 that may well be that it's an independent instructor  
27 who has given that evidence or that advice to students.  
28 What I'm not aware of is the rationale behind it.

29 COMMISSIONER: Assistant Commissioner, a couple of officers

1 have ventured their opinion for the rationale and one  
2 might have thought, listening to their evidence, that  
3 that explained their own personal approach. They said  
4 victims often, in the stress of the moment, violent  
5 offence, will give an account of the description which  
6 is not really a good one because of their emotional  
7 state and therefore it's better not recorded in their  
8 statement but somewhere else for later consideration.  
9 What do you say as to that?--My recollection of the  
10 training, I recall it when I was a recruit and I recall  
11 it when I was at DTS, and I recall it when I was an  
12 instructor at DTS that one of the first sessions in the  
13 DTS courses was a role play that occurred, and it was  
14 designed to startle everyone in the room. A firearm  
15 with a blank cartridge was discharged and there was  
16 pandemonium and the offenders were dressed in various  
17 disguises; they ran in, firearm shot, they exited the  
18 room. So, the bit there was actually to demonstrate to  
19 us and the detectives - was that people's memories will  
20 be fallible, and that, that's okay because in the end  
21 the job is actually to understand that, but still  
22 nevertheless you would take the descriptions that they  
23 would provide because there may well be some nexus in  
24 what they say, that could be the nexus between what  
25 they've seen and - the majority of what they see might  
26 be wrong and there might be something that actually is  
27 a nexus that then facilitates us to take warrants out  
28 to look for particular things. So, that's what I hope  
29 on answering that question.

1 Yes. But what it means, the fact that we had officers  
2 giving evidence that either currently or not in the  
3 distant past occupied fairly senior positions within  
4 the Force and ventured that explanation, conveyed the  
5 impression that they thought investigators in taking a  
6 statement have a sort of a discretion as to what  
7 constitutes relevant information from the witness.  
8 One, for example, opined, if the witness was saying  
9 there was a double-barrelled shotgun and the CCTV  
10 footage that could be shown to the witness showed that  
11 it wasn't, then you wouldn't put the witness's  
12 description into the statement. Another opined that,  
13 if the witness had given an account, part of which was  
14 simply impossible, then you wouldn't put that into the  
15 statement, all of which conveyed the impression that  
16 there are differing views about the obligation to  
17 record relevant information. Do you want to say  
18 something about that?---Yes. I think that you've made  
19 the point there are differing views about what people  
20 think is relevant and what's not relevant. My personal  
21 perspective was, start at the beginning and finish at  
22 the end and everything goes in regardless. That's my  
23 personal view.

24 Yeah, and most of your colleagues occupying very senior  
25 positions have said exactly the same thing, but one is  
26 left with the uneasy sense that that's not a universal  
27 view, that you put everything in?---Yeah, I accept that  
28 people have said that, Mr Redlich.

29 MR RUSH: Part of the evidence also is, from looking at

1 Operation Lorimer, that the Homicide inspector who was  
2 in charge of Operation Lorimer, in effect his 2IC who  
3 was a detective senior sergeant at Homicide, were  
4 unaware of the practices of some of the Homicide  
5 detectives at least who were in the habit of not taking  
6 or not putting full descriptions in statements taken  
7 from witnesses. That also perhaps highlights the  
8 difficulty in relation to detection of these practices  
9 from a more senior Command level. Accepting that, how  
10 is it addressed? I guess at least the two matters you  
11 might care to comment on: (1) the practice could still  
12 exist and it's not being detected, and that, despite  
13 training and non-acceptance, even back in 1998 of the  
14 practice, it existed. So, how do police come to grips  
15 with that?---I suppose, not to say tritely, most of my  
16 training was in the last century and I think we've come  
17 a long way since then and there's still an opportunity  
18 to improve. I agree, it is difficult if you haven't  
19 got it in front of you or, you know, as the senior  
20 members are reviewing briefs, if it's not in front of  
21 them, it's not there. I suppose my experience in the  
22 superior courts is that informants' notes especially  
23 and investigators' notes are meticulously reviewed by  
24 the prosecutor as well as open to defence and, if it's  
25 not picked up by there, it is a difficult thing to  
26 highlight.

27 Appreciating that comment, the questions that were asked of  
28 the previous witness concerning the checking of briefs,  
29 in general terms what was put to the witness, that a



1 brief be checked by a senior sergeant at a more local  
2 level, or in a bigger operation, someone is responsible  
3 for checking the statements of the brief, seeing that  
4 they're correct and potentially bringing together -  
5 sorry, and potentially going back to a member to  
6 correct something or to suggest something after an  
7 analysis of statements. That, I take it, is a practice  
8 that is common in investigation?---Could you just  
9 rephrase that a bit for me, it's a little bit ...

10 Taking it one step at a time: brief checking occurs - at  
11 every level of whatever type of investigation, brief  
12 checking is fundamental?---Yes.

13 And the brief checker will read the statements that make up  
14 the brief?---Yes.

15 Because it's the responsibility of the brief checker, a  
16 number of matters: (1) to look for corrections in  
17 statements where statements may be wrong; that needs to  
18 be pointed out?---Well, that's a hypothetical one, I  
19 don't know if I can answer that accurately. I would  
20 think that in a general sense when someone's checking  
21 for a brief, if it's a complex brief for instance,  
22 they'll be looking for, are there any gaps, is it -  
23 does one witness say one thing and does another witness  
24 say something else and is there a gap there - that's  
25 one hypothesis.

26 And, taking that scenario, if one witness says something and  
27 there's a gap in the evidence between that witness and  
28 another witness who was there at the same time, what  
29 does the brief checker do in relation to rectifying

1 that situation?---Again, that's hypothetical, that  
2 depends on a whole range of things, and it could be  
3 that - so I'm hypothesising here, I'm struggling to  
4 probably give you an answer because I can't sort of  
5 draw upon any actual knowledge that I have, but it may  
6 well be open that, if there's a gap there, that the  
7 investigator or someone goes back to a witness and,  
8 using open-ended questions, attempts to maybe elicit if  
9 there was any further information that they could  
10 provide or clarify in their statement.

11 Let me give you a specific example where there are a number  
12 of police witnesses to a dying declaration, and one  
13 police officer says, "I heard Senior Constable Smith  
14 ask the particular person who's responsible for the  
15 dying declaration this question and I heard the person  
16 say back this answer", and that is not in Senior  
17 Constable Smith's statement. What's the brief checker  
18 do in that?---I'd have to think very carefully, because  
19 whatever they do say if they go back to that witness  
20 could end up influencing the witness on something that  
21 they may not have any knowledge or notes of, so in that  
22 scenario that you put I would be thinking very  
23 carefully how I - how that might well be covered, and  
24 it may well be that it's difficult. I think the  
25 important thing to say, is that, witnesses effectively  
26 are the source of truth in the witness box; so, if  
27 there was any untoward behaviour or inappropriate  
28 behaviour by any police officer, for instance, that's a  
29 very dangerous area that a police officer would put

1           themselves into.

2       Accepting that, what I suggest is, for the person charged

3           with the preparation of the brief, that would be

4           automatically something that that person would feel is

5           necessary for clarification?---They may well do, yes.

6       And the way in which it is clarified, in those

7           circumstances, is to go back to the constable that is

8           alleged to have been the recipient - asked the question

9           and received the information?---That may well be the

10          case.

11       And that would be the natural way of doing things?---I agree

12          with that.

13       That's an example, that's part and parcel of the obligation

14          on the senior sergeant or whoever is responsible for

15          checking the brief?---I won't disagree with that.

16       COMMISSIONER: Just, if I may interrupt you, Mr Rush. (To

17          witness) And that's merely a process at a more complex

18          level of a police investigation that's reflected

19          day-to-day with the sergeant and the junior constable

20          in the summary matter where the sergeant, as Mr Rowe's

21          explained, looks at the constable's draft document and

22          sees deficiencies in it?---So, it depends on what the

23          deficiencies are, I suppose, Mr Redlich. If it's just

24          the way that the statement's set out and it's missing

25          obvious things like time, date, location, other people

26          present, that may well be a matter for clarification.

27          But it may also be that, if there are things that the

28          checker becomes aware of in terms of conversations

29          that's not recorded, well, there's a difficult - that's

1 a difficult, a dangerous area to start going into.  
2 What does the sergeant do then?---Not authorise the brief.  
3 I don't follow why, because there's a deficiency in the  
4 police officer's statement - unless that deficiency is  
5 the critical piece of evidence necessary to  
6 substantiate the case; is that what you're  
7 assuming?---That's what I'm thinking, yes, if the  
8 points of proof are not covered.  
9 If it's a critical piece of evidence, proof of which is  
10 necessary to obtain the conviction?---Yes.  
11 So, do you think most sergeants would do that; would say,  
12 brief not authorised, rather than say to the junior  
13 officer, "Your proof is deficient at the moment. To  
14 get a conviction this evidence is necessary, did it  
15 occur?" Officer says, "Yes", go into their statement.  
16 Isn't that the likely outcome?---I would say - I would  
17 say that, if I was in that position, I would want to -  
18 I would want to know that, if it's just a part about  
19 the description in the statement or the formatting,  
20 that's one side of it. If it was deficient because the  
21 informant didn't cover all the points of proof in his  
22 questioning, if there was no evidence of that, that  
23 certainly would be fatal to the brief.  
24 What started this discussion was the fact that this is a  
25 process that exists at the most basic level of criminal  
26 investigation with summary matters where there is a  
27 communication between the police officer and their  
28 supervisor about the adequacy of the material. I  
29 mentioned to Mr Rowe, Superintendent Sheridan talked

1 about enhancement of the statement, Sergeant Dunn had  
2 talked about improvement, not in a pejorative sense,  
3 but simply as the process of ensuring the ultimate  
4 statement contains everything it should; that that  
5 practice continues on as we escalate up into the Major  
6 Crime Squads and the more serious crime, that  
7 investigative process is likely to continue?---I don't  
8 know how I can answer that, sir, I'm sorry.

9 Investigation and witness statement taking and  
10 informants' roles, it is a craft, they actually develop  
11 it as they - if that's what you're asking here.

12 Yes?---That's right, so.

13 This depends on, it requires both the individual officer and  
14 their supervisor to have a very clear sense of where  
15 the line has to be drawn in terms of what can be added  
16 to a statement that's already been drafted or  
17 made?---Yeah, precisely.

18 And where's that line to be found? Is it in any of the  
19 training material that you've cited?---No, it's -  
20 it's - listening to Mr Rowe this morning, quite clearly  
21 when we're talking about supplementary statements,  
22 we're trained to say, this is what you do, this is what  
23 you need to do, this is what you need to consider, this  
24 is what you do now, you will be accountable for in the  
25 future. So, that's probably a reflection now of the  
26 changing way that we are doing training in terms of it  
27 being in the notes so that members do understand that.  
28 In a practical exercise sense, for instance, if they're  
29 doing prac exercises, sometimes we'll set up, like,

1 crime scenes and things like that to deliberately draw  
2 a trainee or a recruit into making a mistake as a  
3 learning outcome.

4 Yes, Mr Rush.

5 MR RUSH: Just going back to a question previously this  
6 morning in the scenario that we're talking about, a  
7 trap, and an easy trap, is to send a direction back to  
8 improve the statement?---If it's as blunt as that,  
9 that's a trap.

10 One of the documents that's before the Commission is  
11 Exhibit 633, p.10438. This is a briefing note from a  
12 sergeant prosecutor - not one, I should say, that the  
13 Commission has heard from - indicating in 2003 his  
14 experience having been lecturing probationary  
15 constables for about four years. At item 4, his  
16 experience: "Changing statements: The majority stated  
17 that there occasions when they were instructed by  
18 supervisors to change their statements on briefs, to  
19 add untrue material, usually by adding questions that  
20 were not asked or by adding the caution rights prior to  
21 conversation. From some of the questions I was asked  
22 it appears that many sergeants do not have the  
23 knowledge of court experience to properly assess the  
24 briefs." Now, that is the experience of someone  
25 obviously on a regular basis going to the Academy and  
26 speaking to probationary constables. Is there anything  
27 that is done to, when the opportunity arises, to check  
28 with probationary constables what their experiences are  
29 in matters such as this over the course of their total

1 training?---So, what I can talk about in current  
2 procedures, is that, we actually - just to sort of give  
3 you an overview, the constable course is a 31-week  
4 course now, so they'd have three field placements  
5 during that course, so that's why it's expanded out  
6 to - it was previously five months sometime back. So,  
7 after they do their designated training workplace  
8 placements they come back and they're actually  
9 debriefed and we will look for things like that; we  
10 will look for inappropriate behaviours or inappropriate  
11 workplace practices, and especially if management of  
12 those stations is not proper, we'll consider taking the  
13 status off that particular police station so they  
14 receive no recruits until we're satisfied that any  
15 issues that we've identified have been rectified. So,  
16 that's what we do at the moment. I can't say, I'm not  
17 sure when that was actually made, but I accept that on  
18 face value that's a concern for the author obviously,  
19 but I'm not sure what the date was so.

20 The date of that's 2003?---Okay.

21 But, as I indicated to the previous witness, the Commission  
22 has evidence, from prosecutors, that nothing changed,  
23 and as far as note-taking is concerned and  
24 contemporaneous notes, if anything, it got worse rather  
25 than better because of the pressure of time, no  
26 overtime allowed for the making of notes and the like.  
27 What I'm driving at, Mr Casey, is, is there any form  
28 of, say six months or a year out - let me withdraw  
29 that. It is unlikely that a probationary constable

1 that has been seconded to a police station during the  
2 course of the 32 weeks will be responsible for a brief;  
3 is that not correct?---Generally unlikely I would  
4 think, yes.

5 So, moving on after a year or 15 months, is there anything  
6 that has been done or anything that can be done to  
7 check on the experience of graduates from the  
8 Academy?---I'd probably have to give some thought to  
9 that, to be frank, it's probably a lot larger than just  
10 saying that we will do a thing or series of things.

11 We might follow up on that. You would agree that, for a  
12 junior constable in a police station to be given a  
13 direction along the lines that is indicated there, it  
14 would be almost impossible for that constable to deny  
15 the direction from his or her supervisor?---There's  
16 certainly a power imbalance and we're often conscious  
17 of that; but they're actually there to learn, and we  
18 would hope that they are learning in an appropriate  
19 way.

20 COMMISSIONER: Experience in the field or on the street is,  
21 after a certain period of time, going to overtake any  
22 of the learning acquired at the Academy, isn't  
23 it?---Yeah, that's right, sir. I think Mr Rowe did  
24 talk about it, that the education/academic sector say  
25 that, yes, they'll only ever learn 10 per cent in a  
26 training environment and they'll learn 20 per cent from  
27 watching and 70 per cent from doing. And, quite  
28 clearly, that's an issue of concern if these matters  
29 are still alive today.



1 MR RUSH: It was raised this morning, is there any potential  
2 for some form of continuing education of sergeants?---I  
3 haven't turned my mind specifically to that. There are  
4 some things that we've got in train now. We actually  
5 also see the senior constable ranks, so the first  
6 constable - after 12 months when they're confirmed they  
7 become a first constable up to the point of sergeant.  
8 There's nothing in there at the moment that actually we  
9 have got in terms of delivery to them. We're actually  
10 trying to design - well, I'm saying, well, not trying -  
11 we are in the process of designing a program to  
12 actually bring them back into the - because they're the  
13 ones that probably, apart from sergeants, they're the  
14 most influential because they're the ones working with  
15 the members at the frontline, so that's one aspect.  
16 Mr Rowe talked about the investigator management course  
17 which is the sergeant level in terms of detective  
18 training, refreshing when they come back there, so  
19 we're in the process of reviewing that. We're  
20 reviewing - there's been various words - retention,  
21 Constable Development Course, it's now called Taking  
22 Charge: they come back 12 months approximately after  
23 they graduate, we're looking at reviewing that in the  
24 near future. We've just redesigned the diploma, so  
25 that's the next step on that.

26 And what happens when they come back after  
27 12 months?---Well, at the moment it's probably more  
28 about a refresher, there's no assessment component for  
29 a start, and it probably updates and things that could

1 be bolstered and that's why we actually wanted to  
2 review that part of it as well, otherwise it's  
3 meaningless just bringing them back to sort of have an  
4 update and re-engage with their colleagues, so that's  
5 changed significantly over the years, but we think that  
6 we're going to go back and revisit that.

7 It was mentioned by the last witness in answer to a question  
8 on specifically Operation Mothballing, were you aware  
9 of that prior to the IBAC Commission hearings?---No.

10 COMMISSIONER: Did that strike you as odd, that it hadn't  
11 been drawn to your attention? Because, on its face, it  
12 raised some serious questions about the adequacy of  
13 training?---So, I'm not saying, sir, that it probably  
14 hasn't been brought to the attention of the learning  
15 designers or, you know, the Detective Training School  
16 or the foundation training area, in terms of the  
17 disclosure provisions, and disclosure provisions are  
18 way more prescriptive now than what they were when I  
19 was an operational member, so that would have been  
20 brought to our attention, I'm sure. As I say, there  
21 are a lot of outcomes of enquiries and debriefs and  
22 things like that that come to us to review and to  
23 implement into training.

24 So, I'm sorry, you say that the disclosure obligations are  
25 now quite prescriptive?---I believe so, yes.

26 Where are they to be found, Mr Casey?---Well, I can't  
27 actually - - -

28 I couldn't see them?---I'm not a subject matter expert, but  
29 it's - there is a section in the Criminal Procedure Act

1 or something that talks about what needs to be  
2 disclosed.

3 Oh, I see. I meant - I'm sorry, I thought you were talking  
4 about training methods. I raised with Mr Rowe, I  
5 couldn't see anything in the documentation produced  
6 that specifically focused on the disclosure  
7 obligations, other than the hand up brief passage I  
8 took him to?---Okay. I thought there was something  
9 about it, um.

10 We'll obviously explore that with you later, thank  
11 you?---Yes, okay.

12 MR RUSH: Is there not some form of program or system within  
13 Victoria Police that, when something like Operation  
14 Mothballing goes so wrong in court, of bringing that to  
15 the attention of police members?---So, in relation to  
16 that particular matter, I can't say, but certainly  
17 there's probably - there are a number of enquiries and  
18 a number of things that come to training, come to my  
19 world all the time to actually - this was an issue that  
20 was found as a deficiency in something and there's an  
21 organisational accountability record that we've got  
22 something there to implement into training.

23 With that issue, and I'm not being critical of anyone  
24 particularly involved, but there was a critical piece  
25 of information in a criminal trial that was not  
26 disclosed because the detective indicated that she did  
27 not know it should be. Then, is there no way that -  
28 and there are other instances the Commission is aware  
29 of - is there no way of highlighting what may be

1 learned as a consequence of that sort of experience,  
2 highlighting it within the Police Force?---That's a  
3 good point. I've actually turned my mind to it during  
4 the proceedings, and one thing that I see as a gap is  
5 that we aren't as well connected I think. Even though  
6 the Detective Training School might, with its judicial  
7 day and we've got a professional relationship with IBAC  
8 and the former OPI and things like that, but there's an  
9 opportunity obviously there to exploit a greater  
10 relationship with the prosecutors, and that includes  
11 the OPP as well, because they're the people that are  
12 seeing something going on in court and it may not  
13 necessarily actually come back to the organisation, it  
14 might be just dealt with in isolation. That's what I'd  
15 turn my mind to.

16 COMMISSIONER: There are difficulties in people who are  
17 working within an organisational structure, whether  
18 it's the Victoria Police or OPP, in raising concerns  
19 about things that they've observed at firsthand. So,  
20 for example, in Mothball, the issue that arose was not  
21 just about the individual informant who plainly enough  
22 had a quite distorted view of the disclosure  
23 obligation, but those around her and above her, none of  
24 whom seemed to think that there was any need to  
25 disclose to the defence that a face-fit had been  
26 conducted. Does that not suggest a lack of  
27 understanding by those in a supervisory capacity as to  
28 their obligation to ensure disclosure?---So, if I can  
29 just unpack that: yes, I agree with what you're saying.

1 I asked Mr Rowe, I couldn't see anything in the sections  
2 dealing with authorisation of the brief, supervision of  
3 the brief, that talk about the need for those  
4 overseeing an investigation to ensure, (a) there's a  
5 proper audit trail of how information has been  
6 gathered, and more importantly again, that there's been  
7 full disclosure of everything that's been gathered. Is  
8 that something that should work its way into the  
9 material?---It's not without its challenges, but  
10 certainly I would agree that we need to explore that  
11 more to see where we actually go with it.

12 MR RUSH: When Mr Rowe was giving evidence he was  
13 particularly taken to a training document which set  
14 out, in relation to supplementary statements, what you  
15 don't do. Whilst he pointed out there are other  
16 instances where what you don't do may be involved in  
17 training, you would agree, firstly, that that is a  
18 particular highlight of that teaching; for police  
19 officers to know, together with what you do, what you  
20 don't do. And, is that not something that could be the  
21 subject of more concentration and training?---Yes, I  
22 agree it would be.

23 Just going back to the point raised under Operation  
24 Mothball. In brief checking is there any system or  
25 requirement for the checker to go to material that is  
26 not being disclosed?---Not personally aware. I'm  
27 afraid it's been a long time since I was brief checking  
28 and that was - that was into the 1990s, I think.

29 If there isn't, perhaps there should be?---Well, certainly

1           we would explore that if it isn't, yes.

2           They are the matters, Commissioner.

3           COMMISSIONER: Mr Casey, both you and Mr Rowe in your

4           statements said, in relation to the issue of

5           descriptions of offenders being omitted from

6           statements, you both referred to the fact that such

7           descriptions are usually or, Mr Rowe said "invariably",

8           also recorded in other documents such as police notes,

9           patrol duty returns, diaries, LEAP reports and the

10          like. I don't quite follow: how does that bear upon

11          the issue of a witness's statement setting out the

12          description?---I'm sorry, sir, could you just ask me in

13          a different way?

14          Look, have a look - - - ?---I understand what you're saying

15          about all the supplementary material.

16          Have a look at the very last paragraph of your statement,

17          Mr Casey?---Yes, I've read the statement.

18          You plainly state: "The description should be included in

19          the original statement by the witness." Then, what is

20          the significance of the fact that it might also be

21          recorded elsewhere?---Well, because official - well,

22          panic descriptions, original handwritten notes of

23          descriptions as witnesses conveying to them,

24          conversations over D24, the LEAP report, so those

25          descriptions will go into those documents. So, what is

26          the purpose? Well, ultimately, if it goes in the

27          witness statement, it's declared and that's the

28          evidence that will be given by the witness.

29          Yes. But then, if there's a challenge to it, then it's

1           corroborated by other documentation if it was  
2           contemporaneous with the event?---I agree.  
3       Nothing else, Mr Rush?  
4       MR RUSH:  No, Commissioner.  
5       COMMISSIONER:  Mr Hay?  
6       MR HAY:  I have one, if I could, Commissioner.  
7       COMMISSIONER:  Yes, certainly.  
8       <EXAMINED BY MR HAY:  
9       Mr Casey, you were asked by the Commissioner about the  
10           process of brief authorisation, and I think you  
11           referred to a term "points of proof".  Can I put to you  
12           a scenario where somebody puts up a brief and, let's  
13           say, there's a point of proof that's just not covered  
14           at all.  Would there be anything improper in going back  
15           to the junior officer and saying, "There's nothing on  
16           this particular point, do you have any information that  
17           you could put into the brief about that  
18           issue?"?---That's one option, yes.  
19       And, so long as it was recorded in a proper way, would there  
20           be anything improper in that suggestion and then that  
21           being followed through?---I wouldn't think so.  
22       COMMISSIONER:  Just that, the sticking point is, so long as  
23           it's recorded in an appropriate way.  
24       MR HAY:  Quite.  
25       WITNESS:  I'd agree with that.  
26       COMMISSIONER:  That's the dilemma.  
27       MR HAY:  Quite, Your Honour.  I'm not seeking to duck around  
28           that issue, I think it was a little unclear in the  
29           earlier exchange.

1 COMMISSIONER: No, no, agree.  
2 MR HAY: Thank you.  
3 COMMISSIONER: So, Mr Casey, thank you for your attendance  
4 and your assistance. Tomorrow afternoon, as I  
5 understand it, counsel assisting will engage in some  
6 closing submissions which I understand will identify  
7 all of the practices that have emerged about which we  
8 are concerned, and I'm assuming thereafter I look  
9 forward to having some discussions with you about the  
10 ways in which we can together address the problems that  
11 have arisen and how they are best to be  
12 resolved?---Certainly.

13 So, thank you for your attendance, Assistant Commissioner.

14 MR RUSH: Commissioner, that completes the evidence for  
15 today and it's the intention, as you have indicated, of  
16 counsel assisting to make closing submissions at  
17 2 o'clock tomorrow afternoon.

18 COMMISSIONER: Adjourn until 2 pm tomorrow.

19 <(THE WITNESS WITHDREW)

20 Hearing adjourns: [12.35 pm]

21 ADJOURNED UNTIL THURSDAY, 28 FEBRUARY 2019

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