

# REPORT OF THE INTEGRITY COMMISSION

**No. 4 of 2017**

An investigation into allegations of  
misconduct in the Fox Free Taskforce  
and Fox Eradication Program



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The objectives of the Integrity Commission are to –

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct by adopting a strong, educative, preventative and advisory role.

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This report and further information about the Commission can be found on the website

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## **OPERATION KOONYA**

### **REPORT OF THE INVESTIGATION**

**An investigation into allegations of fabrication and misrepresentation of evidence, and the failure to manage a conflict of interest, in relation to the Fox Free Taskforce and Fox Eradication Program**

**6 December 2017**

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## Foreword

This is a report of an investigation undertaken by the Integrity Commission arising from a complaint received in October 2016. The complaint made allegations of misconduct relating to the management and operation of the programs to locate and then eradicate foxes in Tasmania during the period 2001–2013.

The complaint followed an earlier complaint to Tasmania Police relating to possible criminal offences. The Commission however investigated the complaint to determine the factual basis for any misconduct, as defined in the *Integrity Commission Act 2009* (the IC Act).

The report has been prepared by the investigator of the complaint, in accordance with s 55(1) of the *IC Act*. The investigator makes findings of fact on the basis of the evidence obtained during the investigation. The investigation addressed the main allegations of misconduct as identified in the complaint, however also considered additional issues, concerns and coincidences that were identified during the investigation.

The report was considered by the Board of the Integrity Commission on 6 December 2017. In accordance with s 58(2)(b)(i) of the *IC Act*, the Board determined to refer the report to the Secretary of the Department of Primary Industries, Parks, Water & Environment for action. The Board made no specific recommendations as to any appropriate action it considered should be taken in relation to the matter.

Given the expanse of time that the investigation considered, the public authority administering and overseeing the various programs underwent several changes. These included: Department of Primary Industries, Water and Environment (1998 – April 2006); Department of Primary Industries, and Water (April 2006 – June 2009); and Department of Primary Industries, Parks, Water and Environment (July 2009 – present). The report makes use of ‘Department’ to reference those entities as they existed, except where it is required to specify otherwise.

In a similar vein, unless a specific reference is required, the report makes use of ‘the Program’ to cover issues relating to the Incident Control System (established in 2001), Fox Free Taskforce (2002) and Fox Eradication Program (2007).

## Executive Summary

This investigation arose from a complaint made by the Hon Ivan Dean MLC in October 2016. It followed an earlier complaint by Mr Dean to Tasmania Police regarding potential criminal conduct.

The complaint to the Commission alleged that employees of the Fox Free Taskforce (2002–2006) and Fox Eradication Program (2007–2011), or from the administering department (Department of Primary Industries, Water and Environment (DPIWE)) fabricated or falsified, or knowingly misrepresented (including by omission), evidence of foxes living in Tasmania in order to ensure the ongoing funding and continuation of the fox programs. The allegations, if proven, could amount to a breach of the code of conduct provided in the *State Service Act 2000*.

The complaint also alleged that the (then) Minister for Primary Industries, Water and the Environment, the Hon David Llewellyn MP, failed to manage a conflict of interest given he was at the time also Minister for Police and Emergency Management. It was alleged that the Minister improperly favoured DPIWE concerns about the existence of foxes in Tasmania over evidence to the contrary obtained in a police investigation carried out in 2001.

### Investigative process

In order to expedite the investigation, an officer was seconded from Tasmania Police to undertake the investigation. The officer was employed through the Commission from 6 February–14 July 2017.

The investigator considered evidence obtained through coercive notices for interviews and written responses, and through informal conversations with relevant employees. The investigator also reviewed large amounts of written material, including technical reports, operational reviews of the Program and other communications. Additional historical information and assistance was provided by the Department of Primary Industries, Parks, Water and the Environment.

The investigation enabled an extensive review of evidence associated with the allegations. However the investigator has also reported on additional issues, concerns and coincidences that were either noted in the original complaint or raised by people providing information as part of the investigation, or identified in documentation reviewed as part of the investigation. The report covers all relevant ‘fox events’ that may have provided opportunities for misconduct or other concerns and coincidences.

The investigation involved the use of the Commission’s coercive powers, including two Notices to produce records, 18 Notices to attend and give evidence and 25 Notices to produce information. Information was also provided without Notice by DPIWE and other people involved in the fox events.

Before finalising the investigation report, the investigator provided relevant persons with the opportunity to review and make submissions on the draft report and its findings, in accordance with the rules of procedural fairness. The resulting submissions have been considered in detail by the Board of the Commission and the report modified accordingly. Where the Commission has obtained approval to do so, the submissions have been attached in full to the report.

## **General observations**

There is evidence that the Program commenced in a challenging environment and always struggled with public credibility. The amount and regularity of criticism over the years was fuelled by scientific and professional scepticism, a concern at the amount of public money being expended, a lack of actual knowledge of events as they occurred, and a general misunderstanding of the principles being applied by the Government and the administering department, including the precautionary principle, differing evidentiary thresholds for criminal, civil and biosecurity matters, and the difference between 'hard' evidence and information.

There was also scepticism of evidence within the Program, driven largely by the need to address hoaxes. Employees indicated that they were frustrated by the waste of time and resources spent following up information that was later found to be false or a hoax. This led to a reluctance to publicly release details of hoaxes on the basis of the potential for copy-cat reports.

Employees of the Program identified a poor workplace culture established in the early stages, linked to a need to quickly hire personnel who may not have had the necessary technical, investigative or professional expertise. Managers and other staff transitioned through the Program, resulting in inconsistencies of approach, inefficiencies and difficulty in implementing change. Internal conflicts and concerns with operational procedures (particularly the collection of fox scat evidence) were not adequately addressed.

### **Context: the 'precautionary principle' and state of knowledge**

It is apparent that the management of the FFT and FEP, and the decisions made to provide funding and other resources, were based on a biosecurity risk management approach centred on the 'precautionary principle'.

The precautionary principle stipulates that where there is a risk of serious or irreversible harm, a lack of evidence should not prevent an immediate and pre-emptory response to minimise, manage or eliminate the risk. The amount of harm that could be caused must be anticipated, and the response proportionate to that threat. The threshold of response may be relatively low given the potential impact.

If the application of the principle results in a presumption that foxes may be in Tasmania then appropriate action should be taken to reduce the threat that they pose. There is no need for scientific proof to a standard that is 'beyond a reasonable doubt' or 'on the balance of probabilities'. Waiting for any of these thresholds to be reached could result in the fox establishing. Once established it would be nearly impossible to eradicate. Instead there is an obligation for action that would prevent or minimise harm.

There is significant evidence available as to the anticipated damage an established fox population could mean for Tasmania's biodiversity and agricultural industries. The potential direct harm would be to lose smaller mammals (Eastern barred bandicoots, Tasmanian bettongs and Eastern quolls), put the endemic native hen at extreme risk and local populations of little penguins and shearwaters, native rodents and ground birds under serious risk.

Foxes are responsible for lambing losses of up to 30% in some regions of Australia, and may also prey on calves, poultry and goats. It is estimated that foxes establishing in Tasmania could result in an annual cost to our economy of up to \$20 million a year.



The actions and responses taken under the precautionary principle are based both on the state of knowledge at the time, and the absence of hard evidence to not take action. However the approach requires constant review to take into account new information and evidence.

## **Summary of findings**

### ***Allegation 1: employees of the FFT or FEP fabricated and falsified evidence of foxes living in Tasmania***

There is no direct evidence of any employee having fabricated or falsified evidence.

There is circumstantial evidence that supports the possibility that fox scats (droppings) were deliberately placed in the environment. However the investigation has identified issues relating to the collection, storage and testing of scats that raise concerns about potential cross-contamination between scats and consequently the validity of the results of DNA testing of the scats. There is no evidence that any motive for fabricating this evidence relates to the desire to obtain ongoing funding to continue the Program.

The investigation addressed a range of issues and concerns in relation to many of the fox events that have not been able to be sufficiently resolved to make a conclusive finding on those events. It is apparent that doubts or a lack of knowledge about particular issues or events has led to speculation that evidence has been fabricated or falsified. The investigation has clarified the facts surrounding some of these issues, but the historic nature of the events – which affects both the memories of those involved and the availability of accurate records – mean that some remain unresolved.

The impact of hoaxing on the Program was real. The Longford fox was initially considered to be evidence of foxes living in Tasmania however was subsequently found to be a hoax. The Glen Esk fox cannot be discounted as a potential hoax.

### ***Allegation 2: employees of the FFT or the FEP, or the Department, knowingly used false information or misrepresented information of the fox events for the purpose of continuation of the Program and securing ongoing funding***

There is no evidence that any employee knowingly relied on false information for the purpose of continuation of the Program or to secure ongoing funding.

Decisions were made on the basis of the extent of knowledge at the relevant time. As noted above, there were instances where the factual basis for assumptions changed, for example the determination that the Longford fox was a hoax. However there was ongoing evidence, including independent DNA testing of fox scat, which provided a basis for continuing the Program.

It is apparent that, as a result of the ongoing scepticism and criticism of the Program, there was a tendency to view and state information or evidence of fox events at their highest level. In communications, the Program used phrases such as 'hard evidence', 'physical evidence' or 'evidence of foxes'. However no authenticity rating or qualifying standard was applied.

There is evidence in relation to two fox events – the Longford fox and the Symmons Plains fox – that suggests the facts of the events were embellished, and that there was a failure to retract public information immediately after it was known to have changed. However it appears that the motive for this was to discourage 'copy-cat' hoaxing, and there was other

credible information and evidence available which would have caused a continuation of the Program.

There appeared at times to be an urgency to releasing evidence and information without proper consideration, and a reluctance to subsequently correct information. Employees speaking to the media engaged in speculation at times and provided incorrect information which fortified the critics.

There appears to have been no adequate independent regular reviews of the evidence and most internal reviews had terms of reference that excluded a review of the evidence.

There is evidence that the managerial response to challenges of the evidence was dismissive, even when it was initiated from within the Program. Managers required compelling evidence to investigate issues, and appear to have dismissed concerns raised about evidence or Program personnel until employees were prepared to document them. The reluctance to adequately consider and investigate employee and external concerns, particularly those in relation to anomalies in the fox scat evidence, indicates a lack of diligence by managers but is not indicative of misconduct.

***Allegation 3: the (then) Minister for Primary Industries, Water and Environment, and Minister for Police and Emergency Management, the Hon David Llewellyn MP, failed to manage his ministerial conflict of interest***

There is no evidence to suggest that Mr Llewellyn had a conflict of interest while holding the dual Cabinet roles of Minister for Primary Industries, Water and Environment, and Minister for Police and Emergency Management.

Both portfolios were impacted by the possible introduction of foxes into Tasmania. The Minister had to be mindful of potential conflicts that may have arisen in holding the portfolios, and for such conflicts to be managed.

As Minister for DPIWE, Mr Llewellyn had to respond to a biosecurity threat of a significant invasive species. The threshold in such cases is governed by the precautionary principle. Put simply, the principle serves the adage 'better safe than sorry', and stipulates that it is not necessary to wait for scientific certainty to take protective action.

The earlier police investigations (as part of JTF1 and JTF2) focused on investigating criminal offences, with a view to prosecution. The threshold to establish a criminal conviction is 'beyond reasonable doubt', achieved with measureable, tangible and admissible evidence. Neither task force was able to obtain any admissible evidence to commence proceedings.

It is considered that the dual portfolios of the Minister would have provided him with a more balanced and informed view as to the situation in order to make the necessary decisions.

## Timeline of fox events

Date	Event or matter
1998, 3 June	<p><u>First Burnie fox</u></p> <p>Reports of a fox on Victoria Wharf boarding a ship to Tasmania on 31 May 1998 and escaping into the Tasmanian landscape. On 7 June 1998, fox footprints were located on the West Beach at Burnie. This fox was never located.</p>
2001, late April, early May	<p><u>Agfest fox</u></p> <p>Information was received of a fox exiting a mainland container at Agfest. No physical search was made for the fox however the sighting was later investigated but no direct eyewitnesses were located.</p>
2001, early May	<p><u>Credible sighting</u></p> <p>English couple staying at Longford caravan park heard two foxes calling to one another</p>
2001, 15 May	<p><u>Credible sighting</u></p> <p>Highly regarded naturalist, Chris Spencer, sighted a fox at close range on Illawarra Road, Longford</p>
2001, June	<p><u>Information on fox cubs bought into State</u></p> <p>A number of foxes were bought into the State in mid-October 1999 and 2000 and released into the landscape</p>
2001, May–July	<p><u>Incident Control System established to respond to sightings at Longford</u></p> <p>Managed by a task force made up of PWS Rangers.</p>
2001, 10 July	<p><u>St Helens fox</u></p> <p>Two persons claimed to shoot a fox and sent images to the Examiner newspaper. Later determined by PWS Ranger Glenn Atkinson to be a hoax.</p>
2001, 13 July	<p><u>Joint Task Force 1: Report</u></p> <p>An investigation into an alleged conspiracy to import foxes into Tasmania finds no evidence that foxes had been imported or existed in Tasmania</p>
2001, 17 July	<p><u>Longford fox</u></p> <p>A photograph was published in <i>The Examiner</i> of fox carcass and two males holding it up. Later determined by Ranger Atkinson to be a hoax.</p>
2001, 6 August	<p><u>Woodstock fox footprint</u></p> <p>Prints were located on a property at Bishopsbourne; a cast was taken and it was determined to be a fox print</p>
2001, 23 September	<p><u>Symmons Plains fox</u></p> <p>Erick Bosworth and Scott Greeves find a decomposing fox carcass at a site in Symmons Plains, which they claimed they had shot on a previous visit. This fox was identified as having an endemic long tailed mouse in its stomach.</p>

Date	Event or matter
2001, December	<u>ICS engaged an independent consultant to review their efforts</u> Tim Bloomfield from the Victorian Department of Natural Resources and Environment was engaged to review all 'fox evidence' and to undertake a 'risk assessment' for the purpose of making recommendations on how the Government might handle the fox situation in the State
2002, January	<u>Review report by Tim Bloomfield</u> Mr Bloomfield reports that, <i>'Foxes are the greatest known threat to Tasmania's wildlife in our time and the eradication of foxes from Tasmania will only occur by the application of a thorough, comprehensive and extensive program. The control measures selected must be applied at sufficient distribution and frequency that there can be confidence that all individual (foxes) will have been treated'</i> .
2002, 31 January	<u>Fox Free Taskforce established</u> The FFT is provided funding of \$2.4 million over two year period, enabling the employment of 22 staff with teams to be located in Burnie, Launceston, Campania and St Helens
2002, 31 January	Dedicated fox hotline established
2002, March	<u>Reward for information</u> The Minister announces a reward of up to \$50,000 for information leading to the conviction of a person responsible for the introduction of foxes into Tasmania
2002, 10 May	<u>Fox scat located at Burnie</u> The scat contains fox grooming hair
2002, 3 June	<u>Lilydale skull and pelt</u> A fox pelt located by council workers at Lilydale Road and Turners Road, Lilydale; later deemed to be a hoax
2002, November	Program Review by Tim Bloomfield
2003, 15 March	<u>Burnie fox</u> Female fox carcass located on the Bass Highway, Burnie. Analysis revealed it had never had cubs, and it was confirmed that it was not the fox that escaped from the Burnie Wharf in 1998.
2003, March	Program Review by J Kinnear
2005, 11 March	<u>First positive fox scat – DNA analysis</u> Located at Conara during monitoring activities.
2006, 6 February	<u>Lillico fox</u> Carcass impregnated into the bitumen on the Bass Highway near Lillico Beach Coastal Reserve
2006, 21 May	<u>Old Beach fox blood</u> Property owner located drops of blood on wood and sand under an entry point to a chicken coop
2006, June	Program Review by Invasive Animals Cooperative Research Centre

Date	Event or matter
2006, 1 August	<u>Glen Esk fox</u> A full carcass with injuries consistent with being hit by vehicle was located on Glen Esk Road, Cleveland
2006, October	Fox positive scats located at Conara, Epping Forest and Somerset, as part of monitoring after Glen Esk fox
2007	<u>Fox Eradication Program established</u> The Program establishes a Steering Committee and a Technical Advisory Panel
2007, 23 August	Fox positive scats found near Spreyton
2007, September	Scat dogs introduced to Tasmania
2007, 25 October	First fox positive scat located by a Program detector dog, near Seymour
2008, February	Scat detection trials commenced
2009, 5 May	Fox scat at Interlaken located
2009, 25 May	Program review by Parliamentary Standing Committee of Public Accounts commenced
2009, 15 June	Report by Simon Fearn: <i>Evidence of foxes in Tasmania: a catalogue of hard data</i>
2009, August	Program review by Landcare Research (New Zealand)
2009, 8 July	<u>Interlaken fox skull</u> Fox skull observed hanging on shed at property at Railton, by FEP officer; property owner stated that the skull was found on stump in forestry coup on private property at Interlaken. Testing found to be a female fox.
2009, September	Report by Simon Fearn: <i>Report on Invertebrate Remains in fox Positive Scats collected in Tasmania</i>
2009	Scent dogs introduced to Tasmania
2009, December	Program review: report of Parliamentary Standing Committee of Public Accounts
2010, 26 July	Comprehensive audit of imported fox scats undertaken by FEP Manager Peter Cremasco: identifies significant issues and recommendations
2011, 9 May	Article by Professor Stephen Sarre in the Journal of the Institute for Applied Ecology: <i>Genetic species identification ... fox positive scats in Tasmania</i>
2011, July	Report by Simon Fearn: <i>Evidence of Foxes in Tasmania</i>
2013	Program review by Max Kitchell
2016	Report by Inspector Matthew McCreadie: <i>Review by Tasmania Police in regard to criminal offending</i> . No criminal offences detected

## **PART A**

### **Background**

# 1. Introduction

## 1.1. The complaint

- [1] On 29 February 2016, the Hon Ivan Dean MLC lodged a complaint with Tasmania Police raising allegations of criminal misconduct involving the FEP. The complaint included material in support of the alleged misconduct. Mr Dean also provided the complaint and the associated material to the Commission for information.
- [2] The complaint was assessed by Inspector Matthew McCreadie, Tasmania Police. The original allegations raised by Mr Dean were revised by Inspector McCreadie in consultation with Mr Dean. Inspector McCreadie's assessment report, dated 19 July 2016, found that evidence of foxes living in Tasmania was relied on at the time by senior officers from the FEP. While this evidence was later found to be incorrect, the assessment found no evidence that the reliance on this evidence was deliberate or amounted to criminal misconduct. However Inspector McCreadie found that several individual employees of the FEP may have been involved in the fabrication of evidence, but only to the level of misconduct.
- [3] On 11 October 2016, Mr Dean lodged a formal complaint with the Integrity Commission raising allegations of misconduct, as outlined in the three allegations below.

## 1.2. Allegations

- [4] The Commission's consideration of the complaint distilled the following three allegations:
  - Allegation 1: employees of the FFT or FEP fabricated and falsified evidence of foxes living in Tasmania.
  - Allegation 2: employees of the FFT or the FEP, or the Department, knowingly used false information or misrepresented information of the fox events for the purpose of continuation of the Program and securing ongoing funding.
  - Allegation 3: the (then) Minister for Primary Industries, Water and Environment, and Minister for Police and Emergency Management, the Hon David Llewellyn MP, failed to manage his ministerial conflict of interest.

## 1.3. Format of report

- [5] The report contains four parts:
  - Part A provides the background to the investigation and defines the fox events, Program time line and other concerns that become evident during the course of this investigation
  - Part B presents and analyses any evidence of misconduct arising from alleged fabrication or falsification of evidence by employees of the Program
  - Part C presents and analyses any evidence of misconduct arising from alleged misrepresentation of evidence by employees of the Program or other officers for the purpose of continuing the Program.

- Part D presents and analyses any evidence that the then Minister David Llewellyn failed to manage a conflict of interest in holding the dual Cabinet roles of Minister for Police and Emergency Management and Minister for Primary Industries, Water and Environment.

#### 1.4. Acronyms

Name			
DPIW	Department of Primary Industries and Water	ICS	Incident Control System
DPIPWE	Department of Primary Industries, Parks, Water and Environment	JTF1	First Joint Task Force
DPIWE	Department of Primary Industries, Water and Environment	JTF2	Second Joint Task Force
FEP	Fox Eradication Program	NVA	Natural Values Atlas
FFT	Fox Free Taskforce	PAC	Parliamentary Standing Committee of Public Accounts
IACRC	Invasive Animals Cooperative Research Centre	PWS	Parks and Wildlife Service
IC Act	<i>Integrity Commission Act 2009</i>	QVMaG	Queen Victoria Museum and Art Gallery

## 2. Administration

### 2.1. Jurisdiction

- [6] The Commission's jurisdiction was invoked on receipt of the complaint. The complaint involved public officers and a designated public officer (Mr Llewellyn).<sup>1</sup>
- [7] Section 87(1) of the *IC Act* states that the Commission is to 'assess, investigate, inquire into or otherwise deal with, in accordance with Parts 6 and 7, complaints relating to misconduct by a designated public officer'.

### 2.2. Assessment process

- [8] Following initial review, the complaint was accepted for assessment by the Commission pursuant to s 35(1)(b) of the *IC Act*, and an assessor was appointed on 19 October 2016.
- [9] The assessment did not identify any material to warrant dismissal of the complaint, and the assessor noted that further inquiry was necessary in order to fully examine the allegations raised. On that basis the Assessment Report, dated 9 December

<sup>1</sup> A designated public officer ('DPO') is defined in s 6(1) of the *IC Act*.



2016, recommended that the complaint be investigated in accordance with s 37(2)(g) of the *IC Act*.

### 2.3. Investigation process

- [10] In accordance with s 38(2) of the *IC Act*, the Secretary of DPIPWE, Dr John Whittington, was advised by written notice of the determination to conduct an investigation on 13 December 2016. The Notice was made subject to the confidentiality requirements of s 98 of the *IC Act*.
- [11] A Commission investigator was appointed to investigate the complaint, in accordance with Part 6 of the *IC Act* on 15 December 2016. However an external investigator was seconded to the Commission and appointed to investigate the complaint on 6 February 2017.
- [12] The investigation involved the use of the Commission's coercive powers, including two Notices to produce records,<sup>2</sup> 18 Notices to attend and give evidence<sup>3</sup> and 25 Notices to produce information.<sup>4</sup> Information was also provided without Notice by DPIPWE and other witnesses.

### 2.4. Standard of proof

- [13] The standard of proof applied in this report to factual findings is the civil standard i.e. 'on the balance of probabilities'. This requires only 'reasonable satisfaction', as opposed to 'satisfaction beyond reasonable doubt' (as is required in criminal matters).
- [14] In considering whether the civil standard of proof has been met, an investigator will bear in mind what was said in *Briginshaw v Briginshaw*:

*Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.<sup>5</sup>*

### 2.5. Procedural fairness

- [15] In accordance with s 46(1)(c) of the *IC Act*, the investigator 'must observe the rules of procedural fairness' in undertaking the investigation.
- [16] Procedural fairness is an opportunity for an individual to be heard. This includes, where relevant, being interviewed as part of the investigation and being given the opportunity test evidence relevant to them. It may include an opportunity for the

<sup>2</sup> In accordance with s 47(1)(c) of the *IC Act*.

<sup>3</sup> In accordance with s 47(1)(b) of the *IC Act*.

<sup>4</sup> In accordance with s 47(1)(a) of the *IC Act*.

<sup>5</sup> (1938) 60 CLR 336, 362 (Dixon J).

person to make comment on excerpts of the draft investigator's report, including the draft findings.

- [17] This report contains factual findings, not findings of misconduct. Where factual findings, or the evidence on which they are based, might be considered to have an adverse effect on the named individual, relevant extracts of the draft report were provided to that person for comment prior to finalisation of the report.
- [18] Relevant extracts of the draft report were provided to the following persons for review and comment:
- Craig Bester
  - Peter Cremasco
  - Craig Elliott
  - Alan Johnston
  - Nick Mooney
  - Peter Mooney
  - Garry Reid
- [19] The draft report was also provided to the Secretary, DPIPWE.
- [20] All submissions received as part of procedural fairness were considered by the investigator, and the draft report amended accordingly. A copy of each submission has been attached to this report where the author of the submission has provided permission to do so.
- [21] It is noted that the CEO determined that it was unnecessary to provide a draft of his report of the investigation (prepared in accordance with s 57 of the *IC Act*) to any persons prior to finalising that report for consideration by the Board. This was on the basis that the CEO's report contained no recommendations which could be adverse to any of the persons named in the report or the Department, and that the relevant persons had been provided the opportunity to make submissions on the investigator's report.

## 2.6. Relevant policies and procedures

### Legislative framework

- [22] DPIPWE, as with all of the employing state service agencies (and their officers), is required to comply with relevant legislative obligations and Tasmanian State Service-wide policies, including but not limited to:
- *State Service Act 2000* (Tas) and *State Service Regulations 2011* (Tas)
  - Employment Directions and Ministerial Directions

### State Service Act

- [23] The code of conduct for State Service employees is at s 9 of the *State Service Act*. Although the entire code of conduct is relevant, those parts which are of particular interest to this investigation are:

*(1) An employee must behave honestly and with integrity in the course of State Service employment.*

*(2) An employee must act with care and diligence in the course of State Service employment.*

...

*(7) An employee must maintain appropriate confidentiality about dealings of, and information acquired by, the employee in the course of that employee's State Service employment.*

*(8) An employee must disclose, and take reasonable steps to avoid, any conflict of interest in connection with the employee's State Service employment.*

*(9) An employee must use Tasmanian Government resources in a proper manner.*

*(10) An employee must not knowingly provide false or misleading information in connection with the employee's State Service employment.*

*(11) An employee must not make improper use of –*

*(a) information gained in the course of his or her employment; or*

*(b) the employee's duties, status, power or authority –*

*(c) in order to gain, or seek to gain, a gift, benefit or advantage for the employee or for any other person.*

...

*(13) An employee, when acting in the course of State Service employment, must behave in a way that upholds the State Service Principles.*

*(14) An employee must at all times behave in a way that does not adversely affect the integrity and good reputation of the State Service.*

*(15) An employee must comply with any other conduct requirement that is prescribed by the regulations.*

The code of conduct applies to all employees and officers: s 9(16). 'Officer' means a person appointed as a Head of Agency, to a prescribed office or as a senior executive under s 31.

## 3. The investigation

### 3.1. Investigative methodology

- [24] The investigation focused on the main allegations raised by the complainant. However, the investigation has also addressed a range of unresolved issues, concerns or coincidences relating to the management of the Program and the evidence collected raised by various sources, both prior to, and during, the investigation. These unresolved matters built a case of suspicion and speculation around large areas of the evidence and led to allegations of fabrication and misrepresentation.

- [25] The Commission sought to complete the investigation as quickly as possible. This included seconding a dedicated resource into the Commission to focus on the task.
- [26] The initial weeks of the investigation were spent, in the main, collating all available records, letters and documents. The investigation provided coercive notices containing generic questions to a large number of former employees of the Program. This was completed as a screening phase to seek information specific to the allegations. The selection of those former employees included long and short-term employees, those that had been mentioned in the McCreadie Report and those expected to have knowledge. Other former employees were selected for interviews under a coercive notice. These included employees who could provide information about the Program and the main fox events, or who had allegations against them. Other persons were spoken to by telephone, email or informal interview.
- [27] The investigation progressed on the basis of available records and information, and information subsequently obtained from DPIPWE and other sources. Interviews were conducted as required; however to expedite the investigation, many people were served with a Notice to Produce Information rather than being directed to attend an interview.
- [28] Over the course of the investigation:
- 19 persons were interviewed. The shortest interview was two hours and the longest six hours;
  - 25 persons were served with a Notice to Produce Information. These Notices were restricted to being used as a screening instrument to detect possible evidence of misconduct;
  - 25 persons were contacted by email or telephone to seek additional information. Some persons were contacted on repeat occasions to seek clarification or further information.
- [29] Two persons failed to respond to a Notice to Produce Information. A large number of persons spoken to were interstate and overseas. Several persons were unable to be contacted.
- [30] The investigation focused on the most serious allegations of misconduct. Not all evidence utilised by the Program was able to be reviewed in the investigation's time frame. In general, where information was uncovered that directly related to a concern or issue with a particular piece of evidence, it has been referred to in this report.
- [31] Within each fox event there is reference to 'Other issues, concerns and coincidences', identified by the investigator or nominated by people providing information as part of the investigation. The Commission has attempted to resolve these as part of the investigation however the historic nature of the events and the unavailability of some records means that it has not been possible to make factual findings in some instances.

### **3.2. Investigative limitations**

#### **Limited scope**

- [32] The scope of this investigation focused on possible misconduct by employees of the Program. More specifically, it examined any fabrication, falsification or misrepresentation, either by embellishment or omission of evidence by Program employees.

#### **Historical matter**

- [33] The Program commenced in 2001 and concluded in 2014. Many records are no longer available or are difficult to locate. Staff have moved to other employment, knowledge is lost and witness recollections are negatively affected. There have been various internal and external reviews resulting in changes to practices and there have been various funding arrangements.

#### **Issues with record and information**

- [34] The difficulty in sourcing historical records and their eventual delivery late in the investigation impacted considerably on the investigator's ability to follow up some issues.
- [35] Records have been difficult to locate or may have been legitimately destroyed. Some evidence has been provided by former staff members who retained copies of documentation and this assisted greatly in addressing some of the unresolved issues. Some documents remained in hard copy form, whilst others were stored electronically.
- [36] Some material sought from DPIPWE arrived late in the investigation given the difficulty experienced in locating the records. As a result the investigation and interviews commenced without reference to some documents. Ongoing interaction with former staff members assisted in locating documents and files towards the end of the investigation.

#### **Criticism and scepticism**

- [37] Criticism and scepticism have been present since the Program's inception. Many of the rumours and speculation have been linked together and it is difficult, if not impossible, to determine the underlying factual basis.

### 3.3. Persons providing information in the investigation

State Service officers		
Glenn Atkinson	Chris Emms	Matthew Marrison
Olivia Barnard	Simon Fearn	Stan Matuszek
Stephen Barrow	Alison Foster	Mark Monks
Candida Barclay	Robert Gaffney	Nick Mooney
Nicholas Bates	Wayne Gilbert	Peter Mooney
Craig Bester	Robert Gubiana	Jenna Myers
Oliver Breeze	Peter Harrison	Dan Novak
Chris Buza	Alan Johnston	Chris Parker
Michael Copping	Jonathon Knox	Regan Parkinson
Peter Cremasco	Adrie Konyon	Tom Priestley
David Cunningham	Adam Landells	Garry Reid
Keverall Cunningham	Chris Leitch	Susan Robinson
Peter Darke	Steven Locke	Patrick de Sancha
Garry Davies	Jeremy Lovell	Alex Schaap
Steven Douce	Rod McCarthy	Alistair Scott
Joseph Dowde	John McConnell	Colin Spry
Michael Driessen	Jane McGee	Ken West
Craig Elliott	Mark Mackay	Jason Wiersma
Jodie Elmer	Shane Malcolm	Kristy Withers
Scientists / Experts		
Dr Oliver Berry	Phil Ladds	Professor Stephen Sarre
Tim Bloomfield	Dr Clive Marks	Georgina Storey
Hans Brunner	Dr David Obendorf	Barbara Triggs
Dr Glen Hall		
Other witnesses		
Robert Baker	Frank Gigliotti	Phillip Riley
Erick Bosworth	Tammy Gordon	Ian Rist
Ian Cook	Tehree Gordon	Phil Spehr
John Coombes	John Handley	Peter Stronach
John Cunliffe	Joshua Leeson	Gregor Viney
Gerard Dutton	Matthew McCreadie	Lindsay White
Mark Fenby	John Mikulski	Charles Wolf
Scott Geeves	Jason Powe	

### 3.4. Reports and documents referred to in this report

Report	Author (first named)	Date	Report citation
<b>Scientific papers</b>			
Faecal DNA detection of invasive species: the case of the feral fox in Tasmania Wildlife Research	Oliver Berry	January 2007	Berry Faecal DNA detection 2007
Genotyping Analysis of Fox Samples Collected in Tasmania	Stephen Sarre	May 2007	
DNA genotypes reveal red fox abundance, response to lethal control and limitations of contemporary survey techniques	Clive Marks	December 2009	Marks Genotypes 2009
Article – Institute for Applied Ecology Genetic species identification. Fox positive scats in Tasmania	Anna McDonald	May 2011	McDonald 2011
Foxes are now widespread in Tasmania: DNA detection defines the distribution of this rare but invasive carnivore	Stephen Sarre	December 2012	Sarre Report 2012
Are There Really Foxes: Where Does The Doubt Emerge?	Deborah Blackman	March 2013	Blackburn Foxes 2013
The risks of using “species-specific” PCR assays in wildlife research: The case of red fox ( <i>Vulpes vulpes</i> ) identification in Tasmania	Joana Gonçalves	March 2014	Goncalves Report 2014
The dispersion and detection patterns of mtDNA-assigned red fox <i>Vulpes vulpes</i> scats in Tasmania are anomalous	Clive Marks	June 2014	Marks Report 2014
The Great Poo Hunt: A comprehensive DNA-based predator scat survey conducted in Tasmania, Australia	Catriona Campbell	July 2014	Campbell Poo Hunt 2014

Report	Author (first named)	Date	Report citation
Defining specificity in DNA detection of wildlife: Response to Goncalves “The risks of using species-specific PCR assays in wildlife research: the case of the red fox identification in Tasmania”	Stephen Sarre	August 2014	Sarre: Goncalves Response 2014
Reply to Sarre et al. “Defining specificity in DNA detection of wildlife”	Joana Gonçalves	November 2014	Goncalves: Sarre Response 2014
Opportunistically Acquired Evidence is Unsuitable Data to Model Fox ( <i>Vulpes vulpes</i> ) Distribution in Tasmania	Clive Marks	December 2014	Marks Evidence 2014
Report to Tasmania Government: Anomalies in the detection patterns of fox scats in Tasmania	Clive Marks	March 2015	Marks Anomalies 2015
Trends in anecdotal fox sightings in Tasmania accounted for by psychological factors	Clive Marks	April 2017	Marks Sightings 2017
<b>Program review</b>			
Review of Effectiveness of Fox Eradication Program	Timothy Bloomfield	November 2002	Bloomfield 2002
A Review of the Fox Free Tasmanian Program	J Kinnear	2003	Kinnear Report 2003
Foxes in Tasmania	Invasive Species Cooperative Research Centre	2006	IACRC Report 2006
Improving Fox Management Strategies in Australia	G Saunders	2007	
Review of the Program to Eradicate Foxes from Tasmania	John Parkes and Dean Anderson	2009	Landcare 2009
Inquiry into the Efficiency and Effectiveness of the Fox Eradication Program in Tasmania	Parliamentary Standing Committee of Public Accounts	2009	PAC 2009
Fox Eradication Program Review Panel Report	Max Kitchell	2012	Kitchell 2013



<b>Report</b>	<b>Author (first named)</b>	<b>Date</b>	<b>Report citation</b>
<b>Data bases</b>			
Sightings Summary report (Hard Copy)	DPIWE	To 2006	Sightings Summary
Scat register database	DPIPWE	To 2014	Scat Register
Sightings register database	DPIPWE	To present	Sightings Register
Natural Values Atlas	DPIPWE	Current	NVA
<b>Other</b>			
Fox-free Tasmania – Action Plan to Prevent the European Red Fox in Tasmania 2001-2003	S Blackburn	2001	Blackburn 2001
Tasmania Police Report	Detective Sergeant Coad	2001	First Joint Task Force Report
Symmons Plains Fox Shooting Report of Investigation	Chris Emms	October 2001	Symmons Plains Report 2001
Report on the Joint investigation into the Introduction of foxes into Tasmania	Glenn Atkinson	August 2002	Second Joint Task Force Report 2002
Two folders containing all original investigation reports of second Joint Task Force	Various	2002/3	Second Joint Task Force Folders
Summary of Investigation into Introduction of foxes	Glenn Atkinson	December 2005	Fox Summary 2005
Physical Evidence of Foxes in Tasmania since 1998	Nick Mooney	April 2007	Evidence list 2008
Evidence of foxes in Tasmania a catalogue of all FEP hard data	Simon Fearn	June 2009	Fearn Evidence Catalogue 2009
Report on Invertebrate Remains in Fox Positive Scats collected in Tasmania by the FEP	Simon Fearn	September 2009	Fearn Scat Content 2009
Audit of Imported fox scats – as used for training by the Fox Eradication Program's Scat Detector Dog Units	Peter Cremasco	July 2010	Cremasco Audit 2010
Report on Invertebrate Remains in Fox Positive Scats collected in Tasmania by the FEP	Simon Fearn	July 2011	Fearn Scat Content 2011

<b>Report</b>	<b>Author (first named)</b>	<b>Date</b>	<b>Report citation</b>
Evidence of foxes in Tasmania a catalogue of all FEP hard data	Simon Fearn	July 2011	Fearn Evidence Catalogue 2011
Overview of context and reliability of DNA fox positive scats collected by FEP	Simon Fearn	September 2011	Fearn Scat DNA Report 2011
Report – Quantification of fox scat density near dens: a report on the pilot study conducted at Warrnambool Victoria	Simon Fearn	September 2011	Fearn Den Report 2011
Tasmania Police Report	Inspector McCreadie	2016	McCreadie Report 2016
Fox Activity since 2001	DPIPWE website	current	DPIPWE website

### 3.5. Fox events

[38] The following are significant evidence events and will be referred to as fox events.

<b>Date</b>	<b>Event</b>	<b>Other name</b>
2001	ICS established	
2001	Fox cub import investigation	
2001	Longford fox	
2001	Woodstock fox prints	
2001	Symmons Plains fox	Bosworth fox
2002	FFT established	
2003	Burnie fox	
2006	Lillico fox	
2006	Old Beach blood	
2006	Glen Esk fox	Cleveland fox
2007	FEP established	
2009	Interlaken skull	Railton skull
2002-2011	Scats identification and collection	

### 3.6. Time line

Date	Event or matter
1998, 3 June	<u>First Burnie fox</u> Reports of a fox on Victoria Wharf boarding a ship to Tasmania on 31 May 1998 and escaping into the Tasmanian landscape. On 7 June 1998, fox footprints were located on the West Beach at Burnie. This fox was never located.
2001, late April, early May	<u>Agfest fox</u> Information was received of a fox exiting a mainland container at Agfest. No direct evidence was found.
2001, early May	<u>Credible sighting</u> English couple staying at Longford caravan park heard two foxes calling to one another
2001, 15 May	<u>Credible sighting</u> Highly regarded naturalist, Chris Spencer, sighted a fox at close range on Illawarra Road, Longford
2001, June	<u>Information on fox cubs bought into State</u> A number of foxes were bought into the State in mid-October 1999 and 2000 and released into the landscape
2001, May–July	<u>Incident Control System established to respond to sightings at Longford</u> Managed by a task force made up of PWS Rangers.
2001, 10 July	<u>St Helens fox</u> Two persons claimed to shoot a fox and sent images to the Examiner newspaper. Later determined by PWS Ranger Glenn Atkinson to be a hoax.
2001, 13 July	<u>Joint Task Force 1: Report</u> An investigation into an alleged conspiracy to import foxes into Tasmania finds no evidence that foxes had been imported or existed in Tasmania
2001, 17 July	<u>Longford fox</u> A photograph was published in <i>The Examiner</i> of fox carcass and two males holding it up. Later determined by Ranger Atkinson to be a hoax.
2001, 6 August	<u>Woodstock fox footprint</u> Prints were located on a property at Bishopsbourne; a cast was taken and it was determined to be a fox print
2001, 23 September	<u>Symmons Plains fox</u> Erick Bosworth and Scott Greeves find a decomposing fox carcass at a site in Symmons Plains, which they claimed they had shot on a previous visit. This fox was identified as having an endemic long tailed mouse in its stomach.

Date	Event or matter
2001, December	<u>ICS engaged an independent consultant to review their efforts</u> Tim Bloomfield from the Victorian Department of Natural Resources and Environment was engaged to review all 'fox evidence' and to undertake a 'risk assessment' for the purpose of making recommendations on how the Government might handle the fox situation in the State
2002, January	<u>Review report by Tim Bloomfield</u> Mr Bloomfield reports that, ' <i>Foxes are the greatest known threat to Tasmania's wildlife in our time and the eradication of foxes from Tasmania will only occur by the application of a thorough, comprehensive and extensive program. The control measures selected must be applied at sufficient distribution and frequency that there can be confidence that all individual (foxes) will have been treated.</i> '
2002, 31 January	<u>Fox Free Taskforce established</u> The FFT is provided funding of \$2.4 million over two year period, enabling the employment of 22 staff with teams to be located in Burnie, Launceston, Campania and St Helens
2002, 31 January	Dedicated fox hotline established
2002, March	<u>Reward for information</u> The Minister announces a reward of up to \$50,000 for information leading to the conviction of a person responsible for the introduction of foxes into Tasmania
2002, 10 May	<u>Fox scat located at Burnie</u> The scat contains fox grooming hair
2002, 3 June	<u>Lilydale skull and pelt</u> A fox pelt located by council workers at Lilydale Road and Turners Road, Lilydale; later deemed to be a hoax
2002, November	Program Review by Tim Bloomfield
2003, 15 March	<u>Burnie fox</u> Female fox carcass located on the Bass Highway, Burnie. Analysis revealed it had never had cubs, and it was confirmed that it was not the fox that escaped from the Burnie Wharf in 1998.
2003, March	Program Review by J Kinnear
2005, 11 March	<u>First positive fox scat – DNA analysis</u> Located at Conara during monitoring activities.
2006, 6 February	<u>Lillico fox</u> Carcass impregnated into the bitumen on the Bass Highway near Lillico Beach Coastal Reserve
2006, 21 May	<u>Old Beach fox blood</u> Property owner located drops of blood on wood and sand under an entry point to a chicken coop
2006, June	Program Review by Invasive Animals Cooperative Research Centre

Date	Event or matter
2006, 1 August	<u>Glen Esk fox</u> A full carcass with injuries consistent with being hit by vehicle was located on Glen Esk Road, Cleveland
2006, October	Fox positive scats located at Conara, Epping Forest and Somerset, as part of monitoring after Glen Esk fox
2007	<u>Fox Eradication Program established</u> The Program establishes a Steering Committee and a Technical Advisory Panel
2007, 23 August	Fox positive scats found near Spreyton
2007, September	Scat dogs introduced to Tasmania
2007, 25 October	First fox positive scat located by a Program detector dog, near Seymour
2008, February	Scat detection trials commenced
2009, 5 May	Fox scat at Interlaken located
2009, 25 May	Program review by Parliamentary Standing Committee of Public Accounts commenced
2009, 15 June	Report by Simon Fearn: <i>Evidence of foxes in Tasmania: a catalogue of hard data</i>
2009, August	Program review by Landcare Research (New Zealand)
2009, 8 July	<u>Interlaken fox skull</u> Fox skull observed hanging on shed at property at Railton, by FEP officer; property owner stated that the skull was found on stump in forestry coup on private property at Interlaken. Testing found to be a female fox.
2009, September	Report by Simon Fearn: <i>Report on Invertebrate Remains in fox Positive Scats collected in Tasmania</i>
2009	Scent dogs introduced to Tasmania
2009, December	Program review: report of Parliamentary Standing Committee of Public Accounts
2010, 26 July	Comprehensive audit of imported fox scats undertaken by FEP Manager Peter Cremasco: identifies significant issues and recommendations
2011, 9 May	Article by Professor Stephen Sarre in the Journal of the Institute for Applied Ecology: <i>Genetic species identification ... fox positive scats in Tasmania</i>
2011, July	Report by Simon Fearn: <i>Evidence of Foxes in Tasmania</i>
2013	Program review by Max Kitchell
2016	Report by Inspector Matthew McCreadie: <i>Review by Tasmania Police in regard to criminal offending</i> . No criminal offences detected

## 4. Issues impacting on the Program

- [39] During the course of this investigation there were a number of matters which impacted on the Program.

### 4.1. Cultural and management Issues

- [40] Culture refers to the environment that surrounds a person in their workplace. It is a powerful element that can influence work relationships and processes. It is made up of values, beliefs, underlying assumptions, attitudes, and behaviours shared by a group of people; it is generally unspoken, unwritten and establishes rules for working together.
- [41] Culture is especially influenced by Program managers and longer term employees due to their role in decision making and strategic direction.
- [42] The FFT and FEP certainly had their cultural issues, which in turn affected their work performance. It was described as present throughout the entirety of the Program in some form. Most employees interviewed, referred to this.
- [43] For the FFT, the issues included the initial recruiting of hunters who were described as wanting to get a firearm, spotlight and vehicle and head out to shoot foxes. It was regularly described as a 'boys club'. These personnel also had to do baiting, maintain sand pads and complete mundane tasks to which there was resistance. Money was readily available and spent on items not considered necessary. Other staff were more scientific in their approach and it led to clashing. There was a lack of trained investigators, on-hand fox experts, rigor regarding evidence collection and continuity, and a continual focused effort to find fox evidence to display in an attempt to address the sceptics. Most staff refer to this as the period where the emphasis was on hunter / shooter values.
- [44] For the FEP, the emphasis moved to the scientific focus. However cultural issues were largely identical to the FFT. Most staff refer to this as the period where the emphasis was on scientific values.
- [45] Both programs had a large initial influx of personnel. Managers appeared to struggle throughout both programs with staff describing managerial positions as a 'poisoned chalice' and managerial offices were described as 'pain rooms'. Managers, as well as other staff, transitioned through the Program on a regular basis. Employment was via periodic contracts. One of the striking aspects of this investigation was the number of disillusioned and ill employees as a result of the criticism levelled at the Program and individuals, as well as from poor management practices.
- [46] Managers said they struggled to introduce change and experienced resistance, both passive and overt, from both above and below in the organisation. Staff voiced concerns over a variety of matters, commenced quietly and ended in direct challenges, causing conflict within the workplace.
- [47] Managers struggled with conflict resolution processes involving employees and some reportedly avoided conflict at all costs. One Manager was removed from his position due to bullying and a range of other issues. All staff interviewed state that, when he

commenced in 2011, FEP Manager Craig Elliott tried to ‘sort it all out’, but that the job was ‘too big’.

[48] In relation to evidence review, management appeared to hold the view that:

- to investigate or review any aspect of physical evidence required a reason and compelling evidence to be produced: ‘*unless you’ve got something compelling telling you otherwise, you have to work on the assumption that these things are real ...*’,<sup>6</sup> and
- the removal of some evidence would not neutralise all the evidence.

[49] In relation to the Glen Esk fox, the Department stated to the PAC in 2009, ‘*that is one event in a long history of the program. All the other events and all the other evidence and observations provide the entire context for where we are today and I do not think we should misrepresent the significance of that one investigation*’.<sup>7</sup>

[50] The lack of consistent definition of core components used throughout the Program led to different interpretations being used. This is specifically evident with the definition of ‘hard’ evidence.

## 4.2. Impact of external criticism

[51] Criticism of the Program appears to have commenced from the beginning. It extended to the Program generally, the evidence, the funding and was directed towards employees, managers and politicians. The following are some comments gathered through the investigation:

*It was like keeping the tide back ... the website ... each time an article got posted [on Tasmanian Times] I could actually feel the tone in the office change, and then next thing there’d be people off in debates about why won’t the department defend us.*

*There would always be a reason about the political cycle, of not wanting the minister out in front of media, a tendency for people making the decisions to say, ‘Just let it go, and it will all fade away, don’t give it oxygen’. Essentially we quite often had one hand tied behind our back, which was frustrating - they’d be copping it over the back fence so to speak, because anything that appeared in the media was taken as gospel truth, and it wasn’t being defended.*

*I just think that it’s incredibly sad that people on the ground who work in the community, who have kids that go to school, who could be talked about by a member of Parliament in a way that is saying that we’re all flawed and we’re all hoaxers ... he hasn’t just said it’s one or two potentially bad people ... we’re all nasty people ... it really was offensive to hear that. It still is – this government still does the same thing. It takes its toll on people to hear our bosses ... talking about us in such a negative way, when most of us just want to do a good job.*

*I had a dead wallaby dumped in my driveway. I had people spit at me at Agfest. I’ve had grown men crying in my office because of the way they were being treated in the community and ostracised so it was tough work and four years was enough.*

<sup>6</sup> Transcript, Alan Johnston, pg 49.

<sup>7</sup> Tasmania Parliament, Hansard, 2 June 2009 (Kim Evans), p 42.

*We went from an organisation that, I suppose you could say was a little bit too cloak and dagger, and no one knew what we were up to, but then we made ourselves very open to the public.*

*... it was horrible. We'd do public meetings. We stood in front of people locally and said, "We want to bait through your properties." That was very sensitive. It was difficult. We got attacked ... people were very angry. So yes, there is a kind of circling of wagons that the program did. It became – it certainly became us and them.*

*There's criticism with the amount of money and if we've got foxes we would see them and that's just not true if you've got a small level of population, you won't see them. You don't see devils in Hobart but they're here, you know. You don't see quolls very often ... we didn't have very much evidence of foxes, didn't surprise me at all.*

- [52] There was also significant scepticism in the community as to whether foxes were living in Tasmania and it appears the Program was placed under pressure to produce absolute proof of their existence.
- [53] The Program received consistent criticism by several persons over prolonged periods. This criticism was not without merit on occasion. It led to an organisational dismissal of their concerns and the inability 'to hear' any legitimate concern. This dismissal and tendency to ignore critics led to the critics getting 'louder'. The more overt they became the more they were ignored but the longer something was said the more it was taken to be fact. It also led to valid concerns wrongly being dismissed and wrong interpretations being made. Some staff reported welcoming the questions believing it would improve the Program. Some executive documentation encourages concerns to be raised. It is unclear if this was a genuine offer or provided without real conviction. Operational areas tended to resist and dismiss this criticism.

#### **4.3. Precautionary principle**

- [54] The initial biosecurity risk management standard is based in the precautionary principle. The precautionary principle stipulates that if an issue or event is identified as causing serious or irreversible harm, the lack of evidence to not take action should not prevent immediate and pre-emptory response to eliminate the issue or event, or to reduce the risk of damage. The amount of harm that could be caused must be anticipated, and the response proportionate to that threat.
- [55] There is significant evidence available as to the anticipated damage an established fox population could mean for this State:

*The Tasmanian and Commonwealth Governments and their relevant agencies should recognise the fox threat for what it is – an impending disaster comparable in magnitude in reference to damage, to an outbreak of a calamitous disease such as Foot and Mouth disease. The key word here is magnitude in reference to the damage to the economy, and very much more to Tasmania's biodiversity. Accordingly, while the response scenarios would be different ... the eradication of the fox nonetheless, should be given the highest priority within the relevant agencies in relation to staffing, funding and the allocation of resources needed to complete the task. Should failure be*



*the result, anything less would be seen, both currently and historically, as a gross example of government irresponsibility?*<sup>8</sup>

- [56] The potential direct harm to Tasmania's biodiversity would be to lose eastern barred bandicoots, Tasmanian bettongs and eastern quolls, put our endemic Tasmanian native hen at extreme risk and local populations of little penguins and shearwaters, spotted-tailed quoll and smaller species of dasyurids, native rodents and ground birds would be under serious risk. It may impact on the recovery of the Tasmanian devil from facial tumour disease. Foxes are responsible for lambing losses of up to 30% in some regions, averaging 5–10% Australia-wide, occasionally prey on new-born calves and have even maimed cows during birth, free-range poultry of all sorts is at particular risk as are fawns and kid goats; and there are estimates of the fox establishing in Tasmania are an annual cost to our economy of up to \$20 million a year.<sup>9</sup>
- [57] Previous reviews of the Program and community consultation recognise an established fox population as a significant threat to this State. This is one of the only areas where there is agreement between the Program's staff, critics, scientists, hunters and the general community.
- [58] The precautionary principle adopts a presumption that foxes may be in Tasmania should there be evidence or information to support that premise, and that appropriate action should be taken to reduce the threat that they pose. Evidence or information credibility to invoke the precautionary principle may be low and the response action taken should be high. There is no need for scientific proof to a standard of that is 'beyond a reasonable doubt' or 'on the balance of probabilities'. Waiting for any of these thresholds to be reached could result in the fox establishing. Once established it would be nearly impossible to eradicate. Instead there is an obligation for action that would prevent or minimise harm.

*The levels of scepticism in our community in general ... if you waited until everybody was happy that we should do something there is almost no point doing anything. And that gives a real problem in ... a way applying that principle has got us to this interview but it does mean that if you have what ... I would describe as an evidence based micromanagement reaction, that is – we do nothing until you can absolutely prove that foxes are in Tasmania – then that leads to the question of what evidence proves they are here – that bar is actually so high that it is self-defeating almost.*

...

*But I would rather be here arguing this toss than arguing the toss of, "We've got foxes everywhere and why didn't you do more".*<sup>10</sup>

- [59] However, actions and responses taken under the precautionary principle require constant review to take into account new information and evidence.

<sup>8</sup> Kinnear Report 2003, pg 7.

<sup>9</sup> Media Release, David Llewellyn, 13 November 2006.

<sup>10</sup> Transcript, Nick Mooney, pp 8, 14.

#### 4.4. Evidence versus information

- [60] 'Evidence' is the term used to define something that leads to a conclusion or proof. 'Information' is knowledge about a certain subject. Both terms have relative levels of certainty that can apply. Evidence is conclusive, information is informative.
- [61] Evidence can be described as 'hard', 'strong', 'compelling', 'firm' to 'weak' or 'soft'. Information can be described as 'credible' or 'not credible'. 'Physical' evidence relates to objects.
- [62] Soft evidence can be information and there is an element of unreliability with any weaker rating of either concept. For evidence or information to be important, it must be relevant.

#### 4.5. Hard evidence

- [63] During the Program the term 'hard evidence' has been used to describe the standard of evidence that suggests that the fox is living in Tasmania. As defined in the 2006 IACRC Report, 'hard evidence' is real and unassailable.<sup>11</sup> It means the evidence is not able to be questioned or disputed. The IACRC definition is the only documented definition that could be located within Program documents. It is noted that after the publication of the report, the term 'hard evidence' was superseded by 'physical evidence'.
- [64] The application of the term 'hard evidence' as it relates to the Program is somewhat unclear. It is referred to throughout the Program in reviews, operational and strategy documents, reports, websites, media releases and within Parliamentary discussions.
- [65] The predominant use of this term relates to scientific evaluation and not judicial proceedings. The concepts and terminology that apply to judicial thresholds are high and should not be used when considering the Program.
- [66] Staff were unclear as to the definition of 'hard evidence':
- ... there is no formal glossary.<sup>12</sup>*
- ... there was an element of instability across the definitions.<sup>13</sup>*
- ... hard evidence was physical evidence.<sup>14</sup>*
- ... hard evidence would be something like ... a fox scat that read positive ... you'd have to take it as hard evidence, seeing that the testing regime was peer reviewed and scientifically recognised.<sup>15</sup>*
- ... would be that sort of stuff where we've got scientific backing to what we've collected ... (no question mark over it) ... sound or solid evidence.<sup>16</sup>*

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<sup>11</sup> IACRC Report 2006, pg 23.

<sup>12</sup> Transcript, Nick Mooney, pg 21.

<sup>13</sup> Ibid, pg 22.

<sup>14</sup> Transcript, Craig Elliott, pg 46.

<sup>15</sup> Transcript, Glenn Atkinson, pg 46.

<sup>16</sup> Transcript, Chris Emms, pg 64.

*... a scat, a carcass, whether a footprint counted as hard evidence – I think it did. Footprints ... physical evidence ... I didn't get a definitive – a definition of what "hard evidence" is.<sup>17</sup>*

[67] The IACRC Report recognised this issue:

*Hard evidence provides certainty but does absence of evidence of foxes provide evidence of their absence? Incontrovertible proof of foxes in Tasmania would provide clear and unambiguous support for ongoing action and acceptance of the problem as a State and National emergency. An overabundance of hard evidence would also be indicative of an established fox population, with the inference that efforts to control the incursion had failed. Conversely, any lack of scientific certainty with individual cases should not be used as a reason to postpone measures to avoid or minimise a threat of significant reduction or loss of biodiversity (McNeely et al. 2001). The present situation presents a difficult dilemma.<sup>18</sup>*

[68] The following instances have been reported as hard evidence of the presence of foxes in Tasmania. In some cases, the claim of hard evidence has been publicly refuted:

- May 1998: Fox walks off a container ship and into Tasmania at Burnie wharf, later confirmed by prints. Six workers reportedly chased the fox until it escaped from view.
- August 2001: Confirmed fox prints found at Woodstock Lagoon near the Longford incident.
- September 2001: Fox shot near Symmons Plains ('Bosworth' fox) and carcass retrieved. Contents of gut revealed evidence of an endemic species.
- May 2002: Scat collected near Burnie is confirmed as that of a fox through hair analysis (fox guard hairs were identified in scat).
- October 2003: Fox found freshly dead on the verge of Bass Highway on the outskirts of Burnie. Carcase retrieved by police.
- February 2005: Scat found in the Conara area confirmed as a fox scat through DNA analysis.
- February 2006: Dead fox reported by roadside at Lillico Beach and carcase retrieved by Taskforce. Tissue, hair and jaw samples confirmed positively as fox. Age of fox (approx. 4–6 months) provides first hard evidence of foxes breeding in Tasmania.
- May 2006: Poultry reported killed at Old Beach (near Hobart). Blood collected and confirmed as fox. The blood was recovered following the application of barbed wire to a hole through which an animal had passed to kill the poultry.<sup>19</sup>

[69] The Program was established to detect and eradicate live foxes in the Tasmanian environment. The application of the definition of 'hard evidence' to the Program was

<sup>17</sup> Transcript, Mark Mackay, pg 22.

<sup>18</sup> IACRC Report 2006, pg 23.

<sup>19</sup> IACRC Report 2006, 4.1, 4.2.

that it was evidence of foxes living in the State: *'the evidence is strong to suggest that there actually are fox carcasses; these are carcasses of foxes that were living in Tasmania and were killed in Tasmania'*.<sup>20</sup> There is an assumption that it is not evidence of foxes here by accidental incursion for a short period or accidentally or of hoax evidence. The Longford fox is an example that the Program withdrew from the evidence list.

- [70] There is no reference in the funding applications reviewed as part of the investigation, to the term 'hard evidence'.
- [71] Fox sightings were determined to be information, rather than evidence. This was due to the inherent unreliability of identification by eye witnesses and some Tasmanian native animals can easily be mistaken for foxes. Ratings of 'excellent', 'possible' and 'unlikely' were applied. Ratings were determined by the call taker to the fox hotline and a form was used to prompt questions for which answers would determine their rating. The rating system is not evident after 2005 on the electronic data base, but there is evidence that sightings continued to be rated for a priority response by the Program.<sup>21</sup>
- [72] The current listings of evidence on the DPIPWE website lack any reference to the term 'hard evidence'. It is listed as physical evidence. There were no caveats attached to that information.<sup>22</sup>
- [73] It is apparent that after the IACRC defined hard evidence, the term appears not to have been used since. It appears to have changed to 'physical evidence'. No documentation has been viewed that would explain the change in description. In any event, a listing under physical evidence would still require the evidence to be indicative of a fox living in Tasmania.

#### **4.6. Hoaxing by members of the public**

- [74] Hoaxing appeared to be an ever-present problem, particularly during the pre and FFT years of the Program (2000–2006). Deliberate hoaxing by community members was attributed to the Wynyard, St Helens and Longford foxes in 2001.<sup>23</sup> Further anecdotal evidence was referred to during the investigation, including a stuffed fox being placed by the side of the road at Oatlands.<sup>24</sup>
- [75] The seriousness of hoaxing appeared to be often portrayed as the less serious level of pranking. Many staff referred to the scepticism they applied to new fox evidence as a result of this hoaxing and referred to the waste of time and resources.
- [76] There are also many instances where foxes or fox product have been bought into the State and then discarded, with no intention to hoax the Program. The fox located on the Frankford Highway in 2016 is an example of this.

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<sup>20</sup> Transcript, Alan Johnston, pg 14.

<sup>21</sup> IACRC Report 2006, 4.4 (also referred to by other staff).

<sup>22</sup> During the investigation, the relevant pages of the website were amended to include the following note: *The Department advises that the information on these pages will be reviewed in light of any outcomes of the Integrity Commission's consideration of the complaint.*

<sup>23</sup> IACRC Report 2006, pp 15–16.

<sup>24</sup> Transcript, Nick Mooney, pg 6.

[77] In 2006, the IACRC Report stated:

*... with the potential for such hoaxing, it is of paramount importance that each report or investigation of evidence (especially hard evidence) is clinically analysed and documented. Reports and evidence need objective assessment; everything from the integrity of the person making the report, to the feasibility of the circumstances surrounding the sighting or detection of hard evidence. It will take compelling evidence to convince the Tasmanian public that a fox or foxes may be present in Tasmania.*<sup>25</sup>

#### **4.7. Changing dynamics and focus of the Program**

[78] The structure, dynamics, purpose and operating processes of the Program changed considerably over time.

[79] The Program commenced against an urgent threat, required initial significant recruiting, was without adequate process and struggled to recover. The Program morphed from personnel representative of hunter / shooter values (FFT) to a more scientific response (FEP) and that change in management had an effect.

[80] There was a transient nature of employment through contracts; experienced staff left, and took organisational and evidence knowledge with them.

[81] Processes and accountability increased over the course of the Program.

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<sup>25</sup> IACRC Report 2006, pg 31.

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## **PART B**

**Allegation: that employees of the FFT or the FEP fabricated and falsified evidence of foxes living in Tasmania**

- [82] Part B will examine each fox event as it was known at the time, and whether there is any evidence of fabrication or falsification of evidence by employees of either the FFT or FEP.

## 5. Longford fox cub importation

### The complainant alleges that:

- the Tasmania Police investigation concluded there was no evidence that fox cubs had been imported into Tasmania, and this finding should have held more weight and has been misrepresented or ignored.

### Other issues, concerns and coincidences:

- who prepared the Briefing Note and its purpose
- the source of additional information in the Briefing Note
- the Investigation examined whether the information in the briefing note was fabricated, falsified or embellished.

### 5.1. Evidence

- [83] Fox sightings had occurred in the Longford area prior to 2001.<sup>26</sup>
- [84] In early May 2001, an English couple was touring Tasmania and heard a fox calling whilst at the Longford River.<sup>27</sup>
- [85] On 15th May 2001, the highly regarded Tasmanian naturalist, Chris Spencer, observed a fox at close range on Illawarra Road, Longford.
- [86] On 24th May 2001, a person reported seeing a fox on Illawarra Road at Mountford crossing the road. He used to live in NSW and hunted foxes.
- [87] On 30th May 2001, a person observed a fox at close range on the new highway on the south side of Illawarra Road.<sup>28</sup>
- [88] In late May 2001, the PWS commenced an ICS in response to recent highly credible fox sightings and information pertaining to a target area around Longford.<sup>29</sup>
- [89] In mid-June 2001, a report was made regarding a fox sighting at Agfest. A fox had been observed leaving a container which had arrived from the mainland.
- [90] There were six other possible sightings in the Longford area over the same period.<sup>30</sup>
- [91] Information was obtained by PWS that fox cubs had been imported into Tasmania. This information was supplied to then Minister Llewellyn who ordered a criminal

<sup>26</sup> Sightings Summary Report, 1 March 1999. A kayaker on the Macquarie River observed a fox near Woolmers Bridge.

<sup>27</sup> Sightings Summary Report; Natural Values Atlas.

<sup>28</sup> Sightings Summary Report, pg 2; IACRC Report 2006, 6.1.

<sup>29</sup> Nick Mooney, Foxes in Tasmania – Review of the Longford Response, 14 August 2001.

<sup>30</sup> Sightings Summary Report; Natural Values Atlas.

investigation by a joint task force involving Tasmania Police and PWS officers (JTF1) and an eradication response by PWS.<sup>31</sup>

- [92] On 20 June 2001, JTF1 commenced. The investigation focus was to determine whether there had been a conspiracy to import foxes into Tasmania and to bring criminal charges if there was sufficient evidence to do so.<sup>32</sup>
- [93] JTF1 was presented with a briefing note outlining the information that PWS had obtained. The briefing note stated that information had been received over the previous weeks that Samba (deer) shooters had brought back fox cubs from Victoria and released them in this State. Enquiries were made with various persons within the shooting fraternity and the information obtained was more specific in detail. It included that: three persons were involved in importing 11 fox cubs over the Launceston Show Week in 1999; the foxes were bought in on the Spirit of Tasmania; and the foxes were reared on a property at Longford in a bush pen and then released. It said that the same persons involved released eight fox cubs in 1997 but a breeding population failed to establish, and that the reason for the release was an attempt to improve hunting in the State. Two of the three persons were identified as Paul Anthony Rigby and Cameron Charles Bryant. The third person was not known. The area of release was not known but these persons had links to Longford, St Helens and Oatlands. It was also noted that the informant is extremely concerned about threats made to him about providing the information to authorities and that he will refuse to co-operate in any further way.<sup>33</sup>
- [94] On 21 June 2001, a property, 'Montreal', in Longford was attended and searched for one suspect, by members of JTF1. All outbuildings, a caravan and the house were unoccupied and locked at the time.<sup>34</sup>
- [95] By 25 June 2001, members of JTF1 wished to validate the original information contained in the briefing note. The informant was speculated to be Andrew Copping.<sup>35</sup>
- [96] Michael Copping informed members of JTF1 that he had information from his brother, Andrew, that Andrew had a discussion with an unknown person in Glenorchy who approached him after recognising him as a hunter due to signage on his vehicle. Michael Copping stated he had provided some of the general aspects of the information in the briefing note but did not know the specific information such as the suspect's identity. Michael Copping stated he had been informed that two groups of fox cubs had been imported into the State by Samba shooters, one group of five and one group of six, on the TT line in a vehicle and reared in the bush. The shooters were from the Perth area but he did not nominate suspect identities.<sup>36</sup>

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<sup>31</sup> IACRC Report 2006.

<sup>32</sup> Fox Summary 2005.

<sup>33</sup> Glenn Atkinson, Confidential Briefing Notes: Illegal Importation of foxes into Tasmania (undated).

<sup>34</sup> First Joint Task Force Report.

<sup>35</sup> Ibid.

<sup>36</sup> Detective Inspector Michael Otley, Alleged Conspiracy to Import Foxes into Tasmania, 13 July 2001.



- [97] Enquiries continued into the suspects. The following information is relevant to their investigation:
- Cameron Bryant was employed as a farm hand on the farm Montreal on Illawarra Road, near Longford. He had been a Samba hunter on the mainland
  - Paul Rigby was a Samba hunter on the mainland
  - both the above were interviewed and denied importing fox cubs
  - several other persons were spoken to and were unable to assist
  - the investigation was done covertly to avoid publicity, and
  - the reporting person considered that all persons spoken to had been fully co-operative.<sup>37</sup>
- [98] Other action included:
- a search of the property 'Montreal', and
  - a den excavation of a property at Hadspen, which afforded no evidence.<sup>38</sup>
- [99] On 13 July 2001, various reports were submitted to then Commander Ivan Dean in regard to the outcome of JTF1. The reports were completed by Detective Sergeant Robert Coad and Detective Inspector Michael Otley. The reports concluded that there was no evidence of fox cubs being imported into the State, no evidence of fox presence, and that any evidence obtained by sightings could not be corroborated by scientific evidence and could be explained by a different theory.<sup>39</sup>
- [100] On 17 July 2001, Commander Dean submitted a report to the Deputy Police Commissioner Jack Johnston. He stated that the information provided, outside that provided by Andrew Copping, appeared to be rumour and guesswork by PWS officers. It was further speculated that the information was embellished to provide the fox inquiry with some validation. He describes many of the sightings as suspect.<sup>40</sup>
- [101] On 17 July 2001, a photographic image of a fox being held by several males was published in the *Examiner* newspaper. It was set against the backdrop of the Longford road sign.
- [102] On 19 July 2001, the *Examiner* newspaper published an article stating that Tasmania Police considered the fox import allegations to be untrue.
- [103] On 6 August 2001, fox prints were located in mud at Woodstock Lagoon, near Longford.
- [104] On 29 August 2001, Detective Inspector Otley provided Commander Dean with a report responding to a number of media reports relating to the existence of foxes in Tasmania. The Detective Inspector stated that the footprints found at Woodstock

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<sup>37</sup> First Joint Task Force Report.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid; Detective Inspector Michael Otley, First Joint Task Force Report, 13 July 2001.

<sup>40</sup> Commander Ivan Dean, First Joint Task Force Report, 17 July 2001.

were being investigated by PWS and that they considered it had no relevance to the fox cub import theory.<sup>41</sup>

- [105] On 31 August 2001, Commander Dean informed Assistant Commissioner Barry Bennett that police had assisted with a search at Conara and that PWS would follow up on information that was coming from Crime Stoppers.<sup>42</sup>
- [106] On 23 September 2001, the Symmons Plains fox carcass was recovered and it was nominated to have been shot at Symmons Plains on 13 September 2001. The fox's stomach contents reportedly contained an endemic long tailed mouse.
- [107] On 27 September 2001, Erick Bosworth (who allegedly shot the Symmons Plains fox) stated he had seen a vixen and cubs near where the Symmons Plains fox was shot.
- [108] On 7 October 2001, the *Sunday Examiner* newspaper reported that a gang was breeding foxes and whilst police had found it difficult to confirm the allegations, it was the timeframe to prosecute under the Statute of Limitations that stopped further action.
- [109] In December 2001, Tim Bloomfield, Department of Natural Resources and Environment (Victoria), was appointed to conduct an independent review of all 'fox evidence' and to undertake a 'risk assessment' for the purpose of making recommendations on how the Government might manage the fox situation in the State.
- [110] In January 2002, Mr Bloomfield stated:
 

*Foxes are the greatest known threat to Tasmania's wildlife in our time and the eradication of foxes from Tasmania will only occur by the application of a thorough, comprehensive and extensive program. The control measures selected must be applied at sufficient distribution and frequency that there can be confidence that all individual (foxes) will have been treated.*<sup>43</sup>
- [111] On 31 January 2002, Minister Llewellyn announced the establishment of the Fox Free Task Force (FFT) with allocated funding of \$2.4 million over two years.<sup>44</sup>
- [112] In March 2002, the Minister announced a reward of \$50,000 for information leading to the conviction of a person for introducing foxes into Tasmania. The Crime Stoppers telephone number was provided and information was received.
- [113] On 26 March 2002, Nick Mooney wrote that, '*The information that the authorities have received leaves no doubt that foxes were deliberately brought to Tasmania ...*'.<sup>45</sup> This was on the basis of sightings reports, the Woodstock prints and the Bosworth fox, as well as reports of both deliberate and accidental imports that Wildlife Rangers had put

<sup>41</sup> Detective Inspector Michael Otley, Alleged Conspiracy to import foxes into Tasmania, 29 August 2001.

<sup>42</sup> Commander Ivan Dean, Alleged Conspiracy to import foxes into Tasmania, 31 August 2001.

<sup>43</sup> Bloomfield 2002, pg 3 (referencing advice provided to the Department in January 2002).

<sup>44</sup> IACRC Report 2006, 3.2.9.

<sup>45</sup> Nick Mooney, Nature (Vol 416, pg 367), 26 March 2002. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

together post 2001 eg people bringing in individual live foxes as pets and the claimed 2001 incursion via Agfest.<sup>46</sup>

- [114] Additional information was received in 2002 about the fox cub imports from the recent established fox hotline. This led to the establishment of JTF2, involving Mr Atkinson and two members of Tasmania Police. During their investigations further information was obtained regarding the original fox cub importation report. It included that there were as many as three occurrences of fox cub importations, nominated different suspects, identified a property on Pateena Road as being of location the cubs were raised, that the cubs were raised on a Labrador dog bitch, in a bush pen and that a tree limb had fallen and compromised the pen resulting in the fox cubs escaping.
- [115] On 12 September 2002, Catalyst (ABC TV) broadcast *Tassie Fox: A Biosecurity Threat* about the fox cub importation into Tasmania.<sup>47</sup> In that program:
- Nick Mooney stated, *'Bringing foxes into Tasmania is probably the most foolish and stupid thing I could think of being done'*
  - Dr Clive Marks stated, *'I would call it an example of bio-terrorism; we're dealing with something which is akin to September 11 for wildlife in Tasmania'*
  - Chris Emms (Wildlife Ranger) stated, *'In ten, fifteen years' time we're going to be judged by our children as to how effective we were.'*
- [116] On 19 September 2002, Senator Shane Murphy stated in Parliament, in response to Catalyst, *'I have never heard such a load of rubbish in all my life ... the reality is this: the police conducted an extensive investigation in Tasmania in so far as it related to the introduction of foxes into the State by person or persons unknown'*. He went on to raise concerns over the credibility of Mr Bosworth and stated sightings in the area could be explained.<sup>48</sup>
- [117] Towards the end of 2002, Mr Atkinson asked the AFP to review the investigation from the JTF2 to determine if any avenue of enquiry had not been adequately concluded. The review concluded there were no further lines of enquiry that could be made in regard to the evidence / information.<sup>49</sup>
- [118] In 2003, Kinnear stated: *'Tasmania's fox-free status was breached as the direct result of a deliberate introduction of several foxes into the Burnie and Launceston areas'*.<sup>50</sup>
- [119] In the *2004-2007 Fox Eradication Management Strategy*, reference was made to the release of a litter of cubs into Tasmania.<sup>51</sup>
- [120] The 2005-2006 funding applications to the Commonwealth Government did not refer to fox cub importations.

<sup>46</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>47</sup> <http://www.abc.net.au/catalyst/stories/s665469.htm>

<sup>48</sup> Commonwealth Parliament, Senate Hansard.

<sup>49</sup> Transcript, Glenn Atkinson, pg 26.

<sup>50</sup> Kinnear Report 2003.

<sup>51</sup> DPIWE, Fox Free Tasmania: Fox Eradication Management Strategy 2004-2007, pg 5.

- [121] The 2006 IACRC Report refers to the report about the fox cub importation and the Tasmania Police findings. It commented on the police investigation focusing on criminal charges relating to fox cub importation and that it finished before physical evidence came to light. The report took a precautionary approach to the possible incursion of foxes into the state of Tasmania, given the importance and value of the unique ecology of Tasmania and found:

*Despite the suspicions raised, it was impossible for the review to discount all the hard evidence presented and we concluded that indeed an unknown number of foxes had been deliberately and/or accidentally introduced and that some of these and possibly their progeny are still living in the wild in Tasmania. With this in mind, eradication of foxes from Tasmania must still be the single intent of the Taskforce.*

*The Tasmania Police reported the findings of its investigation and concluded that there was no substance to the information provided.*

...

*We understand that this police investigation dealt only with the importation of foxes per se and finished before any hard evidence came to light (e.g. the Longford footprints or the 'Bosworth' fox).<sup>52</sup>*

- [122] On 15 June 2006, Parliamentary notes indicate that Minister Llewellyn stated:

*We took action in 2002 when three litters of fox cubs were bought back to the state by people who were identified, but were not able to be charged.*

...

*Certainly the police followed these issues up. I am convinced that those litters were distributed ... It was on that basis we established the effort to try to rid the state of foxes.<sup>53</sup>*

- [123] In 2009, the Landcare Research Report states:

*However, a more deliberate attempt to establish a population was apparently made in late 1999 with an alleged introduction of 11 foxes from two litters released at three place in Tasmania.<sup>54</sup>*

- [124] In 2009, the PAC received a submission from DPIPW which stated:

*Unsubstantiated allegations surfaced that litters of foxes had been smuggled into Tasmania and released in 1999 (and possibly 2000 and 2001).<sup>55</sup>*

...

*Of great concern to Tasmania have been anecdotal reports from a number of sources, including first-hand witnesses, suggesting importation and breeding of foxes in Tasmania into the 1970's and possibly later. These reports culminate in allegations*

<sup>52</sup> IACRC Report 2006, pg 29.

<sup>53</sup> Tasmania Parliament, House of Assembly, 15 June 2006.

<sup>54</sup> Landcare 2009, pg 11.

<sup>55</sup> PAC 2009, DPIPW submission, pg 1.

*that a number of fox litters were imported and released in Tasmania at the turn of the century (an investigation by Tasmania Police concluded that there was no substance to the claim).<sup>56</sup>*

- [125] A letter dated 1 September 2010 from the Minister for Environment, Parks and Heritage, the Hon David O'Byrne MP, to Dr Marks, states:

*With regard to your comments about the police inquiry into the specific issue of particular names person allegedly having brought fox cubs into the state; that particular line of inquiry has not been used as the basis of my Department's belief that foxes are present in Tasmania, nor has the Department formed any conclusion about how any of all of the foxes currently known (and unknown) to be present in the state got here.<sup>57</sup>*

- [126] In 2013, the Kitchell Report made no reference to the fox cub importation in its preamble.

- [127] In 2014, Nick Mooney stated in relation to a question about whether he believed fox cubs were brought into Tasmania, he stated: *'I don't know, to me it's a story, it might be a very credible story when told by some people, but I don't have a strong view of it, because I've seen no evidence'*.<sup>58</sup> Mr Mooney confirmed to the Commission that the most common reason given for the alleged importation was that they were brought to Tasmania by shooters.<sup>59</sup>

- [128] On 28 June 2014, Dr Marks wrote:

*In 2001 it was widely reported that red foxes had been deliberately released in the island state of Tasmania. Although this claim was later revealed to be baseless.*

...

*In 2001, claims of up to 19 foxes from the Australian mainland had been released in Tasmania and were widely communicated by media ... despite a Tasmanian Police investigation finding this claim to be anecdotal and without any evidentiary basis. None the less, opportunistically acquired post-mortem specimens of foxes lead some researchers to conclude that they had originated from the claimed release in 2001.<sup>60</sup>*

- [129] On 29 April 2016, fox evidence listed on the DPIPWE website did not refer to fox cub importations.

### **Evidence of Mr Glenn Atkinson**

- [130] Mr Atkinson was at the time a Ranger in PWS and was a member of both JTF1 and JTF2.

<sup>56</sup> PAC 2009, DPIPWE submission, pg 4.

<sup>57</sup> McCreadie Report 2016, pg 23.

<sup>58</sup> Nick Mooney, ABC radio, 2014; McCreadie Report 2016, pg 25. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>59</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>60</sup> Marks Evidence 2014.

- [131] Mr Atkinson stated he prepared the briefing note provided to JTF1 but was not aware of the informant's identity. He said Michael Copping had been dealing with the informant but that the informant refused to deal with police and was frightened of retaliation by the suspects.<sup>61</sup> Mr Atkinson took these concerns as being genuine.
- [132] He confirmed the information received by JTF2 about the location of the suspect property, and said that female Labrador dogs can raise fox cubs and that a previous renter of the property had a Labrador bitch, and was a Samba deer shooter and had travelled to and from the mainland for hunting trips.
- [133] Mr Atkinson provided an example of the difficulty in the investigations:

*We have specific information from a person of good character relating to a conversation three years ago about a litter of foxes being reared for release on a bitch. He had this conversation with a person who has demonstrably little regards for the law. He swears this conversation took place. [The other person] denies (it) ... With no other avenue available investigators are left with fact that one of the two is not telling the truth.<sup>62</sup>*

- [134] Mr Atkinson stated that there was no primary or consistent suspect for the alleged importation of fox cubs into Tasmania, and that there were at least three primary suspects (including groups) between 2000 and 2002.<sup>63</sup>
- [135] All information provided by Mr Atkinson was validated against contemporary documents from 2001 as part of this investigation.
- [136] Mr Atkinson retained a copy of all documents from JTF2. These documents include running sheets of investigations in regards to each piece of evidence.

### **Evidence of Michael Copping**

- [137] Michael Copping was a Ranger with PWS.
- [138] He stated that he had received the original information. He was approaching property owners in the vicinity of the sightings to allow access for spotlighting. He was on the Montreal property and spoke to a worker on the property and they got into a conversation about foxes. That person stated he had friends who were Samba deer hunters in Victoria and who had found two dens of fox cubs whilst hunting. They had bought them back wrapped up in the spare wheel of their Toyota Land Cruiser to rear them in order to hunt them. They were raised in a pen at the back of the property and a limb had fallen onto the fencing and some of the animals had escaped. The remaining animals were released at two other properties. He provided the information to Mr Atkinson and Mr Emms at the time. He does not recall the worker's name. The informant told him that he would not co-operate with authorities as he feared for his life.
- [139] He was instructed to keep looking across the (suspect) property and sometime later found the remains of a chicken wire enclosure up on a ridge, wrapped in a heap of

<sup>61</sup> Transcript, Glenn Atkinson, pp 27– 28.

<sup>62</sup> Second Joint Task Force Report.

<sup>63</sup> McCreadie Report 2016, pg 18.

bulldozed trees, and that before they could get scientific advisor Nick Mooney there to search for forensic samples, the heap was set on fire and everything destroyed.

- [140] There is some information that there were aerial photographs taken of the pen showing the established pen and then in a later shot it had been removed. This information has not been viewed, but Dr Marks confirmed that he had sighted them.<sup>64</sup>
- [141] Michael Copping was spoken to several times by this investigation and failed to recall the name of the original informant. He stated that the person had been interviewed by Tasmania Police during JTF1. The person failed to co-operate with Tasmania Police. He further stated the person had been the tenant on the property called Montreal at one time.<sup>65</sup>

#### **Evidence of Detective Constable John Mikulski**

- [142] Mr Mikulski was a Detective Constable assigned to a part time role in JTF2.
- [143] He considered there was credible information that foxes had been imported in or around 2001 and were released into the landscape. He further stated that there was never any strong direct evidence sufficient to enable any person to be charged with a criminal offence.

#### **Evidence of Chris Emms**

- [144] Mr Emms was a Ranger for PWS and a supervisor with the ICS.
- [145] He stated the fox cub importation investigation by Tasmania Police was examining evidence and information from an offence perspective, whilst the Department was looking at it from a risk management perspective.<sup>66</sup>

#### **Evidence of Peter Mooney**

- [146] Peter Mooney was the Manager of the ICS, and later General Manager of PWS.
- [147] He stated that he was a part time manager of the initial response to the fox issue in 2001. His main role was to manage the identification phase or to establish that the fox was living in Tasmania. He was aware that Tasmania Police were conducting an investigation into importation offences. The timeframe to prosecute under the Statute of Limitations would have nearly expired at the commencement of that investigation.
- [148] He said that fox experts at the time were unanimous that there was only one opportunity to eradicate the fox and that significant resources had to be provided to seize that opportunity. He said he did not know the original informant's identity. He was able to recall that persons were interviewed at the Launceston Police Station but he was unable to identify any of them.<sup>67</sup>

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<sup>64</sup> Email from Clive Marks, 8 March 2017.

<sup>65</sup> Emails from Michael Copping, 25 March and 1 April 2017.

<sup>66</sup> Transcript, Chris Emms, pg 8.

<sup>67</sup> Transcript, Peter Mooney, pg 10.

## 5.2. Analysis of evidence

- [149] The role of the ICS was to identify if foxes were living near Longford or other supposed release areas within Tasmania, and to eradicate them. They were working within a biosecurity threshold and applied a precautionary approach. It was the task of this unit to interview witnesses and persons, do ground searches for prints or other evidence, lay traps and spotlight. Little evidence or information was required to respond to a possible fox incursion.
- [150] JTF1 was established based on information supplied to PWS that a number of persons had imported fox cubs and released them into the Tasmanian landscape. Hunters were nominated as being responsible and were motivated by a desire to gain revenge for a decision by then Minister Llewellyn regarding gun control and to create better hunting prospects in the State. The general area of interest was nominated as Longford. The information was recently obtained and was corroborated by seemingly credible fox sightings in the Longford area.
- [151] Minister Llewellyn acted decisively and tasked Tasmania Police and PWS to form JTF1 to investigate any criminal offences relating to that importation, and to establish if foxes were present. There was credible evidence that foxes were in and around the Longford area. A precautionary response was required.
- [152] JTF1 operated with a covert approach to avoid publicity. The reasoning behind this is not evident, but could relate to the difficult task the investigation posed. The main aim of JTF1 was to locate and interview the nominated suspects. The information was that cubs had been imported and released. Location of physical or forensic evidence would therefore be difficult and would be reliant on witness evidence and admissions. The property ('Montreal') where the fox cubs were allegedly kept was searched, however it appears that the search was undertaken to locate a suspect and there is no mention of a search for evidence.<sup>68</sup>
- [153] There was pressure placed by Tasmania Police upon employees of PWS to establish the identity of the original informant. Andrew Copping was nominated as the informant; however it is clear he was not in possession of the detailed evidence contained in the original Briefing Note.
- [154] JTF1 found there was no evidence of fox cubs being imported. The task force operated in the context of a criminal investigation that required relevant and admissible evidence to reach a threshold of proof of beyond a reasonable doubt.
- [155] JTF2 received several additional pieces of information that led to a property being searched adjacent to the originally nominated one, some twelve months after the initial report. On this property was located corroborative evidence to the initial and subsequent information. However, no viable suspect was determined, the evidence still fell short of the threshold for a criminal prosecution and the timeframe to prosecute under the Statute of Limitations had expired.
- [156] Over the years the findings of JTF1 received a significant amount of publicity. They have been used to directly challenge the basis of the FFT, as well as the evidence

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<sup>68</sup> First Joint Task Force Report.



and information collected by the PWS and ICS. This issue has been debated in the media and by critics to the point where this statement appears to have been held as proof there were no foxes in Tasmania. There have also been allegations that persons have been misled by FFT staff due to this finding.

- [157] With due respect to JTF1, its determination that there was no evidence of foxes may have exceeded their remit. They were established to, 'operate covertly in an endeavor to establish and verify the contents of the Briefing Note'<sup>69</sup> and to '*specifically concentrate of the illegal operations of importation of the fox ... for rearing and release*'.<sup>70</sup>
- [158] It appears that the standard of proof applied to the criminal investigation of importing foxes was transferred to the presence of foxes in Tasmania. This evidence of foxes in Tasmania should not have been required to reach a standard of proof of beyond a reasonable doubt. It also did not take into account additional evidence provided and located in 2001-2002.
- [159] The information of fox cubs being in the State, supported by a number of credible sightings, was a line of enquiry. The information is not of itself audacious, was credible and explained how the incursions occurred. However it was not evidence that was proof of foxes living in Tasmania. There was no other information as to the origin of the foxes present in the area.
- [160] This fox event did not amount to hard evidence, nor is there any suggestion by the ICS, PWS, FFT and FEP that it did. Further information solidified its credibility in 2002. There is no doubt that JTF2 'got closer' to an evidentiary status of the information. However there was no firm suspect for importation of foxes at any stage. Nonetheless, actions were taken to respond on the presumption that foxes were present and applied the precautionary principle. The report from JTF1 was relevant on 13 July 2001 and it should not apply to any later time period.

### 5.3. Analysis of evidence – fabrication of evidence by staff

- [161] The original source of the information contained in the Briefing Note cannot be established. Whilst not directly alleged by the complainant, it could be alleged that the information it contained was fabricated, falsified or embellished.
- [162] The lack of identification of the original informant and information was problematic for the joint task forces. Both persons who were involved in the preparation of the Briefing Note are unable to provide that identification.
- [163] The original Briefing Note was accompanied and informed by a handwritten note. The note states:

*11 fox cubs from 2 litters, transported on TT Line in boot of car, Samba shooters from Perth, Paul Rigby, raised in bush block pen 2km from Longford, farmhand on "Montreal" property friend of Rigby, 2nd time they have tried to do this, previously 4*

<sup>69</sup> Detective Inspector Michael Otley, First Joint Task Force Report, 13 July 2001.

<sup>70</sup> First Joint Task Force Report.

*yrs ago for no apparent reason 1997, alleged to have got cubs Launceston Show week 1999.*

- [164] The handwriting on the note has not been identified.<sup>71</sup>
- [165] Michael Copping states the information was obtained from a worker on the property where the cubs were kept. He was not aware of the existence of the handwritten note nor its contents when he was interviewed. The details of the handwritten note however correspond to some of the information provided by Michael Copping.
- [166] There are two persons of interest that were identified during the course of JTF1 who could have been the original informant. Neither has been sought out for comment due to the corroborative nature of evidence established in 2002.
- [167] It is obvious there is a vital piece of information missing which links the nominated suspects to the information. Cameron Bryant was a nominated suspect, as was Paul Rigby. Mr Bryant resided and worked on the Montreal property, as did the worker that Michael Copping spoke to. The handwritten note states that Mr Rigby is a friend of that farmhand on the Montreal property. There were several dwellings on the Montreal property at the time that were occupied. Michael Copping specifically mentioned Mr Rigby and Mr Cameron to JTF1 when interviewed on 26 June 2001. Both Mr Bryant and Mr Rigby confirmed they were Samba shooters who visited the mainland to hunt.<sup>72</sup>
- [168] The information provided by Andrew Copping supports some of the content of the information supplied to Michael Copping, which in turn informed the Briefing Note.
- [169] The JTF1 report stated that not being able to find the origin of the information source was '*with no other motive than concern for the State ...*'.<sup>73</sup> It did not suspect dishonesty or misrepresentation at the time from PWS officers.
- [170] It is noted that Mr Atkinson and Michael Copping had full time positions within PWS at the time and there is no suggestion that they had any motivating factor to fabricate evidence.
- [171] There is no evidence that the information contained in the Briefing Note was fabricated, falsified or embellished. There is a sufficient trail of information and common links to find that it is highly likely that the information recorded in the Note existed and was legitimately recorded. This information was not evidence.
- [172] All the generic issues that occurred throughout this Program are evident in regards to this fox event. It is likely that better record keeping at the time would have assisted in resolving this matter.
- [173] The specific allegation of misrepresentation will be addressed in Part C of this report.

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<sup>71</sup> Mr Atkinson and Mr Copping have confirmed that it is not their handwriting.

<sup>72</sup> First Joint Task Force Report.

<sup>73</sup> Ibid.

#### 5.4. Other issues, concerns and coincidences

##### **Who prepared the Briefing Note and its purpose?**

- [174] Mr Atkinson has confirmed that he completed the briefing note for the information of JTF1. It was not completed to inform the then Minister of the situation, however it is possible that a copy was supplied.<sup>74</sup>

##### **Where did the additional information naming the suspects originate?**

- [175] Mr Atkinson stated he did not know who the original informant was.
- [176] Michael Copping stated he was unable to recall the name of the informant, but stated it was a worker at the 'Montreal' property.

##### **Findings**

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**There is no conclusive evidence that the information contained in the Briefing Note prepared as a result of the ICS and provided to JTF1 was fabricated, falsified or embellished.**

**There is no conclusive evidence that any employee of the PWS or ICS fabricated or falsified evidence in relation to this fox event.**

**The evidence suggests that the Minister considered the information provided by both of his Departments, did not ignore or dismiss the findings of JTF1 and elected to apply the precautionary principle to inform his management response.**

## 6. Longford fox

##### **The complainant alleges that:**

- the images of the Longford fox were a hoax
- this fox event should not have been relied upon as evidence of foxes living in Tasmania.

##### **Other issues, concerns and coincidences:**

- the males depicted in the Longford fox image were known and the Department should have attempted to identify and expose those persons
- the involvement of Erick Bosworth with the Longford fox should have impacted on the credibility attached to the Symmons Plains (Bosworth) fox.

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<sup>74</sup> Transcript, Glenn Atkinson, pg 6.

## 6.1. Evidence

- [177] In May 2001, officers from the Nature Conservation Branch and PWS commenced the ICS in response to credible fox sightings and information pertaining to a target area of Longford.
- [178] The Longford fox photograph appeared in the *Examiner* newspaper on the 17 July 2001. The photograph depicted two men – with their heads lowered to prevent identification – standing under a Longford road sign. One male held the fox up by its tail and was also holding a firearm.<sup>75</sup> A letter accompanied the photograph when received at the *Examiner*, stating the fox had been shot in the Bishopsbourne–Woodstock area, two weeks earlier.<sup>76</sup>
- [179] An appeal was made for the men to come forward and the Department was contacted by one of the males in the photograph. He stated he would send in the fox pelt but wanted to remain anonymous, as he had been poaching at the time he shot the fox. The pelt and a further letter were received. The letter insisted the event was real.<sup>77</sup>
- [180] On 6 August 2001, fox footprints were discovered in the Woodstock Lagoon area.
- [181] On 23 September 2001, the Symmons Plains (Bosworth) fox was recovered. It was alleged to have been recovered from a property at Symmons Plains having been shot 10 days earlier by Erick Bosworth.<sup>78</sup>
- [182] On 17 October 2001, Nick Mooney said, *'If we can prove that the fox in the Longford picture is related (to the Symmons Plains fox) then we can say for certain that the fox in that photo was shot at Woodstock. If this is the case then we can be certain we are looking at a population'*.<sup>79</sup>
- [183] On 9 November 2001, Dr Nick Robinson, Department of Natural Resources and Environment (VIC), sent Peter Mooney an email stating that *'The two samples have a high similarity to each other (could possibly be full siblings as they share a high proportion of alleles. Both samples could not be reliably assigned to any urban Melbourne population'*.<sup>80</sup>
- [184] On 13 November, Peter Mooney asked Dr Robinson for a percentage rating of them being siblings or parents/offspring.<sup>81</sup> In his response, Dr Robinson said:

*Just talked through with a colleague. It is difficult to say how probable it is that the two are full siblings without parental genotypes ... ie say for one locus the dog had alleles A and B, which the vixen had alleles and dog progeny could inherit AC AD BC or BD from parents. So two progeny could be 100 identical (eg both AC), 50% identical (progeny 1 AC, progeny 2BC) or 0 identical (progeny 1 AC, progeny 2BD) at the locus. The frequency of particular alleles at particular loci differ in different*

<sup>75</sup> *The Examiner*, 17 July 2001.

<sup>76</sup> Transcript, Peter Mooney, pg 16.

<sup>77</sup> IACRC Report 2006.

<sup>78</sup> Statement, Erick Bosworth, 27 September 2001.

<sup>79</sup> Nick Mooney, *Foxes in Tasmania – Review of the Longford Response*, 14 August 2001.

<sup>80</sup> Peter Mooney, Email from Dr Robinson, 9 November 2001.

<sup>81</sup> Peter Mooney, Email to Dr Robinson, 13 November 2001.

*populations. We don't even know what populations these animals come from, so we have no idea what the frequencies are. If the two parents share alleles (by chance of a common descent) then there is a higher likelihood that the progeny will share alleles.*

*Just taking two individuals at random from within each of the 3 urban Melbourne populations we sampled and eyeballing the allele sharing across all loci between each two, it ranges from 20 to 70 (some could be siblings, we don't know). The two Tas samples share 70 of the alleles, so they are definitely on the high side. But they might also be from the same inbred population on the mainland, hence a high allele sharing'.<sup>82</sup>*

- [185] On 24 November, Peter Mooney stated on ABC Radio that the DNA sampling of those two different animals proves that they were actually siblings and was evidence of breeding.<sup>83</sup>
- [186] On 4 June 2002, then Minister Llewellyn informed Budget Estimates that the DNA assessments made the foxes siblings or a close relative, and originated from southern Victoria.<sup>84</sup>
- [187] In September 2002, Mr Atkinson recorded that the DNA link between the foxes is highly unlikely based on information provided by a credible informant. Documents obtained by the Commission relating to JTF2 indicate that: the persons in the Longford photograph had been identified; there was an admission that it was done as a joke; and both the fox in the photograph and the pelt provided to the Department had been sourced from Victoria. Mr Atkinson reported in December 2005 that, at the time of his investigation he *'was able to disprove this matter beyond a reasonable doubt'*.<sup>85</sup> The records indicate that Mr Atkinson reported this to a supervisor (Chris Emms) on 27 September 2002.
- [188] In November 2002, in his review of the FFT Tim Bloomfield referred to:
- Hard Evidence – 1. A skin of an adult male reportedly shot at Longford in July 2001, forwarded anonymously by people who claim to be trespassing (poaching) at the time ... 3. A carcass of a 14-16 month old male was reportedly shot at Symmons Plains in September 2001 ... The carcass and the skin are closely related – at least cousins.*<sup>86</sup>
- [189] On 17 December 2002, an article authored by Nick Mooney was published in *Birding Australia* stating the DNA tests on the carcass and skin were closely related (at least cousins) and lists the Longford fox was 'hard evidence'.<sup>87</sup> Mr Mooney has confirmed that he made this statement on the basis of information provided by the then Investigations Officer for the Program. He also confirmed that he *'sometimes used the*

<sup>82</sup> Peter Mooney, Email from Dr Robinson, 13 November 2001.

<sup>83</sup> <http://www.abc.net.au/radionational/programs/earthbeat/out-smarting-tasmanias-foxes-can-it-be-done/3643598>

<sup>84</sup> Parliament of Tasmania, Budget Estimates Committee, 4 June 2002.

<sup>85</sup> Fox Summary 2005.

<sup>86</sup> Bloomfield 2002.

<sup>87</sup> Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017..

term “hard evidence” to describe something physical that seemed credible evidence of fox(es) in Tasmania’.<sup>88</sup>

[190] In March 2003, the Kinnear Report stated:

*In mid-July a photo was sent into the papers showing two people holding a fox which was taken near a sign at Longford. It was alleged that the fox was shot on a property nearby. The persons in the photo would not come forward, but did send a fox skin into the Task Force which was subsequently sent for DNA analysis. No further evidence could be obtained to support the claims.*<sup>89</sup>

[191] In 2003, the DPIWE website stated that the skin of a second fox shot at Longford showed – through DNA analysis – a direct relationship to the Symmons Plains fox.<sup>90</sup> By 2004 it was removed from the list of evidence published by the Department.

[192] On 2 September 2005, Catriona Thompson (Technical Officer, Department of Primary Industries (VIC)) advised Chris Parker (FFT officer) that she had located the results sheet for the Symmons Plains fox and could not offer any conclusive results. She said that the samples yielded very degraded DNA, producing either no results or limited results. She said that she had passed the results onto Dr Robinson for interpretation but that he was unable to form any conclusions.<sup>91</sup>

[193] The Fox Management Strategy 2004-2007 states that:

*Shortly after this a skin from a fox was handed in to the Parks and Wildlife Service from anonymous hunters ... The DNA results showed a possible relationship with the Symmons Plains fox with the initial relationship possibly being as high as siblings. This was later revised to a lower level. The carcass of the fox was never recovered so no further evidence to support the claims of these hunters were obtained.*<sup>92</sup>

[194] In the Australian Federal Funding Application 2005-2006 there is no reference to the Longford fox.<sup>93</sup>

[195] In Parliamentary proceedings on 15 June 2006 Minister Llewellyn stated:

*I am drawing from memory now ... but it was deduced through DNA analysis that the fox shot at Symmons Plains for instance was in fact a sibling of the fox in the photo ... at Longford. ... we are talking of juvenile foxes and those foxes were determined to be siblings from the DNA analysis. So it does show clearly that there are a number of fox sightings and indications of foxes in the State.*<sup>94</sup>

[196] In 2006, the IACRC recorded that ‘No further evidence around this incident (Longford fox) has arisen and its authenticity remains questionable’.<sup>95</sup>

<sup>88</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>89</sup> Kinnear Report 2003.

<sup>90</sup> *Game Tracks* (2003), Issue 8.

<sup>91</sup> Catriona Thompson, Letter to Chris Parker, 2 September 2005.

<sup>92</sup> DPIWE, Fox Free Tasmania: Fox Eradication Management Strategy 2004-2007, pg 5.

<sup>93</sup> DPIWE, Projects proposed for Australian Government Funding 2005-06, 31 October 2005.

<sup>94</sup> Tasmania Parliament, House of Assembly, 15 June 2006.

<sup>95</sup> IACRC Report 2006.

- [197] In the FEP Operating Plan 2006-2007, there is no reference to the Longford fox in the list of fox evidence.
- [198] On 15 April 2008, Nick Mooney listed the physical evidence for foxes in Tasmania and there is no reference to the Longford fox.<sup>96</sup> Mr Mooney has confirmed that, *'by the mid-2000s the informal understanding within the Program was that the Longford Fox was very likely a hoax'*. His view was consolidated by virtue of the *'second genetic analysis giving the result the Longford and Symmons Plains Foxes were not closely related'*.<sup>97</sup>
- [199] On 31 March 2009, the DPIPWE Submission to PAC stated the Longford fox skin was an *'unresolved piece of evidence'*.<sup>98</sup>
- [200] In July 2011, Simon Fearn stated in a report that the Longford fox pelt was an unresolved piece of evidence and most likely a hoax.<sup>99</sup>

### **Evidence of Mr Atkinson**

- [201] Mr Atkinson investigated the Longford fox in 2002 and determined it to be a hoax. He stated, *'We thought it was (a hoax) right from the start to be quite honest, but we couldn't discount it'*<sup>100</sup> and that *'if we call everybody a hoaxter, no-one will tell us anything and we want people to tell us things'*.<sup>101</sup>
- [202] Mr Atkinson was able to trace the type of firearm being held in the published image, as it had a distinguishing feature, and ultimately identified the owner of the firearm. Mr Atkinson received an informal admission from Phillip Perkins that he and Leonard Viney were responsible and had obtained the pelt from a carcass sourced in Victoria. There was also a third male who was *'cropped out'* of the published photograph.
- [203] He stated:

*I was able to disprove this matter beyond doubt. The fox in the photo was imported from the mainland, as was the skin that was posted to the Department (the skin not being from the animal in the photograph). I was eventually able to locate the persons in the photograph. I reported this was in fact a deliberately staged hoax, and the persons who perpetrated it were known to me, to management ... It was decided that there was no gain to the Department to publicise this information and expose the persons involved to ridicule as this may prevent others from coming forward with information and sightings. Management's feeling was that as this evidence never enjoyed a lot of credibility in the first place and was certainly not the only evidence of foxes in Tasmania, that it was preferable to move on and make no reference to it.*<sup>102</sup>

<sup>96</sup> Nick Mooney, *Physical Evidence of Foxes in Tasmania since 1998*, 15 April 2008. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>97</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>98</sup> PAC 2009, DPIPWE submission.

<sup>99</sup> Fearn Evidence Catalogue 2011.

<sup>100</sup> Transcript, Glenn Atkinson, pg 40.

<sup>101</sup> Ibid, pg 41.

<sup>102</sup> Fox Summary 2005.

- [204] Mr Atkinson confirmed to the Commission that Erick Bosworth was definitely not one of the men in the photograph.<sup>103</sup>

### **Evidence of Chris Emms**

- [205] Mr Emms was a Ranger for PWS and a supervisor with the ICS.
- [206] Mr Emms initially stated that he had no knowledge of the Longford fox being determined a hoax, however when prompted, apologised and stated that he was aware of this fact.<sup>104</sup>

### **Evidence of Peter Mooney**

- [207] Peter Mooney was the South East Regional Manager for PWS and had a part time role overseeing the ICS.
- [208] Mr Mooney said that he received the pelt in the mail at the office at Seven Mile Beach. He said he was not formally aware of the fox being a hoax but remembers someone told him it was probably from Victoria. He stated there would have been discussions about not making the hoax public as ridiculing hoaxers may stop legitimate people coming forward or providing information. He said that a reward may also have had the effect of creating a large influx of information that was unable to be managed.<sup>105</sup>

### **Evidence of Nick Mooney**

- [209] Nick Mooney stated that the fox *'is indeed likely to be an irresponsible hoax ... we had to take it seriously at the time'*.<sup>106</sup> Mr Mooney has confirmed that, *'by the mid 2000s the informal understanding within the Program was that the Longford Fox was very likely a hoax'*. His view was consolidated by virtue of the *'second genetic analysis giving the result the Longford and Symmons Plains Foxes were not closely related'*.<sup>107</sup>

## **6.2. Analysis of evidence**

- [210] Mr Atkinson undertook a thorough investigation of the information being received in relation to this fox as part of JTF2. The investigation included consideration of telephone records, searches and interviews of a large number of people linked to this matter. He kept all the records and was able to produce them during the Commission's investigation. The records demonstrate that Mr Atkinson was able to resolve this issue and finalise it.
- [211] His report in 2005 provides insight into the managerial response to hoaxing. Despite what he records in 2005, this fox event did have credibility in 2001, especially when linked by DNA to the Symmons Plains fox.

<sup>103</sup> Transcript, Glenn Atkinson, pg 39.

<sup>104</sup> Transcript, Chris Emms, pp 53– 54.

<sup>105</sup> Transcript, Peter Mooney, pp 14–15.

<sup>106</sup> PAC 2009, Evidence. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>107</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.



- [212] Whilst some staff and management knew of the resolution of this fox event, it continued to be referred to well after 2002.

### **6.3. Analysis of evidence – fabrication of evidence by staff**

- [213] There is no specific allegation that an employee of the Program fabricated or falsified evidence relevant to this fox event.
- [214] All the generic issues that occurred throughout the Program are evident in regards to this fox event.

### **6.4. Other issues, concerns and coincidences**

#### **The images of the fox were a hoax**

- [215] It can be resolved that the photographic image published in the *Examiner* on 17 July 2001 was a hoax and this was determined in 2002 by JTF2.

#### **The Department should not have relied upon this fox event as evidence of foxes living in Tasmania.**

- [216] Whilst the decision to not publicise the hoax had its merit at the time, it took nearly three years for this matter to stop being referred to in an evidentiary or informative manner. Even as late as 2011, its status was 'unresolved'. This allegation will be referred to in Part C of this report.

#### **The males depicted in the Longford fox image were known and the Department should have attempted to identify and expose those persons.**

- [217] Mr Atkinson identified the person in the Longford photograph as Phillip Perkins and Leonard Viney. Mr Perkins admitted his part in an informal interview in 2002.

#### **The involvement of Erick Bosworth with the Longford fox should have impacted on the credibility attached to the Symmons Plains (Bosworth) fox.**

- [218] On the evidence obtained by the Commission, Mr Bosworth had no role in this matter.

### **Findings**

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**There is no conclusive evidence that any employee of the ICS or the FFT/FEP fabricated or falsified evidence in relation to this fox event, and at the time, it was not unreasonable to rely on the event as evidence of foxes living in Tasmania.**

## 7. Woodstock fox prints

### The complainant alleges that:

- the fox prints may have been part of the Longford fox hoax
- all the unresolved issues, concerns or coincidences could lead to a conclusion that evidence was unreliable and may have been fabricated.

### Other issues, concerns and coincidences:

- an ICS employee may have used the Symmons Plains fox feet to make the footprints at Woodstock
- the property owner's dog made the prints and ICS employees did not thoroughly investigate this possibility.

### 7.1. Evidence

- [219] As noted above, the ICS was established in May 2001 in response to credible fox sightings and information pertaining to a target area of Longford.<sup>108</sup> The Longford fox image appeared in the *Examiner* in July 2001.
- [220] On 18 July 2001, PWS officers returned from training exercises in Victoria with samples of fox urine and fox feet. Fox smell (from feet) was recorded as added to the repertoire of quarantine dogs, as an on-ground action.<sup>109</sup>
- [221] On 6 August 2001, FFT officers Chris Parker and Oliver Breeze located fox prints at Woodstock Lagoon. Casts were taken at the location. The cast and resin copy of the Woodstock fox print has been retained as evidence.<sup>110</sup>
- [222] On 23 August 2001, the *Mercury* published a front page article, *Tassie fox the proof*. It stated that a cast taken of the print was sent to four fox experts around Australia and all identified it as a fox print.<sup>111</sup>
- [223] On 23 September 2001, the Symmons Plains (or Bosworth) fox was seized by FFT officers. The feet of that fox were removed at some point and only two of those feet had been located in December 2008.<sup>112</sup>

### Evidence by Oliver Breeze

- [224] Mr Breeze was a former member of the FFT.
- [225] He states that he was in the area as a response to the Longford fox photograph. The lagoon is near where the photograph was taken. He was working out of the Cressy Research Station at the time and had a good relationship with the person who owned the property. He attended to cat traps on the 6 August 2001 that had been deployed in the area. The traps were being used to capture ginger cats to eliminate them from

<sup>108</sup> Nick Mooney, *Foxes in Tasmania – Review of the Longford Response*, 14 August 2001.

<sup>109</sup> *Ibid.*

<sup>110</sup> Fearn Evidence Catalogue 2011.

<sup>111</sup> The *Mercury*, *Tassie Fox the proof*, 23 August 2001.

<sup>112</sup> Fearn Evidence Catalogue 2009.

reported sightings. He was working the southeast side of the lagoon. There was a clay pan area between the low water mark of the lagoon and the grassed area. He observed the prints in the clay. Mr Breeze recalls that the print appeared quite different to a dog print.

- [226] Mr Breeze had plaster materials with him at the time and after taking photographs, took a clear cast of one print. Mr Bloomfield confirmed it was a fox print. Mr Breeze recalls no human prints or tyre prints in the area and there was nothing that concerned him about the find at the time or at any point later.<sup>113</sup>

### **Evidence of Chris Emms**

- [227] Mr Emms participated in the on-ground response as part of the ICS. He said the area where the fox prints were located had been regularly surveyed.<sup>114</sup>
- [228] He stated that the feet of the Symmons Plains / Bosworth fox had been removed to do some castings, to see if it could be matched to the Woodstock prints. He nominated Dr Phillip Ladd who completed the autopsy of the Symmons Plains fox as removing the feet at the time of the autopsy<sup>115</sup> and believes the feet may have also used them to produce some castings for education purposes.<sup>116</sup>

### **Evidence of Nick Mooney**

- [229] Nick Mooney said that he was called to attend the scene and described a stream of prints in a marsh area with no vehicle or human prints around it. He said, '*There were a series of fox prints in a marsh and ... one was a reasonable cast ... (he) sent photos to various (expert) people*'.<sup>117</sup> They were deemed highly likely to be from a fox, and the cast and a resin copy were lodged with Tasmanian Museum and Art Gallery (TMAG).
- [230] He stated there was a suggestion that the print was of the owner's dog or a whippet dog. These dogs were checked by having them walk through a sand pad and cast their feet for comparison and the prints were not similar to the print taken at Woodstock lagoon. In January 2009, he was recorded as stating,

*We recorded the prints of all local small dogs we could get including Mr Cox's whippet and none closely matched the canid prints we recovered. ... the whippet freely trotted about Mr Cox's back yard and was easy to record while visiting a friend who rented a cottage there. A whippet has a very different foot to a fox. The prints we collected were not whippet feet.*<sup>118</sup>

<sup>113</sup> Notes of conversation with Oliver Breeze, 2 June 2017.

<sup>114</sup> Transcript, Chris Emms, pg 10.

<sup>115</sup> Email from Chris Emms, 15 May 2017.

<sup>116</sup> Transcript, Chris Emms, pg 38.

<sup>117</sup> Nick Mooney, Foxes in Tasmania: Review of the Longford Response, 14 August 2001.

<sup>118</sup> <http://tasmaniantimes.com/index.php?/article/a-light-at-the-end-of-a-decade-long-tunnel-/#sthash.CZBDY273.dpuf>

## 7.2. Analysis of evidence

- [231] The Woodstock fox prints were located by ICS employees as part of the strategic response to fox reports in and around Longford. The response was significant, as evidenced in the review report prepared by Nick Mooney.<sup>119</sup>
- [232] Mr Breeze recalls the incident well and provided cogent evidence during his interview.
- [233] The Longford fox pelt was provided to authorities in July 2001 and as such was missing its legs. The Longford fox was later deemed a hoax in 2002.
- [234] The Symmons Plains fox was alleged to have been shot and handed into authorities, after the Woodstock fox prints were discovered.
- [235] The Woodstock fox prints have been recorded as 'hard evidence' in all reporting and Review Reports.
- [236] An independent article prepared by Dr Marks assessed the quality of physical evidence listed the Woodstock prints as of medium credibility (ie a single piece of evidence with no known human interference with the specimen). It provided no disqualifying criteria.<sup>120</sup>
- [237] The prints were checked by Mr Bloomfield at the time of first casting and he confirmed them as fox prints. The specimens remain available today.
- [238] The Fox Sighting Register maintained by the Program recorded seven sightings rated as 'excellent' from 1 May – 23 July 2001, and seven others. This excludes the sighting by Chris Spencer (naturalist) and the report of fox calling (made by unnamed tourists) in the Longford area.
- [239] Fox feet had been imported into Tasmania as part of the ICS.<sup>121</sup> All officers involved in the ICS were Rangers with the PWS, had long time employment and as such had little to no motivation to take part in a hoax from a financial reward perspective.
- [240] There is a possibility that the prints were part of a wider hoax linked to the Longford fox image, or an independent hoax; however there is no current evidence or information that could lead to this conclusion. The resolution of the Longford fox as a hoax uncovered no evidence or suggestion that this fox print was a hoax. ICS employees also stated there were no human prints near these fox prints to suggest a hoax had taken place.
- [241] The prints were checked by an expert and deemed to be a fox. There were sightings on a regular basis in the area from the public.
- [242] Nick Mooney gave evidence of the exclusion of the owner's dog, as well as other dogs in the area. A significant effort was made to do this. It appears this matter was thoroughly investigated.
- [243] This evidence remains a pivotal piece of physical and hard evidence that a fox was living in Tasmania in 2001, in the Woodstock Lagoon area.

<sup>119</sup> Nick Mooney, *Foxes in Tasmania: Review of the Longford Response*, 14 August 2001.

<sup>120</sup> Marks Evidence 2014.

<sup>121</sup> Nick Mooney, *Foxes in Tasmania: Review of the Longford Response*, 14 August 2001.

- [244] There was a further suggestion during the investigation that the plaster cast taken of the print may not exist. That cast is confirmed to be currently located at the TMAG.

### **7.3. Analysis of evidence – fabrication of evidence by staff**

- [245] The Symmons Plains fox was obtained by the Program on 23 September 2001 and therefore it is unlikely that it could have been used to make the prints found on 6 August. There is no evidence or information that any employee or any other person fabricated or falsified any evidence relating to this fox event.

### **7.4. Other issues, concerns and coincidences**

#### **The fox prints may have been part of the Longford fox hoax.**

- [246] An analysis of all the information obtained during the course of this investigation indicates that any link between the Longford fox feet and the Woodstock fox prints is speculative.
- [247] There is no evidence or information to support these fox prints were part of a larger hoax.

#### **An FEP officer may have used the Symmons Plains fox feet to make the footprints at Woodstock.**

- [248] The fox prints could not belong to the Symmons Plains fox as that carcass had not been recovered at that point.

#### **The property owner's dog made the prints and officers did not thoroughly investigate this possibility**

- [249] Nick Mooney and others provided evidence that this issue was explored, and the dogs excluded as a possibility.

### **Findings**

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**There is no conclusive evidence of fabrication or falsification of evidence relating to this fox event.**

## **8. Symmons Plains fox**

### **The allegations are:**

- Chris Emms 'swapped out' the fox carcass provided by Erick Bosworth and replaced it with another
- Mr Emms and Mr Bosworth conspired to fabricate evidence of a fox living in Tasmania by placing a fox carcass in the landscape<sup>122</sup>
- all the unresolved issues, concerns or coincidences could lead to a conclusion that evidence was unreliable and may have been fabricated.

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<sup>122</sup> The first two allegations were raised by David Obendorf during his interview as part of this investigation.

**Other issues, concerns and coincidences:**

- the dates of seizure, x-ray and autopsy of the carcass made a delay of 36 hours until the autopsy was completed
- evidence provided by Ian Rist was dismissed or ignored
- Mr Bosworth's evidence and credit issues
- whether a full search of Mr Bosworth's property took place to determine if more than one fox was present
- the endemic long tailed mouse located in the stomach contents of the fox were misidentified
- the long tailed mouse was not a local species to the Symmons Plains area
- the long tailed mouse never existed, whilst the Program claimed to have lost it
- the DNA comparison with the Longford fox
- a scat from an endemic pademelon was located in the fox
- staff altered the original representation of facts in order to explain new information;
- FFT Manager, Chris Emms became aware of a letter which suggested anomalies in the fox investigation, and left the FFT as a result
- the feet from this fox were used to make the fox prints at Woodstock Lagoon;
- the skull of this fox was the skull recovered at Railton in 2009 and is known as the Interlaken skull
- the fox had a mark on its tail that is common with an animal being hung by the tail for a period of time
- Nick Mooney removed the legs and head from the fox and it was suspected that was to hide that the head had no sign of bullet damage<sup>123</sup>
- inconsistencies in the information relating to the analysis of the long tailed mouse
- the carcass was discarded as waste at the time of autopsy due to its condition and therefore cannot be the one currently in the QVMaG.

**8.1. Evidence**

[250] On 13 September 2001, Mr Bosworth saw unfamiliar 'eye-shine' while on a hunting trip with Scott Geeves at a property belonging to John Youl in Symmons Plains. He shot at the eye shine but thought he had missed the animal.

[251] On 24 September 2001, Mr Bosworth returned to the property with Mr Geeves to get firewood. He found a carcass of a fox that he then believed was the animal he shot at on 13 September 2001. Mr Bosworth returned home and contacted PWS. Mr Emms attended and took possession of the fox carcass.<sup>124</sup>

<sup>123</sup> The Hon Ivan Dean MLC, Letter to Integrity Commission, 26 February 2016.

<sup>124</sup> Chris Emms, Symmons Plains report, 17 October 2001.

- [252] On 25 September, the fox was x-rayed and later taken to Dr Phillip Ladds (a veterinary pathologist). An autopsy identified the cause of death as a broken neck, possibly from a gunshot, as there were fragments of the projectile in the fox's neck. The autopsy report described the bodyweight of the animal at 3.2kg, was badly decomposed with maggots through all soft tissue of the head and extending down to stomach. There were extensive multiple fractures of the bones of the skull, jaws and cervical vertebrae and a small opening in the abdomen. The stomach, throat and upper neck region were sampled for analysis and provided to PWS staff. The fragments were removed, as was the stomach contents.<sup>125</sup>
- [253] On 26 September, Mr Emms extracted the lead fragments from the tissue and later sent it to Tasmania Police for testing, along with Mr Bosworth's firearm. Mr Emms also separated the stomach contents and sent them to various experts for analysis.
- [254] On 27 September, Mr Bosworth and Mr Geeves accompanied Mr Emms to Mr Youl's property and described events. Mr Emms noted and photographed two clumps of hair lying on the ground where Mr Bosworth said he found the carcass. The hair matched the area on the carcass where the animal had been shot. Mr Bosworth and Mr Geeves both made written statements of the matter.<sup>126</sup>
- [255] On 28 September, the *Mercury* published an article about the fox find. It stated it was *'the first confirmed fox kill and the first piece of concrete evidence of the existence of the introduced pest in Tasmania ... (Emms stated) It was very smelly and started to decay but was in reasonable condition structurally'*.<sup>127</sup>
- [256] On 29 September, analysis of the samples indicated the fox to be a male, aged 12–18 months.<sup>128</sup>
- [257] On 7 October, Sergeant Gerard Dutton (Ballistics Section) reported on the projectile fragments and Mr Bosworth's firearm. He stated that the bullet fragments were extremely small and damaged from impact, and that the calibre could not be determined. The fragments were all lead without copper wash or jacketing, and with no class rifling characteristics.<sup>129</sup> He reported that there were wood fibres in with the fragments.<sup>130</sup>
- [258] On 12 October, Hans Brunner confirmed in writing that he had identified an endemic long tailed mouse in the sample provided to him from the stomach contents of the fox. That species of mouse occurs in rainforest, also wet and dry sclerophyll forest and is particularly common in sub-alpine scree.<sup>131</sup>

<sup>125</sup> Animal Health Laboratory (DPIWE), Section Report (Pathology), 3 October 2001.

<sup>126</sup> Chris Emms, Symmons Plains report, 17 October 2001.

<sup>127</sup> *The Mercury*, Shot fox first proof, 28 September 2001.

<sup>128</sup> Frank Busana, Age Analysis results for Fox Specimen – recovered at Symmons Plains, Tasmania 29/9/01.

<sup>129</sup> Sergeant Gerard Dutton, Ballistics Analysis – Fox shot at Symmons Plains, 7 October 2001.

<sup>130</sup> Email from Sergeant Gerard Dutton, 7 March 2017.

<sup>131</sup> DPIPWE website, 5 June 2017.

- [259] On 17 October, Mr Emms concluded that, on the evidence available, Mr Bosworth shot the fox at the Symmons Plains location. Additional resources were moved into the site to assist in ground searching and spotlighting.<sup>132</sup>
- [260] On 23 October, Minister Llewellyn stated the fox had been feeding off various indigenous fauna and flora.<sup>133</sup>
- [261] On 9 November, Dr Robinson alerted Peter Mooney that a DNA comparison had been completed between the Longford pelt and the Symmons Plains fox (discussed above, Longford fox event).
- [262] On 24 November, Peter Mooney conducted an interview on ABC Radio where he was asked about evidence that the fox had become established, and stated:
- Well the main evidence ... the gut samples have come up to be conclusively Tasmanian foods, in other words that Tasmanian native rats, Tasmanian skinks ... the DNA sampling of those two different animals have come out to prove that they're actually siblings. So that means we have had a litter.*<sup>134</sup>
- [263] By 1 December 2001, the bird components and skink located in the stomach of the fox could not identify an endemic species.<sup>135</sup> Nick Mooney has confirmed that he was advised *'that the partial remains of the skink could not be identified unless by DNA analysis which would necessitate analysing all potential species in Tasmania for reference (incredibly expensive). It was decided not to do this'*.<sup>136</sup>
- [264] On 8 March 2002, JTF2 received information that Ian Cook and Lindsay White, both of Nugent, had imported a fox on the Spirit of Tasmania and released it near Longford. Both persons were interviewed and denied any involvement, but admitted to bringing breeding hens from Victoria.<sup>137</sup>
- [265] On 8 May, Rod Belstead told JTF2 that Mr White had told him and several others that he had brought a carcass of a shot fox from Victoria in September 2001. Mr White had left the carcass on the road near Longford.<sup>138</sup>
- [266] On 9 May, Craig Fraser (FEP officer) received information that Mr Cook and Mr White had bought back a dead fox from Victoria in September 2001. It was placed on the road near Longford.<sup>139</sup>
- [267] Records of TT Line show Mr Cook and Mr White returning to Tasmania on 14 September 2001. A note on the running sheet of JTF2 states that the date does not relate to any fox imports.

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<sup>132</sup> Chris Emms, Symmons Plains report, 17 October 2001.

<sup>133</sup> Tasmania Parliament, Hansard, 23 October 2001.

<sup>134</sup> *Outsmarting Tasmanian's foxes, Can it be Done?* <http://www.abc.net.au/radionational/programs/earthbeat/out-smarting-tasmanias-foxes-can-it-be-done/3643598>

<sup>135</sup> Nick Mooney, File Note, 1 December 2001.

<sup>136</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>137</sup> Tasmania Police, IDM report 200200681.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.



[268] On 4 June 2002, Minister Llewellyn stated in Parliament,

*... a further fox was shot near Symmons Plains and that was recovered, analysed and the stomach contents and so on analysed and found to be containing small animal species and so on that were only here in Tasmania. So fairly conclusively it was shot where it was shot and so I think one can conclude that that was perhaps the most significant event that proves that foxes are in the State.*

*On top of that the DNA assessments that were made put the second fox as being a sibling or a close relative of the first fox and having originated in southern Victoria from the area where these foxes were alleged to have come. So all of the circumstantial evidence and this latest hard evidence adds up to the fact that this is the case.<sup>140</sup>*

[269] In July 2002, an article appeared in the Tasmanian Field Naturalists Club Bulletin stating that the long tailed mouse is a wet forest species and unlikely to be found in the Longford area. The area where the fox was located had a large range of potential prey species and the finding of the mouse was questioned and called for a verification of the species in the Longford area.<sup>141</sup>

[270] On Thursday 12 September, *Tassie Fox: A Biosecurity Threat* was shown on Catalyst (ABC TV).

[271] On 19 September, Senator Shane Murphy raised the subject of foxes in Tasmania, in the Senate, after viewing the Catalyst program. He stated that Mr Bosworth had made public statements to the effect that the ballistics report indicated his rifle shot the fox. He was critical of the evidence used to determine that foxes were in Tasmania.<sup>142</sup>

[272] In November, Mr Bloomfield stated:

*The shooting of the Symmons Plains fox and the frequency and quality of sightings since are indicative of a low level fox presence ... the first recorded kills of Tasmanian native fauna by the introduced European red fox in Australian history occurred in 2001 ... the actual level or extent of predation by foxes is unknown apart from the Symmons Plains fox ... stomach analysis indicated that this fox had consumed a native endemic mouse and other native species. These are the first recorded kills of native fauna.<sup>143</sup>*

[273] On 17 December, Nick Mooney sent an email to Birding Australia and states that the Symmons Plains fox had a partly digested, endemic long tailed mouse plus other plants and animals indigenous to Tasmania and that the DNA testing between the Longford fox and the Symmons Plains fox showed they were closely related, at least cousins.<sup>144</sup>

<sup>140</sup> Tasmania Parliament, Hansard, Budget Estimates Committee, 4 June 2002.

<sup>141</sup> Tasmanian Field Naturalists Club Inc, Bulletin No 307 July 2002.

<sup>142</sup> Commonwealth Parliament, Senate Hansard, 19 September 2002.

<sup>143</sup> Bloomfield 2002.

<sup>144</sup> Nick Mooney, email to Birding Australia, 17 December 2002. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

- [274] In 2003, the Game Management Services Branch (DPIWE) published a report that stated the Longford and Symmons Plains foxes had a direct DNA relationship.<sup>145</sup>
- [275] In March 2003, the Kinnear Report states, '*Analysis of the stomach contents ... and a small mammal ... native long tailed rat*'.<sup>146</sup>
- [276] In 2003, DPIWE allocated the highest funding of the field baiting program to the Symmons Plains area with a budget of \$71,500 and staff to cover that area of 1,100 square km.<sup>147</sup>
- [277] In 2003, a DPIWE publication stated:
- A hunter shot a male fox at Symmons Plains in October 2001. Analysis of the stomach contents showed that it had been feeding on a variety of materials, including corby grubs, berries, a bird, a skink and a small mammal. On examination, some fur was identified as being the remains of a native long-tailed rat, Pseudomys higginsii. The rat is endemic to Tasmania. The evidence supported the theory that this fox was living in the Symmons Plains area. We still don't know if this was the only one. Finally DNA testing on the Symmons Plains fox showed that it was a relative of a fox allegedly shot in the Longford area by two anonymous hunters. Without teeth from this animal, it was impossible to say if it was a sibling or an older fox, possibly a parent or a cousin. What the evidence did support was the fact that we have a population of foxes living in the Longford area. Based on over 80 reports of sightings from all over the State it would appear that this issue [wild foxes] is not isolated to just the Longford area.*<sup>148</sup>
- [278] On 15 August 2004, the Sunday Tasmanian newspaper quoted Nick Mooney as saying that initially there was a high degree of genetic likeness between the Longford and Symmons Plains foxes, but that this was later revised.<sup>149</sup>
- [279] The FFT Eradication Management Strategy 2004-2007 stated the DNA results between the Longford and Symmons Plains foxes showed a possible relationship, initially as high as siblings, but then later revised to a lower level.<sup>150</sup>
- [280] In 2005, Mr Brunner stated that the identification of the long tailed mouse was made from the hairs of the sample provided to him.<sup>151</sup>
- [281] In September 2005, the Department of Primary Industries (VIC) responded to a query from FFT Manager Chris Parker. Catriona Thompson, a Technical Officer stated that the results sheets for the DNA analysis of the Longford and Symmons Plains foxes were located. It confirmed the DNA testing, stated the samples yielded degraded DNA which did not amplify well, producing no or limited results which were hard to

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<sup>145</sup> *Games Tracks* (2003), Issue 8.

<sup>146</sup> Kinnear Report 2003, pg 13.

<sup>147</sup> DPIWE, Operational Plan 2003-2004.

<sup>148</sup> *Games Tracks* (2003), Issue 8.

<sup>149</sup> *Sunday Tasmanian*, Hoax theory on fox Pelt Story, 15 August 2004. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>150</sup> DPIWE, Fox Free Tasmania: Fox Eradication Management Strategy 2004-2007.

<sup>151</sup> Hans Brunner, Letter to Nick McKim, 18 August 2006.

interpret. At the time of the testing, there were several attempts to extract samples to get better quality DNA, but that it was unsuccessful. Dr Robinson reviewed the results and he was also unable to form any conclusions given the limited results available.<sup>152</sup>

[282] In the FEP Operating Plan 2006-2007, there is a list of hard evidence. It states,

*September 2001: A fox is reportedly shot near Symmons Plains and the carcass given to the Taskforce. Contents of gut revealed evidence of two endemic species (long-tailed mouse and Tasmanian pademelon), powerful evidence that the fox had been living wild in Tasmania.*

[283] In 2006, the IACRC Report stated:

*although this rodent species (long tailed mouse) is not typically found around Symmons Plains, remains have been found in masked owl pellets at Epping which is only 11 km away from the site ... the indirect entry of the bullet into the head was consistent Mr Bosworth stating that as he fired the eye shine went (the head may have been turning on impact) ... Forensic investigation could not match the bullet ... to that of the rifle ... the projectile ... copper wash ... hard evidence ... September 2001: Fox shot near Symmons Plains and carcass retrieved. Contents of gut revealed evidence of an endemic species.*

[284] In June 2006, then Minister David Llewellyn stated in Parliament, *'I am drawing from memory ... through DNA analysis ... was in fact a sibling'*.<sup>153</sup>

[285] On 15 April 2007, a report prepared by Nick Mooney listed the evidence of foxes in Tasmania, including the Symmons Plains fox as 'physical evidence'. It stated the grass where the fox had allegedly laid was discoloured and there was partial scavenging of the gut. It states there was a lack of detailed notes of the stomach contents before it was sent for analysis, that the visual decomposition state was appropriate for the claimed date of death, that the analysis of the stomach content identified *'a long tailed ... mouse (hair, teeth and bones)'*. It further stated that the shooters had maintained their version of events, in the face of ridicule and identified several issues with the find. The stomach content sent to Hans Brunner had been discarded (as he had not been informed that it may have been a fox nor asked to keep it), there was a lack of forensic detail on estimated time of death including any examination of scavenging larvae, there were no records of the long tailed mouse in the Symmons Plains area. There was an owl pellet (containing the remains of a Long-tailed Mouse) located 15km away and that Mr Bosworth tried to claim a reward. It did, however, conclude there was no evidence of hoaxing and the find was evidence that a fox was living wild and shot in Tasmania in late August 2001, probably near Symmons Plains.<sup>154</sup>

[286] On 25 May 2008, Peter Darke stated on ABC Radio that there had been rumours that the long tailed mouse had been planted in the carcass. He stated that the decomposition rate was the same as the fox carcass.<sup>155</sup>

<sup>152</sup> Catriona Thompson, Letter to Chris Parker, 2 September 2005.

<sup>153</sup> Tasmania Parliament, Hansard, 15 June 2006.

<sup>154</sup> Nick Mooney, Physical Evidence of foxes in Tasmanian since 1998, 15 April 2007.

<sup>155</sup> ABC Radio, Street Stories, 25 August 2008.

- [287] On 24 August, a plastic lunchbox was located in a freezer at the FEP Workshop area at Prospect. This included a 100ml specimen jar that contained preserved insect larvae from the stomach of the Symmons Plains fox. It also contained an amount of hair. The hair was sent to Barbara Triggs who identified them as an introduced common house mouse *Mus Musculus*.<sup>156</sup> Ms Triggs had a comparative sample of the long tailed mouse also sent to her.
- [288] The DPIPWE submission to the PAC in 2009, referred to the Symmons Plains fox as 'credible physical evidence'.<sup>157</sup>
- [289] In September 2010, then Minister O'Byrne listed the Symmons Plains fox as evidence to support that foxes were living wild in Tasmania.<sup>158</sup>
- [290] In July 2011, a report into the location of physical exhibits was undertaken and the long tailed mouse in the stomach sample, the upper jaw and cranium and two of the four feet of the fox could not be accounted for.
- [291] In February 2013, Dr Obendorf viewed the frozen carcass of the Symmons Plains fox at the QVMaG. He states he cannot reconcile the appearance and description of this fox in documents, photographs and by word of mouth at the time of finding to the carcass in the QVMaG.<sup>159</sup>
- [292] At time of finalising this report, the Symmons Plains fox remains listed on the DPIPWE website as evidence of foxes living in Tasmania.

### **Evidence of Erick Bosworth**

- [293] Mr Bosworth is a civilian who reported shooting the Symmons Plains fox.
- [294] Mr Bosworth stated on 13 September 2001:

*I was shining the (spot) light when I saw some eyes. They looked somewhere between a white and bluey colour. Eyes I haven't really seen before. I asked Scotty to hold the light whilst I looked through the scope on the rifle. All I could see were eyes and I thought it was a feral cat. I reckon it was 55-60 yards away. I had a shot and then saw the eyes disappear. I said to Scotty I thought I had missed the bastard. I was aiming for the head region. As I fired it turned its head sideways. I didn't bother going to have a look as I thought I had missed. We saw a roo further on so we went on shooting ... On Monday 23rd of September 2001 I went back ... to get some firewood ... We were driving back through the gate and were about to drive off when I noticed something on the ground. It was about ten metres from the ute. At first I thought it was a hare but then saw the tail ... it's a fox ... I threw it in the back of the ute and came straight home. I contacted the Examiner first and then ... Parks and Wildlife.<sup>160</sup>*

- [295] On 29 September 2001, *The Mercury* published an interview with Mr Bosworth where he repeated much of his statement above. It also stated that Mr Bosworth had been

<sup>156</sup> Fearn Evidence Catalogue 2011.

<sup>157</sup> PAC 2009, DPIPWE submission.

<sup>158</sup> Letter from Minister David O'Byrne to Clive Marks, 1 September 2010.

<sup>159</sup> Transcript, David Obendorf, pg 16.

<sup>160</sup> Statement, Erick Bosworth, 27 September 2001.

hunting since he was fourteen years old, including hunting foxes in Victoria and that Mr Bosworth strongly believed the carcass was that of the Burnie fox that escaped the wharf area in 1998. He described how foxes, *'travel very fast and will walk day and night after food. Checked all the water holes at Symmons Plains and I know what their feet are like and I haven't found one paw print'*.<sup>161</sup>

[296] On 23 April 2002, Mr Bosworth was interviewed on the *7.30 Report*. He stated:

*I seen this pair of eyes right up where the gate is ... I haven't seen eyes like that before ... I bought the fox home and I rang 'em ... Anyway I said I've shot a fox and within three quarters of an hour there were about seven National Parks officers here – all come in like blowflies they did.*<sup>162</sup>

[297] On 17 July 2002, the *Mercury* published an article about the health of Erick Bosworth as it related to the Symmons Plains fox matter. It stated:

*(Bosworth's) health had declined because of the scorn and stress he has endured since claiming he shot a fox last year ... The disability pensioner said he believed he was eligible for a \$5000 State Government reward for killing the fox ... "I wish I had never shot it ... They cancelled the reward as soon as I shot the fox. You would feel the same way if you were sold down the drain ... He told the reporter that he knew where the vixen and cub (of the Symmons plains fox) were but wouldn't tell PWS or the State Government until the reward was paid ... he said he would shoot the other foxes himself when he was better and take it to Parliament House ... PWS said no reward had been offered and the reward offered was from a hunting magazine which had been withdrawn when PWS sought for such.*<sup>163</sup>

[298] On 17 July 2002, JTF2 interviewed Mr Bosworth about his comments in the *Mercury* about the vixen and cub. He stated he had observed them on two occasions and continued to comment about not getting the alleged \$5,000 reward for shooting the fox and was in the process of researching the archives to prove the reward existed. He stated he had been in talks with 'someone very high up' and that things were going to happen and that authorities would find out about it when it hit the papers.<sup>164</sup>

[299] On 7 February 2002, Mr Bosworth was detected by PWS committing wildlife offences, and was later convicted and fined. He was with Mr Geeves at the time of the offending.

[300] On 23 December 2002, Mr Bosworth stated that about seven FEP Rangers went to his home where he provided the fox to authorities.<sup>165</sup>

[301] In March 2012, Mr Bosworth was interviewed again by Simon de Little. He stated:

- four months after he shot the fox, he saw its vixen and cubs in the cattle yards at Powranna and informed PWS. He described the fox character and fox baiting and was critical of the Program

<sup>161</sup> *The Mercury*, Top-Shot Erick tells how he ended great fox hunt, 29 September 2001.

<sup>162</sup> Simon de Little, Interview with Erick Bosworth, 2012 (YouTube).

<sup>163</sup> *The Mercury*, Fox hunter says scorn hit health, 17 July 2002.

<sup>164</sup> Joint Police Task Force, General running sheet.

<sup>165</sup> ABC TV, *7.30 Report*.

- he had never shot a fox before
- he shot the fox in Tasmania, not in Victoria
- didn't know what animal it was when he shot at it but knew it wasn't a kangaroo, wallaby or rabbit
- he went over after he shot at it and couldn't find the animal
- wanted the reward from the State Government of \$5000 but that it was withdrawn as soon as he had shot the fox
- when put to him the reward was in a magazine, he stated it was in the Examiner newspaper
- he identified hoaxing as a huge issue for the Program
- described quite a high level of knowledge of foxes and fox events in Tasmania;
- confirmed he had mates that shot foxes on the mainland, that have visited him in Tasmania
- he stated that the then Minister for Primary Industries, Water and Environment , the Hon Bryan Green MP, told him to get another fox and it was after this he saw the vixen and cubs
- he was critical of the Game Management Plan, of deer licence fees and of firearms restrictions bought in by the then Government but denied hearing rumours the alleged fox cub imports were linked to this reason
- he had been a poacher for years.

[302] During the interview Mr Bosworth's wife stated that Mr Bosworth had put the fox on top of the wood in his utility and bought it home and, after a discussion about burying it, decided to let PWS know about it. She denied the fox was shot and brought over from the mainland. She described Mr Bosworth as a shocking poacher when he was younger. She stated he gets muddled up due to dementia. Mr Bosworth passed away on 10 November 2014.

### **Evidence from Scott Geeves**

- [303] Mr Geeves was with Mr Bosworth when he allegedly shot the Symmons Plains fox.
- [304] Mr Geeves stated, *'We were driving through the gate on the property and Eric noticed something on the ground. He got out and held it up and said it's a fox ... came home and Eric rang the Examiner'*.<sup>166</sup>
- [305] On 7 February 2002, Mr Geeves, along with Mr Bosworth, was detected by PWS committing wildlife offences, he was later convicted and fined.
- [306] Mr Geeves stated that he has a 'pretty good' recollection of the matter and that he has not spoken to any authorities about the matter since it occurred. He stated that he originally believed the animal was a cat and as soon as Mr Bosworth shot at it and missed, they moved on to some kangaroo that were nearby. Access to the property

<sup>166</sup> Statement, Scott Geeves, 27 September 2001.

was via the Midlands Highway, opposite the Symmons Plains racetrack and the spot where Mr Bosworth located the fox carcass was about 2km from the highway. He was present when the carcass was located by Mr Bosworth in the close vicinity to the previously described eye shine of the animal that was shot at by Mr Bosworth. He stated there were tufts of hair on the grass and the animal stood 'about a foot to a half' off the ground. It was nearby to the access gate.

- [307] They immediately returned to Mr Bosworth's house and contacted PWS. An officer named Stan (Matusek) arrived; he doesn't believe Mr Matusek was in uniform and understood he lived down the road. Photographs were taken at Mr Bosworth's property and the fox was later taken by Mr Emms and another officer.
- [308] Mr Geeves recalls it was definitely a male fox, had predator interference in the stomach area, had started to decompose but was in quite good condition (not falling apart), may have been flatter on one side, can't recall any maggots now but doesn't discount it, and there was an injury to the neck. He doesn't recall anything unusual about the tail of the fox.
- [309] He recalls fur on the ground where it had been, but no discolouration on the ground.
- [310] He states that Mr Matusek had taken a photograph of him holding the fox up. He later asked for a copy of the photograph and was told 'what photo' and generally it was like 'don't know what you're talking about' attitude.
- [311] He stated Mr Bosworth used to go hunting on the mainland and believes this may have commenced after the fox carcass was located. He had a falling out with Mr Bosworth when he was caught poaching, as he believed Mr Bosworth may have provided authorities with information that led to his criminal conviction.
- [312] Mr Geeves denied ever being contacted by a journalist and had never said to anyone that the fox was a hoax. He was adamant that Mr Bosworth shot at an animal, at the same place they later found the fox. He said he couldn't say that Mr Bosworth shot the fox.
- [313] He said it was possible that Mr Bosworth had set it up, and that it wouldn't have surprised him. He also stated that if Mr Bosworth had he would never have told him about it.
- [314] Mr Geeves was provided with two photographs of the fox, one nominated as being taken at Perth and another taken at the Prospect Workshop. He identified the one at Perth as definitely being the one from Mr Bosworth's property as he could identify the same lines in the concrete. He was unsure about the second photograph, as he said it looked quite different from a colour perspective. He said that the fox was either on the ABC or in a newspaper photograph sitting on a freezer after it was seized and he recognised it at the time as being the same fox. He said that he has only ever seen that fox in his life.<sup>167</sup>

### **Evidence of Glenn Atkinson**

- [315] Mr Atkinson was a member of both JTF1 and JTF2.

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<sup>167</sup> Interview with Scott Geeves, 9 June 2017.

[316] On 17 July 2002, Mr Atkinson interviewed Mr Bosworth over comments attributed to Mr Bosworth in the *Mercury* that day. Mr Atkinson described him as a 'simple soul' and would be incapable of perpetuating a hoax and maintaining such a confidence. He was able to pass information to Mr Emms about the location of the vixen and cubs, but this information had already been received by the ICS, via a third party.<sup>168</sup>

[317] Later in 2002, Mr Atkinson spoke with Mr Geeves. He stated Mr Geeves and Mr Bosworth had had a falling out over a matter so Mr Atkinson asked Mr Geeves if Mr Bosworth had really found shot the fox at Symmons Plains. Mr Geeves replied: *'I would like to sink the old bastard but yes, he did'*.<sup>169</sup>

### **Evidence of Chris Emms**

[318] Mr Emms was a member of PWS and was involved in the ICS at Longford. He later became a member of FFT from 2002 until 13 May 2005, when his contract expired and he returned to the PWS. He took possession of the Symmons Plains fox carcass from Mr Bosworth.

[319] He stated that on the 24 September 2001, he was contacted by Mr Matusek who informed him that Mr Bosworth had contacted him and had a fox in his possession that he claimed he had shot at Symmons Plains.

[320] Mr Emms and another ICS member met Mr Bosworth in Perth. Mr Bosworth provided them with a fox carcass that was under a tarp in the back of a utility; the carcass was seized and taken to the Prospect office. Mr Geeves was also present and provided a formal statement at a later time.

[321] He described being highly suspicious of Mr Bosworth's version of events. He described the carcass as *'intact, but it had started to decay on one side where the projectile had ... penetrated. There'd been some carrion eating ... on the lower end of the animal ... it was clearly a fox at the time'*.<sup>170</sup>

[322] On 27 September 2001, Mr Emms, Mr Bosworth and Mr Geeves went to the property where the fox was allegedly shot and Mr Emms took photographs of the ground where Mr Bosworth said he located the fox. There were hair tufts on the ground. The fox was allegedly shot close to where the vehicle was parked in Photo B of the Symmons Plain Fox Report. He states there was access onto the Midlands Highway from this property but that it was several kilometres away. He states that he was still extremely sceptical of Mr Bosworth's story. He said, *'at this point in time there's certainly evidence that it was there on site, but whether it's actually been brought into the State and put on site and then left there for some time and then recovered, ... people can do a lot of things'*.<sup>171</sup>

[323] Mr Emms said that, having written his investigation report, he had nothing more to do with the matter. When asked if he had received information about Mr Bosworth shooting the fox in Geelong and bringing it back into the State, he stated that he read

<sup>168</sup> JTF2: notes on running sheet.

<sup>169</sup> Transcript, Glenn Atkinson; Second Joint Task Force – IDM Reports.

<sup>170</sup> Transcript, Chris Emms, pg 17.

<sup>171</sup> Ibid, pg 22.



about it in the newspaper and that Mr Bosworth had been asked about his comments. Mr Bosworth indicated that he stood by his original statement.

- [324] Mr Emms stated that once the identification of the long tailed mouse was made, he had no reason to continue doubting that the fox had been shot in Tasmania. Mr Emms was not aware of later inconsistencies within the version of events stated by Mr Bosworth. These included that Mr Bosworth:
- later said he went over to look at what he shot and couldn't see anything. Mr Emms stated he recorded what Mr Bosworth said in his statement, that he didn't go over and look and
  - later said he had not been to the mainland shooting. Mr Emms agreed that was a contrary claim by Mr Bosworth.
- [325] Mr Emms stated that he was aware of Mr Bosworth's poaching history; it did concern him, but the presence of an endemic mouse in the stomach overshadowed credit issues. He also remembered that there were some wood fibres found in with the pellets when the specimen was sent to Tasmania Police Ballistics Section for analysis and believes the jar may have been contaminated.
- [326] Mr Emms was present during the partial autopsy outside of the laboratory conducted by Dr Ladds (the carcass was not permitted into the laboratory as it was a fox, was decomposing and there was a significant risk of viruses and disease). Dr Ladds removed the stomach, and Mr Emms washed the contents, packaged and sent them off for analysis. Mr Emms recalls a small mammal. He recalls, *'you could clearly see that there was fur, hair, berries and other bits and pieces in it ... skin to Hans Brunner ... a specialist in fur ... a handful ... all you got was, from memory, just the bit of a tail and the rear end of it around some skin ... scientists ... we very rarely got anything back'*. He stated there was slurry left over from the stomach but was never told about any testing on it. He stated there were maggots on the carcass.<sup>172</sup>
- [327] When Mr Emms was further interviewed, he said that the skin was in a mass ball and he could see hair and part of a tail. He did not undo the mass which appeared like a large fur ball. He recorded it as skin as that is what he could predominately see. He didn't question the content of the letter by Mr Brunner as he assumed the teeth, bones and hair were in the mass. He described it as decomposing skin of what appeared to be a mammal. He recalls taking photographs of the specimen jars with the samples in them. He recalls the photographs being in the Symmons Plains fox file at Prospect.
- [328] He stated he remembers there was a reference to a scat in the report from Mr Brunner but they were sending a lot of items for analysis at the time. Mr Emms said that the long tailed mouse was from that locality as far as he knew and that Nick Mooney dealt with that side of it. He recalls that there was a DNA link to the Longford fox, but can't recall the outcome of a second test.
- [329] He initially stated he was not aware that the Longford fox was later deemed a hoax, but then stated that he did have a recollection that was the case.

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<sup>172</sup> Transcript, Chris Emms.

- [330] Mr Emms stated he would have written the original label on the fox and has not viewed the carcass since. He stated there were no fox carcasses located that could have accidentally replaced the Symmons Plains fox.
- [331] He stated he was aware of the information that the carcass was bought back from Victoria and indicated that Mr Atkinson dealt with that aspect of it. However, the overriding factor was that there was an endemic mouse in the stomach of that fox. He stated that if the stomach of the Symmons Plains fox had not contained the endemic mouse, the find may have been deemed unresolved.<sup>173</sup>
- [332] Mr Emms stated the only time he went to Mr Bosworth's house was in the company of the then Minister for Primary Industries, Water and Environment, the Hon Bryan Green MP. He accompanied Mr Green, as Mr Bosworth stated he would only talk to the Minister.
- [333] Mr Emms denied sending a sample of the long tailed mouse to Mr Brunner to compare.<sup>174</sup>
- [334] On 15 May 2017, Mr Emms viewed the label attached to the Bosworth fox and stated the handwriting on the label was not his. He stated that the fox's head and feet were removed by Dr Ladds at the time of the autopsy. The feet were to be compared with the Woodstock footprints and used for casts to be made for community education programs. The head was removed to send to an expert.<sup>175</sup>
- [335] On 8 June 2017, Mr Emms stated he recalled no discolouration on the ground where the carcass was alleged to have laid for 10 days. He did recall that the fur he found on the ground was stuck to the grass under it, and that the grass was mostly dried. He recalled that one side of the fox was visually decomposing whilst the other was in relatively good shape, and that there were tufts of hair missing from the damaged side. He recalls maggots in the neck area where the bullet fragments were located and in the stomach area.
- [336] He stated that he didn't expect there to be more predator interference (had the fox lain there for ten days) as the fox smelt and is not a generally palatable meal, referring to carcasses lying for long periods of time on mainland roadways.
- [337] He said that Mr Matuszek had called him to attend Mr Bosworth's residence to collect the fox, given Mr Matuszek was not working at the time. That collection happened on the side of the road in Perth.
- [338] In relation to the sequence of events, he said that: he picked the fox up on 23 September 2001; took it for an x-ray on 24 September (and had to wait for the x-rays to be processed which occurred late in the day); and the autopsy took place on 25 September. He cannot explain why the date of 24 September 2001 was on the label with the carcass at the QVMaG, but stated that he didn't write that.
- [339] Mr Emms said he took possession of the fox following the autopsy. He was asked about where the rest of the head may have gone. He stated after the jaw was

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<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Email and telephone conversation with Chris Emms, 15 May 2017.

removed he sent it to Dr Busana, the remainder was not in good shape and speculated that it may have been disposed of by Dr Ladds, as there is no reference in his paperwork about the head.

- [340] Mr Emms was not aware of the analysis of the hair located in the specimen jar from the stomach contents, undertaken in 2008. When asked if there could have been more than one mammal in the stomach, he stated he was not aware of one.
- [341] Mr Emms denied any suggestion of a 'pact' to fabricate evidence with Mr Bosworth. He stated he never met Mr Bosworth before his meeting on the roadside where he took possession of the fox. Mr Emms also denied any suggestion that the carcass given to him by Mr Bosworth had been swapped for another. He said that, in terms of motive, the FFT was not even a concept at that stage.<sup>176</sup>
- [342] Mr Emms supplied a letter dated 24 December 2004 from Peter Mooney (then General Manager, PWS) to Mr Emms. The letter informed Mr Emms that, should he take up an offer to extend his contract with the FFT, his substantive position in PWS was to be advertised as a permanent position. This was the catalyst for him leaving the Program.
- [343] Mr Emms contacted the Commission on 13 June 2017 and provided a copy of his diary note for that period, as the dates and sequence of events had concerned him. He said he had made a mistake on his original report and that that affected every date after that. He stated the days of the week are correct however the dates are wrong. He believes that it may have originated from Mr Bosworth's statement where he recorded the 23rd as a Monday (Monday was 24 September 2001). His diary entries showed he had been on leave the week before returning to work on Monday 24 September 2001. The entry further states the x-ray and pathology were done on 25 September, the feet and head were removed on 26 September, and the visit to Symmons Plains and the taking of statements from Mr Bosworth and Mr Geeves were on 27 September 2001. He further states that the label on the fox, dated 24 September 2001 is correct, being the date he logged it into the evidence book.<sup>177</sup>

#### **Evidence from Stan Matuszek**

- [344] Mr Matuszek was a Ranger with PWS at the time of this matter.
- [345] He said that he received a phone call from Mr Bosworth and went around to his house in Perth. He was not working and observed Mr Bosworth had a dead fox in his back yard. He knew Mr Bosworth from being a resident of Perth himself and that Mr Bosworth used to shoot on a block of land that PWS owned. Mr Bosworth was given permission to enter onto that land, 'keep an eye out' for illegal activity with a condition he was not to become involved in any illegal activity.
- [346] He said he received a telephone call from Alison Andrews, a journalist, from the *Examiner* wishing to confirm the fox's existence as he attended Mr Bosworth's premises. Mr Bosworth had telephoned her before him trying to sell his story to the newspaper.

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<sup>176</sup> Transcript, Chris Emms.

<sup>177</sup> Email from Chris Emms, 13 June 2017.

[347] He described the fox as partly decomposing, no rigor mortis, it was in one piece, not as scavenged as a wallaby would have been after ten days, doesn't recall the smell, and believes there were maggots present. He said that he never saw the fox again, but believes it went into the freezer at Prospect.

[348] When asked about possible fabrication, he said the staff he worked with would not have involved themselves in any fabrication; they would have preferred not to have foxes in Tasmania due to the damage done by the fox on the mainland. He believed at the time it was one of the fox cubs that had been released near Longford that they had been hunting for and there was absolutely no reason to 'swap' another carcass in. In addition, he stated he wouldn't know where to get one from on short notice.

[349] He was unable to find the photograph described by Mr Geeves.

### **Evidence from Gerard Dutton**

[350] Sergeant Gerard Dutton is the Officer-in-Charge of the Ballistics Section, Tasmania Police and examined the bullet fragments from the Symmons Plains fox.

[351] On 28 September 2001, he received:

- a .22WMR calibre CZ bolt action repeating rifle No 723525, model 452-2E Classic, and
- a magazine containing four .22WMR calibre Winchester cartridges, fitted with hollow point copper washed, copper jacketed bullets.

[352] He said the three lead fragments he examined were very small with a combined weight of 1.776 grains (0.115g). The .22WMR calibre bullet is usually 40-45 grains (2.59 to 2.9g) in weight.

[353] He stated that the fragments were not able to be matched to a projectile from the firearm supplied. No copper wash or jacketing was detected upon examination of the projectile fragments. The fragments had additional contaminate material adhered to the specimen, being what appeared to be wood fibres and white spherical particles.

[354] He gave his opinion that the ammunition used by Mr Bosworth could have caused the wounds on the carcass. He reviewed some documents obtained by the investigation and provided an opinion that there was nothing in any of the reports that was inconsistent or suspicious with the version provided by Mr Bosworth, the scene and the evidence collected.

[355] He also gave his opinion that, dependent on material between the animal and the scope, the magnification of the scope was sufficient for the fox to be clearly observed at the nominated distance of 55-60m.<sup>178</sup>

### **Evidence of Nick Mooney**

[356] Nick Mooney was employed as a Wildlife Management Officer in the Wildlife Management Branch of Resource Management and Conservation at the time.

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<sup>178</sup> Tasmania Police, Summary of ballistics report.

Following the establishment of the ICS in May 2001, Mr Mooney was attached as a 'Science Adviser', a title invented at the moment.<sup>179</sup>

[357] On 27 May 2005, Nick Mooney speculated that Mr Bosworth may have shot the fox in a location other than Symmons Plains.<sup>180</sup> He said that '*Mr Bosworth was known to hunt along the Western Tiers, a place arguably more suitable for the Long-tailed Mouse*'.<sup>181</sup>

[358] On 13 October 2006, Nick Mooney wrote an article on Tasmanian Times where he stated two endemic species were contained in the Symmons Plains fox carcass (the long tailed mouse and a Tasmanian pademelon). He stated:

*The material identified as scat was taken from the lower intestine of the fox; it was in the fox. I have no idea why it was not highlighted earlier – there seemed a fascination with “stomach content” at the time. I recently presented it because I have been scratching for ways to get people to understand the biological storm Tasmania is facing and realised it had not been publicly presented.*<sup>182</sup>

[359] The information was obtained from the letter written by Hans Brunner on 12 October 2001. On 3 November 2006, Nick Mooney posted a retraction stating the scat was a separate sample.<sup>183</sup>

[360] In a recorded interview in 2011, Nick Mooney stated that the first result from the DNA between the Longford and Symmons Plains fox was optimistic however that the second result was less strong. He stated 'it was not unknown for some hunters in Tasmania to take a shot at something and to then not look at whether it had been hit or not'.<sup>184</sup> He stated he later examined the carcass and observed – on an X-ray – what he believed to be dust from lead where the high velocity round hit the jaw bone. The carcass looked to be in the date range consistent with the expected decomposition rate but he doesn't remember maggots in the carcass. Mr Mooney only saw the carcass frozen. He agreed the fox could have been shot in a location other than Symmons Plains, due to the presence of the Long-tailed Mouse.<sup>185</sup>

### **Evidence of Simon Fearn**

[361] Mr Fearn was a member of the FEP and completed an audit of the evidence of the Symmons Plains fox.

[362] In July 2011, Mr Fearn completed a report. He identified that in August 2008, a plastic lunchbox was discovered in a freezer in the FEP workshop at Prospect. One item

<sup>179</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>180</sup> Nick Mooney, Email to David Obendorf, 27 May 2005.

<sup>181</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>182</sup> <http://tasmaniantimes.com/index.php?/article/shades-of-inconvenient-truth/#sthash.UKXMclD4.dpuf>

<sup>183</sup> Ibid.

<sup>184</sup> The original quote in the interview read: '*it was perfectly normal for hunters in Tasmania ...*'. In his response to the draft investigation report, Mr Mooney requested that his comment be changed to 'it was not unknown for some hunters in Tasmania ...': Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>185</sup> Nick Mooney, Interview with Simon De Little, March 2011. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

contained a specimen jar containing insect larvae and hair that were located in the fox's stomach. As Mr Emms had only reported one mammal in the stomach area, the fur was tested by Barbara Triggs who stated it was from a common house mouse.

- [363] The long tailed mouse had not been recorded as being found in that area, but remains had been found 15km away in an owl pellet. The owl has a homing range of 20km.
- [364] Mr Fearn suggested that the identification of the original endemic mammal may have been incorrect.<sup>186</sup>

### **Evidence of Graham Hall**

- [365] Dr Hall was a scientist employed by PWS and was present when the fox was bought into the Prospect Office on 23 September 2001. He has viewed images taken by Dr Obendorf, when the carcass was examined at the QVMaG. He states some of the images do not correspond to his recollection of the fox carcass, although the right side was 'more in keeping with it'.<sup>187</sup> He later stated that the fox he saw had no soft tissue left and no stomach left.<sup>188</sup>

### **Evidence of Tammy Gordon**

- [366] Ms Gordon is the Collection Officer and Registrar, Natural Sciences, (QVMaG) and accepted specimens of this fox.
- [367] Ms Gordon was present on the day the carcass labelled as the Bosworth fox was received from the FEP, thawed and then preserved in alcohol in 2008. She describes that carcass as in poor shape, definitely was not fresh and she recalls the smell of decay. There was confirmation that the QVMaG did not have the long tailed mouse sample. Their records included the photographs taken of the fox upon receipt. She recalls carrion beetles under the carcass and that she had located maggots in the preservation fluid.
- [368] Ms Gordon stated preservation in ethanol will alter the appearance of an animal and make it appear better than it was, the smell will not be present, and the hair stops slipping off and fluffs out. She said that the tail was unusual in appearance, in that it was scrawny and unlike most bushy fox tails.<sup>189</sup>

### **Evidence of John Mikulski**

- [369] Mr Mikulski was a Detective Constable in JTF2 in 2002.
- [370] Mr Mikulski said that he was present when Mr Bosworth was interviewed by Mr Atkinson on 17 July 2002. He said that Mr Bosworth appeared to be a simple person and agreed with the opinion of Mr Atkinson that it would have been difficult for Mr Bosworth to maintain a hoax. He conceded that Mr Bosworth adapted and changed

<sup>186</sup> Fearn Evidence Catalogue 2009.

<sup>187</sup> Emails supplied by David Obendorf and Graham Hall, 9-10 October 2014.

<sup>188</sup> Telephone conversation on 11 May 2017.

<sup>189</sup> Telephone call with Tammy Gordon, 15 May 2017.

his story to suit the situation. He said that Mr Bosworth tended to accept suggestions made to him, but didn't believe it was deliberate dishonesty.<sup>190</sup>

- [371] He said that on 26 June 2003, he visited Ian Rist at Blessington. Mr Rist made a statement that he had been at a Northern Midlands Field and Game Clay Target Shooting meeting in late May 2003. He had a conversation with Ken Triffitt who stated he had been told by Mr Bosworth that he had shot the fox at Geelong, put it under the seat of his van and bought it back, in order to obtain a \$5,000 reward. He forgot it was there and it started to smell so a plan was formed to fabricate evidence.
- [372] Mr Mikulski spoke to Mr Triffitt on the same day and established that he had heard the information from another person, Andrew Palfreyman. Mr Triffitt did not agree with some of the information provided by Mr Rist.
- [373] On 27 June 2003, Mr Mikulski spoke to Mr Palfreyman. Mr Palfreyman told him that the shooter was a 'well-to-do business man' who had brought the fox back to Tasmania after shooting it in Geelong, and discarded it on the side of the road in the Longford area after it started to smell.<sup>191</sup>

#### **Evidence of Chris Parker**

- [374] Mr Parker was the Manager of the FFT. He stated he had no concerns over the Bosworth fox.<sup>192</sup> Mr Parker was described by the complainant as 'knowing something' about this fox event, providing a suggestion that Mr Parker has concerns about this fox event.

#### **Evidence of Dr David Obendorf**

- [375] Dr Obendorf said that he examined the carcass of a fox labelled as the Symmons Plains fox in February 2013. He observed that the animal body had the appearance of being substantially intact and in good condition. He noted the chest cavity was unopened and that there was a uniform hair covering of the left and right lateral sides of the fox. He was unable to reconcile the appearance of the carcass compared to the description in the pathology report of Dr Ladds.
- [376] Dr Obendorf stated the discrepancies in this case caused him to speculate as to whether Mr Bosworth and Mr Emms were involved in a conspiracy of fabrication regarding this fox, and whether Mr Emms had potentially swapped the fox carcasses after taking possession of it from Mr Bosworth.<sup>193</sup>

#### **Evidence of Hans Brunner**

- [377] Mr Brunner is elderly and has not been interviewed.

#### **Evidence of Dr Phil Ladds**

- [378] Dr Ladds is believed to be in ill health and has not been interviewed.

<sup>190</sup> Unsworn interview, 27 April 2017.

<sup>191</sup> Tasmania Police, IDM 200327508 ,23 June 2003.

<sup>192</sup> Telephone call with Chris Parker, 14 March 2017.

<sup>193</sup> Transcript, David Obendorf, pp 23–25.

## 8.2. Analysis of evidence

- [379] There are many uncertainties arising from the information obtained in relation to this fox event. This has led to speculation about the legitimacy of the find and include errors and inconsistencies, poor evidence management and credibility concerns of some of the persons involved.
- [380] The evidence indicates that the initial response to this fox and the information available at that time was one of a precautionary approach. The importance of the identification of the endemic long tailed mouse in the stomach of the fox cannot be underplayed, and was the most direct evidence of a fox living in Tasmania. Its later dismissal as evidence created uncertainty and speculation of possible scenarios, including hoaxing by Mr Bosworth.
- [381] The presence of the long tailed mouse played a significant, but not conclusive role in the establishment of the FFT in 2002. It played the same role in every review of the Program since 2002 and has been represented as the strongest evidence of foxes living in Tasmania to the community, over the course of the Program. This evidence of identification appears strong and was determined by a recognised hair identification specialist. Mr Brunner confirmed his identification in 2005 and strengthened it by stating he had compared it to a confirmed hair sample of the same species. The turning point regarding the reliability of the evidence was in 2008 when an introduced mouse was identified from the same stomach contents after Mr Emms had stated there was only one mammal in the stomach of the fox.
- [382] Since 2008, concerns as to the accuracy of the identity of the rodent in the stomach of the fox have increased. The samples were not able to be located in 2008 and it is believed Mr Brunner discarded them. They are no longer available and consequently the analysis cannot be validated. The pademelon scat was an unnecessary distraction, as was the DNA link to the Longford fox.
- [383] The carcass is currently in the QVMaG. The evidence indicates that it is highly likely that it is the same one provided by Mr Bosworth in 2001.
- [384] It is doubtful there will ever be certainty in relation to the Symmons Plains fox. Considering all of the available evidence and information, including the alternative identifications of an endemic mouse (by Mr Brunner) or an introduced house mouse (by Ms Triggs), this fox cannot be relied upon as 'hard evidence' of foxes living in Tasmania.

## 8.3. Analysis of evidence – fabrication of evidence by staff

- [385] The allegation is that the carcass marked as the Symmons Plains fox at the QVMaG is not the fox surrendered by Mr Bosworth on 24 September 2001. It speculates that Mr Emms 'swapped out' the carcass to ensure one with an endemic mouse was autopsied. There are variants of this speculation including that Mr Bosworth was part of the conspiracy and there are a number of issues, concerns and coincidences that provide some credibility to that speculation.



- [386] The speculation is derived from: the condition of the fox carcass in photographs taken at the time it was seized; descriptions of the carcass in the Pathology Report; a viewing of the animal by Dr Hall when it was bought into Prospect; a viewing by Dr Obendorf in 2013 at the QVMaG; and that Dr Ladds had stated that he disposed of the carcass as waste after the autopsy.
- [387] There appears no basis that the fox has been accidentally misidentified, as there are no fox carcasses that are not accounted for. There is no evidence or information that any FFT staff fabricated or were involved in fabricating evidence relevant to the Bosworth fox.
- [388] Dr Obendorf believes Dr Ladds informed him in a telephone call that he had disposed of the carcass after the autopsy, however he did not make a file note of it at the time.<sup>194</sup> Dr Ladds indicated in 2016 that PWS had taken responsibility for the carcass after his examination.
- [389] Mr Emms stated that Dr Ladds asked him what to do with the carcass after the autopsy and he told him it had to be kept for future testing or reference. The head of the carcass was removed at the time of autopsy and there is no record of its location or mention after the autopsy. Mr Emms cannot discount the head was disposed of by Dr Ladds and that may be what he was referring to.<sup>195</sup>
- [390] The photograph of the fox taken by Mr Matuszek at Perth on 24 September 2001 appears to be taken at night and shows the fox lying on its left side on roadway. The following photograph was taken at the Prospect Office the next day and was taken during the day and shows the fox on its right side. The fox is clearly in poorer shape on its right side, which is consistent with the evidence of Mr Emms and Dr Hall. The colour setting on the images is different but the overall patterns of colour on the carcass are consistent, legs are darker, darker patch on hind area, lighter on mid and under area. Its mouth is open in both shots but perhaps the most important aspect is the condition of the tail. The tail is matching in both images. It is not the usual tail one associates with a fox, being big and bushy. The tail has a large tuft near the back end of the animal, little hair along its entirety before it has a small tuft at its extreme. No skin is visible to observe insect infestation at the distance portrayed in the image.
- [391] Dr Ladds stated the carcass was badly decomposed with maggots through the soft tissue of the head and extended down to the stomach. Dr Hall also stated the carcass was decomposing and when he viewed the photographs he made comment that the image taken with the animal lying on its right side was more in keeping with his memory. Mr Emms said the carcass was in quite good condition of the left side and poor condition on the right side and recalls maggots in three locations on the carcass.<sup>196</sup> There were maggots located in the preserving fluid at the QVMaG.
- [392] Ms Gordon stated that there was an effect of preserving liquid on a carcass and that she specifically commented on the tail of the animal being different. There may also

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<sup>194</sup> Transcript, David Obendorf, pg 17.

<sup>195</sup> Chris Clark, Email to David Obendorf, 9 March 2016.

<sup>196</sup> Telephone interview, Chris Emms, 8 June 2017.

be fox hair taken from the ground where Mr Bosworth said he shot the fox to compare with the carcass in the QVMaG.

- [393] Dr Ladd's Pathology Report was brief and not indicative of a full autopsy. Mr Emms stated it was a partial autopsy due to quarantine concerns.
- [394] Mr Geeves stated the carcass was in relatively good condition and qualified this comment by saying 'it wasn't falling apart', it was decomposing and smelt. He was unsure of the photograph of the fox, on the concrete at the Prospect workshop, saying it looked different, but couldn't say why except for the colour. There is a clear discernible colour filter difference between both photographs. He did volunteer that there was a photograph of the fox on the ABC or in a newspaper shortly after it was seized, sitting on a freezer and that was the fox that was taken from Mr Bosworth and himself. This places the correct carcass at the workshop.<sup>197</sup>
- [395] The issue with the carcass description appears to be the result of scientific versus civilian descriptions, and different descriptions between employees. Further, the evidence suggests that the condition of the carcass was consistent with records and accounts from witnesses, was decomposing, in poorer shape on one side, and had maggots in it. This evidence is consistent with an animal that had been dead for a period of time. Taking all the evidence into account, it is more probable than not, that the carcass at the QVMaG is the Symmons Plains fox surrendered by Mr Bosworth.
- [396] Mr Geeves provided detailed evidence. At the time of the fox event, he was young and impressionable; however he and Mr Bosworth had a falling out over a poaching matter in 2002 and Mr Geeves did not alter his version of events. He volunteered he could not say with any certainty that Mr Bosworth shot that fox at Symmons Plains, just that Mr Bosworth shot at an animal and ten days later there was a fox in same location.
- [397] For Mr Emms, alone, to have swapped the carcass between being given it by Mr Bosworth and the autopsy he would have had to have a fox available. It would need to have been shot with a firearm similar to Mr Bosworth's, the fox would have had to have had similar physical colouring and the distinctive tail feature, similar rates and location of decomposition and ensured the fox had ingested an endemic mouse at about the same time it was killed.
- [398] It has also been suggested that Mr Bosworth conspired with Mr Emms to produce the carcass. It would involve complex preparation, theatrical set-ups and motivation for all parties to have clearly benefitted from it. It would rely on Mr Geeves being part of the conspiracy and for all the parties to be confident that none of the others would inform anyone of the conspiracy in the years to follow.
- [399] There have been no such rumours provided by any person in the course of this investigation. There is no evidence of this and any speculation that Mr Emms fabricated evidence, with or without Mr Bosworth's assistance, is not supported. Mr Emms had permanent employment and a solid reputation for integrity amongst other staff members.

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<sup>197</sup> Telephone interview, Scott Geeves, 9 June 2017.

- [400] These issues or concerns have been addressed earlier in the report. Most have now been resolved. None either singularly, or in combination, could lead to a conclusion that an employee fabricated or was complicit in any fabrication of evidence relating to this fox event.
- [401] Despite all the issues around this fox, it is more probable than not that this fox is evidence of a fox living in Tasmania. The exact circumstances of its death cannot be determined. Without adding a strength of weight to any particular aspect, it is more probable than not that this fox was shot or found by Mr Bosworth in Tasmania.
- [402] All the generic issues that occurred throughout this Program are evident in regards to this fox event.

#### **8.4. Other issues, concerns and coincidences**

##### **The dates of seizure, x-ray and autopsy of the carcass made a delay of 36hrs until the autopsy was completed**

- [403] The diary entry provided by Mr Emms as part of this investigation shows a different date line to that recorded in the Symmons Plains Fox Shooting report dated October 2001. It is an unfortunate error, which appears to have stood the test of time. All dates, on all documents now align, with the exception of Mr Bosworth's statement. The time period delay has reduced from 36hrs to approximately 16hrs.

##### **The date of the fox being located was Monday 24 September 2001. The date on the label at the QVMaG is this same date**

- [404] The date of the autopsy was Tuesday 25 September 2001. The date of the legs and head being removed was Wednesday 26 September. The date the scene was re-visited and the written statements taken was Thursday 27 September.
- [405] The error occurred due to Mr Emms recording the wrong date. He recorded the retrieval of the fox in his Symmons Plains Report as 'Monday 23 September 2001', when it was actually Monday 24 September 2001. Mr Emms has supplied diary entries to support this.

##### **Evidence provided by Ian Rist was dismissed or ignored.**

- [406] Mr Rist provided a written statement that Mr Bosworth had admitted that the Symmons Plains fox was a hoax.
- [407] The evidence obtained from Mr Mikulski's contemporaneous notes shows that the information provided by Mr Rist was investigated at the time. It shows that Mr Rist was told about the admissions of Mr Bosworth by Mr Triffitt, however that Mr Triffitt said he did not hear the admissions, and that he was told about it by Mr Palfreyman. When interviewed by Mr Mikulski, Mr Palfreyman did not nominate Mr Bosworth as the person who made the admissions, but rather a person he knew from the south of the State.
- [408] It is unfortunate that Mr Rist was not told the outcome of the matter. The investigation notes were part of JTF2 and were filed initially with Tasmania Police.

- [409] The evidence indicates that the information provided by Mr Rist did not implicate Mr Bosworth and did not support any finding of fabrication of evidence by Mr Bosworth.

**Mr Bosworth's evidence and credit issues were not taken into account**

- [410] Mr Bosworth's credibility was in question from the time he provided the fox carcass to Mr Emms.<sup>198</sup> Mr Bosworth was a known, self-confessed poacher at the time, saying 'he had given it a good old go over the years'.<sup>199</sup>
- [411] Mr Bosworth's credibility was further tainted by inconsistencies in stories relating to fox hunting on the mainland, and descriptions of what occurred when he said he shot the fox and when Mr Emms collected the carcass, as well as his poaching offences in 2002. This fox find came after the Longford fox image and Woodstock fox prints which had significant media coverage, and Mr Bosworth's motivation to report that matter appear to be strongly linked to a perceived financial reward. Rather than immediately report it to authorities, he contacted a newspaper outlet, stated he wanted the reward and later withheld information about the location of other foxes until he would get a reward.
- [412] Mrs Bosworth provided some information that after her husband shot the fox he threw it on the back verandah of their home at Perth and then he went to get a load of wood on his utility; however she also said that he came back at 9 or 10pm with the fox on the pile of wood in the vehicle.<sup>200</sup> This is another inconsistent account.
- [413] Mr Bosworth was interviewed by JTF2, and both he and Mr Geeves maintained that the fox had been shot at Symmons Plains. Officers interviewing Mr Bosworth stated that they considered he would not be able to maintain the confidence of a hoax but noted that Mr Bosworth could adapt his version of events for a better individual outcome.<sup>201</sup> Mr Geeves maintains the fox was located at Symmons Plains sixteen years after the event.<sup>202</sup>
- [414] The identification of the endemic long tailed mouse in the stomach of the fox carcass by Mr Brunner was the turning point in the investigation. Mr Brunner was a highly respected analyst and there was no reason to doubt the veracity of his identification. Mr Bosworth's credibility consequently was (at the time) no longer a highly relevant matter, as the endemic mouse showed the fox had digested it, with the highly probable suggestion that had occurred in Tasmania.
- [415] The evidence suggests that Mr Bosworth's credibility was an issue for officers from the start and no objective reliance was placed upon it. Mr Bosworth appears to have been challenged about aspects of his evidence at times. The focus clearly changed from Mr Bosworth to the evidence of the endemic mouse in the stomach of the fox.

<sup>198</sup> Transcript, Chris Emms, pp 34–36.

<sup>199</sup> Simon de Little, Interview with Erick Bosworth, 2012 (YouTube).

<sup>200</sup> Ibid.

<sup>201</sup> Second Joint Task Force Folder.

<sup>202</sup> Telephone conversation with Scott Geeves, 9 June 2017.

**Whether a full search of Mr Bosworth's property took place to determine if more than one fox was present**

- [416] Mr Bosworth's property was not searched. There was no legislative power or justification for searching Mr Bosworth's property at the time.
- [417] There is evidence that only one fox was seized or seen. On this basis, the information provided by Mr Rist should not include any reference to Mr Bosworth. This issue is speculative with no information to support it.
- [418] This matter provides no cogent argument relating to misconduct.

**The long tailed endemic mouse located in the stomach contents of the fox was wrongly identified**

- [419] Not securing the evidence of the long tailed mouse in the stomach contents was a significant failure, however it must be viewed in context. The year was 2001 and the matter being investigated was not criminal in nature, but rather to establish and action an appropriate eradication effort. Other examples of evidence retention showed that most scientists that were sent samples retained that evidence for many years.<sup>203</sup> This was important evidence and the inability to validate the findings creates uncertainties.
- [420] Mr Brunner was deemed to be an expert in his area. He was in a position to identify the long tailed mouse. There is no evidence of undue influence nor any other explanation for why he would not have come to an independent assessment as to the identity of the material. Mr Brunner stated in 2005 that he had a comparison sample and reiterated his analysis.<sup>204</sup>
- [421] There have been suggestions that Mr Brunner was not reliable in other identifications,<sup>205</sup> and that the long tailed mouse is too hard to differentiate between other mice located in Tasmania.<sup>206</sup> A specimen jar was recovered at the Prospect workshop in 2008 that contained some hair from the stomach contents of the fox. Mr Emms stated he only recalled one mammal in it. The sample was analysed by Ms Triggs who identified an introduced house mouse. It has also been suggested that Ms Triggs was not reliable in other identifications.<sup>207</sup> The second sample still exists.
- [422] This matter cannot be resolved conclusively without the sample analysed and subsequently discarded by Mr Brunner. However, there may have been more than one hair sample in the stomach contents of the fox, as it had a number of different items. Mr Emms stated there was a slurry that he stored in a container.<sup>208</sup>
- [423] This issue cannot be conclusively resolved. The suggestion Mr Brunner misidentified the mouse comes from the analysis of a different sample seven years later. Taking all the evidence into account more weight may be attached to the original sample identification.

<sup>203</sup> Fearn Evidence Catalogue 2009.

<sup>204</sup> Hans Brunner, Letter to Nick McKim MHA, 12 August 2005.

<sup>205</sup> Emails from David Obendorf email, 26 and 29 May 2017; Fearn Scat DNA Report 2011.

<sup>206</sup> Fearn Scat DNA Report 2011.

<sup>207</sup> Fearn Scat DNA Report 2011.

<sup>208</sup> Transcript, Chris Emms, pg 47.

### **The long tailed endemic mouse was not a local species to the Symmons Plains area**

- [424] The presence of the long tailed mouse is not recorded in the area where the fox was allegedly recovered. It is usually located in rainforest or sub alpine areas. It was identified in owl pellets located at Epping Forest in 1999. There are differing opinions as the home range of the owl (5–20km). The Natural Value Atlas records only four other long tailed mouse detections in Tasmania from 1996 to 2005. There is a wider distribution detected to 2017, including low level areas such as Bruny Island, but the only contact with the animal in the Symmons Plains area remains those in the owl pellets.<sup>209</sup>
- [425] This specific concern appears genuine. It provides sufficient weight for the issue of the endemic mouse to now be balanced against the possibility it was misidentified. The current location map of these species shows a far more widespread pattern than was evident in 2001.
- [426] The matter cannot be resolved and neither the identification of an endemic mouse by Mr Brunner nor the identification of the introduced house mouse by Ms Triggs can be preferred in determining whether, on the balance of probabilities, the Symmons Plains fox is evidence of foxes living in Tasmania.
- [427] This matter provides no cogent argument relating to misconduct, if it is accepted the mouse was misidentified. If it was not misidentified, it cannot be discounted as being present due to other long tailed mouse remains being located within 15km.

### **The long tailed mouse never existed, while the Program claimed to have lost it**

- [428] There is speculation that the mouse never actually existed. The mouse specimen was contemporarily recorded by Mr Brunner and is referred to in a letter in October 2005. Mr Emms refers to it in his report. There is no evidence that the rodent that was sent for testing did not exist or was fabricated.

### **The DNA comparison with the Longford fox**

- [429] There is evidence that the initial DNA comparison between the Longford fox and the Symmons Plains fox suggested that the foxes could have been siblings. However that analysis was later downgraded (see above, 'Longford fox event').

### **A scat from the endemic pademelon was located in the Symmons Plains fox**

- [430] The identification of an endemic pademelon scat in the Symmons Plains fox caused concern and speculation. Mr Brunner referred to the scat in the same letter that he identified the long tailed mouse, however it was differentiated to the contents of the stomach.<sup>210</sup> Mr Brunner was used extensively by staff to analyse specimens that were collected.
- [431] The presence of two endemic species in the stomach contents of this fox would have been important and published at the time. It was not, because it is highly probable

<sup>209</sup> Natural Values Atlas.

<sup>210</sup> Hans Brunner, Report to Chris Emms, 12 October 2001.

that the scat is an independent specimen for analysis that was identified in the one report. Also, the Symmons Plains fox is recorded as having no lower stomach (intestine and genitals) due to predation.<sup>211</sup>

- [432] It was referred to as evidence by both Nick Mooney (in the *Tasmanian Times* article in 2006), and the FEP Operating Plan 2006-2007. Nick Mooney subsequently retracted his statement on *Tasmanian Times*, saying it had been made in error.
- [433] There is no evidence this scat has any links to the Symmons Plains fox. This matter provides no cogent argument relating to misconduct.

**Staff altered the original representation of fact in order to explain new information**

- [434] The only details of the Symmons Plains fox that staff later adapted to fit new information related to the location where Mr Bosworth shot the fox. The long tailed mouse had not been identified in the Symmons Plains area where Mr Bosworth stated he shot the fox.
- [435] The issue was raised as early as 2001, when, based upon the likelihood of the long tailed mouse being in the area, Nick Mooney speculated that Mr Bosworth may have shot the fox elsewhere and relocated it to Symmons Plains.
- [436] There is evidence that staff gave little weight to Mr Bosworth's evidence. The discovery of the endemic mouse in a land area that wasn't recognised as being a local habitat caused some speculation as to why. One such speculation was that Mr Bosworth was known to frequent an area where the mouse was located. He was a prolific poacher, by his own admission, and it was entirely possible that he shot it elsewhere in Tasmania. The comments by Nick Mooney were speculative and were delivered in that manner.

**Chris Emms became aware of a letter which suggested anomalies in the Symmons Plains fox investigation and left the FFT as a result**

- [437] The letter in question was written by Dr Obendorf on 12 February 2005 and sent to the Hon Tony Fletcher MLC (then member for Murchison). Dr Obendorf had completed an analysis of the information on the Symmons Plains fox incident. The first letter went missing and a second was sent a week later. Mr Emms left the FFT at about the same time. Dr Obendorf was concerned about the coincidence in this timing and whether Mr Emms left due to the issues raised in the letter.
- [438] The evidence is that Mr Emms was notified on 20 December 2004 of the potential loss of his substantive position at PWS, should he extend his contract with the FFT. Mr Emms chose to decline the extension in favour of returning to PWS.

**The feet from this fox were used to make the fox prints at Woodstock Lagoon**

- [439] The feet of the Symmons Plains fox were removed on 26 September 2001.<sup>212</sup> The fox prints were made at Woodstock on 6 August 2001.

<sup>211</sup> Symmon's Plains Report 2001, pg 2.

<sup>212</sup> Chris Emms, Diary entry of 26 September 2001.

**The skull of this fox has not been accounted for and was the skull recovered at Railton in 2009 ('Interlaken skull')**

- [440] The evidence suggests that the skull of the fox was removed at the time of autopsy. It has not been able to be accounted for. A DNA analysis of both items shows that the Interlaken skull is not from the Symmons Plains fox.

**The fox had a mark on its tail that is common with an animal being hung by the tail for a period of time**

- [441] The images of the fox at the time of collection, and when placed in the QVMaG show no mark on the tail that is consistent with it being hung up by the tail. The tail has a tuft at the base and very little hair on the remainder of it, until its end.
- [442] The evidence is sufficiently strong to find this fox was not hung up for a period of time.

**Nick Mooney removed the legs and head from the fox without explanation in order to hide that the fox head had no sign of a bullet**

- [443] Dr Ladds removed the head and the feet of the fox on 26 September 2001. Those fragments were sent to Tasmania Police Ballistics Section for analysis. The head has not been recovered. The jaw was sent for analysis to Frank Busana and is currently lodged in the QVMaG.
- [444] The legs were removed to either compare to the Woodstock fox print cast or for educational purposes. Two of the four legs have been located and are in the QVMaG. Nick Mooney has confirmed that he did not remove either the legs or feet from the fox.<sup>213</sup>
- [445] X-rays were taken of the skull at the time of autopsy and are currently located at the QVMaG. There was no evidence of bullet damage to the skull, but there were projectiles located in the soft tissue in the neck. The animal was determined to have died from a broken neck.
- [446] There is no evidence there was any bullet damage to the head that may have been the motivation to remove and dispose of the skull. Projectile fragments were located and analysed.

**Inconsistencies in the information relating to the analysis of the long tailed mouse**

- [447] Mr Emms completed the Symmons Plains Fox Report in October 2001. He states that he sent the skin of a mammal to Mr Brunner for identification. Mr Brunner identified the mammal as a long tailed mouse. Mr Brunner states in his report the analysis was made from teeth, bones and hair.
- [448] Mr Emms described the specimen as a mass which consisted mainly of skin but that he could see part of a tail and hair in it. He believes that Mr Brunner unravelled the mass and located the items he recorded.

<sup>213</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.



[449] This is a feasible account of the discrepancy and there exists no information to the contrary.

**The carcass was discarded as waste at the time of autopsy due to its condition and therefore cannot be the one currently in the QVMaG**

[450] This issue is addressed in the following section.

### **Findings**

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**There is no conclusive evidence that:**

- **Chris Emms replaced the fox carcass provided to him by Erick Bosworth, or**
- **Mr Emms or Mr Bosworth conspired to fabricate evidence by producing a fox carcass and stating it was killed in Tasmania.**

## **9. Burnie fox**

There is no specific allegation involving this matter.

**Other issues, concerns and coincidences:**

- there is a concern that this fox is not evidence of a fox living in Tasmania and was placed on the Evidence List and misrepresented.

### **9.1. Evidence**

- [451] On 13 February 2002, a fox positive scat was collected at Odgen Street, Burnie. The scat was determined to be fox positive due to the identification of fox grooming hair in it.
- [452] On 16 October 2003, a person riding a bicycle on the Bass Highway near the old Burnie Hospital saw a fox carcass and notified Tasmania Police.<sup>214</sup> Constable John Cunliffe located the carcass in the eastbound lanes near Burnie Subaru. The carcass had blood visible around its mouth and head region. It was put into a small box and taken to the Burnie Police Station.<sup>215</sup>
- [453] A management action response occurred and no further evidence of foxes was uncovered.
- [454] On 16 October 2003, Dr S Pyecroft undertook an autopsy on the animal. He reported that: the animal was an immature female, had low fat levels, the stomach was empty, and there was marked autolysis equivalent to that which would normally be observed in an animal that had been killed 36–48hrs previously. He reported that the injuries were concussive, and that the fox suffered trauma and was alive when the injuries were inflicted. The age of the fox was determined to be around two years.<sup>216</sup>

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<sup>214</sup> Statement, 16 October 2003.

<sup>215</sup> Statutory Declaration, Constable John Cunliffe, 16 October 2003.

<sup>216</sup> Stephen Pyecroft, Burnie fox Pathology Report, 16 October 2003.

- [455] A media release sought to encourage the driver of any vehicle that may have hit the animal to come forward. That did not produce any results. Approximately one week after the discovery of the carcass, the FFT received an anonymous report that the fox was caught and killed on a ship that was unloading at the Burnie Wharf, and that the carcass was left on the roadside to avoid disruption of shipping activities.<sup>217</sup>
- [456] On 20 October 2003, there was an attempt to have a DNA comparison to foxes located in the Webb Docks area of Victoria.<sup>218</sup> This was repeated on 6 November.
- [457] On 17 December, further analysis determined that the animal had been reproductively active.<sup>219</sup>
- [458] DNA comparisons to the Longford and Symmons Plains foxes were completed, but the results were inconclusive.
- [459] The IACRC Report 2006 states that the site had fresh blood on the road (confirmed by the collecting police officer and subsequent examination by Taskforce staff), suggesting that the fox had only recently been hit by a vehicle. Injuries were consistent with it having been road-kill or otherwise killed by severe trauma to the head.<sup>220</sup>
- [460] Two fox positive scats were located at the old Burnie Hospital in 2008.<sup>221</sup> There were reports of fox sightings in and around this period.<sup>222</sup>
- [461] The carcass of this animal is at the QVMaG. It is and always has been listed as evidence of foxes living in Tasmania. As at time of writing this report, the evidence is listed on the DPIPWE website.

### **Evidence of Nick Mooney**

- [462] Nick Mooney stated that an FFT officer (Shane Malcolm) received information from a male working at the wharf area who had told him not to bother looking into that carcass, as it had been hit on the head and thrown on the roadway.<sup>223</sup> Mr Mooney said there were some rumours it came off a ship and was running around until it was run over. However, based on the extent of injuries suffered, he said that – at the time – he preferred the scenario that it was road-kill.<sup>224</sup>
- [463] He said that the Burnie fox 2003 was too young to be a fox found in 1998.<sup>225</sup> He said that, based on the pathology report prepared at the time, the fox was of an age that it should have had pups.<sup>226</sup>

<sup>217</sup> Nick Mooney, Physical evidence of foxes in Tasmania since 1998, 15 April 2008.

<sup>218</sup> Chris Emms, Letter to Nick Robinson, 20 October 2003.

<sup>219</sup> Stephen Pyecroft, Email to Chris Emms, 19 December 2003.

<sup>220</sup> IACRC Report 2006.

<sup>221</sup> DPIPWE, Scat Register.

<sup>222</sup> DPIPWE, Sighting Register.

<sup>223</sup> Transcript, Nick Mooney, pg 61.

<sup>224</sup> PAC Evidence, Nick Mooney, 2 June 2009, pg 14.

<sup>225</sup> Nick Mooney, ABC Radio Interview, 23 April 2008.

<sup>226</sup> PAC Evidence, Nick Mooney, 2 June 2009, pg 14.

- [464] He further stated that it was unusual for a fox not to have anything in its stomach, but that they have a high metabolism and a small stomach so they need to eat often. He would have expected stomach content but stated that may have been indicative it had not eaten for a few hours.

#### **Evidence of John Cunliffe**

- [465] Mr Cunliffe was a Police Constable at the time and retrieved the fox carcass from the Bass Highway. He states he recalls the incident but does not recall any blood being on the roadway when he picked up the fox. He said the fox had head injuries and that he picked it up with a plastic bag and placed it into the box.

#### **Evidence of Chris Emms**

- [466] Mr Emms states the information '*was based on a phone call that one of the guys up the northwest received from an anonymous person who claimed that it had come off the container and they actually killed it*'.<sup>227</sup>

### **9.2. Analysis of evidence**

- [467] There is surprising lack of information relating to this fox, and it is impossible to draw definite conclusions as to its origin.
- [468] The lack of body fat and an empty stomach points to a period where it may have been at sea for some time before arrival. The lack of breeding in an animal aged two years indicates that it may have been alive in an isolated area, such as Tasmania. If it arrived in a shipping container then it may not have been from the Melbourne Wharf area. However the fox's proximity to the Burnie Wharf area makes it more probable than not that it was from interstate, but when it arrived cannot be determined.
- [469] This fox has been listed as evidence of foxes living in Tasmania. Its manner of death is not able to be determined, but the evidence suggests it was road-kill due to the extent of its injuries and the manner of its finding. The IACRC Report 2006 suggested the collecting police officer stated there was blood on the roadway. This was not confirmed during this investigation and the source of that information in 2006 is not known.
- [470] There was a fox positive scat located in February 2002 approx 4km inland from Burnie Wharf. The age of the fox excludes it from being the fox that escaped from the Burnie Wharf in 1998. Further fox positive scat was located near the old Burnie Hospital in 2008.
- [471] The only information that was provided relates to it being killed off site and placed on the roadway. No driver came forward to state it had been hit.
- [472] Even if a person had killed it on a ship or at the wharf area and then left it a short distance away from the wharf area, it is reasonable to assume this was done to prevent FFT involvement on site, rather than a deliberate hoax.

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<sup>227</sup> Transcript, Chris Emms, pg 60.

- [473] The enquiries by the FFT to compare the fox's DNA with foxes in the Melbourne dock area supports the assumption that this fox was considered to be an incursion, rather than evidence of any established State fox population. This is further discussed in Part C of this report.

## Findings

**There is no conclusive evidence that any employee of the FFT fabricated or falsified evidence in relation to this fox event.**

## 10. Lillico fox

- [474] The complaint does not allege any specific issue with the Lillico fox carcass. It draws on concerns, issues and coincidences to place suspicion upon the fox event, its origin and the conclusion reached by the FFT that resulted in it being listed it as 'hard evidence'.

### Other issues, concerns and coincidences:

- why the FFT took so long to respond to the original fox sighting recorded by the Friends of Lillico Penguins
- the identity and legitimacy of the rabbit shooter
- the lack of corroborative evidence for a breeding population
- there were feathers in the carcass when it was recovered.

### 10.1. Evidence

- [475] On 19 December 2005, a volunteer for the Friends of Lillico Penguins reported that he had observed the carcass of a 'puppy looking animal' near the penguin rookery at Lillico.<sup>228</sup> Such reports were forwarded for information to PWS on a regular basis. On 24 December 2005, FFT officer Peter Harrison received a report that a fox was on the roadway at Lillico. The area was attended by FFT Officer Shane Malcolm however the fox was not located.<sup>229</sup>
- [476] Over the next few weeks, the carcass was seen to be decomposing and smelling by the volunteer.<sup>230</sup>
- [477] On 6 February 2006, a person reported a fox she had observed as road-kill at Lillico Beach while on a bike riding holiday on 25 December 2005. She described the animal as having a big red bushy tail, with a white tip and was a small juvenile with canine teeth. She was unaware of the significance of the find at the time and when she became aware, contacted the FFT.<sup>231</sup>

<sup>228</sup> <http://tasmaniantimes.com/index.php?/article/foxes-ivan-dean-and-the-kitchell-report/>

<sup>229</sup> Transcript, Peter Harrison, pg 19.

<sup>230</sup> <http://tasmaniantimes.com/index.php?/article/fox-believer/>

<sup>231</sup> DPIPWE, Sighting Register.

- [478] Mr Harrison attended the site on 6 February 2006 and located a fox carcass impregnated into the bitumen on the Bass Highway, near the penguin observation car park.<sup>232</sup>
- [479] The remains were fur and most of the bones of a crushed carcass including a lower mandible with teeth. Nick Mooney has confirmed that, on reviewing the jaw bone, '*on first impressions it looked mustelid or canid and but on full examination it was juvenile red fox*'.<sup>233</sup> It was determined that the animal was 3-4 months old.<sup>234</sup> Its sex was unable to be determined.<sup>235</sup>
- [480] A road worker also reported, post discovery, seeing the carcass.<sup>236</sup>
- [481] On 28 February 2006, a wallaby shooter reported to the Fox Hotline that he had twice observed foxes at Lillico. The first sighting was on or around 12 December 2005, at night while spotlighting and he reported he was unable to be definitive about it being a cat or a fox. The second sighting was of the same eye shine on 12 January 2006, again while spotlighting.<sup>237</sup>
- [482] Also on 28 February, a person reported that he had seen a dead animal on the road in December 2005, approximately 40m from the Penguin viewing car park. The animal appeared to have been dead for 8–10 days. The head was described as squashed and there was a white tip on the tail. The reporter said that he was working on a roadside slasher at the time, otherwise he would have stopped. He stated he had shot foxes before and was definite the animal was a fox.<sup>238</sup>
- [483] In May 2007, an unknown person reported they had shot a fox cub which was with a second cub (approximately 1km away from where the Lillico fox carcass was discovered) and had moved it to near the penguin colony in order for it to be discovered.<sup>239</sup>
- [484] Mr Harrison referenced this anonymous report in his investigation running sheet on 18 March 2009. The running sheet states that a second cub was shot in April–May 2006 on the edge of blackberry bushes next to a walnut plantation. The shooter had stated he didn't notify the FFT at the time as he had had previous involvement with the Ulverstone Program employees and wasn't taken seriously and was reluctant in any event due to the political and media implications.
- [485] On 25 May 2009, the PAC was informed that the cub was 10 weeks old and may have represented evidence of breeding.<sup>240</sup> On 2 June, Nick Mooney reported to the same forum that a rabbit shooter had come forward and stated he saw two fox cubs and shot one. The information was provided years later. The person did report seeing

<sup>232</sup> Transcript, Peter Harrison, pg 18.

<sup>233</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>234</sup> DPIPWE website, Fox Evidence 2006.

<sup>235</sup> PAC, DPIPWE submission, 31 March 2009.

<sup>236</sup> Nick Mooney, Physical Evidence of Foxes in Tasmania since 1998, 15 April 2008.

<sup>237</sup> DPIPWE, Sighting Register.

<sup>238</sup> Ibid.

<sup>239</sup> Nick Mooney, Physical Evidence of Foxes in Tasmania since 1998, 15 April 2008.

<sup>240</sup> PAC Evidence, Nick Mooney, 25 May 2009, pp 15–16.

foxes around that time. The type of gun was not disclosed and no lead shot was located when it was x-rayed.<sup>241</sup>

- [486] On 31 July, the wallaby shooter reported seeing the same eye shine as previously reported on 28 February 2006 (refer above). In the same report he stated he had been responsible for shooting the Lillico fox in 2005 and had put it on the roadway to make it look like road-kill.<sup>242</sup>
- [487] The fox carcass is located at the QVMaG. This matter has been and remains listed as evidence of foxes living in Tasmania.

### **Evidence of John Coombes**

- [488] Mr Coombes was the volunteer that first located the fox carcass in December 2005.
- [489] He observed it on the bitumen slip road as he drove into the car park of the penguin viewing area. He parked his vehicle and walked back to look at it. He was not able to identify it as a fox, had never seen a dead fox, it did not have a bushy tail and he was of the belief there were no foxes in Tasmania at the time. He stated it was the right colour and had sharp teeth and described it as a 'puppy looking animal'. He had no experience but offered the opinion that it hadn't been dead for too long, it had no flies on it and he recalls no body stiffening when he kicked it around to get better view of it. He stated there was a patch of blood on the head and that that was the only damage to the carcass.
- [490] There was a PWS Discovery Ranger present at the time who also looked at the carcass and did not recognise it as a fox. Mr Coombes moved the fox from the slip road onto the bitumen verge and over the next few weeks it decomposed and later became flattened. He said he looked for it each Monday when he attended the area. He does not know exactly what was written on the notification form that notified the PWS. He believes that the Ranger filled it out and submitted it. He did not ring the fox hotline about the carcass.
- [491] He does not recall if he showed the FFT officer to the carcass but does recall there were feathers with it when it was peeled off the bitumen.<sup>243</sup>

### **Evidence of Peter Harrison**

- [492] Mr Harrison states he was notified of a possible fox carcass on the roadway at Lillico on Christmas Eve 2005, by his Manager, Chris Parker. He was unable to attend and notified FFT officer, Shane Malcolm. He states it took some convincing, but that Mr Malcolm attended the next morning and informed him that he didn't see a fox carcass.
- [493] In early February 2006, Mr Harrison received another notification originating from two bike riders from Canberra who stated they also saw it in December 2005. He spoke to them by telephone and attended the reported area. He walked the length of Lillico straight and only observed one carcass that had been run over. It had been impregnated into the bitumen. The animal species couldn't be identified and he

<sup>241</sup> PAC Evidence, Nick Mooney, 2 June 2009, pg 16.

<sup>242</sup> DPIPWE, Scat Sighting Register.

<sup>243</sup> Telephone conversation with John Coombes, 31 May 2017.

describes prying it off the road surface in one clump. Mr Harrison recalls there was a photograph of the carcass taken, but doesn't believe it was an *in situ* image.

- [494] Mr Harrison stated he never queried Mr Malcolm about attending on 25 December 2005 and conceded Mr Malcolm should have located the carcass, if he had attended.
- [495] He also stated that Mr Malcolm had received information that a rabbit shooter had shot two fox cubs in the area. He met up with a man whom he believed to be this person, but it was years after the carcass was discovered. He stated the person intimated that he had shot the fox and showed him to an area where there may have been evidence. He did not recover any fox evidence from this location.<sup>244</sup>
- [496] Mr Harrison stated there was corroborative evidence located in the area, namely two fox positive scats found within 5km of the carcass.<sup>245</sup>

### **Evidence of Thomas Clark**

- [497] Mr Clark is the person who states he shot the fox and placed it on the roadway.
- [498] He stated he shot it directly across the road, on a property that he is the caretaker of, belonging to Bruce Robinson.
- [499] Mr Clark was hunting rabbits and wallabies at the time. He describes the area as a flat paddock with grass and blackberries. It was just on dark and he observed two fox cubs: one ran quickly over the top of the hill but the fox he shot was slow and he shot it in the chest. There were no obvious signs it was ill when he picked it up. He put it on the roadway so it would be found away from the property, as he didn't want any media attention.
- [500] He states he notified the Ulverstone Fox Program about the matter and approximately three days later he took an officer to the exact location he had shot the fox. He pointed out where the other fox had gone and describes a track into another paddock. He pointed out a number of scats which he said they took away with them.
- [501] He stated he shot at the other one and reported that he had done so, but that he did not kill it. He was critical of FFT officers and didn't think they took him seriously. He said they were looking in the wrong place.
- [502] He states he met with an officer matching the description of Mr Harrison at the Ulverstone FEP Office. He states he went to the office several times to speak to the officer about the foxes but got the impression he was being ignored.
- [503] He states that he had been to the mainland shooting fox before this matter and was aware of their eye shine. He has seen foxes in this location over the years, but in recent times there has been a noticeable decline. He predicts that there will be a female in the same area and has recently upgraded his rifle. He states that he expects to see a fox as the rabbit population has declined recently and there is no other explanation for this.<sup>246</sup>

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<sup>244</sup> Transcript, Peter Harrison, pg 22.

<sup>245</sup> Ibid, pp 16–24.

<sup>246</sup> Telephone conversation with Thomas Clark.

### Evidence of Nick Mooney

- [504] Nick Mooney described the incident as odd in that a shooter came forward and said he had shot the fox with a shotgun, as there were no projectile fragments located in carcass.<sup>247</sup>
- [505] However Nick Mooney also described the fox as 'worrying evidence of breeding',<sup>248</sup> and 'the discovery of the juvenile fox carcass as catastrophic'.<sup>249</sup>

### Evidence of Craig Elliott

- [506] Although Craig Elliott was not in the FEP when this matter occurred, he provided some evidence to the Commission:

*The carcass at Lillico ... was a fox cub. I went with a community engagement officer out to a presentation at Lillico, and the person who actually made the report to the program was there. He asked a very simple question of, "When will I ever hear back about what happened?" Common sense would dictate that we'd actually respond to the person who reported something and tell them what we did. So the officer I was with (Dave Sayers) and I said, "Yes, we'll look into it."*

...

*Dave Sayers ... rang me probably a couple of days later saying "I have tried to find out and it is all over the place". I went and asked for the file, presuming that there would be an actual evidence file and some sort of incursion response ... a photocopied map with ... highlighter ... the rest of the file seemed to consist of this member of the public and his emails to the program asking to be updated and that was it.*<sup>250</sup>

### Evidence of John McConnell

- [507] Mr McConnell (a former FFT investigator) stated he was deployed to the Lillico area for a week to a fortnight to do intensive fieldwork in searching for additional evidence. He recalls locating some scat and possibly a track, but no actual fox evidence was found.
- [508] He stated the aging test of the fox determined it to be 12 weeks of age.

## 10.2. Analysis of evidence

- [509] There are many unnecessary errors detected within the different reporting avenues that relate to this fox, leading to speculation about the legitimacy of the find. The errors include different dates of discovery and age of the fox cub. The anonymity provided by FFT to evidence and information sources officers has increased the speculation.
- [510] The initial report (19 December 2005) described the carcass as having head injuries, but that its body was intact and it appeared to be quite a fresh looking kill (not fly

<sup>247</sup> Nick Mooney, Interview with Simon de Little.

<sup>248</sup> Nick Mooney, Physical Evidence of Foxes in Tasmania since 1998, 15 April 2008.

<sup>249</sup> *The Mercury*, Fox Taskforce to be slashed, 1 March 2006.

<sup>250</sup> Transcript, Craig Elliott, pg 22.



blown or decomposing). The origin of the report to the FFT on 24 December 2005 is unknown. It may have been the notification form submitted by a person from the Friends of Lillico penguin rookery.

- [511] It is difficult to reconcile why Mr Malcolm did not locate the carcass on 25 December 2005. Mr Coombes said it was evident. Mr Harrison located it in February 2006 when little of the carcass remained. It is possible that Mr Malcolm did not attend the site on 25 December 2005.
- [512] The importance of this piece of evidence cannot be underestimated. The previous physical evidence was nearly three years earlier (excluding the Conara scat). Due to its age it was also the first indirect evidence of possible breeding in Tasmania.
- [513] Mr Harrison stated that there was corroborative evidence for the carcass, being fox positive scat located within 5km of this find: one scat on a railway line located by Justin Dittman, and one scat on the dam wall located by Rod McCarthy.<sup>251</sup> This was supported by the Scat Register:

Scat	Name	Date	Location and comments
#12481	R McCarthy	24 March 2010	Forth on a dam wall
#14024	J Dittman	17 April 2011	Lillico

- [514] There were additional scats located further afield at Spreyton. The fox positive scats listed above were located more than four years after the carcass was located and appear too remote to be of any corroborative assistance to the carcass.
- [515] There were a number of negative scats located in 2007 as part of the strategic monitoring program.<sup>252</sup>
- [516] The area was described by media as a fox sighting hotspot. However there are no recorded ('excellent') fox sightings prior to February 2006 on the hard copy sightings register (there are four sightings rated as 'possible' on 1/7/2001, 12/12/2002, 2/4/2005 and 10/8/2005;<sup>253</sup> there are a further two on the electronic data base with no rating value 18 February 2005 and 28 March 2005<sup>254</sup>). There are several sightings reported after 28 February 2006 and span to 2011.
- [517] The precautionary approach dictated that this carcass could be evidence of possible fox breeding in Tasmania. There is evidence there was a substantive response, including extensive searching, scat collection, spotlighting, deployment of cameras and scat and scent dogs and public communications, by the FEP in the Lillico area as a result. No further contemporary evidence was located.
- [518] As a result, it is more probable than not that the Lillico fox was not one that originated from breeding in Tasmania. If that is accepted, it must follow that the fox is not evidence of a living fox in Tasmania and the highest value statement that can be

<sup>251</sup> Transcript, Peter Harrison, pg 16.

<sup>252</sup> DPIPWE, Scat Register.

<sup>253</sup> DPIPWE, Sightings Summary report.

<sup>254</sup> Natural Value Atlas.

made is that it is evidence of a dead fox on the roadway at Lillico. Its origin remains undetermined.

### **10.3. Analysis of evidence – fabrication**

- [519] There is no evidence or information that any FFT staff fabricated or was involved in fabricating evidence relevant to the Lillico fox.

### **10.4. Other issues, concerns and coincidences**

#### **Why the FEP took so long to respond to the original fox sighting recorded by the Friends of Lillico Penguin Rookery**

- [520] Nick Mooney has stated that the original report did not use the word ‘fox’ and as a result the report was not linked to a fox and not referred to the Program.<sup>255</sup>
- [521] The notification form has been reviewed and this is clearly the case.

#### **The identity and legitimacy of the rabbit shooter**

- [522] This person has been identified as Thomas Clark. Mr Clark provided an account of what occurred. His evidence confirms what FFT and FEP officers have stated publicly about this matter.
- [523] Mr Clark identified himself as a hunter who shot the fox nearby and placed it on the roadway in order for it to be located. He states that he met with the FFT officer three days after the fox was placed on the roadway; however this does not reconcile with the FFT records or the officer’s recollection. Mr Clark is listed as reporting several fox related sightings but these are not until several years later. The Scat Register does not show scats being collected in that area until 2007.
- [524] This delayed reporting tends to support why Mr Harrison stated there were fox positive scats found in the area, albeit several years after the fox carcass was located.
- [525] Mr Clark states he didn’t want to become part of a ‘media circus’ due to the find, and moved it. This appears to be a legitimate concern based on other persons’ experiences. Mr Clark’s evidence is not sworn, he has a history of dishonesty and poaching, and his account does not reconcile with records. Mr Clark cannot be considered a credible witness.

#### **The lack of corroborative evidence for a breeding population**

- [526] If Mr Clark’s version of events is accepted, there were:
- two fox cubs observed
  - one was shot and killed
  - it was shot close by (within 1km) and placed on the road to be found, and
  - it was evidence of breeding.

<sup>255</sup> Transcript, Nick Mooney, pp 66–67.

[527] Then it follows that:

- the fox cubs were so young they would have still have been in the protection of their mother (they usually disperse at six months)<sup>256</sup>
- there would be at least one den close by<sup>257</sup> or
- there would be scats present (one fox completes 8–9 scats a day).<sup>258</sup>

[528] Despite the documented behaviour of the fox and the well-reasoned arguments about why there would be a lack of evidence located, it is extraordinary to propose that – after the investigation by the FFT – no further evidence could be located to substantiate fox presence.

[529] If Mr Clark's version is not accepted, this fox was either a deliberate or accidental incursion. It is difficult to reconcile how such a young animal could come to be located at Lillico Beach. It was located several kilometres from the Devonport Wharf area.

[530] There was no other evidence that would support additional foxes or breeding in the area.

**There were feathers in the carcass when it was recovered.**

[531] There was a suggestion that there were penguin feathers in or under the carcass when it was removed from the roadway. The investigating officer did not disclose this information and none are visible in the photographs taken of the carcass.

[532] There is no evidence to suggest the feathers were ingested by the fox.

**Findings**

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**There is no conclusive evidence that any employee of the FFT fabricated or falsified evidence in relation to this fox event.**

## 11. Old Beach blood

**The complainant alleges that:**

- An FFT employee placed a fox blood sample at the site or contaminated the blood sample with fox urine.

**Other issues, concerns and coincidences:**

- the FFT officer nominated as contaminating the site was John McConnell and that was completed by spraying it around the site
- this matter has been widely reported as a fox piercing itself on the barbed wire trap which allowed droplets of its blood to drip onto the wood below.

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<sup>256</sup> <http://www.thefoxwebsite.net/ecology/ecologygrowingup>

<sup>257</sup> IACRC Report 2006, pg 71.

<sup>258</sup> Landcare 2009.

## 11.1. Evidence

- [533] On 16 May 2006, approximately 20 chickens were found dead in a pen at Old Beach, near Hobart. The chicken carcasses were described as having bites to the back of the neck, head and shoulder areas, some had broken necks, the wound depth was 2-4cm and the killing was described as efficient and accurate. No half-eaten carcasses were located.<sup>259</sup> The property owner, Phillip Riley, contacted PWS for assistance and FFT field officer, Mark Mackay attended on 17 May 2006.
- [534] A barbed wire trap was set in the area identified as providing access into the pen. The main purpose of the trap was to capture hair on the responsible animal's re-entry to the pen. A sand pad was also placed at the entry point in an attempt to capture a footprint of the responsible animal. The chicken carcasses remained within the pen and additional live chickens were added as a lure.
- [535] On 22 May 2006, Mr Mackay was called back by the owner as the live chickens had been killed overnight. Mr Mackay identified and collected what appeared to be blood spots on the wood at the bottom of the barbed wire trap and in the sand pad.<sup>260</sup> The evidence docket records that blood samples were taken and included comments: *'Chook pen. Possible second visitation of predator, or could be chook blood'*.<sup>261</sup>
- [536] Two of those blood spots were analysed at the University of Canberra on 4 June 2006 and identified as being fox positive. A DNA sex test failed on the samples.
- [537] There is evidence there was a substantive management response, including extensive searching, scat collection, spotlighting, deployment of cameras and scat and scent dogs, and public communications. There had been 11 cameras in place, resulting in a large number of different animals recorded including quolls and dogs, while sand pads showed a large number of different animals. No further contemporary evidence of foxes was located.
- [538] On 15 June 2006, this presence of blood in this event was mentioned in Parliament by Mr Nick McKim MHA.<sup>262</sup> Further questions were raised in Parliament on 5 September 2006 about this matter.
- [539] The DPIPWE website currently states:
- May 2006: Blood is collected at the site of a large chicken kill at a coop in Old Beach (near Hobart). Analysis confirms the blood to contain fox DNA. The blood was recovered from barbed wire placed around a hole in the coop in the hope of gathering fur for testing.*<sup>263</sup>
- [540] The blood sample located in the sand remains at the University of Canberra.<sup>264</sup>

<sup>259</sup> Tasmania Parliament, Hansard, Legislative Council, the Hon Doug Parkinson MLC, 5 September 2006.

<sup>260</sup> Mark Mackay, Investigation Report Old Beach Blood – Running Sheets.

<sup>261</sup> Mark Mackay, Investigation Report Old Beach Blood – Evidence Docket 0223.

<sup>262</sup> Tasmania Parliament, House of Assembly, 15 June 2006.

<sup>263</sup> <http://dpiuwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011>

<sup>264</sup> Fearn Evidence Catalogue 2009.

[541] This matter has been and remains listed as evidence of foxes living in Tasmania.

### **Evidence of Phillip Riley**

[542] Mr Riley is the owner of the property at 96 Kathleen Drive, Old Beach where the chickens were killed in the pen.

[543] He states that he did not notify the FFT that a fox was involved or alleged to be involved. He only ever recalled one officer attending (Mr Mackay) but said that he was not at home during the day so could not be sure.

[544] He described the traps used and that the FFT officer left the chicken carcasses in the pen and supplied further live chickens; several days later those chickens were also found dead. He said the chickens were all killed by bites to the head and neck area.

[545] He believes there may have been blood located on the barbed wire. He does not recall where the blood samples were obtained from.

[546] He recalls Mr Mackay telling him – at a later meeting on his property – that there was a chance he had accidentally contaminated the blood sample with fox urine that was in his car.

[547] He does not believe it was a fox that attacked his chickens but rather a White-spotted quoll. He came to this conclusion after discussions with neighbours about similar things occurring on their properties.<sup>265</sup>

### **Evidence of Mark Mackay**

[548] Mr Mackay stated in interview:

*I'm not going to use the word belief; I think it's highly improbable that a fox happened to cut itself on the barbed-wire that I placed at Old Beach and leave its blood there. I don't think that a fox left its blood at or at least naturally left its blood at Old Beach and I didn't at the time.*<sup>266</sup>

[549] He described the incident and stated, *'there were these spatters on wood, a bit of treated pine ... and ... one in the sand. I used a fresh Stanley knife, with a brand new blade, and I cut under the wood ... scooped it up in the sand'*. The wood was at ground level and under the barbed wire trap.<sup>267</sup>

[550] The initial chicken carcasses were not tested for animal saliva. There were footprints of the owner's dog and a quoll identified in the sand trap. He recalls photographs being taken of the samples *in situ*. He recalls collecting the barbed wire, that no blood was evident and that he sent that with the samples to Prospect.<sup>268</sup>

[551] He said:

*I find it highly improbable that an animal conveniently cut itself on barbed wire for me, and also not leave prints or hair on that barbed wire. And also a fox cutting itself like*

<sup>265</sup> Notes of interview, Phillip Riley, 12 April 2017.

<sup>266</sup> Transcript, Mark Mackay, pg 12.

<sup>267</sup> Ibid, pp 52, 54.

<sup>268</sup> Ibid.

*that; trying to get in somewhere, and – and even spatter. So cutting itself to the extent that it would leave spatter. Graze possibly, yes. But not – not dripping blood. Just way too convenient.*<sup>269</sup>

- [552] He cannot recall any other staff member attending but thought that Nick Mooney may have spoken to a neighbour.<sup>270</sup>
- [553] He described being frustrated at not being permitted to bring in a trained investigator to interview the owner. He said Chris Parker denied his request to bring in Glenn Atkinson, as Mr Parker believed that Mr Atkinson would get the landowner off side.<sup>271</sup>
- [554] Mr Mackay stated that no further evidence of foxes was discovered during the management action that followed the initial blood find.
- [555] He said: *'I know that I did not contaminate that blood, certainly intentionally, and I know that I didn't contaminate it accidentally because I didn't have possession of ... fox urine until several weeks later ... well after ... the blood came back as fox positive'*.<sup>272</sup>
- [556] Mr Mackay was asked for a hypothesis to explain the anomaly and he stated he had suspicions that the property owner's friends (who work on an interstate transport company) may have put it there as a joke but that he had no evidence or information to support the suspicion.
- [557] Mr Mackay described how he placed the urine on site in a container that he partially dug into the ground. It was placed in front of a camera. He states he had had two containers of urine as one had been leaking and as a result there was only a very small amount of urine left to deploy. The small amount still had plenty of scent.<sup>273</sup>
- [558] Additional evidence was sought from Mr Mackay by the Commission. He stated that he believed there would be photographs from the on-site cameras that show the urine in a plastic container dug into a small hole in front of the camera trap. He recalls one photograph showing the owner's dog sniffing the container.
- [559] He stated that DNA was identified as belonging to a dog on the carcasses of the subsequent kills. DNA was extracted by using sampling buds into teeth puncture wounds.<sup>274</sup>
- [560] Mr Mackay stated that the FFT queried the result with the University of Canberra, asking if it could be blood from a dog. He was later informed that it was definitely not dog, it was fox.<sup>275</sup>

### **Evidence of Craig Bester**

- [561] Mr Bester was a FFT staff member.

<sup>269</sup> Ibid, pg 55.

<sup>270</sup> Ibid, pg 57.

<sup>271</sup> Ibid.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid, pp 57–58.

<sup>274</sup> Email from Mark Mackay, 14 June 2017.

<sup>275</sup> Transcript, Mark Mackay, pp 48–49.

- [562] Mr Bester stated that he attended the Old Beach site sometime after the blood was discovered and assisted with putting cameras in. He does not specifically remember urine being used and raised no concerns in relation to this incident.<sup>276</sup>

### **Incident report**

- [563] A report of the initial incident was received by Mr Parker on 16 May 2006.
- [564] The reporter described a previous sighting which Mr Mackay rated as 'unlikely' and supported this with reasons. The possibility that a fox killed the chickens was rated as 'possible'.<sup>277</sup>
- [565] The report records that, on 21 May 2006, the property owner further reported prints and blood on the sand pad and that a second hole had been dug to gain access to the pen.
- [566] On 22 May 2006, Mr Mackay returned to the location. He extracted the blood and collected hair samples. Within that same dated entry was a record that FeralMone<sup>278</sup> had been used on site as a lure. The sand pad had a print that was attributed to the owner's dog, a scat was collected which is assumed to have returned a negative result for fox.

### **Evidence of John McConnell**

- [567] Mr McConnell was a FFT employee.
- [568] He states that he did not attend the Old Beach address at any stage, did not use fox urine at that address and produced diaries that showed he was at the Campbell Town Show from 18-21 May 2006 and then at Bishopsbourne on 22 May 2006.<sup>279</sup>

### **Evidence of Joe Dowde**

- [569] Mr Dowde was an FEP employee.
- [570] He did not go to the Old Beach site and describes it as an event that occurred after he commenced with the Program. He says it became known that fox urine was used at that site as a lure but believes the potential for urine to contaminate blood was *'very, very low. I know that because urine doesn't hold a great deal of DNA because it's a waste product'*.<sup>280</sup>

### **Evidence of Jodie Elmer**

- [571] Ms Elmer was an FEP employee.
- [572] Ms Elmer did not go to the Old Beach site and describes it as an event that occurred after she commenced with the Program.

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<sup>276</sup> Ibid, pp 14–15.

<sup>277</sup> Mark Mackay, Incident Interview Record – Old Beach, 17 May 2006.

<sup>278</sup> FeralMone was at the time a commercially available spray attractant.

<sup>279</sup> Transcript, John McConnell, pp 45–46.

<sup>280</sup> Transcript, Joe Dowde, pp 59–60.

- [573] She provided evidence that fox urine was used by the FFT / FEP as a lure. It was not audited in the same manner as the scats, as the urine could not be returned. She believes there may have been a Urine Register and that it was kept in the Prospect Offices.<sup>281</sup>

#### **Evidence of Adrei Konyn**

- [574] Mr Konyn was an FEP staff member.
- [575] The complainant stated that Mr Konyn could provide evidence in relation to this matter however this was not the case.

#### **Evidence of Nick Mooney**

- [576] Nick Mooney was employed as a Wildlife Management Officer in the Wildlife Management Branch of Resource Management and Conservation at the time. He said that he did not attend Old Beach in relation to this matter.<sup>282</sup>
- [577] In April 2007, Nick Mooney stated that the blood was tested twice and that both tests were fox positive, and that its consistency and concentration could not be from a contaminate. One fox urine lure was used on 19 July 2006 and was the first time such a lure had been used on-site. Dog and cat hair was recovered from the barbed wire trap, and saliva from several chickens killed weeks after the initial kills was found to be from a dog. He said the blood on the sand and wood were not photographed close up *in situ*.<sup>283</sup>
- [578] In 2009, Nick Mooney stated that this was the first time DNA testing was used to identify a fox in Tasmania. There were two spots of blood found, the barbed wire and sand pads were placed on 17 May and the blood retrieved on 22 May 2006. The blood result was returned on 5 June 2006. He stated, '*It is odd that you wouldn't get any more evidence, only odd that you got blood*'. Mr Mooney stated it was not unusual for hair not to be snagged on the barbed wire and that an attractant was used on 19 June 2006, nearly a month after the blood was initially found. He stated there could be no retrospective contamination.<sup>284</sup>

#### **Evidence of Alan Johnston**

- [579] Mr Johnston is a former Manager of the FEP.
- [580] In 2009, he stated:

*There are some bizarre things about it, but the reality was that we ended up with a sample of blood on site which had fox DNA in it. In the absence of any clear evidence that it got there any other way, we worked on the assumption that it was from a fox.*<sup>285</sup>

<sup>281</sup> Transcript, Jodie Elmer, pg 47.

<sup>282</sup> Transcript, Nick Mooney, pg 6.

<sup>283</sup> Nick Mooney, Summary of Hard Evidence of Foxes in Tasmania since 1998, 26 April 2007.

<sup>284</sup> PAC Evidence, Nick Mooney, 2 June 2009.

<sup>285</sup> PAC Evidence, Alan Johnston, pg 40.



### **Evidence of Charles Wolf**

- [581] Mr Wolf was a subcontractor for DPIPWE and was utilised in culling expeditions. He stated he has been around foxes on and off all his life and hunted on the mainland. He describes them as cunning. He indicated that he had previously heard a fox calling at the Risdon Brook dam area (located nearby to Old Beach).
- [582] He stated he had been in the vicinity of the house at Old Beach when the fox blood was located. He met an FFT officer named Mark. He never saw or smelt fox urine in the vicinity and never saw it being used.
- [583] He stated he had no issues with the Old Beach blood find and believed the FFT officers to be honest and was supportive of the agency.<sup>286</sup>

### **Evidence of Sue Robinson**

- [584] Ms Robinson was a FFT member.
- [585] She states that she had no direct activity relevant to the Old Beach blood incident. She states she thought it was odd that blood was present at the site and at no time has even heard a rumour about the blood samples being contaminated with urine.<sup>287</sup>
- [586] Ms Robinson was asked about whether she supplied Mr Mackay with the fox urine. She stated she could not remember but volunteered that was something she could see herself doing. This was prior to an authority being required to import fox product such as urine. She checked her diaries and found an entry where she was liaising with a mainland individual from whom she had previously obtained fox urine. Her diary does not specifically mention this.<sup>288</sup>

### **Evidence of Candida Barclay**

- [587] Ms Barclay was a project officer for the FEP, commencing in 2009.
- [588] Ms Barclay stated that Mr MacKay had informed her of concerns about whether the blood sample at Old Beach was fox.<sup>289</sup>

### **Request for Sign in / Out Urine Records – DPIPWE**

- [589] The only data supplied is dated from 2008.<sup>290</sup>

### **University of Canberra – Institute of Applied Ecology**

- [590] Studies have shown that trace quantities of DNA can occur in mammal urine but that it breaks down quickly. Fox tests use mitochondrial DNA which is more robust than nuclear DNA due to it containing its own membrane; however when that membrane breaks down it will degrade faster than nuclear DNA.

<sup>286</sup> Telephone conversation with Charles Wolf, 5 April 2017.

<sup>287</sup> Email from Sue Robinson, 12 April 2017.

<sup>288</sup> Email from Sue Robinson, 2 June 2017.

<sup>289</sup> Statutory Declaration, Candida Barclay, 24 March 2017.

<sup>290</sup> DPIPWE, Fox urine records.

- [591] Freezing and thawing appear to accelerate such a breakdown and the estimate of successfully obtaining DNA from such a sample would be questionable after a period of a week.<sup>291</sup>

### **Evidence of Dr Clive Marks**

- [592] Dr Marks stated that, in his experience, it would be extremely unlikely that drops of fox blood from minor puncture wounds made by barbed wire would occur and that he had not seen blood drops from this type of injury previously. He explains that foxes are covered in thick hair and any minor puncture wounds are likely to result in bleeding being adsorbed by their hair rather than forming droplets. The fox shelters in dense gorse, blackberry and other plant species with sharp spikes and push through tunnels of sharp spines on a regular basis. He stated it would be more likely to find hair on the barbed wire.<sup>292</sup>

### **Evidence of Jason Wiersma**

- [593] Mr Wiersma was an FFT officer who attended Old Beach to put in the camera traps.
- [594] He described how the initial camera traps used sardine oil and feralMone. He makes mention of a faint musky smell on the camera when it was first retrieved but when checking the camera trap found it to be dog urine. He states urine was not used when he was present and that Mr Mackay had mentioned he didn't have any (suggesting he needed a sample).<sup>293</sup>

## **11.2. Analysis of evidence**

- [595] The Commission's investigation has detected unnecessary errors within the reporting that relates to this fox event. These errors have led to speculation about the legitimacy of the find.
- [596] The complainant nominated people who may have provided information relating to fabrication or falsification of evidence in this matter. Those sources have not led to any cogent evidence being provided for determination, with the exception of Mr Riley's evidence regarding Mr Mackay's concession that he may have accidentally contaminated the blood sample with fox urine.
- [597] FeralMone was recorded as being used on 22 May 2006 as a lure. This product is an artificial attractant and does not contain fox DNA.<sup>294</sup> There is sufficient evidence to find that fox urine was used on site.
- [598] There is mention of fox urine being brought into the State by the ICS, in July 2001.<sup>295</sup> There is clear contemporary evidence that fox urine was first used a lure on 19 July 2006. There are two references to an actual date that fox urine was used, including the running sheet completed by Mr Mackay; however there is no mention of using

<sup>291</sup> Rachel Walsh, University of Canberra, DNA persistence in urine, 3 June 2008.

<sup>292</sup> Email from Clive Marks, 2 June 2017.

<sup>293</sup> Jason Wiersma, Email re Old Beach Fox Urine, 11 April 2007.

<sup>294</sup> Email from Mark Mackay, 14 June 2017.

<sup>295</sup> Nick Mooney, Foxes in Tasmania: Review of the Longford Response, 14 August 2001.

urine in Mr Mackay's diary for this period. The fox urine database formally commenced in 2008.

- [599] Two of the three blood samples taken were tested and returned independent fox positive results.
- [600] There was at the time no test that can differentiate between DNA obtained from urine or from blood in foxes. It appears that any fox urine would need to be fresh and in some quantitative measure for DNA to be extracted from urine. There is no research or testing that has been done on this aspect and this provides a lack of certainty.
- [601] The precautionary approach dictated that a response was required on the basis that this event could be evidence of a live fox in Tasmania. There is evidence of such a response, including extensive searching, scat collection, spotlighting and deployment of cameras, and public communications by the FEP in the Old Beach area. No further contemporary evidence was located.
- [602] The Sighting Register recorded three sightings in the surrounding areas in the 12 months leading up to the blood being discovered: 21 February, 1 March and 30 April 2006. None of the sightings could be considered 'high value' and there are no other sightings listed as excellent or possible in the previous hard copy data. There were sightings after media articles were published.<sup>296</sup>
- [603] Mr Riley believed the blood was probably left by a quoll. He provides verbal evidence of possible contamination by Mr Mackay; this was not accepted by Mr Mackay. Significantly, Mr Mackay does not accept it was a fox that left the blood there: he had serious reservations about a fox leaving the blood from early on and informed his Manager, however was denied access to an investigator.
- [604] One thing that all persons involved agree is that this was an odd incident. The owner and investigator are both convinced a fox did not leave the blood sample on the wood. This was reinforced by evidence from Dr Marks regarding the nature of blood marks that might arise from a puncture wound by the barbed wire.
- [605] The images from the site show large blood spots on the wider piece of wood on the outside of the cyclone fencing of the pen. The blood spots are not under the hole cut for access, but to the side, and are not in a position that would naturally occur from dripping.
- [606] The DNA test (repeated on two occasions) was positive for fox. However the test was not to determine whether it was blood or urine but to detect fox DNA. The testing process extracted DNA from two wood samples. The blood samples were clean and sequenced in both directions, indicating a reasonable amount of DNA. The literature suggests that urine has a low concentration of cells containing DNA and that DNA will degrade if exposed to freezing, heat or the environment.<sup>297</sup> The DNA testing has an error rate, but the material was tested twice.
- [607] This matter cannot be resolved. It is an example of the conflict of science and practical assessment of the evidence. Taking all matters into consideration the validity

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<sup>296</sup> NVA, Sightings Register.

<sup>297</sup> Email from Stephen Sarre, 8 May 2017.

of this fox event cannot be determined. There are sufficient questions or concerns over this event that it should not be relied upon as evidence of a population of foxes living in Tasmania.

### **11.3. Analysis of evidence – fabrication**

- [608] The allegation is that an FFT employee placed a fox blood sample at the site or contaminated the blood sample with fox urine.
- [609] There are unresolved issues that make it difficult to make a finding on this matter. Both Mr Mackay and Mr Riley appeared as genuine witnesses. Despite Mr Mackay's suspicions that the blood may have put it there as a joke, there is no direct evidence that fox blood was placed at the scene by any person.
- [610] There is evidence that fox urine was used. Mr Mackay said it was remnants only, as the urine had spilled and was within another container. The docket he completed and attached to the blood sample stated he believed the blood to be from a dog. He stated he did not use fox urine until well after the blood was analysed and the evidence suggests that was 19 July 2006. The metadata attached to the photograph with the fox urine is 20 July 2006. A sample of blood cannot be retrospectively contaminated with urine. The evidence suggests to a high degree that urine was used for the first time on 19 July 2006.
- [611] The unsworn evidence provided by Mr Riley in regard to the admission of the accidental use of urine by Mr Mackay was not very detailed due to the amount of time that has transpired. However, it is possible that Mr Mackay was referring to the smell of urine on the camera.
- [612] Mr Mackay provided his sworn evidence in a very credible manner. He was objective, to the point of being sceptical in relation to this and other fox events. He stated with certainty that he did not consider the blood was left by a fox. He also stated this was the first time he had been questioned about it.
- [613] Taking all the evidence into account, there is sufficient evidence to find that Mr Mackay did not contaminate the blood sample with urine or fabricate any evidence.

### **11.4. Other issues, concerns and coincidences**

#### **The FEP officer nominated as contaminating the site was John McConnell**

- [614] The basis of this allegation cannot be determined. It suggests that Mr McConnell attended the scene at some point.
- [615] Mr McConnell stated he never attended the Old Beach site. He produced diaries that showed his whereabouts and that evidence is compelling. Mr Riley stated he only observed Mr Mackay. The only officer that used fox urine at the site was Mr Mackay.
- [616] There is no evidence that any other officer attended before or when the blood was detected.

**This matter has been widely reported as a fox piercing itself on the barbed wire trap which allowed droplets of its blood to drip onto the wood below**

- [617] This would appear to be a logical deduction from the information at the time, but it is unlikely to be correct. The barbed wire was taken, tested and did not have any blood or hair on it. The photographs of the site show the blood spots to be off to the side of the access hole. Dr Marks makes some reasonable observations about this evidence and why it would be unusual for blood spots to be in this location.

### **Findings**

**There is no conclusive evidence that any employee of the Program fabricated or falsified evidence by contaminating the blood sample with fox urine at this fox event.**

## **12. Glen Esk fox**

**Specific allegations / concerns relating to this fox are that:**

- a member of the public 'planted' the fox carcass on the roadway, and
- Nick Mooney was involved or at least aware of this fabrication.

**Other issues, concerns and coincidences:**

- the identity of the driver who stated they saw the fox ran out from the side of the road and hit it
- the identity of the person who stated the fox was not present at 8.30am that morning
- the identity of the person who telephoned the FFT to state that the fox was run over at Epping Forest and moved as the landowner did not want the FFT on their property
- contradictions in the report by FFT Officer Mark Mackay in regard to the presence of Joshua Leeson
- contradictions in the estimated time of death of the fox
- contradictions in content of media releases
- torn skin on the carcass could be evidence that it was interfered with by someone after it died
- a hole in the jaw could be indicative of hooking (a fox trapping method).

### **12.1. Evidence**

- [618] On 11 March 2005, a fox positive scat was located at Conara.<sup>298</sup>

- [619] At approximately 9.30am on 1 August 2006, a fox carcass was reported on the Glen Esk Road, Cleveland by farming contractors. The fox was on the back of a utility tray

<sup>298</sup> DPIPWE, Scat Register.

and was dead. The contractors indicated that the fox was found on the roadway a short distance away on Glen Esk Road.

- [620] Mark Mackay and Nick Mooney attended and arrived at approximately 10.30am, as they had been travelling from Hobart to the Prospect Office. Mr Mackay managed the witnesses while Nick Mooney examined the carcass.<sup>299</sup> Mr Mooney identified it as a fox and determined that it appeared to be a fresh road-kill. It was a male fox, its extremities were cold to touch and a temperature test using a thermometer showed a warmer core temperature by several degrees. The ambient temperature was close to that of the extremities.
- [621] There was some clotted blood free in the mouth, a large skin flap torn, but still attached, to the right hind leg with no bleeding present. Skin was off the groin, the penis was visible and the carcass was floppy.
- [622] The fox was transferred to a veterinary clinic at Kings Meadows, where x-rays showed broken vertebrae in the mid lower back.<sup>300</sup> The cause of death was determined to be injuries from blunt trauma.<sup>301</sup> No samples taken from the fox showed any endemic species or other item to be present. The age of the fox was later determined to be 6-15 months.<sup>302</sup>
- [623] The time of death was initially estimated by Nick Mooney as 2-3 hrs prior to finding i.e. 7.30-9.30am.
- [624] There was a significant management action response to this carcass. Over the next three months, five fox positive scats were located in and around the area.<sup>303</sup> These scats were deemed to be corroborative evidence that the Glen Esk fox was living in the area.
- [625] On 2 September 2006, Nick Mooney stated, *'It's well and truly beyond reasonable doubt – it was a wild fox living in northern midlands and got run over. With now three foxes run over there's possibly more than 50 foxes distributed across the State'*.<sup>304</sup>
- [626] By the end of October 2006, concerns were being raised outside the Program about the validity of this fox as evidence of one living in the area.<sup>305</sup> In response to a concern raised by Dr Obendorf, Mr Llewellyn as the Minister for Primary Industries and Water, stated that, *'the death of the fox occurred on Glen Esk Road as reported*

<sup>299</sup> This was on the basis of the assumption that Mr MacKay, as an area coordinator, had training and authority in interview and was in uniform, and that Mr Mooney had more experience with examining dead animals: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>300</sup> Nick Mooney, Statement, 2 August 2006.

<sup>301</sup> Dr Richmond Loh, Pathology Report.

<sup>302</sup> Report from Roger Kirkwood, Victoria.

<sup>303</sup> These included: scat #918 on 28 September 2006 at Epping Forest, and scats # 702 (1 October), #809 and #814 (10 October) at Conara.

<sup>304</sup> Nick Mooney, ABC Radio, 2 September 2006. Mr Mooney has confirmed that the *'estimate was a projection from the numbers of road-killed foxes on Phillip Island (Vic) compared to the number of free-living foxes estimated to be there. In many respects Phillip Island is comparable to rural midlands Tasmania ...'*: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>305</sup> David Obendorf, Letter to Minister David Llewellyn, 25 October 2006.

*... [and that] every angle was investigated in establishing whether the fox had been in the State for some period'.<sup>306</sup>*

- [627] On 22 November 2006, the concerns were raised in the Legislative Council by the Hon Ivan Dean. In responding on behalf of the Minister, the Leader for the Government, the Hon Doug Parkinson stated:

*... most aspects of the post mortem examination are consistent with the death of the fox occurring on Glen Esk Road as reported ... one reasonable alternative conclusion ... suggested anonymously ... the fox was road-killed earlier on the same morning at a nearby location and relocated. This alternative conclusion does not change the major issue – that being a fox was on the loose in our State.<sup>307</sup>*

- [628] On 1 February 2007, Dr Tony Ross reviewed the evidence relating to the time of death, as a result of evidence supplied by Dr Obendorf.<sup>308</sup>
- [629] The Glen Esk fox was reported in the list of physical evidence of the Program prepared by Nick Mooney. The report discloses the issues regarding the time of death and other aspects of the evidence.<sup>309</sup>
- [630] The IACRC Report from June 2006 and the carcass find on Glen Esk Road led to the State Government announcing it was committed to the eradication of foxes and would fund a \$56 million program, over ten years.<sup>310</sup>
- [631] In 2011, Nick Mooney stated that, at the time, he should have realised that the fox had been run over twice, as evidenced by the lack of blood in the large rip of skin.<sup>311</sup>
- [632] The carcass and other exhibits are currently at the QVMaG. The only item of evidence not able to be retrieved was the gravel and soil sample taken from the gums of the fox.

### **Evidence of Nick Mooney**

- [633] Nick Mooney was one of the first officers to arrive at Glen Esk Road. He examined the carcass, noted it was in good condition and was greyer than most foxes he had observed previously.
- [634] He described the fox as having cold extremities to touch, the trunk was neutral and the chest felt a little warm. The fur was dry, the carcass floppy, the mouth was loosely shut with clotted blood and saliva in the mouth and dirt around the gums. There was one tooth missing but this area was healed, heavy bruising to the left mouth corner and an adjacent pinprick hole through the lip. The eyes were two thirds open, firm to touch and smooth, the right eye was full, shiny and slightly misty, the left eye clear.

<sup>306</sup> David Llewellyn, Letter to David Obendorf, 22 November 2006.

<sup>307</sup> Tasmania Parliament, Legislative Council Hansard, 21 November 2006.

<sup>308</sup> Dr Tony Ross, Glenn Esk fox - Comments on Timeline, 1 February 2007.

<sup>309</sup> Nick Mooney, Physical Evidence of Foxes in Tasmania since 1998, 15 April 2008.

<sup>310</sup> PAC 2009.

<sup>311</sup> Nick Mooney, Interview with Simon de Little, 2011.

The right side hind leg had a large ragged tear exposing the hind, inner and upper leg area and extended into the stomach area. The inside appeared bruised.<sup>312</sup>

- [635] Using a thermometer Mr Mooney took temperatures of the carcass while at Glen Esk Road, capturing the ambient temperature at 7.9 degC, rectal at 11.5 degC and the chest core at 12.4 degC. Mr Mooney confirmed that the readings were taken with a soil probe digital thermometer borrowed from an attendee; the thermometer was later tested against a mercury thermometer and found to compare well. He has confirmed that the readings were intermittently observed by other attendees, including Mr Mackay.<sup>313</sup>
- [636] During the autopsy (at 2pm), the pathologist, Dr Richmond Loh, drew Nick Mooney's attention to the mouth being firmly closed and that the limbs had begun to stiffen. Stomach contents were removed and the hair was vacuumed. The lower jaw was removed for aging and a section of the lip removed for DNA analysis, and the carcass placed in the freezer. The conclusion reached at that time was that the fox had been killed by a vehicle on Glen Esk Road shortly before its discovery.<sup>314</sup>
- [637] On 1 October 2006, as part of the management response action, Nick Mooney located a fox positive scat in the area.<sup>315</sup>

### **Evidence of Mark Mackay**

- [638] Mr Mackay arrived at Glen Esk Road with Nick Mooney.
- [639] Mr Mackay said that he and Nick Mooney were travelling to Launceston for a statewide branch meeting. They were at Epping Forest when they received a call from Mr Parker asking them to go to a report of a fox carcass on Glen Esk Road. They headed back and he said that Mr Mooney went, *'really quiet; he had his head down. I said, "It'll probably just be a wombat or something." ... Nick said, "Step on it"'*.<sup>316</sup>
- [640] About 1km into Glen Esk Road, a utility parked on the side of the road with two males standing next to it, with a fox in the tray. Mr Mackay states two more males attended a little later, one towing a lime spreader. Nick Mooney told him the carcass was fresh, and that he checked the ambient and internal temperature of the fox with a thermometer and asked Mr Mackay to take down the numbers he yelled out.<sup>317</sup> Mr Mackay stated that he did not see any readings on the thermometer.<sup>318</sup>
- [641] He said he dealt with four witnesses. He took notes of what they said but did not take formal statements as he had not received training for that. He said he later read in the newspaper that the witnesses had said he gave them 'the third degree'.<sup>319</sup>

<sup>312</sup> Nick Mooney, Statement, 2 August 2006.

<sup>313</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>314</sup> Nick Mooney, Statement, 2 August 2006.

<sup>315</sup> Transcript, Nick Mooney, pg 28.

<sup>316</sup> Transcript, Mark Mackay, pg 24.

<sup>317</sup> Ibid, pg 26.

<sup>318</sup> Ibid, pg 27.

<sup>319</sup> Ibid, pg 12.



[642] He said that finding the fox was a shock:

*I'd spent four years looking for the damn things and then suddenly we're looking at one ... I felt the whole program, the pressure of the whole program on my head and luckily Nick (Mooney) was with me or was it luck 'cause the way that event happened I'm suspicious of.*<sup>320</sup>

[643] He described the fox carcass as having an intact head, a little blood on the gums, the large skin flap that was unusual and there was no blood. He said:

*Its eyes were shiny ... the tooth and the gums were shiny ... the testes had been crushed out ... the flap on the skin and all the membranes were shiny ... I don't have any training at all (in this area).*<sup>321</sup>

[644] Nick Mooney left the site to attempt to locate some ice to place around the fox. Mr Mackay located some blood on the roadway to pinpoint where the fox had been run over and a tyre iron was used to prise up the bitumen to take the blood sample. He believes there was a hessian bag in the back of the utility, and only remembers it was there as they located hessian in the fur when they vacuumed it back at the Prospect workshop and there was a discussion about it.<sup>322</sup> Mr Mooney has confirmed that the carcass was bagged in a new plastic bag.<sup>323</sup>

[645] When asked whether the finding of the Glen Esk fox was a coincidence with him driving to a meeting about the Program's future, Mr Mackay replied, '*No, it isn't coincidence, no, I'm as sceptical as that, yes it could be, the whole thing could be engineered, that's a possibility. I don't know whether it's a probability but it's a possibility*'.<sup>324</sup> However he states he has no evidence that the Glen Esk fox is not a legitimate event.

### **Evidence of Joshua Leeson**

[646] Mr Leeson was one of the contractors who found the fox on the roadway.

[647] He states he was driving along, saw the fox lying on the road and may have run over it with a tyre. He did not otherwise touch or move it, and at no point did he ring the Fox Hotline to inform them that he was the driver that hit the fox. He stated he called his mates following along behind him and advised them of the fox.<sup>325</sup>

[648] Mr Leeson stated that he had not returned to the site at any stage and that by the time he drove back through everyone was gone. He said he could not recall pointing out the area where he had seen the fox.<sup>326</sup>

### **Evidence of Jason Powe**

[649] Mr Powe was one of the contractors that found the fox on the roadway.

<sup>320</sup> Ibid, pp 12–13.

<sup>321</sup> Ibid, pp13, 46.

<sup>322</sup> Ibid, pg 46.

<sup>323</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>324</sup> Transcript, Mark Mackay, pg 50.

<sup>325</sup> Statement, Joshua Leeson, 27 April 2017.

<sup>326</sup> Telephone conversation with Joshua Leeson, 13 June 2017.

- [650] He stated that he observed Scott Leighton exit Glen Esk Road onto the Midlands Highway, as he was turning in. He later spoke with Mr Leighton who informed him he had not seen the fox on the roadway when he drove out.
- [651] When driving to his work he stated there were two white trucks in front of him on the highway. These trucks were pulling yellow bins used for lime spreaders. He caught up to the back one on Glen Esk Road. He recalls no other vehicles in the vicinity at the time. He stated he saw the fox and doesn't believe it had been dead long, unless it had been frozen.<sup>327</sup>

#### **Evidence of Dr David Obendorf**

- [652] Dr Obendorf raised concerns about the time and cause of death at an early stage and questioned the primary conclusion that the fox was living wild in Tasmania prior to its death.<sup>328</sup>

#### **Evidence of John McConnell**

- [653] Mr McConnell was an FFT field officer.
- [654] He states he saw the fox when it was brought into the Prospect workshop and that it appeared fresh. Nick Mooney has however confirmed that the carcass was taken *'direct from the field to Dr Kim Barrett's surgery (staying with it there) then to the Animal Health Labs at Mt Pleasant I had already rung to forewarn. It was immediately logged then put into the fridge by Dr Loh from where he took it a short while later for the formal examination'*.<sup>329</sup>
- [655] He said that he was sent to Sale in Victoria, between 21–24 August 2006, to shoot foxes and test for decomposition and cooling rates. This testing was an attempt to gain evidence to validate the time of death of the Glen Esk fox. He describes sitting in a vehicle at night, next to fox carcasses and measuring their temperature every hour for eight hours. He measured ambient, chest and anal temperatures. He described observing dullness to the eyes over the watch period. He stated the experiment was repeated later by two other officers. When asked why, he stated he didn't know. He described the testing progress as quite rigorous.<sup>330</sup>

#### **Additional evidence supplied during the investigation**

- [656] During the investigation, the Commission received credible information suggesting that the fox carcass may have been imported to the State, and planted at the site.
- [657] The source provided the information on the basis of anonymity. The credibility of the information is supported by its consistency with facts and statements which were not generally known. The investigation was conducted on the basis that the information was credible.

<sup>327</sup> Telephone contact with Jason Powe, 28 April 2017.

<sup>328</sup> David Obendorf, Letter to Minister David Llewellyn, 22/11/06.

<sup>329</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>330</sup> Transcript, John McConnell, pp 56–59.

## 12.2. Analysis of evidence

- [658] The Glen Esk fox was an opportunistic find. The time of death was a crucial factor in establishing the legitimacy of this apparent road-kill event on Glen Esk Road. To the FFT, the event was a critical piece of evidence. It was the third piece of physical evidence that year, and was close to where a fox positive scat was found in October 2005. This fox find was a significant factor in attracting funding and establishing the FEP.
- [659] The timing of the event has fuelled speculation given Program funding was coming to an end and there were suggestions that the Program would be winding down. To some, this presented as motivation to fabricate evidence of a fox living in Tasmania to further the Program.
- [660] Issues were raised about this fox shortly after it was reported in the media, via emails between Dr Obendorf and Nick Mooney.<sup>331</sup> However Mr Mooney has confirmed that he undertook temperature testing responses (on fresh dead hares and a cat) the next night, before any doubts had been raised by Dr Obendorf (or anyone else). He confirmed that he did this because he found there was a lack of data to plot a cooling curve for comparing the Glen Esk fox results to, and that, much later, further testing was done by others with actual foxes in Victoria to improve the accuracy of the curves.<sup>332</sup> This issue is considered in more detail in [722]–[727] (below).
- [661] Anonymous information suggested that the fox was killed at Epping Forest hours earlier and moved to Glen Esk Road to avoid management action on surrounding land. Anonymous information must be considered with caution and its probative value will depend on a number of considerations.

### ***Alleged importation of fox carcass***

- [662] The allegation of fabrication of the evidence arose from a person originally contacting the complainant in 2016 to say he was present when the fox carcass was planted. The person was contacted by the Commission as part of the investigation, however refused to provide a sworn statement and spoke on the condition of anonymity. The allegations made by the person supported the concerns relating to the stated time of death and other issues with this fox event.
- [663] The person alleged that a known individual placed the carcass on the roadway, after bringing it back from Victoria. The information he provided was consistent with other known and corroborated facts, and the sequence of events portrayed for the planting of the fox carcass appeared genuine.
- [664] He also alleged that Nick Mooney was either part of that fabrication of evidence or was aware of it, given his alleged association with the person who is said to have placed the carcass on the road. However he could provide no direct evidence or information to support these claims.

<sup>331</sup> Transcript, David Obendorf, pg 54.

<sup>332</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

- [665] Nick Mooney confirmed that he rejects '*entirely that [he] had any involvement in, or knowledge of, the fox carcass being planted, if this had in fact occurred*'.<sup>333</sup>
- [666] The Commission notes that Nick Mooney was not provided with the identity of the individual who is alleged to have planted the fox, and consequently could not respond directly to this allegation. The information was not provided to Mr Mooney to protect the identity of the source of the information.
- [667] The motivation for the alleged planting of the carcass was speculated (by the complainant) to be a desire for the continuation of funding for the Program. However Nick Mooney has confirmed that his

*employment with the Department did not depend on continuation of the Program. ... the Program's activities were in addition to my usual duties and did not result in any increase in my wages. While I claimed some allowances for fox related work, the work I was not doing as a result of fox work would have entailed more field work and hence more allowances. If anything, Program work was a financial disadvantage to me.*

*Before, through and since the Program, I held the view that well established foxes would be arguably the worst single thing that could happen to Tasmania's vertebrate wildlife and the effective control, let alone eradication of foxes, would be likely impossible once they were well established. Therefore, I advocated a strong application of the Precautionary Principle; considering the extreme risks (probably accentuated with the concurrent demise of Tasmanian devils from disease) acting before everything that ideally should be known was known. I still hold that opinion, and view an over-reaction to any evidence of foxes as less risky to Tasmania than an under-reaction.*

*My strong commitment to the Taskforce's activities needs to be understood in this light.*

*I was not opposed to winding up the Program, if we were satisfied there were no wild foxes.*<sup>334</sup>

- [668] The complainant also highlighted the coincidence of Nick Mooney being only 15mins away from the site of the finding when it was reported. Mr Mackay stated that, upon receiving notification of the finding from Mr Parker, Mr Mooney '*went really quiet*' and said '*Step on it*'. Mr Mooney has confirmed (in his response to the draft investigation report) that his demeanour and response to Mr Parker's notification was based on it being

*the worst possible news, because it was current evidence they persisted when we all hoped there would be no more evidence. I would have asked Mr Mackay to put his foot down as I wished to investigate promptly and any carcass will only degrade over time.*<sup>335</sup>

<sup>333</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>334</sup> Ibid.

<sup>335</sup> Ibid.

[669] He confirmed that the logistics of such a hoax would be too difficult to manage, as:

1. *a fox must be picked up dead in Victoria, fresh enough for the hoax;*
2. *that fox cannot have anything foreign to Tasmania in its gut or fur;*
3. *the fox must be quickly transported, little degraded, to be deposited at Glen Esk Rd (requiring the hoaxer to be able to arrange transport on short notice);*
4. *The suggested ship transport must dock very early in the time range it might dock;*
5. *the timing of all this must coincide with Program officers being in transit to the meeting at which a winding up of the Program is to be discussed.*<sup>336</sup>

[670] He confirmed that:

*The “coincidence” asserted requires significant effort and the coordination and cooperation of multiple people and so the suggestion of involvement of any Taskforce participant is very unlikely in my opinion.*

*If I was in any way complicit or had knowledge of a hoax before it happened, I suggest it would have been advantageous for me NOT to have been there; such meetings are easy to avoid (especially since I had many other duties) and I was only there as part of the general management team, not by specific invitation.*<sup>337</sup>

### **The involvement of Nick Mooney**

[671] Nick Mooney was a significant player throughout this fox event.

[672] On the day of the find, Nick Mooney, along with Mr Mackay, was driving to a meeting that appears to have been scheduled to discuss winding back the Program. They were 15 minutes away from the location of the fox. Mr Mackay stated that, when Mr Mooney received the call from Mr Parker as they were travelling to Launceston, Mr Mooney went quiet and then told him to ‘put his foot down’ in order to arrive at the nominated location in a quick turnaround time. Mr Mackay noted that he has no evidence that the Glen Esk fox is not a legitimate event, and Mr Mooney has provided the basis for what he said to Mr Mackay (refer [664], above).

[673] Nick Mooney took control of the fox from the arrival, given his experience in examining dead animals. He stated that he observed the carcass to be ‘fresh’, and that his evaluation of the time of death was instrumental in it being considered fresh road-kill. Mr Mooney undertook comparative testing on other species to verify cooling rates of carcasses however the issue was questioned in the post mortem examination and subsequently by Dr Obendorf, causing a review of the evidence that established an earlier time of death.

[674] Mr Mackay said that he did not see the thermometer readings for the temperature, however Nick Mooney stated that Mr Mackay did see at least one reading and other readings were observed by attendees at the scene. Mr Mackay said that Mr Mooney took the carcass with him when he went to get ice, however Mr Mooney said that he left it in the shade on site.

<sup>336</sup> Ibid.

<sup>337</sup> Ibid.

- [675] Nick Mooney went to considerable lengths to confirm his estimated time of death, conducting three comparative tests. Two comparative tests (on brown hares and a cat) were done very soon after the Glen Esk fox was found and were included in Mr Mooney's report on the Glen Esk fox and made available on the Department's website.<sup>338</sup> The third trial is not referred to in any report and has not been supplied by DPIPWE in document searches.
- [676] Nick Mooney located the Conara scat in October 2006. It was the only fox positive scat that was located by Mr Mooney (along with a scat that was fox negative in August 2007) as it was not Mr Mooney's role to look for scats.
- [677] Nick Mooney also contributed to the various media releases and attempts to identify the driver (see below).
- [678] When questioned in interview about the alleged planting of the carcass, Nick Mooney stated:
- that he had no knowledge of the carcass being placed there, either before or after the carcass was discovered
  - that he couldn't imagine anyone he knows placing a carcass on the roadway, and
  - he described the questions as '*a twist he hadn't seen coming*'.<sup>339</sup>
- [679] However, it is apparent that Nick Mooney was required to speak on behalf of the Program without always knowing the full facts or sequence of events. In explaining his statements at the time, Mr Mooney said:
- Clearly I haven't had the full story (with this or other fox events) and quite a list of this stuff. It's not helpful at all. It's not helpful at all because if I had the full story on some things, you mightn't say anything because you know there's even more stories somewhere else. There were – some of those questions you asked me last week that I'd never even heard of.*<sup>340</sup>
- [680] Nick Mooney said he went to the lengths he did to ensure all of the boxes were 'ticked' on this fox event. He stated he adapted his views on the event to take into account all the evidence.
- [681] Nick Mooney is a renowned and passionate environmental conservationist. He presented as a very credible person.
- [682] Nick Mooney was asked about comments he made in 2006 that the Glen Esk fox was 'absolute proof'. He said he couldn't remember making that comment nor being asked about it since, but accepted that he did make it. He said he was embarrassed by this over statement as '*absolute proof really doesn't exist in science, I suspect I had a bit of a brain snap reacting to criticism*'.<sup>341</sup>

<sup>338</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>339</sup> Ibid, pp 60–61.

<sup>340</sup> Transcript, Nick Mooney, pg 52

<sup>341</sup> Transcript, Nick Mooney, pg 2.

## Conclusion

- [683] Some unnecessary errors were made during this fox event. There appears to have been a lack of investigative rigor and the emphasis appears focused on the physical aspects of the fox carcass. No interviews or witness statements were recorded, despite a suggested scepticism towards the witnesses. There appears to have been little follow up or effort made to collate the known information, apart from Nick Mooney's focus on the fox carcass.
- [684] Taken objectively, this fox event was an opportunity for science to take a lead in the retrieval of a carcass and complete an investigation. This was the first 'fresh' carcass located since the 2003 Burnie fox, and provided a significant opportunity for exactness and to dispel any criticism at a later point. However this should have occurred in parallel with investigations undertaken into the witnesses and other available information.
- [685] The fox event contains a remarkable set of circumstances, and there appears a legitimate concern for the matter to have been pursued. The Commission's investigation has not been able to acquire evidence from any source to verify the claim that the fox was imported and planted at the site. Telephone records are not available<sup>342</sup> and it is doubtful financial records would assist.
- [686] The information about the importation appears credible, is consistent with factors that the source would not be able to fabricate, and is not contaminated by the complainant. However the allegation that Nick Mooney was somehow involved in, or at least aware of, the planting of the carcass has been strenuously denied by Mr Mooney, and he has provided explanations for his statements and behaviour on that day. While worthy of analysis and review as part of this investigation, it falls below the threshold of a factual finding that a particular person placed the fox carcass on the roadway, or that Mr Mooney was complicit in this or knew of it either before or after the fox event.

### 12.3. Other issues, concerns and coincidences

**The identity of the driver who stated they saw the fox run out from the side of the road and hit it.**

**The identity of the person who stated the fox was not present at 8.30am that morning.**

**The identity of the person who telephoned the FEP to state that the fox was run over at Epping Forest and moved as the landowner did not want the FEP on their property.**

- [687] The concern over this matter relates to the information supplied by DPIWE and attempting to reconcile that with the evidence. The above matters have been combined.

<sup>342</sup> Nick Mooney provided his then mobile number in response to his review of the draft of the report.

[688] Mr Mackay records in his statement (made on 2 August 2006) that:

- Mr Leeson was the first person to see the fox on Glen Esk Road. He did not stop and continued to his contracting work. He notified Mr Beames who was driving behind him.
- Mr Beames stopped, reversed and picked up the fox, drove on and stopped
- Mr Powe and another person named Aaron, stopped behind Mr Beames
- Mr Beames continued to his contracting work, leaving the fox with Mr Powe
- FFT arrived
- Aaron stated they had found the carcass at 9.30am
- Mr Leeson arrived back at the site and stated to Mr Mackay that he 'saw a doglike creature on the north side of the bitumen'
- Mr Beames arrived back at the site
- Mr Beames stated he had spoken to another driver who had not seen the carcass when he drove through at 8.30am
- he observed large tyre marks in the gravel next to where the carcass had been.<sup>343</sup>

[689] The media report, on 1 August 2006 (incorrectly dated as 2005) encouraged any person who may have hit an animal on Glen Esk Road to come forward.

[690] Nick Mooney records in his statement (made on 2 August 2006) that there appeared to be a tyre mark on the body of the carcass when it was retrieved.<sup>344</sup>

[691] Sometime in the evening on or around 2 August, Chris Parker received a call on the hotline from a person claiming to have run over the fox. Mr Parker said that the person wanted to remain anonymous and did not sound genuine at the time. He recalled the person saying 'I ran over the fox' but could not recall if the person said that the fox had run out from the side of the road. Mr Parker does recall having the impression that the fox was alive when it was hit. The person was asked to call back the following day however did not do so. Mr Parker said that he never met with the person. He said that he mentioned the call to one of the office staff the following day but did not ever talk to Chris Buza about it.

[692] Nick Mooney stated in an internal report that he had been told that a male reported to the FFT on 2 August 2006 that he was the person who hit the fox. He reported that he had an impression he saw something off to the left of his vehicle before feeling a bump under the tyre and then saw the fox on the roadway. He assumed he had killed the fox.<sup>345</sup> This appears to be a different call to that received by Mr Parker.

<sup>343</sup> Mark Mackay, Statement, 2 August 2006.

<sup>344</sup> Ibid.

<sup>345</sup> Nick Mooney, Glen Esk Fox Report, 1 September 2006.



[693] Nick Mooney also said in the report:

*On 8th August at about 1300 hrs an anonymous male (phoning from a private line - not traceable) claiming to be from Campbell Town briefly reported that a fox was indeed road-kill but earlier than reported and a few km north of Glen Esk Road intersection ... the fox was moved by a farmer with land adjacent to the road-kill site because he did not want the inevitable attention of the Taskforce.<sup>346</sup>*

[694] A media report, dated 3 August 2006, thanked an unidentified male for coming forward and responding to the previous appeal. It states that the male said he was driving east on Glen Esk Road when the fox emerged from the left side of the road, ran across his path and was struck by a tyre. It quoted a time of occurring at 9.30am.<sup>347</sup>

[695] There is no evidence on the sightings registers that any person telephoned and stated they ran over the fox.<sup>348</sup> This may have been recorded on a running sheet associated with this fox event however any such record has not been identified during this investigation. Mr Parker did not record his conversation as he was out in the field in the evening, and he had arranged for the person to call back.

[696] On 15 April 2007 and in 2008, a report citing evidence of foxes in Tasmania states that:

*After public requests for someone who hit the animal to come forward on 2nd August, the FFT received a report from someone who identified themselves but asked not to be named, that they ran over the fox – feeling a bump, checking and finding a fox (the witness claimed not to have seen it clearly beforehand). This witness was met and interviewed.<sup>349</sup>*

[697] On 24 April 2007, Nick Mooney stated that he had been advised by Craig Bester that the FFT ‘had a tip off, which has been public knowledge on our website for a long time, a few days later that this animal was killed up the road a bit: a few hours earlier than reported’.<sup>350</sup>

[698] On 30 September 2008, the Hon Doug Parkinson MLC responded to a question in Parliament:

*As outlined on the DPIWE website, the investigations indicate that the likeliest sequence of events is as follows: a person driving down Glen Esk Road on the morning of 1 August hit an animal as it ran across the road. This person only came forward a few days later and is referred to in a media release ... dated 3 August 2006. He states he didn’t want to face the media attention so he moved the animal to a different location ... (another witness) driving a spreader saw a dog-like carcass on the side of the road ... stopped ... it was a fox.*

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<sup>346</sup> Ibid.

<sup>347</sup> DPIWE, Media release, 3 August 2006.

<sup>348</sup> NVA, Sightings Register.

<sup>349</sup> Nick Mooney, Physical Evidence of Foxes in Tasmania since 1998, 15 April 2008.

<sup>350</sup> Nick Mooney, ABC Radio *Statewide*, 24 April 2007.

- [699] In 2009, Nick Mooney told the PAC that the inconsistency relating to who had run over the fox came from confusion on the part of a very new manager who had never talked to the witness. He refers to an anonymous call received the next night from a male saying he lived at Campbelltown, and that the fox was run over near Epping Forest and moved because he did not want FFT staff on his property.<sup>351</sup> Mr Mooney said that he did not know who the driver was that rang up as Craig Bester took the call; the caller didn't identify himself and gave Mr Bester the information before hanging up. The caller did not claim to have run over it.<sup>352</sup>
- [700] Nick Mooney stated in 2011 that the information in the media release had been wrong and the driver had not stated he had run over a fox. He explained the error was due to inexperience on the part of a new manager, Garry Davies, and the information obtained by Mr Davies was 'third or fourth hand'.<sup>353</sup>
- [701] Mr Davies was the Branch Manager of the Wildlife Management Branch. He said that did not receive the phone call from the driver. He stated he checked his diary and there was no information about this matter.<sup>354</sup>
- [702] Chris Buza was involved in the preparation of the media release and stated the information was received by Mr Parker. It was re-written and checked by both Mr Parker and Nick Mooney for accuracy before being released.<sup>355</sup> Mr Buza stated he had confirmed with Mr Parker that the informant had been met with and would not speak to the media.<sup>356</sup> As part of the investigation, Mr Parker gave unsworn evidence that he had no direct dealings with Mr Buza about this issue.
- [703] Mr Leeson states he may have run over the fox and did not say the fox was alive at the time. Mr Leeson stated he did not return to the site and categorically denied calling the Fox Hotline at any stage. However he later stated that he may have stopped as he went back through the site but has no recollection of it, believing that he didn't. There is sufficient evidence from other sources to indicate that Mr Leeson did return to the site.
- [704] Mr Powe states that he observed Scott Leighton exit Glen Esk Road as he was turning in and waved to him. He later spoke with Mr Leighton who informed him that he had not seen the fox on the roadway when he drove out.<sup>357</sup>
- [705] Nick Mooney stated that one of the farm contractors said that he ran over the fox. Mr Mooney had asked the contractor if he saw the fox before he hit it and that the contractor had appeared unsure. Mr Mooney said he came away thinking it wasn't

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<sup>351</sup> PAC 2009, Evidence, 25 May 2009.

<sup>352</sup> PAC 2009, Evidence, 2 June 2009.

<sup>353</sup> Nick Mooney, Interview with Simon de Little, 2011.

<sup>354</sup> NPI response, Garry Davies.

<sup>355</sup> Mr Mooney has confirmed that he does not recall checking the draft media release but notes that he may have: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>356</sup> Telephone conversation with Chris Buza, 4 May 2017.

<sup>357</sup> Telephone conversation with Jason Powe, 28 April 2017.

clear. He said *“run over” is a different thing to being killed ... so the guy wasn’t fibbing necessarily at all. He said he ran over it*.<sup>358</sup>

- [706] Mr Bester said that he had received a phone call on the Fox Hotline from a local landowner whose name he couldn’t recall. The caller said that the fox had been run over close by and moved so that his property would not attract the attention of the FFT. Mr Bester was not sure of this information when recalling it. He stated details would have been on a running sheet related to the Glen Esk fox or on a Fox Hotline detail sheet. Mr Bester later confirmed that he believed the call was anonymous.<sup>359</sup>

### Analysis

- [707] The evidence suggests that there are three persons referred to as providing information about the fox being run over.
- [708] The first person is Joshua Leeson. Mr Leeson has confirmed that he provided information however has provided different accounts of his involvement. The evidence suggests that Mr Leeson was stopped at the site by FFT officers and provided an account which included that he had ‘run over’ the fox. The interpretation placed on this comment having regard to other surrounding circumstances of this fox event was that Mr Leeson had hit a live fox.
- [709] The second person responded to the media release and contacted the hotline in the evening on or around 2 August 2006. The Commission has been informed that there may have been two different calls making this same claim – one received by Mr Parker and the other reported by Nick Mooney. It is likely that the media release distributed on 3 August 2006 thanking a person for coming forward is that reported by Mr Mooney, and the call to Mr Parker is not considered to be relevant.
- [710] The third person was the anonymous person who contacted the hotline on 8 August, stating the fox had been run over near Epping Forest and moved so that FFT wouldn’t attend a farmer’s property.
- [711] The second person’s information appears similar to Mr Leeson’s version of events. There are also similarities between the second person’s and third person’s version of events.
- [712] If considered reliable, the second person’s information strengthens the case that the animal was actually run over – while alive – on Glen Esk Road. The specific time and date of the telephone contact suggest an actual caller, and it was reported that this person was met by FFT staff. However there is no information on the Sightings Database about this contact despite similar information existing for other fox carcasses that have been found.<sup>360</sup> No running sheet or document has been provided that could shed any light on the resolution of this matter. This discrepancy is difficult to reconcile.
- [713] It is possible that the information provided by Mr Leeson and the second person – along with other information circulating regarding the call taken by Mr Parker – has

<sup>358</sup> Transcript, Nick Mooney, pg 19.

<sup>359</sup> Email from Craig Bester, 22 June 2017.

<sup>360</sup> NVA: 1/8/06 – 1/9/06.

been combined. This has led to confusion and perhaps repetition of the inaccuracies without subsequent checking its validity. It suggests that there may have been a communication breakdown and confusion between the media area, field staff and the Manager.

- [714] This information was repeated in Parliament and in the media. It is unclear why this matter was not reviewed and resolved at some point.
- [715] The reference to the third person notifying on 8 August 2006 that the fox had been run over in Epping Forest and moved to Glen Esk Road is unable to be verified due to the absence of records. The call occurred at a time when questions were being raised about the time of death and other aspects of the fox event. The reliability rating attached to this information is very low. It is noted that there are allegations that false phone calls were made all the time.<sup>361</sup>

### **Contradictions in the report by Mr Mackay in regard to the presence of Joshua Leeson**

- [716] This matter has been addressed above.
- [717] Mr Leeson stated he was sure he didn't go back through and stop and had no recollection of showing the FFT officer where the blood on the roadway was. He also stated it was so long ago, that he can't recall it. He speculated he may have gone back to get a load in his spreader, as he was working at Vaocluse (property).<sup>362</sup>
- [718] Mr Powe stated that Mr Leeson did return.
- [719] There is sufficient evidence to find that Mr Leeson returned to the scene and spoke to Mr Mackay on 1 August 2006.

### **Contradictions in the estimated time of death of the fox**

- [720] The basis of this issue is that the time of death of the fox was perhaps the most important factor in determining whether the fox was recent road-kill in Tasmania. The concern is that this evidence is not reliable and cannot lead to the decisive statement that the fox was killed on Glen Esk Road (or other nearby location). This has significance as this fox was held to be a key factor in continuing funding for the Program.
- [721] Mr Powe stated the fox appeared fresh, but did not discount it had been frozen.
- [722] The first estimate of the time of death was provided by Nick Mooney as being 2-3hrs prior to finding the carcass. This was based on Mr Mooney's technical experience and what he observed at the scene. There was nothing in his description that is inconsistent with that being a reasonable conclusion at the time.
- [723] Mr Mackay appears to have substantially relied on the analysis of Nick Mooney to form his opinion.
- [724] Dr Barratt took x-rays of the carcass on 1 August 2006 and recorded the fox was coolish, did not have rigor mortis but the mouth could not be easily opened, and did

<sup>361</sup> Transcript, Adrei Konyn, pg 28.

<sup>362</sup> Telephone conversation with Joshua Leeson, 14 June 2017.

not smell. She estimated the time of death to be within the previous 12hrs, but admitted to having no particular expertise in that area.

- [725] Dr Loh recorded in the Pathology Report it was a 'fresh carcass'. Nick Mooney confirmed that Dr Loh also considered that the carcass had not been frozen prior to his examination of it.<sup>363</sup> Dr Loh appears to have had some concerns over the estimated time of death based on the comments in his report where he sought further information from Mr Mooney. Dr Loh estimated time of death of 5–10hrs before the autopsy i.e. between 2:00–7.45am. However Dr Loh qualified that it was difficult to estimate a time of death due to the large number of influencing factors. There is no information listed on the Pathology Report that is inconsistent with Mr Mooney's previous observations. The report states Dr Loh liaised with his colleagues (Stephen Pyecroft, Cor Lenghaus and Roy Mason) to determine the time of death.<sup>364</sup>
- [726] At the time of attending the Glen Esk fox, Nick Mooney measured the animal's temperature to ensure the fox had not been frozen. It was winter and the temperatures were low. This issue must have been of concern for Mr Mooney, as he subsequently arranged for comparative tests on temperature cooling rates of small animals of similar size, build and fur density that had been killed. Based on the information provided by Mr Mooney, three clinical veterinary surgeons indicated a likely time of death of 1-4hrs with a rapid temperature decline possible for such small animals.<sup>365</sup>
- [727] A trial was conducted in Victoria on 21 August 2006. Two foxes were shot and left to rest in the landscape under close observation. The results showed a comparative time frame of 6–9hrs to achieve the same temperature reading as the Glen Esk fox. The ambient air temperature was slightly warmer and may explain the difference in the rate of decline of the temperature between both tested carcasses.<sup>366</sup> A subsequent trial, again in Victoria, was apparently conducted however the date and outcome is unknown.<sup>367</sup> Nick Mooney has confirmed that the intent of these trials was to describe a 'cooling curve' to enable a better estimate of the likely time of death of the fox.<sup>368</sup>
- [728] Dr Obendorf had concerns about this evidence and sought access to the information to form an independent opinion as to time of death. Having viewed the histology slides (microscopic anatomy cells and tissues of animals), Dr Obendorf identified various discrepancies which he considered could be attributed to the significant injuries the fox had received. However, he estimated the time of death to be much longer than originally determined, stating it could be up to 4 days.<sup>369</sup> Dr Obendorf provided his concerns to the Minister.

<sup>363</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>364</sup> Dr Richmond Loh, Pathology Report, 2006.

<sup>365</sup> Nick Mooney, Glen Esk Fox Report, 1 September 2006.

<sup>366</sup> Transcript, John McConnell, pp 53–59.

<sup>367</sup> Ibid.

<sup>368</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>369</sup> Nick Mooney, Glen Esk Fox Report, 1 September 2006 (David Obendorf markings not dated).

[729] On 1 February 2007, Dr Tony Ross reviewed all of the evidence and concerns raised by Dr Obendorf. He stated that it was probable that the most accurate estimates were those of Nick Mooney, and that the information was highly suggestive of an actual time of death being shorter than 12hrs. However Dr Ross subsequently revised his estimated time of death to closer to 24hrs. He considered it possible, but highly improbable, the carcass could be kept for several days and remain in such a fresh state. He also stated that he is not a fox expert and that estimating time of death is not an exact science. He also noted that predation on the carcass, by birds, would be expected during daylight hours.<sup>370</sup> In contrast, Mr Mooney has confirmed that '[b]irds such as ravens usually only scavenge on eyes when they otherwise cannot easily enter the carcass and feed', and that the multiple open wounds on the Glen Esk fox carcass would have offered better feeding opportunities for birds. He confirmed that '[f]inding such a carcass (eg possums or wallabies) without obvious signs of scavenging is common (I have examined literally hundreds)'.<sup>371</sup>

[730] In 2009, the PAC recorded Nick Mooney's evidence on this matter:

*We have been trying to make sense of it ... there are large margins for error (time of death)'. He further stated that, 'the temperature testing he conducted showed the fox had been dead longer than he first thought ... more like 10hrs from memory.'*<sup>372</sup>

[731] Given that it is apparent that estimating time of death of animals is not an exact science and the considerable variation in estimates the Glen Esk fox could have died somewhere in Tasmania or on the mainland within the possible proposed time frames.

### **Contradictions in content of media releases**

[732] This matter has been previously addressed.

### **Torn skin on the carcass could be evidence it was interfered with by someone after it died**

[733] The basis of this concern is the tear to the carcass. It is suggested that this may be evidence of a previous attempt at skinning the carcass.

[734] The tear was described by Nick Mooney as wide and ragged. The carcass had small speckled bruising and pin-prick bleeding, which he thought was evidence that the skin was torn off.<sup>373</sup>

[735] The post mortem report does not comment on any possible cutting that caused this injury. It states there was a crushing type of injury, which appears consistent with the evidence that Mr Leeson ran over the carcass with a heavy truck.

[736] There is little information or analysis that has been completed and the issue appears not to have been raised in recent times.

<sup>370</sup> Dr Tony Ross, Glen Esk fox, Comments on Timeline, 1 February 2007.

<sup>371</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>372</sup> PAC Evidence, Nick Mooney, 25 May 2009.

<sup>373</sup> Nick Mooney, Glen Esk Fox Report, 1 September 2006.

### Hessian in hair on carcass

- [737] There has been a suggestion that the fox was put in a hessian bag and run over in the bag. This appears to have originated from a finding that there was a material similar to hessian located in the animal's hair.<sup>374</sup> The Commission's investigation was unable to locate the source of this suggestion.
- [738] Nick Mooney stated he saw a hessian bag in the utility tray when he first observed the animal. This is not evident in the photographs provided to the investigation. A later reference in his report to a bag that was allegedly used to store a fox at Glen Esk Road was described as a black plastic bag.
- [739] The suggestion that the animal was placed in a hessian bag and run over is entirely speculative and there is no evidence that it occurred. Like other speculations surrounding the Program, it appears to be based on separate pieces of information that have been linked.

### A hole in the jaw could be indicative of hooking (a fox trapping method)

- [740] There has been some suggestion that the fox was hooked (caught on a hook) and as such would be evidence that it was not killed on Glen Esk Road. The origin of the information is linked to a hole in the top jaw of the fox.<sup>375</sup>
- [741] There is little other information about this. It is not mentioned in the autopsy report. Nick Mooney describes the hole as a 'pin prick' and refers to a gum area where there was a missing tooth which has healed over. Mr Mooney said that *"hooking" has been used (illegally) in Tasmania for catching Tasmanian devils .... Several such animals I examined over the decades showed extreme trauma, vastly more than anything evident in the fox's mouth'*.<sup>376</sup>
- [742] Dr Obendorf stated:

*The likely location of an injury to a hooked animal would be into the soft tissues of the mouth wherever such a hook (either in the form of a simple hook or a trident-type hook) would anchor and hold fast. Hypothetically a hooked fox may try to bite at a metal hook and potentially damage adjacent teeth (i.e. chip or fracture them). A hook anchored into the side of the cheek would produce a hole in the inner aspect of the cheek, localised bleeding into mouth and into the soft tissues. If the hook penetrates muscles – bruising or a haematoma would develop ante mortem ... The 'hole' which I noticed in the photograph is in the soft tissue of the cheek and this was associated with focal haematoma/haemorrhage in the masseter muscle on that side. I raised this concern with Nick Mooney direct.*<sup>377</sup>

- [743] In a reply to Dr Obendorf, Nick Mooney stated, *'the inside cheek damage coincided perfectly with very sharp teeth meeting ... bit its own lip in a convulsion or in a collision'*.<sup>378</sup>

<sup>374</sup> Dr I Thomas, Lists of identifiable pollen and spores in fur sample (undated).

<sup>375</sup> Telephone conversation with Charles Wolf, 5 April 2017.

<sup>376</sup> Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>377</sup> Email from David Obendorf, 16 April 2017.

<sup>378</sup> Nick Mooney, Email to David Obendorf, 11 October 2006.

[744] The expected injury, at least bruising, would be quite severe. Expert opinion is required and had not been sought as part of this investigation.

### Findings

**It is not possible to discount the possibility that this fox event was a hoax and there is credible information to support this finding.**

**There is no conclusive evidence that any employee of the Program was complicit in fabricating or falsifying evidence by placing a fox carcass on the Glen Esk Road.**

## 13. Interlaken skull

**Specific allegations / concerns relating to this fox are that:**

- the Interlaken fox skull is not evidence of a fox living in Tasmania and should not have been listed under the evidence.

[745] There has been a suggestion that the skull is that of the Symmons Plains fox.

### 13.1. Evidence

[746] On 5 May 2009, a fox positive scat was located during strategic monitoring at Interlaken.

[747] In May 2009, the PAC commenced to take evidence on the effectiveness of the Fox Eradication Program in Tasmania. The final report was published in December 2009.

[748] On 8 July 2009, FEP officer Darren Bingham advised that he knew the location of a possible fox skull. The next day, he took FEP officers Peter Harrison and Steve Locke to the home of a friend at Railton. The skull was located in a shed on that property. The property owner said that he collected bones and skulls, and that he had found the skull on top of a tree stump at a property at Interlaken sometime between December 2008–March 2009.<sup>379</sup> The skull was taken possession of by Mr Harrison and a subsequent DNA analysis confirmed it as a fox skull.

[749] The property owner stated that he did not want to be involved in any publicity however that he would be able to show staff the area he found the skull and bones. Mr Harrison and others attended the Interlaken property sometime later with the property owner, however he was unable to locate the exact location and instead nominated a 20ha search range. A search of the location failed to locate any other corroborative evidence of a fox presence.<sup>380</sup> It was noticed that there were bones on other stumps and that may have been deposited by birds of prey.<sup>381</sup>

<sup>379</sup> Nick Mooney, A Response to: Fox Skull find riddle, 24 September 2011.

<sup>380</sup> Fox Sighting Records (provided by DPIPWE on 24 May 2017).

<sup>381</sup> Nick Mooney, A Response to: Fox Skull find riddle, 24 September 2011.



- [750] The skull was not referenced in a review of the FEP undertaken by Landcare Research in August 2009.
- [751] On 13 August 2009, Tammy Gordon (QVMaG) and Dr Rebecca Johnson (Australian Museum) examined the skull and were unable to distinguish the morphological features of the skull, as it displayed elements of both fox and dog.<sup>382</sup>
- [752] On 11 February 2010, an article relating to the skull was published in the *Mercury*. The article cited the public scepticism relating to the FEP. The article reported that a fox scat had been found in May 2009 in the Interlaken area and other scats had been found near Tunbridge, Oatlands and Conara. It also reported credible sightings in the region and reported on baiting in the area.
- [753] On 15 February 2010, Dr A Musser and S Ingelby (Australian Museum) identified the skull as a fox, probably a young female adult.
- [754] A complete genotype was obtained during the DNA extraction and identified the animal as a female fox. The genotype identified this fox as an individual that differs from all other known Tasmanian genotypes.<sup>383</sup>
- [755] The skull is listed as official fox evidence on the DPIPWE website,<sup>384</sup> and is currently located at the QVMaG.<sup>385</sup>

#### **Evidence of Peter Harrison**

- [756] Mr Harrison states an FEP officer '*came into the office and said that a friend of his, a shooting friend of his, had a fox skull that he found up on the Central Plateau*'. Mr Harrison subsequently attended the nominated property at Interlaken where he recovered the skull from the owner. He described it as being reasonably old, had been picked dry and had been out in the sun.
- [757] Mr Harrison indicated that he recalls there was a fox positive scat located in the same drainage area, just north of the location of the skull.<sup>386</sup>
- [758] When Mr Harrison was asked how he would rate the fox skull as evidence of foxes living in Tasmania, he replied it would be fairly low.<sup>387</sup>

#### **Evidence of Steve Locke**

- [759] Mr Locke said that the person who found the skull was confident of leading officers to the tree stump where he had located it. However, as the attending party got closer to the area, the finder was vague, and nominated an approximate search area. A full search occurred and no further evidence was located.
- [760] Mr Locke stated the vagueness of the finder brought into question the veracity of the find. He said that fox carcasses were not normally found on stumps in natural circumstances.

<sup>382</sup> Tammy Gordon, Letter to Peter Cremasco, 13 August 2009.

<sup>383</sup> Fearn Evidence Catalogue 2011 (confirmed with Stephen Sarre, 2017).

<sup>384</sup> Fox Evidence map (DPIPWE website).

<sup>385</sup> Fearn Evidence Catalogue 2011.

<sup>386</sup> Transcript, Peter Harrison, pp 30, 35.

<sup>387</sup> Ibid, pg 34.

- [761] He suspected that a flippant comment had been made at some point by the finder and he had found himself in a position where he needed to '*self-commit rather than retract his statement*'.
- [762] Mr Locke reports that the fox skull could have easily been sourced from the mainland. He raised these concerns with his Manager, Peter Cremasco, and was disappointed to see it appear in official evidence maps and on the front page of a newspaper. Mr Locke is unsure of the motivation for its inclusion and states it probably related to poor decision making.<sup>388</sup>

### **Evidence of Alan Johnston**

- [763] Mr Johnston states there were serious discussions about whether to include the skull in the list of evidence. There was a policy at the time to share the information, rather than cover it up, and as such it was deemed appropriate to list it as evidence. The circumstances of the find were explained to the media at the time.<sup>389</sup>

### **Evidence of Kristy Withers**

- [764] Ms Withers was an Administrative Assistant with the FEP.
- [765] She believed that it hadn't been treated as evidence, as the origin of the skull could not be determined.<sup>390</sup>

### **Evidence of Matthew Marrison**

- [766] Mr Marrison states that, in 2009 at a Project Leadership team meeting (FEP Manager and the senior staff member of each work unit), Craig Bester admitted that dog handlers were bringing fox product into the State. This product included scats, tails, skulls and urine of foxes which were collected during mainland training activities. The product was not accompanied by 'the proper authority'.<sup>391</sup> Mr Bester was told that the practice was required to stop. The Commission has reviewed the minutes of the team meetings however the issue does not appear to have been minuted.

### **Evidence of Peter Cremasco**

- [767] Mr Cremasco, a manager in the FEP stated:

*People spoke of it as hard evidence because you've got the skull in your hands and it's a tangible piece of stuff and okay that's hard, yes, because this ... I certainly didn't feel comfortable about including it as part of the evidence of foxes.*<sup>392</sup>

### **Evidence on Skull Continuity Label**

- [768] The description area of the label indicates the skull was of a small dog or an adult fox and was collected on 9 July 2009.

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<sup>388</sup> Email from Steven Locke, 18 April 2017.

<sup>389</sup> Transcript, Alan Johnston, pg 33.

<sup>390</sup> Evidence of Kristy Withers: response to NPI and Email.

<sup>391</sup> Evidence of Matthew Marrison: response to NPI and Email.

<sup>392</sup> Transcript, Peter Cremasco, pg 6.

**Evidence in Scat Register**

- [769] On 5 May 2009, a fox positive scat was located by FEP officers during strategic monitoring at Interlaken. It was dry and recorded as suspected to be devil scat. On 25 September 2009, the scat was confirmed as fox positive; however there was insufficient DNA to enable a successful genotype.
- [770] In July 2009, a large number of scats were collected at Interlaken. While there is no documentation, it is likely an investigative response to the skull. No scat showed a fox positive result from DNA analysis.
- [771] There are fox positive scats listed as being located in the larger surrounding area. These are:
- 26 July 2007 at St Peters Pass
  - 4 March 2008 at Oatlands
  - 8 May 2008 at Tunbridge
  - 24 March 2009 at St Peters Pass
  - 25 March 2009 at Tunbridge, and
  - 5 May 2009 at Interlaken (as reported above).
- [772] The Scat Register lists the skull find as 9 March 2009 and then corrected to 9 July 2009.

**Evidence of Simon Fearn**

- [773] In July 2011, Mr Fearn completed a report into the evidence of foxes in Tasmania. The report states:

*There is no compelling evidence that it represents the remains of a free living fox in the Tasmanian landscape. Evidence originating from members of the public with no or uncorroborated provenance cannot be classed as hard evidence and this case remains unresolved.*<sup>393</sup>

**Evidence of Dr David Obendorf**

- [774] On 17 August 2011, Dr Obendorf examined the fox skull and provided a report to Mr Dean. He noted some missing teeth, but otherwise that the skull lacked any damage or weathering from exposure.<sup>394</sup>

**Evidence presented to Parliament**

- [775] On 29 September 2011, Mr Dean asked Mr Parkinson, Leader of Government Business in the Legislative Council, about the fox skull find.
- [776] Mr Parkinson replied with a description as to how the skull was obtained. Mr Parkinson further stated that neither staff member who attended found any reason to doubt the finder's version of events. He described the skull as one of many pieces of evidence that support the need for the eradication effort and makes a final comment

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<sup>393</sup> Fearn Evidence Catalogue 2011, pg 20.

<sup>394</sup> David Obendorf, Examination of a skull held at QVMaG, Launceston (undated).

that the Program should not be unreasonably distracted by an ongoing need to substantiate the presence of foxes.<sup>395</sup>

### **Evidence in Fox Sightings Register**

- [777] There is one recorded sighting within the (hard copy) Register that is rated as 'excellent' for Interlaken on 5 January 2003. An extended area to Tunbridge and Arthurs Lake also capture sightings rated as 'excellent' in 2002 and 2005. There are several entries in the (electronic) Register that do not have ratings. There was one sighting on the same property as the skull was reportedly found. Management action included monitoring cameras which produced no result.
- [778] In November 2009, there were another two credible sightings in Interlaken. A more concerted management action occurred with no further evidence of foxes being located. One camera took footage of a large ginger cat.

### **Evidence on DPIPWE website**

- [779] At time of writing, the DPIPWE website stated the following information regarding fox evidence for 2001-2011.

*The following information details the physical evidence of fox activity collected in Tasmania during 2000 to 2011. Reports are arranged in chronological order (newest to oldest) based on the date that the confirmation of results was received by DPIPWE.*

...

*September 2009: Fox positive scat confirmed from Interlaken*

...

*Collected on 05 May 2009 during Phase 2 of the strategic carnivore Scat Collection Survey. This scat is the first fox positive scat confirmed from Phase 2 of the survey (which was undertaken in southern Tasmania in autumn 2009).*

*No physical evidence of fox activity had previously been collected in this immediate area, however fox positive scats have been collected from three nearby locations: one (1) fox positive scat was collected near Tunbridge in May 2008 (approximately 35 km from latest scat), one (1) fox positive scat was collected near Conara in March 2008 (approximately 37 km from latest scat) and two (2) fox positive scats were collected near Oatlands in March 2008 and July 2007 (both approximately 30 km from latest scat).*

*The Interlaken area has been a recent focus for monitoring operations of the Fox Eradication Program as a result of highly credible public sighting reports from the region and proximity to other physical evidence of fox activity. A fox baiting program (covering 255 sq km) was completed in the Tunbridge-Interlaken area in April/May this year.*

*February 2010: Skull collected near Interlaken identified as fox skull through DNA testing*

<sup>395</sup> Tasmania Parliament, Hansard, Legislative Council, 29 September 2011.

...

*DNA analysis was undertaken after physical examination by several experts was unable to differentiate if the skull came from a fox or dog. Fox skulls are very similar in appearance to some dog skulls, as the species are both members of the canid family. The variety of sizes and shapes of the domestic dog skull means that there is no simple measurement or feature to separate them from fox skulls; definitive identification can only be made through DNA analysis.*

...

*The confirmation of the skull being from a fox follows the collection of a fox positive scat (1) in the Interlaken area on 05 May 2009. No DNA genotype has yet been obtained for this scat or any other fox positive scats collected in the region: Tunbridge (2 scats), Oatlands (2 scats) and Conara (1 scat).<sup>396</sup>*

### 13.2. Analysis of evidence

- [780] This fox skull was located in a shed at Railton. The credibility of the person possessing it lessened when he was unable to find the precise location where he said he found it. Despite extensive management action, no further evidence was located.
- [781] Mr Harrison said he took with him a plastic replica skull but was unable to identify the skull that was recovered. Persons at the QVMaG were unable to identify it as a fox, due to its similarity to a dog. It eventually required a DNA analysis to confirm fox origin. It is of interest that this skull was identified as fox by the possessor.
- [782] The origin of this skull is undetermined. It cannot be used as evidence of foxes living in Tasmania; at best, it is evidence of a fox skull on a tree stump at Interlaken.
- [783] DNA testing has confirmed it is not from the Symmons Plains fox.<sup>397</sup>

### 13.3. Analysis of evidence – fabrication

- [784] There is no allegation, evidence or information that this evidence was fabricated or falsified by an FEP employee.

#### **Findings:**

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**There is no conclusive evidence that any FEP employee fabricated or falsified evidence relating to this fox event, and it was not unreasonable to rely on the event as evidence of foxes living in Tasmania.**

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<sup>396</sup> <http://dpi.pwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011>

<sup>397</sup> Report by University of Canberra 2017.

## 14. Fox positive scat

### The complainant and others allege that:

- The following FEP officers fabricated evidence by planting fox scat within the Tasmanian landscape:
  - Garry Reid
  - Peter Harrison, and
  - Robert Gubiani

### Other issues, concerns and coincidences:

- the DNA testing to establish fox positive DNA is unreliable
- there are anomalies within the scat morphology and location
- FEP officer Carlos de Sancha was directed to fox positive scat location by FEP officer Peter Harrison
- Mr Fearn was told to amend his 2009 report into scat content
- reports were directed to be put into draft format to avoid RTI / FOI disclosure
- photographs were not being released if not resembling carnivore scat
- suspicious scat #6067
- FEP officer Adrei Konyn was directed to fox positive scat location by FEP officer Craig Bester
- fox positive scat was no longer in the Evidence List
- FEP officer Adrei Konyn was asked by supervisor Craig Bester to arrange false telephone call to the Fox Hotline
- contamination issues

### 14.1. Background

- [785] On 10 May 2002, a scat was located in Ogden Street, Burnie. Species identification at the time focused on the content of the scat. Identification expert Barbara Triggs identified fox hair in the scat. This is the first fox positive scat being identified in Tasmania.
- [786] Fox scats appear similar to at least five other medium sized carnivores in Tasmania and cannot be differentiated visually.
- [787] On 11 March 2005, a scat was located at Conara and later identified as fox, using DNA testing.
- [788] In 2007, the FEP was established. Funding of \$56 million was provided for a 10yr period, shared between State and Federal Governments. The FEP became more strategic and science-based, proceeding on the assumption that foxes were established in Tasmania and the FEP's purpose was to eradicate the animal. Whilst

other detection methodology continued to be deployed, there was an emphasis on scat detection.

- [789] In August 2007, a comprehensive standard operating procedure (SOP) was implemented regarding the collection of live scat, and receipt and use of training scat.<sup>398</sup>
- [790] In late 2007, the first scat dog handlers were employed. Dogs were trained by staff, both in Tasmania and on the mainland. Fox positive scat was imported to Tasmania to assist with dog training ('training scat'). Scat located in the environment is referred to as 'live scat'.<sup>399</sup>
- [791] The dog handlers were located in the north of the State and deployed as required. Scat dogs were trained to detect fox positive scat and provide a 'sit' response, if it was detected. Scat dogs also screened scat located by other staff during monitoring and other duties, to determine a priority order for DNA testing.<sup>400</sup> Scat dogs were also used as a follow-up investigative tool to a report of a fox sighting and to undertake systemic landscape searches.
- [792] By 2008 questions were being raised internally about the validity of the DNA testing. Blind testing did not however confirm the concerns. In 2011, questions were again raised internally.
- [793] By June 2014, questions were raised externally to the FEP. An independent review of the testing found, among other matters, that there could be a high rate of false positives in the reflective testing.<sup>401</sup> False positives could result in unnecessary expenditure on management actions whilst false negatives could result in establishment of foxes in Tasmania.
- [794] A formal response from the University of Canberra was that the review testing had not been absolute in its reflective conditions. It further stated that the accuracy of the testing was deemed to be 99.6% after the inclusion of the sequencing test. Further, that that particular test is more likely to produce false negatives than false positives.<sup>402</sup>
- [795] In March 2015, a paper was provided to Biosecurity Tasmania that drew attention to anomalies in scat data, specifically the improbable pattern of spatial distribution and detection success associated with one staff member.<sup>403</sup>

### **Identifying fox positive scat (DNA)**

- [796] The University of Canberra started to develop a testing methodology using DNA to identify fox in 2003-2004, and finalised in 2005. The move to DNA analysis required a rapid and cost effective test. DNA testing promised a more accurate and reliable

<sup>398</sup> Safe working practises for FEP activities, August 2007.

<sup>399</sup> Berry Faecal DNA detection 2007.

<sup>400</sup> Transcript, Jodie Elmer, pg 15.

<sup>401</sup> Marks Report 2014; Gonçalves Report 2014; Goncalves: Sarre Response 2014.

<sup>402</sup> Sarre: Gonclaves Response 2014.

<sup>403</sup> Marks Anomalies 2015.

analysis to determine the location of foxes, with the aim to focus appropriate management actions to eradicate the animal.

[797] A cell contains two components from which DNA can be extracted:

- mitochondrial, and
- nuclear.

[798] Nuclear DNA degrades a lot faster than mitochondrial DNA. The test conducted by the University of Canberra to test scat DNA used mitochondrial DNA.<sup>404</sup> For a result of 'fox positive', there are two phases of testing:

Phase Test	Methodology
Phase 1 PCR	This relies on few mammalian cells, with copies of components of the DNA made until there is a sample big enough to detect. The testing process checks for a DNA fragment specific to fox. It will not detect a fragment from another species. If it has this fragment, additional sequence testing is completed
Phase 2 Sequencing	Looks for a particular DNA sequence that is found in all mammals

[799] The results that can be obtained, are as follows.<sup>405</sup>

Result	Test
Fox Positive DNA	Mammal DNA + Fox DNA fragment
Fox Negative	Mammal DNA only
Non mammalian DNA	No mammal DNA

[800] The first testing of Tasmanian scat in 2005 included 1160 scats and 78% were able to be amplified to provide sufficient DNA for species identification. Only one scat was deemed to be fox and the result was successfully reproduced three times.<sup>406</sup>

[801] By mid-July 2011, 62 positive scats had been collected in the Tasmanian landscape. There have been no further fox positive scats located since that date.

### Identifying individual fox (DNA)

[802] The fox positive DNA extractions obtained from the University of Canberra were forwarded to Dr Olive Berry at the University of Western Australia. Testing was completed using trace DNA to identify an individual identity (genotype). Once an individual was identified, it was compared with all previous individual results to determine whether a scat came from the same animal. Not all samples contain

<sup>404</sup> Berry Faecal DNA detection 2007.

<sup>405</sup> McDonald Report 2011.

<sup>406</sup> Berry Faecal DNA detection 2007.



sufficient DNA to identify a genotype. In some cases, the genotype can be identified but not the sex of the animal.

- [803] By 26 November 2009, Dr Berry had identified 14 individual foxes from scats collected in the Tasmanian landscape.

### **Training scat**

- [804] Training scat was imported in order to maintain the detection ability of scat dogs.

- [805] The scat was imported from Victoria and over the course of the Program originated from four main locations:

- Jirrahlina Wildlife Park. Several fox cubs were maintained in order to provide training scat to the FEP. This relationship continued until the quality of the scat was questioned as it was believed the fox cubs were being fed dog food and its presentation was not reflective of fox scat that occurs in the wild.
- Frank Gigliotti, who was testing an alternative poison to 1080 and obtained live foxes caught in soft leghold traps. He kept them in captivity for several days and provided the training scat.
- Bairnsdale, and
- Phillip Island.

- [806] Training scat was kept in a locked room at the Prospect Office. There were established handling and auditing protocols. In 2010, Mr Cremasco completed an extensive audit of the training scat and related paperwork. He identified many issues where scats or associated paperwork was not accounted for or incorrect, and made recommendations to address the concerns. These included requiring a second signature to sign out training scat and restricted access to the scat room (locks were changed). The scat was kept in plastic specimen jars. The training scat was then used, returned to the locked room and signed back in.<sup>407</sup>

- [807] This audit process appears to have continued annually from this point. In the time period of 2007-2009 when most of the fox positive scat were located, the procedures and protocols did not employ the same rigor as after 2010.

- [808] Training scat were also used for dog validations. These validations checked the effectiveness of the dog in detecting scat in a controlled environment. Scat used for validation were marked by GPS location when put into the environment. Dog handlers using training scat with their individual dogs were required to fill out a running sheet as to the location the training scat had been used. Initially, training scat was kept in the specimen jar and deployed, however it was discovered that the dog was looking for the jar, not the fox scat and as a result the training scat was tipped out onto the ground.

- [809] There were instances of training scat not being retrieved from the environment. Examples included:

- birds carrying it away

<sup>407</sup> Peter Cremasco, *Audit of Imported Fox Scats and Procedures*, 2 August 2010.

- being pulled under the ground by carrion beetles
- being trodden on by cattle, and
- disintegrating to a non-solid form.

### **Live scat**

[810] Scat was detected in the environment using three main principles:

- systematic carnivore scat collections
- response to investigations following credible sightings, and
- systematic scat surveys using scat detector dogs.

[811] Carnivore scat collections were carried out in a nominated area and involved field officers searching and collecting carnivore scat. The scat was returned to the Prospect office where it was initially screened by scat dogs, with any scats identified by the dog receiving priority handling and forwarded to the University of Canberra for DNA testing. However, all collected scats were DNA tested.

[812] Reports to the Fox Hotline were recorded and caused an investigator to be deployed to the area. Dog handlers could also be used to assist the investigator.

[813] During the surveys, large areas of the State were searched. Grid references were provided for search locations and scat dogs would attend and search the area. Scats identified by the dogs as being fox positive were collected.

[814] The collection of scat involved a photographic image taken in the landscape, with an allocated exhibit number. The scat would be pushed into a paper bag on site, using available items such as paddles or bush sticks. The bag was sealed and the exhibit number recorded on the outside. The bag was then placed into a carry bag. The carry bag would eventually be transported back to the office and taken to a designated live scat room. It was registered and placed in a wire basket for drying, and then posted to the University of Canberra for DNA analysis.

[815] At the University of Canberra, the scat was divided into three parts:

- DNA analysis and genotyping
- dietary analysis, and
- future advances in testing.

[816] Once the University of Canberra completed its DNA testing sequence, all fox positive DNA was sent to Dr Berry in Western Australia. Dr Berry was conducting an extensive genetic research project into foxes within Australia. The DNA was tested in order to discover whether a genetic profile of an individual animal could be obtained.

### **Scat Evidence List**

[817] The DPIPWE Scat Register reveals that 13,345 scats were collected during 14 January 2006 – 30 June 2014. All have been DNA tested. Two fox scats have been included in that list that pre-date 1 January 2006 (Burnie scat 2002 and the Conara

scat 2005).<sup>408</sup> One fox positive scat is not included in the list (scat #6424 relating to a scat located in a bait hole at Wesley Vale on 3 February 2010, which was poorly handled by staff).<sup>409</sup>

### Fox positive scat

- [818] In all, 62 fox positive scats were located in the Tasmanian landscape. Of these, 13 were able to be genotyped and the sex determined. It enabled individual animals to be identified, through the alleles it inherits from its parents.

### Fox positive scat – DNA sufficient to genotype

No.	Scat No	Date	Location	Genotype and Sex
11	5677	8/2/08	Cleveland	Male
12	5294	21/2/08	Hawley (Wesley Vale)	Male
19	4344	7/5/08	Barrington	Male
21	5300	7/5/08	Spreyton	Male
23	5552	27/5/08	Burnie	Male
25	5553	3/6/08	Longford	Male
26	6130	16/6/08	Burnie	Female
27	10374	16/6/08	Longford	Male
28	6131	17/6/08	Barrington	Male
37	10305	4/11/08	Burnie	Male
38	10309	16/12/08	Boat Harbour	Female
39	10311	16/2/09	Stowport	Female
56	11908	5/10/09	Wesley Vale	Female

### Fox positive scat – containing fox grooming hair

- [819] Within the original list of fox positive scats were six scats that contained fox grooming hair as identified by Ms Triggs.<sup>410</sup>

### Reports from Simon Fearn

- [820] On 15 June 2009, Mr Fearn submitted a report titled *Evidence of foxes in Tasmania: a catalogue of all Fox Eradication Program hard data*. This was a working document and was updated when new information was provided.
- [821] Mr Fearn reviewed the location of all 'hard' evidence from the Program. It provided a detailed account of the search to recover seized evidence from historical fox finds. It is apparent that samples taken from foxes or fox product in Tasmania were sent for various aspects of scientific analysis and arrangements were not always made for the return of the samples. Extensive searches took place at FEP and associated work

<sup>408</sup> DPIPWE Scat Register.

<sup>409</sup> Fearn Scat DNA Report 2011.

<sup>410</sup> Scat Register.

areas, on several occasions, which eventually located some samples, however some evidence could not be located. The most important piece of evidence that was not recovered was the stomach contents of the Symmons Plains fox that contained the endemic mouse. Recommendations as to the handling and storage of evidence were made to ensure future security of physical evidence. This was a working document and was updated when new information was provided, thus there were further versions of the document.

[822] In September 2009, Mr Fearn submitted a report detailing results from his exploration of invertebrate remains of all (then 39) DNA fox positive scats.<sup>411</sup> Mr Fearn found:

- no scat contained an endemic species from Tasmania or elsewhere
- 14 scats contained no insect remains
- 11 contained readily identifiable insect remains
- 5 were considered to be non-carnivore scats, and
- 9 contained secondary prey items, such as ants.

[823] In June 2011, Mr Fearn submitted a second report titled *Report on Invertebrate remains in Fox Positive Scats collected in Tasmania by the Fox Eradication Branch*. Mr Fearn's report explored the invertebrate remains of all (then 57) DNA fox positive scats. It was in this report that he identified foam in two scats. No endemic species were identified from either Tasmania or the mainland.

[824] In July 2011, Mr Fearn submitted a report titled *Overview of Context and Reliability of DNA fox positive scats*.<sup>412</sup> Mr Fearn critically analysed all scat documentation and stated:

- during 2000-2011, 324,000ha had been searched
- 1818 scats had been sent to the University of Canberra for analysis
- 1,234 dog searches had been conducted
- 57 DNA fox positive scats had been detected
- degradation trials included the distribution of 486 fox positive scat into the Tasmanian landscape, during both winter and summer, with some being buried. Dogs detected 100% of scats within 63 days of deposit, 60% within 91 days of deposit, and
- DNA detection was nearly 100% positive at 100 days.

[825] In July 2011, Mr Fearn submitted a second and updated report titled *Evidence of foxes in Tasmania: a catalogue of all Fox Eradication Program hard data*.

[826] In September 2011, Mr Fearn and Ms Olivia Barnard submitted a report, *Quantification of fox scat density near dens: a report of a pilot study conducted at Warrnambool, Victoria*.<sup>413</sup> This study examined the amount and location of scat

<sup>411</sup> Fearn Scat Content 2009.

<sup>412</sup> Fearn Scat DNA Report 2011.

<sup>413</sup> Fearn Den Report 2011.

around fox den sites and other locations, and analysed the scat dog's ability to detect it. It raised the issue of the anomalies identified in Tasmania:

*Given the remarkable capabilities demonstrated by the scat detection dogs during this project, the current situation in Tasmania of sporadic identification of individual scats without any corroborative evidence would appear to be currently without rational explanation. These results also indicate that with suitable search effort, any breeding of foxes on Tasmanian soil should be readily detectable by the Program.*

...

*It may be time for the FEP to recognise that a single DNA fox positive scat isolated and uncorroborated both geographically and temporally represents somewhat of a conundrum. Given the length of time involved (13 years since the alleged first introduction of fox cubs into the State) it is no longer sufficient to simply suggest that foxes are continually moving around in the Tasmanian landscape. A fox or foxes spending any length of time in a locality should leave behind a scat field and any breeding will tie foxes to a home range for 4-5 months resulting in similar scat densities to those discovered during this project. In fact it would be anticipated that the thoroughness of some of the FEP monitoring activities (eg in the Burnie / Devonport / Spreyton area) would be entirely sufficient to locate active den sites. The results from this study also indicate a less than satisfactory level of rigor and replication for scat detection probability trials conducted for scat dogs in Tasmania by the Program where relatively large variances in detection rates were recorded.<sup>414</sup>*

- [827] The study also noted that no photographs of foxes were obtained by cameras placed outside of dens. The report recommended that the trial be repeated in Phillip Island, however Mr Fearn states that did not occur due to funding issues at the time.

### **Evidence of Jodie Elmer**

- [828] Ms Elmer is a former FEP administration officer. She was mainly responsible for management of the training scat and staffed the fox hotline.
- [829] Ms Elmer said she was aware of the rumours of evidence fabrication of scats and stated the motivational rumours for fabrication extended to excitement of a fox positive scat '*all the way up to potential switching out of scats*'.<sup>415</sup>
- [830] She was aware of the allegation of fraud against the Program. She said, '*Most of the conversations in the office were: if we are perpetrating fraud, we're doing a damn shit job at it, because in 10 years there were 60 scats [found]*'.<sup>416</sup>
- [831] Ms Elmer provided evidence of the protocols and processes around training scat, dog validations and the Fox Hotline, and stated that processes changed over the years to make the Program more accountable.
- [832] She cites major catalysts for change were:
- Seymour scat (#5551) on 25/10/2007

<sup>414</sup> Fearn Den Report 2011, pp 6–7.

<sup>415</sup> Transcript, Jodie Elmer, pg 5.

<sup>416</sup> Ibid, pg 6.

- Wynyard scat (#6424) on 3/2/2010
- training scat register, data entry changes, date unknown, and
- first full scat audit process by Mr P Cremasco in 2010

[833] Changes included:

- increasing accountability in handling evidence to reduce contamination risk
- audits of training scat and other imported fox product
- restricted entry into the training and live scat storage areas, including lock changes
- use of drying racks and humidifiers to dry wet scat, and
- stapling live scat evidence bags to use of labels.

### **Landcare Research Review 2009**

[834] The Review report stated:

#### *5.7.2 Providing physical evidence of foxes in Tasmania*

*The fox DNA in scats found in Tasmania is proof that foxes have been or are present in the State. We ignore the contrary view of the few people who believe it is all a conspiracy as no evidence, however forensically linked, will convince them.*

#### *6.3.2 Social constraints*

*... the DNA evidence is unequivocal so residual scepticism that foxes are currently present is not rational ...*

#### *7.1 Conceptual model of fox eradication*

*We must investigate the perplexing finding that fox scats are extremely rare on the landscape, even in areas where DNA-confirmed scats have been located. Indeed, only one scat has been found per individual fox that has been confirmed with DNA testing ...*

#### *7.2 Probabilistic modelling*

*The primary data that are available on the presence or absence of foxes across Tasmania are scats that have been confirmed to contain fox DNA (top model element in Fig. 12). Although hard evidence could also include a carcass or a highly probable visual sighting, the model is described in terms of fox-DNA detection because DNA-positive scat is the principal means of confirming fox presence.<sup>417</sup>*

### **Parliamentary Standing Committee 2009**

[835] The Committee received verbal evidence from a range of parties, including from Professor Stephen Sarre and Dr Berry in relation to DNA testing, and a written submission from Dr Marks. The Committee concluded receiving evidence in September 2009.

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<sup>417</sup> Landcare Report 2009.

[836] It found that:

15. *The scientific evidence reveals that fox scats have been found in various locations around Tasmania and this should be considered as persuasive evidence of foxes in Tasmania as it is highly improbable that a person or persons are importing and spreading fox scats throughout Tasmania.*
16. *The techniques and scientific procedures for testing of scats and the subsequent DNA analysis of positive scats are subject to robust academic oversight and approval by the Technical Committee which reports to the Management Committee.*<sup>418</sup>

[837] It recommended that:

1. *The Government needs to proceed on the basis that the fox has established a presence in Tasmania. Public policy must reflect that position and therefore the Government must do all that is reasonably possible to ensure the eradication of foxes and prevent any further foxes entering Tasmania.*
  2. *The primary focus of the Fox Eradication Program must be to locate, bait and eradicate foxes. The precautionary principle should apply and as such this primary focus should not be unreasonably distracted by an on-going need to substantiate the presence of foxes.*
- ...
11. *The Taskforce continue to question, examine and review all the available data to inform and improve the eradication effort.*<sup>419</sup>

### **Kitchell Report 2013**

[838] In his report, Max Kitchell wrote:

*There has been some concern expressed about the accuracy of the DNA scat analysis and about the time taken by the University of Canberra to analyse scats. Currently the incursion response team does not wait for DNA confirmation of scats but rather responds to a scat as a fox scat if the sniffer dogs identify it as such. In order to confirm or otherwise the robustness of the current scat collection and testing processes it is recommended that an independent forensic laboratory be commissioned to review the efficacy of the University of Canberra's DNA analysis and field practices in collecting, handling and storing scats.*<sup>420</sup>

## **14.2. FEP officers fabricated evidence by planting fox positive scat into the Tasmanian landscape: Garry Reid**

### **Evidence**

[839] Mr Reid was employed as a dog handler in the newly established FEP. He had previously been employed in Water Compliance (DPIWE). Dog handlers were

<sup>418</sup> PAC 2009, pg 6.

<sup>419</sup> Ibid, pp 3–4.

<sup>420</sup> Kitchell Report 2013.

provided training, as were their dogs. The first fox positive scat to be located by a dog was on 25 October 2007 at Seymour. Mr Reid and his dog located that scat.

[840] Between 26 July 2007 – 26 July 2010, 52 fox positive scats were located in the Tasmanian landscape. Thirty-one were located by dog handlers.

[841] Of the 52 DNA fox positive scats, 26 were recorded with Mr Reid being present on site as either a collector or transporting the scat.<sup>421</sup> One other FEP officer (Peter Harrison) was present when 14 of the fox positive scats were located.<sup>422</sup>

[842] In addition, Mr Reid located all fox positive scat (total 14) where there was sufficient DNA to genotype an individual animal. There were two further samples that could be verified as individual animals, but could not be fully identified as female. Both these scats were also located by Mr Reid. Further, Mr Reid located all fox positive scat that contained fox grooming hair, and both fox positive scats that contained foam.

[843] The following shows a comparative overview of the number of scats located by all three dog handlers over this period:

Scats <sup>423</sup>	Total No.	Dog Handlers		
		Reid	Barnard	Cunningham
Total number of fox positive scats by dog handlers	31			
Number fox positive scats (located or transported) by	52	25	5	1
Total number of scats collected by		10	200	64
Total number of fox positive scats located by (collector 1 or 2)		19	5	2
Number of fox positive scats that were able to be genotyped, found by	13	13	0	0
Number of fox positive scats that also had fox grooming hair in contents	6	6	0	0
Number of fox positive scats where foam was found.	2	2	0	0

<sup>421</sup> Scat Register.

<sup>422</sup> Scat Register.

<sup>423</sup> Scat Register.



- [844] When including all 33 FEP officers that located fox positive scat during the same period, the following employees were involved in locating more than two fox positive detections:

Employee (first or second collector)	No.	Percentage
Total number of fox positive scat 26/7/2007 and 26/7/2010	52	
Garry Reid	25	48%
Peter Harrison	15	28%
Olivia Barnard	5	9%
G Rainbird	4	8%
J McConnell	3	6%
C Benjamin	3	6%
Simon Fearn	3	6%
H Strie	3	6%

#### **Evidence of Simon Fearn**

- [845] Mr Fearn was the first to document issues involving scat anomalies and putting focus onto the involvement of Mr Reid. His report highlighted the high number of fox positive scats that Mr Reid found or was at the location, or transported the scat. He drew attention to the number of genotype detections and those containing fox grooming hair. He listed the number of scats being tested, the area searched, the lack of corroborative evidence, the high rate of detection exposed in the scat degradation trials and the high rate of success in the probability detection trials. He referred to the geographical spatial spread and the two scats with artificial material in them.<sup>424</sup>
- [846] Mr Fearn analysed all scat documentation and stated 26 fox positive scats were located or transported by the same dog handler (Mr Reid). He noted that Mr Harrison was present when a large majority of these scats were located. In addition, Mr Harrison also located a large number of scat.
- [847] Mr Fearn reported on the foam in two scats located by Mr Reid and Mr Harrison.
- [848] He reported that fabrication of evidence by Mr Reid and Mr Harrison was a possibility based on the statistical data provided.
- [849] He also referred to possible contamination of some scats due to poor handling or exhibit management.

#### **Evidence of Jodie Elmer**

- [850] Ms Elmer stated that, as Mr Reid was doing investigations, he had a start point to find evidence rather than walking around in a strategic survey.

<sup>424</sup> Fearn Scat Content Report 2011.

- [851] She said that he was '*probably sloppier in his attention to protocols when it came to the training scats*' and that she had observed him using a knife on training scat and put it away.<sup>425</sup>
- [852] She states that although she would say something about this on occasion she did not believe she had much sway with him.

### **Evidence of Peter Harrison**

- [853] In response to the allegations focused towards Mr Reid, Mr Harrison stated that Mr Reid had the best dog, they followed designated search patterns, rather than moving around, those patterns including focusing of tracks and other unusual aspects in the landscape like tree stumps.<sup>426</sup> He said that they responded quickly to each sighting and as a result they were better placed to find evidence; he would contact Mr Reid and have him respond; he states the earlier you arrived the more likely you would find evidence.<sup>427</sup>
- [854] He recalls Mr Reid placing scat into the environment during detection probability trials, as he did himself. He recalls scat being carried around in film containers and then later in specimen jars by Mr Reid. He recalls Mr Reid carrying training scat with him into the field, to conduct training whilst out in the field. Contamination was prevented as Mr Harrison only ever dealt with the live scat and Mr Reid only ever dealt with the training scat.<sup>428</sup>
- [855] He conceded that training scat could easily have been placed into the landscape. He also conceded that he did not watch the dog or handler at all times, but that, '*if I had any suspicions on Garry I would've said something*'.<sup>429</sup>
- [856] He was aware of formal arrangements for training scat to be imported, but that he was not aware of Mr Reid importing scats. He initially stated he was not aware of Mr Reid's son working at the facility that sent some of the training scat, then stated he was.<sup>430</sup>
- [857] He stated that Mr Dowde and Mr Fearn were always intimating wrong doing, about him and Mr Reid putting scats out and falsifying evidence. He described the culture as, '*toxic. As I said to you ... in the last stages if I didn't have to go down to Launceston I just wouldn't*'.<sup>431</sup>
- [858] He saw issues and tried to organise training in regard to exhibit handling with Tasmania Police. He organised a meeting with Program Manager Craig Elliott, himself and a representative from Tasmania Police. The meeting occurred but nothing eventuated from it.<sup>432</sup>

<sup>425</sup> Transcript, Jodie Elmer, pg 40.

<sup>426</sup> Transcript, Peter Harrison, pg 112.

<sup>427</sup> Ibid, 128.

<sup>428</sup> Ibid, 119.

<sup>429</sup> Ibid, 115.

<sup>430</sup> Ibid, 136.

<sup>431</sup> Ibid, 156.

<sup>432</sup> Ibid, 158. Mr Elliott confirmed that he felt that Program staff required more basic evidence collection and management training than that being sought by Mr Harrison.

### Evidence of Matthew Marrison

- [859] Mr Marrison is a former FEP officer that worked in the Community Engagement Division.
- [860] He stated that concerns about evidence collection by Mr Reid was raised by a large number of staff, including Dan Novak, Simon Fearn, Alison Foster, Candida Barclay, Olivia Barnard, Joseph Dowde, Jodie Elmer, Kristy Withers, Christopher Leitch and Mark Mackay, and with supervisors and managers including Peter Cremasco, Mark Sayer and Nicholas Bates.
- [861] His concerns ranged from poor practice and lack of adherence to workplace protocols resulting in a high likelihood of contamination of samples, to Mr Reid deliberately importing scats to falsify evidence finds.
- [862] He stated he observed Mr Reid breach handling protocols in 2007 when he submitted the Seymour scat (#5551). He stated Mr Reid brought it into the Prospect Office building against procedures (due to fox product being located in the office) and then further observed him remove the scat from the collection bag outside to demonstrate his dog's detection ability.
- [863] In 2008-2009, Mr Marrison was processing fox training scat with Mr Reid. That scat that had been imported into Tasmania via Australia Post and he observed poor handling practices to occur by Mr Reid. These included dropping the scat onto the floor and using a knife to separate scats that were too big and then wiping the knife onto his clothes. He reported this to Mr Cremasco, and raised the issue with Mr Elliott when he commenced as General Manager of the Program in 2011.
- [864] He was aware that, in 2011, Mr Elliott tasked Mr Fearn to audit all physical evidence due to the ongoing concerns being raised about it.<sup>433</sup>
- [865] At some point, Mr Reid's access to the live scat drying room was revoked by Mr Cremasco.<sup>434</sup> This included changing the locks and he said Mr Reid located no further fox positive scats. He stated that Mr Cremasco told him of this.
- [866] Mr Marrison states that all staff knew there were issues with Mr Reid and that other staff members had witnessed Mr Reid removing scat from collection bags to demonstrate his dog's detection ability.<sup>435</sup>

### Evidence of Alan Johnston

- [867] Mr Johnstone stated he wasn't aware of any allegation that Mr Reid had planted scat.<sup>436</sup>

<sup>433</sup> Mr Elliott confirmed that the 2011 audit was not motivated by 'ongoing concerns', and that Mr Fearn's task involved 'rectifying the gaps in Standard Operating Procedures and collating the Evidence Files into a single file format': Craig Elliott, Response to draft investigation report, 21 November 2017.

<sup>434</sup> Mr Cremasco has confirmed that 'access was revoked to ALL staff except those directly involved in preparing 'evidence' scats for analysis. This arose due to my discovering that there were potentially dozens of keys available to that room, and the realisation that access couldn't be controlled at that stage. Locks were changed and security keyed': Peter Cremasco, Response to draft investigation report, 20 November 2017.

<sup>435</sup> Statutory Declaration Matt Marrison, Email Matt Marrison.

<sup>436</sup> Transcript, Alan Johnston, pg 40.

- [868] He was aware of scat being imported for training use to maximise a dog's ability to detect scat. He thought the dogs were exposed to training scat perhaps once a week.
- [869] Mr Johnston stated there was some questioning about the high number of fox positive scats being located by Mr Reid, and linked to Mr Harrison. He stated it couldn't be furthered as they were working out of the Devonport Office, a prior hotspot and where there was the most concern about foxes establishing. If the fox was in Tasmania, there is a fairly high probability they would find scats there.
- [870] He stated dog handlers tended to be better at finding fox positive scat, but that *'it was cause for us to think, you know, is there some sign here that's not right but when we did some sort of assessment of it, it didn't seem out of order'*.<sup>437</sup>
- [871] He said that contamination and other issues were put to the Technical Advisory Panel for their assessment.<sup>438</sup>
- [872] He stated there was never any investigation, other than data analysis and no report was done at the end. He stated it was because there was never any serious allegation put to him about fabrication of evidence.<sup>439</sup>

### **Evidence of Peter Cremasco**

- [873] Mr Cremasco stated that when Mr Fearn gave him the 2011 report his response was:

*Most of the positives were being found by Peter and Garry and I pointed out to him "well, no, if you look at the whole range of evidence there, it is not the most – as they are probably the pair that accounted for more than other single group, but, you know, you have got stuff being found through survey by a variety of people on the ground ... (there was nothing) ... that hit me in the face as going "evidence is being fabricated or planted".*<sup>440</sup>

...

*We sat down and looked at what was happening (to explain a fox positive scat sitting on a fence post) ... so there was, you know, accidental contamination in the handling and certainly some of the ways that the dog handlers used to, I mean Garry especially, trying to deal with keeping their training scats – keeping them out of the collection side of things or not having training scats around when he is collecting stuff. The concept of trace DNA just didn't sink in ...*<sup>441</sup>

...

*[Mr Reid] didn't catch on, he still after all the time that I was there I could never get him to understand what we were about. For him it was a competition and "I have got*

<sup>437</sup> Ibid, pp 40–41.

<sup>438</sup> Ibid, pg 44.

<sup>439</sup> Transcript, Alan Johnston, pp 42–43.

<sup>440</sup> Transcript, Peter Cremasco, pg 9. Mr Cremasco subsequently clarified his statement to say that *'Garry and Peter H were also the pair that got assigned to investigate most of the northern reports in the early days due to their proximity to the locations of those reports'*: Peter Cremasco, Response to draft investigation report, 20 November 2017.

<sup>441</sup> Ibid, pp 40–41.

*the best dog and all that” and that worried – that does worry you when someone is that adamant about stuff you are going “okay do they fudge things so that they keep on coming out on top” but I never – there was never anything too concrete. That falsification of the records was probably the only thing that was ever smack bang in your face. There is a lot of other circumstantial evidence around the place.<sup>442</sup>*

- [874] He recalls asking Mr Reid about the reasons why he was finding so many fox positive scat and he was told he worked with a good investigator and had a good dog.

### **External reports**

- [875] A number of scientists have authored papers that examine the validity of physical evidence of foxes living in Tasmania. These reports examine:

- DNA analysis of scat evidence, and
- distribution patterns of evidence.

- [876] The reports conclude that there are anomalies and challenges relating to this evidence. One suggestion is that the high detection numbers of fox positive scat from two FEP officers in particular should be more closely examined to determine whether there is any evidence of fabrication by depositing fox positive scats into the Tasmanian landscape.<sup>443</sup>

### **Other aspects to consider in relation to Mr Reid**

#### **Accidental placement of training and trial scat into the environment**

- [877] Fox training scat was used at various times for training, validation, degradation and detection probability trials.
- [878] During the Commission’s investigation there was reference to a training scat being sent off as a live scat. It was analysed as being fox positive, but was not included in the evidence list as the error was detected. The Commission’s investigation has been unable to uncover any further details of this.
- [879] The Commission also received information that some training scats put into the field were not recovered during the trials. These scat were placed in locations marked by GPS. The losses occurred due to the scat possibly getting carried off by a bird, sucked into the ground, trodden on by cattle, rained on or pulled down by beetles. Failure to recover scat was noted and cross checked against findings of live scat.
- [880] There were also training scats breaking into pieces due to their use.<sup>444</sup>
- [881] Mr Harrison recalls that he was required to put five scat into the landscape for a dog to find under test conditions and that not all of the scat were found by the dog and not all of the scat was recovered. He recalls an incident in Burnie where he put scat out and was to tell the landowner not to inform the dog handler he had been there.<sup>445</sup>

<sup>442</sup> Ibid, pg 19.

<sup>443</sup> Marks Anomalies 2015.

<sup>444</sup> Transcript, Jodie Elmer, pg 49.

<sup>445</sup> Transcript, Peter Harrison, pg 121.

### Performance of Mr Reid's dog

- [882] Mr Harrison said that Mr Reid had an excellent dog and that he followed proper search procedures. He said it was the search procedures that contributed to the high success rate of the dog in finding scat.<sup>446</sup>
- [883] Mr Cremasco said that dog validations were completed on a regular basis to see how good the dogs and their handlers were. It wasn't just about the dog but about how the handler read the dog. He described Mr Reid as having a competitive nature and that Mr Reid, *'always likes to be seen to be the best and it used to do him a disservice, ends up, before every validation, he'd be an absolute bundle of nerves.'*<sup>447</sup>
- [884] Mr Bester was the Monitoring or Canine Coordinator and states all dogs passed their validation tests (trials which tested the skill of the dog and handler in a controlled environment to ensure they were able to detect fox positive scats).<sup>448</sup> He said that Mr Reid used to get quite excited when he found a scat. However when it came to validations Mr Reid would always be tense and apprehensive prior to doing it. He explained that was because Mr Reid wanted his dog to go well.<sup>449</sup>
- [885] Ms Elmer was also involved in dog validations. When it was put to her that Mr Reid had the best performing dog, she stated, *'No ... Olivia Barnard and her dog were the best'*. She stated that Mr Reid was directed away from strategic survey work as he and his dog did not perform as well as the others in relation to daily ground coverage and evidence discovery.<sup>450</sup>
- [886] Mr Dowde stated that Mr Reid became extremely nervous on validation days, sweating, going pale and wouldn't be able to sit still. He stated he was probably nervous that his dog wasn't going to pass the validation. He suspected that was due to the high rate of success in the field and an average validation result may make his fieldwork look suspicious.<sup>451</sup>
- [887] Mr Konyn states that he required a dog to review a scat and waited for days until Mr Reid's dog was available. His reason was that Mr Reid, *'found all the (fox positive) scats'*.<sup>452</sup>
- [888] Mr Reid stated that he considered his dog was a very good performer at locating fox positive scat. He stated he put a lot of training into the dog and trained it twice a day. He described the dog as loving his job. He stated the dog performed well in validations and passed nine out of ten times. He states all the dogs failed at some stage. He conceded the dog's results were no better than the other dogs and his had failed on several occasions. He stated Mr Cremasco made comment on some of the validation sheets that it was a 'superb' performance by the dog. He states the dog's performance earned him an appearance on a television show and that he was

<sup>446</sup> Ibid, 112.

<sup>447</sup> Transcript, Peter Cremasco, pg 44.

<sup>448</sup> Email from Craig Bester, 22 June 2017.

<sup>449</sup> Transcript, Craig Bester, pg 32.

<sup>450</sup> Transcript, Jodie Elmer, pp 34–36.

<sup>451</sup> Transcript, Joe Dowde, pp 13–14.

<sup>452</sup> Transcript, Adrei Konyn, pg 44.

selected to compete on the mainland. He agreed that he became very nervous before validations as the dog was on show, he wanted it to do well.<sup>453</sup>

[889] Mr Reid's relationship with his dog was commented on by number of staff. Staff stated that Mr Reid was as proud of his dog as most people are of their children. He loved and was proud of his dog. There was a wide spread belief that if Mr Reid did fabricate evidence by placing fox scat into the environment, the motivation for doing it would relate to his dog rather than for financial gain or arising from frustration at the continued scepticism and criticism directed towards the Program.

[890] Ms Elmer said:

*[The other dog handlers] all come from a farm background where working dogs are working dogs. Garry's background is breeding dogs. It's all about the show. It's all about the relationship that Garry had with his dogs versus the others had with their dog. The ego, and strut, and bluster that comes from your dog getting a medal ... at the end of the day, your dog's just doing a good day's work. The mentality between that was evident the whole way through.*<sup>454</sup>

...

*I can remember with the Seymour scat - Garry very proudly bringing in the scat into the office and saying, "Look what Timmy found," and putting it down.*<sup>455</sup>

[891] Mr Dowde stated:

*[Mr Reid] was very, very passionate about his dog. I believe he actually ended up with that dog as a pet when it retired ... in his eyes that dog could do no wrong ... a general consensus between staff that were actually taking notice of what was being found and it was also his whole, he acted like, like a school kid at Christmas ... he was ... nearly in people's face and overly confident ... when he'd come back into the office and he would make a big deal of it and he'd want people to notice. He'd want people to notice his dog and it was unusual behaviour for a grown man in my opinion.*<sup>456</sup>

[892] During the interview with Mr Reid, it was evident that that any motivation in fabricating evidence was about Mr Reid's relationship with his dog. As evidence of his regard for his dog, Mr Reid said:

*I loved that job, I loved working with dogs. I don't care about bloody people, dogs are what I care about, and Timmy was absolutely unbelievable as a detection dog. He was the best of the best. Even when we went to Sydney and tested him in Sydney, he beat dozens of dogs from the air-force, army, navy, he beat them, he was so good.*<sup>457</sup>

[893] There have been suggestions that the fabrication of evidence was to continue the Program or to attract funding or for individual financial gain. Mr Reid attracted allowances to maintain his dogs, had a vehicle to transport them, and obtained

<sup>453</sup> Transcript, Garry Reid, pp 68–72.

<sup>454</sup> Transcript, Jodie Elmer, pg 52.

<sup>455</sup> Ibid, pg 21.

<sup>456</sup> Transcript, Joe Dowde, pg 29.

<sup>457</sup> Transcript, Garry Reid, pp 6.

mainland travel and associated allowances. A cursory analysis of relevant documents showed no evidence or suggestion that Mr Reid was financially motivated to fabricate evidence. If Mr Reid did fabricate evidence, the motivation appears to be focused to the performance of his dog.

### **Scat Log data change**

- [894] The Commission received information that Mr Reid had altered scat log data. Suggestions included that a date was filled in, areas in the register were whited out and data changed. However little direct evidence was provided in relation to this issue.
- [895] Ms Elmer stated that she had taken some photocopies of the register or running sheets and had cause to compare her copies to the formal paper record. She discovered that some entries had been altered by using liquid paper over the existing entry and writing over the top. She stated you could see the original information when held up to the light, but that she was unable to recall what the changed data related to. She reported it to Mr Cremasco at the time.<sup>458</sup>
- [896] Mr Reid states that he was spoken to about filling in an entry for another dog handler. He stated it took him some time to work out what happened but that he was going through the register later and realised that the scat had not been returned but not signed in. He discussed it with Mr Johnston and received a letter of warning not to do it again.<sup>459</sup>
- [897] Mr Johnston stated he was aware of an incident where Mr Reid had failed to complete the sign in process for returning training scat. He believed Mr Cremasco investigated and put it down to an error on Mr Reid's part. Mr Reid was counselled over it.<sup>460</sup>
- [898] Mr Cremasco stated that the entry concerned was one date and had been filled in. He could not recall the use of liquid paper arising as an issue with Mr Reid.<sup>461</sup> Mr Cremasco stated he spoke to Mr Reid formally and Mr Reid denied completing the entry and when shown the paperwork could not explain it.<sup>462</sup> He stated that he was not satisfied with the outcome and it should have been harsher and that this incident was the first time he started to question what was going on with Mr Reid.<sup>463</sup>
- [899] Mr Bester states he is not aware of any issues of fabrication relating to the scat log books.<sup>464</sup>
- [900] No letter or document was able to be located by DPIWPE in relation to this matter. No entry was located on Mr Reid's personnel file.

<sup>458</sup> Transcript, Jodie Elmer, pp 27–28.

<sup>459</sup> Transcript, Garry Reid, pp 38–40.

<sup>460</sup> Transcript, Alan Johnston, pg 40–41.

<sup>461</sup> Peter Cremasco, Response to draft investigation report, 20 November 2017.

<sup>462</sup> Transcript, Peter Cremasco, pp 16–17.

<sup>463</sup> Ibid, pp 14–15.

<sup>464</sup> Transcript, Craig Bester, pg 38.



### **Mr Reid and Mr Harrison being told not to work together**

- [901] Many staff referred to this issue in their interviews.
- [902] Ms Elmer described Mr Reid and Mr Harrison as being comfortable together, were 'old school', set in their ways and liked to work together.<sup>465</sup> She states she can recall them being told not to work together and that the catalyst was their high fox positive detection rate. She stated that Mr Reid and Mr Harrison tended to go off on their own, and that Mr Harrison would not call information into the Fox Hotline before going out to investigate a matter but would ring Mr Reid to join him. It made coordinating a state-wide response and prioritising resources a difficult task. She stated they continued to work together and put that down to the way they did things. She said Mr Cremasco had tried to sort it out.<sup>466</sup>
- [903] Mr Marrison recalls that in 2008 or 2009, Mr Reid was reprimanded for disobeying a direction that he not work on investigations with Mr Harrison. The direction was given to both men by Mr Cremasco as a result of concerns about the veracity of the evidence (fox positive scat) being obtained by them. The direction included that Mr Harrison was not to have direct contact with Mr Reid when coordinating investigations and responses to sighting reports, and that they were not to directly deploy dogs in the field. Mr Reid was subsequently moved to survey work. Mr Marrison identified that Mr Reid and Mr Harrison continued to work together on investigations, and informed Mr Cremasco on a number of investigations. He was informed by Mr Cremasco that he had reprimanded Mr Reid and Mr Harrison. Mr Marrison stated that Mr Johnston and Ms McGee discussed this with him.<sup>467</sup>
- [904] Mr Johnston stated that the 'direction' was more a suggestion than anything else, to ensure people worked with others and not exclusively with one person.<sup>468</sup>
- [905] Mr Harrison does not recall any conflict / issue in regard to him contacting Mr Reid directly. He does not recall being told not to work together nor the organisation determining the priority response when all matters were to be reported to the fox hotline.<sup>469</sup>
- [906] Mr Reid recalls being told not to work with Mr Harrison however couldn't remember the reasons given. He wasn't happy about it, but did it and was never spoken to about it again. He believes he was provided duties to stay away from Mr Harrison by Mr Cremasco.<sup>470</sup>
- [907] Mr Cremasco stated that this occurred after the incident with the scat register. He stated he and Mr Johnston tried to break the teams up as another avenue to address the issues with Mr Reid and Mr Harrison. He stated there was a fair bit of resistance to this.<sup>471</sup>

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<sup>465</sup> Transcript, Jodie Elmer, pg 18.

<sup>466</sup> Transcript, Jodie Elmer, pp 36–38.

<sup>467</sup> Statutory Declaration, Matthew Marrison and email 27 March 2017.

<sup>468</sup> Transcript, Alan Johnston, pg 44.

<sup>469</sup> Transcript, Peter Harrison, pg 129.

<sup>470</sup> Transcript, Garry Reid, pp 67–68.

<sup>471</sup> Transcript, Peter Cremasco, pg 18.

### Seymour Scat #5551

- [908] Stephen Barrow is a former FEP officer.
- [909] Mr Barrow stated he was working with Mr Reid at Dolphin Sands on 25 October 2007, when they were re-directed by their supervisor, Mr Bester, to investigate some shearwater birds that had been killed at Seymour. They attended using Mr Reid's vehicle. They met the owner and went over the landscape. There were scats everywhere, especially herbivores (wallaby and birds) and he recalls observing some big cats. Mr Reid got his dog out and started to look around, while he and the owner wandered around. Mr Barrow was close by and heard Mr Reid say 'find, find' which was the signal for the dog to search and focus on its task of finding fox positive scat. Mr Barrow came around the corner and into view and could see Mr Reid was pushing the dog's bottom down to the sit position whilst he said '*find find*'. Mr Reid looked up at me and said, '*Look Stevie, the dog's sitting*'. Mr Barrow stated he was immediately concerned as he believed the dog was coerced into sitting. He also stated his view was only at a glance. They retrieved the scat (docket number #5551) and bagged it. Mr Barrow stated he then pointed out all the other scats in the landscape but the dog showed no interest. The scat was of the same physical appearance as the other scat that was present. Alarm bells were ringing.
- [910] Mr Reid and Mr Barrow returned to Prospect Office late in the day. Mr Barrow asked Mr Reid to provide him with the scat to enable it to be deposited in the evidence room and for the docket to be completed. Mr Reid stated he was going to take it home and bring it back the next day. Mr Barrow informed him that was not proper protocol but Mr Reid insisted and took the scat home.
- [911] Mr Barrow was later told by another dog handler, David Cunningham, that Mr Reid had turned up at his house the next day, before work, to see if Mr Cunningham's dog would have a positive reaction to the scat. Mr Barrow stated he reported the matter to his managers and that most staff knew about it as they asked him about what had happened.<sup>472</sup>
- [912] Mr Cunningham stated he was unable to recall Mr Reid ever attending his house as described by Mr Barrow.<sup>473</sup>
- [913] Mr Reid recalls the Seymour scat as it was his first fox positive scat located by his dog. He states that Mr Barrow was standing near the scat and his dog went over and sat by it. He stated they had no containers to put it in and ended up putting it in a takeaway dinner box. He stated he returned to Mr Cunningham's residence and was met by Mr Parker, his manager. He stated that Mr Parker interrogated him over the find and that Mr Cunningham's dog also sat on the scat.<sup>474</sup>
- [914] Mr Reid was asked if he ever coerced his dog into sitting. He stated that couldn't happen as the dog would always be out in front.<sup>475</sup>

<sup>472</sup> Telephone conversation with Stephen Barrow, 17 April 2017.

<sup>473</sup> David Cunningham, response to NPI.

<sup>474</sup> Transcript, Garry Reid, pp 75–76.

<sup>475</sup> Ibid, pg 45.

- [915] Mr Johnston was unable to recall any issues with the Seymour scat. He did not recall having a conversation with Mr Barrow about it nor any of the circumstances around the scat find and management.<sup>476</sup>
- [916] Mr Cremasco had not yet commenced with the Program and stated he was never aware of this matter.<sup>477</sup>

**Mr Reid's response to DNA analysis being able to identify individual foxes**

- [917] Mr Dowde stated that on 18 November 2009, he was at a bi-annual state-wide Program staff meeting at Campbell Town. The purpose of the meeting was to provide employees with information relating to DNA genotyping of individual scats.
- [918] Mr Dowde stated that, after the meeting, he was approached by Mr Reid. Mr Reid wanted someone to tell him what the presentation meant in non-scientific terms. Mr Dowde explained to Mr Reid that it meant that DNA could identify individuals, family members and where scats had come from. He described Mr Reid as jittery and concerned upon receipt of that information.<sup>478</sup>
- [919] Mr Reid stated that he couldn't remember the meeting in Campbelltown nor any conversation with a staff member about the ability to genome DNA. He stated he became aware of the procedure. He initially stated a lot of fox positive scat was located after the date of the meeting and was shown the evidence list which clearly shows that was not the case.<sup>479</sup>
- [920] There are no documents that have been located that could confirm the date or the agenda of the meeting.
- [921] There was only one fox positive scat located after this date by Mr Reid, in February 2010.

**Mr Reid importing fox scat**

- [922] Mr Dowde stated that he was working at the FEP information stand at the Campbell Town Show on 28 October 2010. He overheard a conversation between two members of the public in which they stated that someone was importing fox scat to Tasmania by post. He asked them what they were talking about and was informed that a dog handler's son was posting it in. When he asked more questions, they refused to give any detail and walked away. He states no FEP officer's name was mentioned and that he reported it to Mr Cremasco.
- [923] Mr Dowde stated that FEP staff had to attend training sessions in Victoria. He states he attended several trips where Mr Reid was present. He said that on a number of occasions (2 July 2010 at Barwon Heads and around 1 May 2011 at Phillip Island) he witnessed Mr Reid collect fox scats in Victoria, place them into containers and put them in the back tool box of his vehicle.<sup>480</sup> He asked Mr Reid about it and Mr Reid told

<sup>476</sup> Transcript, Alan Johnston, pg 55.

<sup>477</sup> Transcript, Peter Cremasco, pg 30.

<sup>478</sup> Transcript, Joe Dowde, pg 42.

<sup>479</sup> Transcript, Garry Reid, pg 77.

<sup>480</sup> Transcript, Joe Dowde, pg 14.

him that fresh scat was better for training purposes. He did not see when or where the scat was removed from the vehicle but he was aware the vehicle was transported back via the Spirit of Tasmania.<sup>481</sup>

- [924] He stated that he was aware that legitimate training scat was delivered to the FEP from Jirrahlinga Wildlife Sanctuary. He said a friend of Mr Reid's ran that facility and that Mr Reid's son worked there.
- [925] Mr Marrison stated that he was working at the Evandale market on an unknown date. He stated that Mr Reid's son approached him and told him that his father had a freezer full of scat at his home in the garage. Mr Marrison attempted to get more information out of him but Mr Reid's son appeared to realise he had said something he should not have and left. Mr Marrison states he reported the conversation to a number of staff including Mr Cremasco. He recalls the matter was deemed to be hearsay and no action was taken. Mr Marrison was unsure of the legal importation requirements of fox scat at the time.<sup>482</sup>
- [926] Mr Cremasco stated he heard rumours that Mr Reid was importing scats but never saw any evidence of this. He states the rumours went from whispers to straight out accusation by some staff. He says that he knew Mr Reid's son was working at the wildlife park in Victoria where fox scat was being obtained by the Program.<sup>483</sup> He states he was not aware of scat being in Mr Reid's fridge or freezer in his garage nor of being told that by any FEP officer.<sup>484</sup>
- [927] Mr Harrison stated he was aware of fox scat being imported from Barwon Heads for training purposes and believes it was sanctioned. He is not aware of Mr Reid bringing in fox scat and is not aware if Mr Reid has a freezer in his garage.<sup>485</sup>
- [928] Mr Johnson stated he was not aware of anything to suggest Mr Reid was bringing back fox positive scat into the state from Victoria or that he was keeping it in a freezer at his home garage. He states he never thought of having any scats tested for evidence of freezing.<sup>486</sup>
- [929] Mr Reid states that he has two freezers in his garage and has never stored scat in them.<sup>487</sup> He states he picked up fox scat in Victoria and used them to train his dog there. He states he never bought them back on the Spirit of Tasmania.<sup>488</sup> He stated he made the contacts and organised for fox scat to forward from the mainland for training purposes. He states his son had an affiliation with the Jirrahlinga Wildlife Sanctuary.<sup>489</sup> He states he has never received scat by post.<sup>490</sup>

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<sup>481</sup> Ibid, pg 28.

<sup>482</sup> Email from Matthew Marrison, 27 March 2017.

<sup>483</sup> Transcript, Peter Cremasco, pg 26.

<sup>484</sup> Ibid, pp 46–47.

<sup>485</sup> Transcript, Peter Harrison, pp 130–138.

<sup>486</sup> Transcript, Alan Johnston, pg 50–51.

<sup>487</sup> Transcript, Garry Reid, pg 62.

<sup>488</sup> Ibid, pg 53–54.

<sup>489</sup> Ibid, pg 55–56.

<sup>490</sup> Ibid, pg 58.

- [930] Dr Clive Marks states that some of the photographic images he has reviewed suggest that some of the scat had possible evidence of freezing. However he conceded the limitations of viewing only images. He states that part of his research looked at ways to store scats for later DNA extraction and analysis. He found that storage in a freezer would often result in the thawed specimen having a whitish clay-like appearance (almost glossy) that did not correspond to the sort of scats that are typically recovered from the field. He noted that some of the scats submitted by Mr Reid and Mr Harrison had an unusual appearance that was distinct from all others submitted by different FEP teams eg #6130 and #10309 (containing foam).<sup>491</sup>

### **Concerns regarding the transport of scats by Mr Reid**

- [931] Olivia Barnard was a dog handler with the FEP. She stated she had concerns about the number of fox positive scat being located by Mr Reid. She raised this several times with Mr Bester and Mr Cremasco.
- [932] She also stated she had specific concerns regarding several scats transported by Mr Reid. Ms Barnard located two scats at Spreyton on 23 June 2008 (#10377 and #10378). She firmly believes that they were dog scats despite her dog reacting to them. She retrieved and bagged (with staples) the scats as required at the time, and provided them to Mr Reid to transport to Prospect. There was no paperwork for handing over the exhibit or for signing it into the Prospect Office. Ms Barnard was surprised that they returned as fox positive and raised her concerns with Mr Bester. She states that she only had one year's experience with dog handling duties at the time and her concerns may have been dismissed. However she said that, as she gained more experience, her concern that the scats had been contaminated heightened.
- [933] Ms Barnard also raised concerns with her supervisors over fox positive scat being found at the Burnie Hospital area by Mr Reid. She states that she searched the same area on multiple occasions as a follow up to monitoring and investigations and her dogs never found fox positive scat but that Mr Reid had found scat within days of her searches. She stated this also occurred at a property at St Peters Pass (near Oatlands). When processes were strengthened, there was a noticeable reduction of fox positive scats located by Mr Reid and his dogs.<sup>492</sup>
- [934] Mr Reid recalled that three scats were found in one day. He stated that Ms Barnard was present and found one and that he had found two scats. He stated despite them coming back fox positive they could not have cross-contaminated. However he then said that perhaps they could have been contaminated as they were in the same box.<sup>493</sup>
- [935] Mr Bester states that Ms Barnard and Mr Cunningham expressed concerns to him over Mr Reid's detection of fox scats. He provided that information to Mr Cremasco who was dealing with it.<sup>494</sup>

<sup>491</sup> Email from Clive Marks, 17 May 2017.

<sup>492</sup> Statutory Declaration, Olivia Barnard and email, 18 April 2017.

<sup>493</sup> Transcript, Garry Reid, pp 74–75.

<sup>494</sup> Ibid, pg 47.

### Mr Reid handling live scat

- [936] Mr Reid stated that he never handled live scat. He states that was the role assigned to the investigator. He said that he handled training scat for the purpose of training his dog however that those scats were checked out/in by other staff and were destroyed when the training was complete.<sup>495</sup>
- [937] Dockets for all fox positive scats show Mr Reid is not ever recorded as the sole collector.
- [938] Mr Harrison recalls one occasion where Mr Reid tipped out a scat out of a bag near the office to show someone.<sup>496</sup>
- [939] There is evidence that Mr Reid handled and transported scat on many occasions as previously outlined.

### Missing training scat

- [940] The first extensive audit of fox training scat was completed by Mr Cremasco in September 2010. That audit identified numerous issues with scat management and includes the identification of scat that was unaccounted for.<sup>497</sup> It is assumed these issues were present before 2010. More rigorous protocols were established in 2010-2011, however the 2011 audit also detected similar issues. Audits conducted after this time showed the majority of those issues appeared to have resolved.<sup>498</sup>
- [941] There was always a possibility of training scat finding its way into the landscape, by accident or design. Records as to duty movement and locations of officers appear restricted to their personal diaries which cannot be accessed without individual permission. A review of travel logs, credit card sheets and other documentation has not assisted in identifying linkages between missing scat and live scat presentation in the landscape.
- [942] On 27 July 2011, Mr Reid was given seven fox scat that had been used in validation trials to return to the Prospect Office. They remained in his vehicle until 22 August 2011, when he said he removed them and put them in his garage. He was assigned to monitoring tasks until 7 October 2011 and then had two weeks leave. He states he cleaned his garage out and may have inadvertently burnt the scats. He states he merely forgot to return them. Mr Reid completed a statutory declaration in regard to the missing scat.<sup>499</sup>
- [943] Mr Elliott (who had since joined the Program) provided him with a written warning about the incident. An email was attached to his personnel file on 13 February 2012:

*The security and proper disposal of training scats is a critical issue for this Program that has attracted repeated public attention over the years. When procedures are not followed, the Program and the individual staff involved can face serious criticism. The loss of these scats also places a cloud over future evidence finds ... Staff within the*

<sup>495</sup> Garry Reid, ED5 response, 3 March 2017.

<sup>496</sup> Transcript, Peter Harrison, pg 149.

<sup>497</sup> Peter Cremasco, Scat Audit 2010.

<sup>498</sup> Jodie Elmer, Scat Audit from 2011.

<sup>499</sup> Statutory declaration, Garry Reid, 20 December 2011.

*FEP must ensure that these procedures are followed to ensure the Program is not unfairly criticised nor the reliability of future evidence finds questioned. Compliance with those procedures protects everyone and should ensure mistakes aren't made by accidentally introducing "foreign fox scats" into the environment.*

- [944] Mr Bester was copied into the above email however made no comment about this matter during his interview.
- [945] Mr Cremasco stated he was aware of Mr Reid being involved in some missing scat and believes Mr Elliott dealt with that. He said that Mr Elliott was aware of the previous issues with Mr Reid when he issued the warning. Mr Elliott stated he was not aware that Mr Reid had already been issued with a warning by Mr Johnston.<sup>500</sup>

### **Spreyton fox scat**

- [946] Mr McCarthy was a field officer with the FEP. He stated that there was an investigation into the report of a duck kill at Spreyton. Mr Harrison responded and located a scat that later was determined to be fox positive. When the test result was available, a large management response occurred with scat dogs and field searching for evidence as well as other regular responses.
- [947] Over the next few months, several pieces of evidence were located in and around that area. Mr McCarthy was informed by another FEP officer, Steven Douce, that Mr Douce was present and searching a property and found a carnivore scat on the side of a track. He was a new staff member and saw the dogs were in the area and stood back to watch what the dog would do. The dog went over to the scat, sniffed it and it immediately sat. He said Mr Reid was the dog handler and did not coerce the dog. The scat was analysed and was fox positive.
- [948] The search produced a number of fox positive scat and Mr McCarthy stated Mr Douce said it was dispersed in the manner you would expect to locate it if a fox was present. There was no media attention and fox sightings continued to be reported.<sup>501</sup>
- [949] The Scat Register lists:

Date	Scat #	Location	Collector	Other comments
21/2/2008	#5294	Hawley House Hawley Beach	Harrison	
19/3/2008	#6409	Spreyton	Appleby Douce	Located by a dog
7/5/2008	#5299	Spreyton	Harrison Reid	Located by a dog
7/5/2008	#5300	Spreyton	Harrison Reid	Located by a dog

<sup>500</sup> Transcript, Craig Elliott, pg 49.

<sup>501</sup> Telephone conversation with Robert McCarthy, 23 June 2017.

Date	Scat #	Location	Collector	Other comments
23/6/2008	#10377	Spreyton	McCarthy Barnard	Located by a dog
23/6/2008	#10378	Spreyton	McCarthy Barnard	Located by a dog

- [950] The Sightings Register does not list the duck kill. It does list four credible fox sightings between March and June in the Spreyton area.

### Re-testing of scat

- [951] Mr Reid stated during his interview that there were occasions where three dogs 'sat' on a scat and that was a very good indication that it was fox positive. He states that he asked for the scat to be re-tested again or even a third time before it came back fox positive. He said he didn't seek an explanation.<sup>502</sup>
- [952] Mr McCarthy stated negative fox scat was re-tested on occasion and the result would change from negative to positive when extra dilution was used in the testing process.
- [953] The Scat Register shows that scat #4379 was '*re-tested in 2011 using a higher dilution (1 in 80) - scat was found to be fox positive*'. The entry states it was located by Mr McCarthy and Mr Reid, identified by a dog and that two other dogs were hesitant to sit at the scat. This is the only such entry in the data base.<sup>503</sup>
- [954] The DPIPWE website cites the following:

*Spreyton (1)*

*Scat was collected near Spreyton on 26 February 2010 during investigations in the area (with scat detector dog support) in response to a fox sighting report received from a member of the public.*

*Spreyton is located on Tasmania's north west coast approximately 4 km from the Devonport CBD.*

*The scat received a "sit" response from the detector dog on site and all detector dogs reacted to the scat during screening for analysis prioritisation. Initial testing of the scat detected no mammalian DNA in the sample. However, subsequent to this analysis a refinement of DNA analysis procedures was made as a result of work undertaken during analysis of scats in the Scat Degradation Study (refer "Eradicate" Issues 2 and 4). In light of the strength of detector dog response to this particular scat a re-test was requested using the enhanced procedure (altered dilution of samples). Re-testing of the sample produced a fox DNA positive result.*

*The release of this result was delayed while the opportunities provided by this development in analytical procedure were being assessed. To date, approximately 20% of scats collected and analysed have returned a 'no mammalian DNA detected'*

<sup>502</sup> Transcript, Garry Reid, pp 61–62.

<sup>503</sup> Scat Register.



result via the earlier analysis procedure. Retesting is now planned for scats from two specific categories that have returned 'no mammalian DNA detected results':

*samples collected from non-core fox habitat; and,*

*samples collected during post-bait monitoring behind baiting fronts.*

*The current scat was collected from identified core fox habitat. Six (6) other fox positive scats have been collected in the Spreyton area (all collected between October 2007 and June 2008). Genotyping analysis has identified two individual foxes in this sample (one male and one animal of indeterminate sex). Attempts to genotype the current scat are ongoing.<sup>504</sup>*

### **Management of Mr Reid**

[955] There is evidence to suggest that other FEP staff were frustrated at what they observed to be inaction on issues involving Mr Reid and that information was not shared between management levels.

[956] There is evidence there was some response by management, but that it focused on testing validation and process, rather than Mr Reid's processes and behaviour. This was a disservice to Mr Reid as it may otherwise have provided him an opportunity to display integrity and reduce being the subject of allegations and rumour.

[957] During his interview, Mr Johnston appeared to downplay issues involving Mr Reid. Mr Cremasco and Mr Bester appeared unaware of some aspects of contact with Mr Johnston. Mr Johnston conceded he did not like and would avoid conflict:

*I guess it's a fair statement to say that I prefer to avoid conflict but to me that's not the same as saying that I wouldn't be prepared to take action if some of these things that have been mentioned here were brought to my attention and were able to be – not actually validated but at least, you know, raised a sufficient level of concern that they warranted some response.<sup>505</sup>*

[958] The threshold to investigate allegations or rumours appeared to be very high and as a result, evidence and information was not uncovered:

*In the absence of I suppose compelling information to tell you that something is really happening rather than just some speculation, you know, which often used to be in the media or on the radio or whatever, stories about people planting scats, unless there is something compelling, you know, and you've got what you hope are robust protocols, you know, I guess unless you've got something compelling telling you otherwise, you have to work on the assumption that these things are real and, you know, we were bombarded through all sorts of media situations with sort of accusations that this stuff was going on so, I mean we couldn't but be aware of the possibilities ... I suppose*

<sup>504</sup> <http://dpi.pwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011#FoxEvidence2010>

<sup>505</sup> Transcript, Alan Johnston, pp 56–57.

*we've got to think about what we were using this information for. We'd been given a task to eradicate foxes in Tasmania so we needed tools to help us do that.*<sup>506</sup>

[959] Mr Cremasco was asked about the management of Mr Reid. He stated that, '*in terms of performance management or disciplinary action for those kind of things we were slack*'.<sup>507</sup>

[960] When asked if timely disciplinary action would have changed the behaviour, he said:

*I don't know, and that's one reason why after the Garry backdating the signature thing, I actually wanted to take it further and make a serious example of it, basically and pull him out of the paddock only going out on dog stuff, knowing that (1), it'd hurt him but, (2) also, you know, it was one way of going, "We mean business here, just get on board with the program".*<sup>508</sup>

[961] When asked why, Mr Cremasco stated it was to protect the Program:

*You want to be able to have people doing the right thing and the more shoddy the work that gets done, the more doubt there's cast on the whole thing. Now, plus by doing that one and tightening things up you also test whether some of the evidence that's coming through has been the result of negligence or at best sloppy handling procedures or wilful planting or manipulation.*<sup>509</sup>

### **Analysis of evidence**

[962] Mr Reid was employed as a dog handler in 2007 and returned to employment within Water Compliance at the end of his contract in 2014.

[963] Mr Reid located a high proportion of the fox positive scats located by dog handlers. He located the largest number of fox positive scats of any person on the Program.

[964] The allegation is that Mr Reid fabricated evidence by planting scat imported from the mainland into the Tasmanian landscape. There is no direct evidence that Mr Reid did this. However there are a number of matters which in combination provide evidence to suggest Mr Reid may have fabricated this evidence. The evidence is circumstantial and relies on the detection level of fox positive scats.

[965] On the available evidence, it is known that Mr Reid located:

- a large number of fox positive scats compared to other staff, including dog handlers
- all fox positive scats in the FEP that contained sufficient DNA to identify an individual animal, and
- all fox scats in the FEP that contained fox grooming hair.

<sup>506</sup> Ibid, pg 49.

<sup>507</sup> Transcript, Peter Cremasco, pp 40–42.

<sup>508</sup> Ibid.

<sup>509</sup> Ibid.

[966] In addition, there is evidence that Mr Reid:

- located two fox positive scats with similar artificial content, being foam that appears to originate from a leghold trap. These traps were generally not used in Tasmania. They are used extensively on the mainland and by the providers of fox training scat to the Program.
- was observed to collect scat in Victoria and made the comment that fresh scat is better than frozen
- reported the loss of scat that had been kept in his garage, where he had freezers and there was a suggestion from a different source that he kept scat in his garage that was being posted from the mainland
- was observed to coerce his dog to sit in suspicious circumstances
- cannot be excluded from the simple process of dropping fox scat onto the ground during dog runs, and
- transported some scat that was analysed as fox positive in circumstances where the collector was not convinced of the result.

[967] More broadly, there is evidence that Mr Reid:

- was involved in data entry issues in the training scat register
- had entries linked to him that revealed unaccounted scat in the 2010 Audit, and
- has a son who was working at a location that provided the fox scat.

[968] It is noted that Mr Reid was present at the location where the fox positive scat was located at Bruny Island in the days before the find. This was volunteered by him, however is matter of mere interest due to its coincidental nature.

[969] There is also evidence of other explanations for the anomalies found in the scat dispersal:

- The majority of fox positive scats were located on the north west coast. This was an area that Mr Reid frequented. It was reported as a hotspot for sightings and evidence. A basic snapshot comparative analysis of sight and evidence reporting on the Natural Values Atlas (NVA) for the time period 1 October 2007 to 31 December 2009 show a similar reporting result (north west 197, north to Oatlands 208).
- Mr Reid's dog was a better performer at locating fox positive scats. However there is contradictory evidence on this point.
- Mr Reid and Mr Harrison deployed systematic searches of investigation locations, leading to a higher detection rate of fox positive scat. This may well have been true but there is no evidence other staff did not use these. Most FEP officers stated they searched around landmarks and adhered to standing operating procedure.
- Mr Harrison stated that he deployed to an area as soon as possible after a sighting, thus increasing his opportunity to locate evidence. The degradation trials show a scat can be detected at 100% for 90 days after deposit in the landscape.

- Detection of accidental training or trial scat in the landscape. Whilst this appears a possibility based on the evidence there were processes put in place to minimise this. Those processes would not have prevented Mr Reid accidentally or deliberately leaving training scat in the environment and then later locating it.
- Contamination could occur by accident or intention. There was opportunity for this to occur with several scats being located and transported together. Contamination could have occurred from a range of sources. It was an ongoing concern for many staff and the risks associated with contamination during laboratory testing was raised with the Technical Advisory Panel by Stephen Sarre on several occasions eg June 2007, December 2007. Accidental contamination would appear to need to be quite extensive to be effective and rise above the detection threshold of the testing. Deliberate contamination could be effective. Contamination would not exclude those containing fox grooming hair.
- DNA testing may have resulted in false fox positive scats being identified. The University of Canberra stated that their testing regime had high accuracy (99.6%). However the testing was by design more likely to produce false negative than false positive results. Total scats recorded on the database is 12,886 and for the period 1/10/2007–31/12/2009 is 8288. The reported error rate would generally apply to 51 scats against the total number of scats and 33 against the restricted time period. These numbers are within the specifications of the expected error rate. However, in the case of Mr Reid it appears that the false fox positive is not an overriding influence. Mr Reid located scat with fox grooming hair, making it highly likely to originate from a fox. In addition, he located all scat that had sufficient DNA to identify an individual fox and gender, making it highly likely to originate from a fox. No other FEP officer located a scat with fox grooming hair and with sufficient DNA to identify an individual fox during the period of the FEP (2007-2011).

[970] There is evidence to suggest that some of the scat dispersal anomalies are closely linked to Mr Reid. In combination the evidence is strong and is strengthened by other surrounding circumstances and concerns.

[971] There are other explanations which reduce the strength of evidence against Mr Reid and in combination provide some hypothesis of innocence. Those explanations hold various degrees of evidentiary strength. Mr McCarthy has provided third-hand information about Mr Reid's dog at Spreyton that (if correct) would support the north-west being a legitimate hot spot, that Mr Reid could not have put the scat into the landscape, and that his dog was not coerced. This could reduce the weight of the data supporting a disproportionately high detection rate of detection by Mr Reid.

[972] In summary, there is no direct evidence that Mr Reid fabricated or falsified scat evidence that would reflect that a live fox was in the Tasmanian environment. There is, however, circumstantial evidence that suggests Mr Reid may have fabricated or falsified such evidence.

[973] Mr Reid resigned from the State Service during this investigation.

## Findings

**It is possible that Mr Reid fabricated or falsified evidence by placing fox scat into the landscape. However the strength of the available evidence is not sufficient to make a conclusive finding on this issue.**

### **14.3. FEP officers fabricated evidence by planting fox positive scat into the Tasmanian landscape: Peter Harrison**

- [974] Mr Harrison was employed as a field officer and investigator in the Program, initially with FFT from 2004 and FEP from 2007 until he concluded with DPIPWE in 2014. Prior to this employment he was at the Land Care Association.
- [975] Over the course of the Program, Mr Harrison located a total of 285 scats.
- [976] During 10 October 2006–14 June 2011, 21 fox positive scats were located. The majority were located in the presence of Mr Harrison with Mr Reid and his dog.<sup>510</sup> Mr Harrison was present when nine of the 14 fox positive scats were located where there was sufficient DNA to genotype an individual animal.
- [977] In the time period comparative to Mr Reid (26 July 2007–26 July 2010) Mr Harrison located 16 fox positive scats, of which 14 were with Mr Reid.
- [978] Mr Harrison was present when all fox positive scat that contained fox grooming hair were located. He was present when both fox positive scats that contained foam were located.
- [979] Considering all 33 FEP staff that located fox positive scat during the period 26 July 2007 – 26 July 2010, the following employees were involved in locating more than two fox positive detections:

<b>Employee</b> (first or second collector)	<b>No.</b>	<b>Percentage</b>
Reid	25	48%
Harrison	15	28%
Barnard	5	9%
Rainbird	4	8%
McConnell	3	6%
Benjamin	3	6%
Fearn	3	6%
Strie	3	6%

### **Evidence of Peter Harrison**

- [980] Mr Harrison said the high rate of detection was due to Mr Reid being conscientious and reliable, proud of his job and good with his dogs. He said Mr Reid had an excellent dog and allowed his dog to run loose, and that he researched and used

<sup>510</sup> Scat Register.

search procedures to maximise the location of positive scat. He said Mr Reid received the investigation information and went straight to the scene so as to be better able to find evidence.<sup>511</sup>

- [981] He stated he wouldn't be with Mr Reid and the dog the entire time they were searching and might call Mr Reid over to his location in order for the dog to check a scat. There was little opportunity for contamination and Mr Reid was of the belief that protocols were changed as a result of a complaint by him in regards to contamination issues.<sup>512</sup>
- [982] When asked if he had ever been spoken to about his scat collections or anomalies he said that in 2013 he had received some scat from a PWS officer who was investigating some birds that had been killed. There was an issue, of which he was not clear, and he was referred to the Standing Operating Procedures in relation to the collection of scat.<sup>513</sup>
- [983] He described an incident where he was called into Mr Cremasco's office about an allegation made by Mr Fearn. He does not remember details but states his integrity was questioned and that he was very upset about it. He conceded he may have referred to legal advice. He also spoke to Mr Johnston about it.<sup>514</sup>
- [984] He said that he observed Mr Reid place scat into the environment during detection trials and during dog training. He does not suspect any training scat got into the live scat mix. He states he never saw any suspicious behaviour by Mr Reid, but conceded he didn't watch him all the time and that Mr Reid would have had the opportunity to put fox scat into the live environment. If he had any suspicions about Mr Reid he would have said something.<sup>515</sup>
- [985] Mr Harrison could not recall any 'major issue' or 'big deal' being made of the scat anomalies, nor any direction about not working with Mr Reid.<sup>516</sup>
- [986] He was aware of Mr Reid's son working at a wildlife park.
- [987] Mr Harrison stated he was not aware how Mr Reid's dog performed at validation, that there were no fox positive scat located after the protocols were increased, that foam was located in two scats, or of leghold traps being used in the environment. He thought that the foam may have come from traps used at the tip at Spreyton and Burnie, but conceded he was familiar with those areas and had never seen them used.<sup>517</sup>

### Other evidence

- [988] Mr Bester stated that Mr Harrison was brought before Mr Johnston and Mr Cremasco in regards to the scats: *'I think it sort of goes a bit hand in hand ... because they work*

<sup>511</sup> Transcript, Peter Harrison, pp 59, 111–112, 127, 139.

<sup>512</sup> Ibid, pp 68, 73–76, 87, 89.

<sup>513</sup> Ibid, pp 103–106.

<sup>514</sup> Ibid, pg 108.

<sup>515</sup> Ibid, pp 115, 119, 123, 150.

<sup>516</sup> Ibid, pg 129.

<sup>517</sup> Ibid, pp 85, 115, 136, 143, 147.

*together a fair (bit)*'. The direction not to work together came at that meeting. He recalls Mr Harrison being annoyed at the whole scenario.<sup>518</sup>

- [989] Mr Cremasco recalled speaking with Mr Harrison about issues and perceptions in the Program. He stated he wanted to split the two officers without making allegations and 'sold' it to Mr Harrison as a way to expose Mr Reid's dog's skills across the State. He stated there was resistance from Mr Harrison as the two officers liked to work together. He recalls Mr Harrison saying he wanted to lodge a complaint about it.
- [990] Mr Cremasco could not explain why no record was made of this nor why there was no mention in Mr Harrison's performance review.<sup>519</sup>

### **Analysis of evidence**

- [991] The main evidence is circumstantial and relies on the detection level of fox positive scats.
- [992] Mr Harrison located:
- a large number of fox positive scats compared to other staff
  - nearly all fox positive scats that contained sufficient DNA to identify an individual animal
  - all fox scats that contained fox grooming hair, and
  - two fox positive scats with similar artificial content, being foam that appears to originate from a leghold trap.
- [993] There appear no other circumstances to provide weight to any suspicious or inappropriate conduct by Mr Harrison. There is no suggestion of contamination or training scat being left behind by Mr Harrison, either accidentally or deliberately.
- [994] Some of the possible explanations considered earlier for Mr Reid have application to Mr Harrison. In most cases it was Mr Reid's dog that located the scat. It is evident from his interview that Mr Harrison was aware of contamination issues and adopted protocols for evidence management. It is also possible that DNA testing errors could account for several of Mr Harrison's fox positive scats which were subjected to re-testing (#809, #814 and #5299).
- [995] Most staff provided opinions that Mr Harrison wouldn't be involved in anything untoward and there is no apparent motivation for fabricating evidence in this manner.
- [996] It is likely that Mr Harrison is suspected of being involved merely by his presence at the locations of the fox positive scats. Mr Harrison located the last fox positive scat, without Mr Reid on 14 June 2011 at Railton.<sup>520</sup>
- [997] However a relevant concern is whether Mr Harrison suspected that Mr Reid may have been fabricating evidence.

<sup>518</sup> Transcript, Craig Bester, pp 41–42.

<sup>519</sup> Transcript, Peter Cremasco, pp 25, 38.

<sup>520</sup> Scat Register.

- [998] Mr Harrison states he never saw Mr Reid coerce his dog to sit or saw any behaviour that was suspicious and that if he had he would have reported it. There is no evidence that would suggest Mr Harrison had any knowledge of what was potentially occurring.
- [999] There is no direct evidence that supports a finding, on the balance of probabilities, that Mr Harrison was involved in the fabrication of evidence by placing fox positive scat into the Tasmanian landscape.

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### **Findings**

**There is no conclusive evidence that Mr Harrison fabricated or falsified evidence by placing fox scat into the landscape.**

#### **14.4. FEP officers fabricated evidence by planting fox positive scat into the Tasmanian landscape: Robert Gubiana**

- [1000] Mr Gubiana was named as a person of interest in relation to fabrication of evidence by planting scat in the 2016 Tasmania Police Report. The origin of that information is not known.<sup>521</sup>
- [1001] Mr Johnston stated that he could not recall any relevant matter regarding Mr Gubiana.<sup>522</sup> The Commission's investigation has identified no further evidence or information in relation to this issue.
- [1002] Mr Gubiana is believed to be residing overseas and has not been contacted.

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### **Findings**

**There is no evidence that Mr Gubiani fabricated or falsified evidence by placing fox scat into the landscape**

#### **14.5. Other issues, concerns and coincidences**

##### **Evidence that DNA testing of fox positive scats was unreliable**

- [1003] Fox positive scat data was used to provide a practical monitoring and investigative tool to the FEP to inform their management actions. The allegation that the testing process was flawed was derived from research undertaken to explore anomalies being detected in fox positive scat dispersal throughout the State.
- [1004] The University of Canberra undertook DNA analysis of the scat being collected. In total, there were 61 fox positive scats detected.
- [1005] The spatial dispersion of the fox positive scats appeared to show anomalies. Fox positive scats were identified in areas where there were no contemporary fox sightings and management action had revealed no other evidence of a fox. Fox positive scats located at Bruny Island and Murchison required a fox incursion across

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<sup>521</sup> McCreadie Report 2016, pg 45.

<sup>522</sup> Transcript, Alan Johnston, pg 34.



an established and significant water barrier. These patterns appear to be more evident of errors in the testing process resulting in false positive results.

- [1006] The University of Canberra stated that their testing regime had a high accuracy (99.6%). The testing was by design more likely to produce false negative than false positive results. The University conducted internal trials of scats of known origin and the results supported the reported error rate. The testing sample size exceeded 500 and no inconsistent results were detected.<sup>523</sup> DPIWE also conducted blind trials of known fox and non-fox scat, with no errors being detected. The testing sample size was 200.<sup>524</sup>
- [1007] In June 2009, Mr Fearn reported that there were irregularities in appearance and content of some of the fox positive scat. He nominated five that appeared to be non-carnivore scats.<sup>525</sup>
- [1008] By 13 May 2010, it appears these scats were re-tested by the University of Canberra, using the previously obtained DNA sample and an additional new extraction. The results were not comparative to the previously analysis for some scat, but the results were explained by contributing factors.<sup>526</sup>
- [1009] In July 2011, Mr Fearn submitted a report titled *Overview of Context and Reliability of DNA fox positive scats*.<sup>527</sup> He repeated his concerns about content and appearance of the scat and raised new concerns about error in testing, possible fabrication and contamination.<sup>528</sup>
- [1010] Professor Sarre's report in 2012 analysed the DNA fox positive results and attempted to build a predictive model of fox habitat suitability for the State. The report suggests that evidentiary data supports that the fox is widespread in northern and eastern Tasmania.

*The absolute number of foxes represented by our findings is unclear. DNA profiles have been obtained from 18 sources (scats, carcasses, skull) (MacDonald, Berry and Sarre unpublished data) with many scats not providing sufficient quality DNA to genotype at microsatellite loci. The genotypes so far obtained have been shown to represent individual genotypes, suggesting a minimum of 18 individuals present in Tasmania over the past 4 years. These include both males (sry - male-specific gene present) and females (sry absent). These data also suggest that the likelihood that two scats identified as fox will be from the same individual is low. This is most likely a function of large home ranges, high rates of scat degradation and low detection probability causing a low density of a specific individual's scats in any given area. The life expectancy of a fox scat in Tasmania is unknown.*<sup>529</sup>

<sup>523</sup> Berry Faecal DNA detection 2007.

<sup>524</sup> Telephone conversation with Candida Barclay, 6 June 2017.

<sup>525</sup> Fearn Evidence Catalogue 2009.

<sup>526</sup> University of Canberra, Letter to DPIWE, 13 May 2010.

<sup>527</sup> Fearn Scat DNA report 2011.

<sup>528</sup> Ibid.

<sup>529</sup> Sarre Report 2012.

- [1011] The Gonclaves Report in 2014 (co-authored by Dr Marks) reports on independent laboratory trials to attempt to replicate Professor Sarre's fox scat DNA testing processes. The results suggested a high probability of generating false positives from that test.<sup>530</sup>
- [1012] The University of Canberra stood by their results and stated the testing process was not replicated. The researchers tested only the first phase (PCR screening) of the DNA-based test applied at the University of Canberra, and did not include the second (sequencing) step of their analysis. This second step is critical to the test outcome, with no scat collected in Tasmania considered to contain fox DNA without a clear sequencing result.<sup>531</sup>
- [1013] In a response to Professor Sarre, Dr Marks stated that they did not replicate the second stage of the testing process as they did not have sufficient information to do so, and that they had requested the information on numerous occasions.<sup>532</sup>
- [1014] Mr Kitchell (in 2013) noted '*concern expressed about the accuracy of the DNA scat analysis ...*'.<sup>533</sup> He recommended that an independent forensic laboratory be commissioned to review the efficacy of the University of Canberra's DNA analysis and field practices in collecting, handling and storing scats.
- [1015] In early 2017, the British Ecological Society placed an expression of concern over Dr Sarre's 2012 article published in the Journal of Applied Ecology.

### ***Analysis of evidence***

- [1016] Both Professor Sarre and Dr Marks have been spoken to at length over the testing process and the concerns.
- [1017] Professor Sarre states that science is never 100% and there is an error rate in his testing. Professor Sarre can only give providence to the part of the process that occurs in his laboratory. His staff did not locate, collect, store or transport the scat. He only has control over the product upon its arrival at his facility.
- [1018] Dr Marks stated he is raising these issues to ensure the testing process is sound given it drove the Program's focus.
- [1019] Both parties present reasonable and objective perspectives. Each of them conceded matters, and were credible in their information and approach.
- [1020] The providence of the DNA evidence is important. It is important for Mr Reid (one of the dog handlers), for the integrity of the FEP, for allegations of misrepresentation and perhaps even more so for the management of any future incursion of fox. It is not unreasonable for an initial response to a fox positive DNA scat to be precautionary, whether there may be a possible error or not. If there is no corroborative contemporary evidence, then all possible explanations should be explored and documented. This will ensure the validation and transparency of the Program.

<sup>530</sup> Goncalves Report 2014.

<sup>531</sup> Sarre: Goncalves Response 2014.

<sup>532</sup> Goncalves: Sarre Response 2014.

<sup>533</sup> Kitchell Report, p 15.

[1021] Technical issues surrounding the DNA testing are not able to be resolved by the Commission.

## **Anomalies within scat morphology and location**

### **1 Bruny Island scat**

[1022] On 21 May 2009, a fox positive scat was located on north Bruny Island. It was located during Phase 2 of the Strategic Monitoring Phase by FEP officers.<sup>534</sup>

#### ***Evidence of Garry Reid***

[1023] Mr Reid states:

*Dave (Cunningham), Olivia (Barnard) and I went to Bruny Island because someone said they'd seen a fox down there, so we went to Bruny Island and had a look and Dave and Olivia and I parked near an apple shed down there. This – I remember this so, so clear, all three of us put six dogs over that area, nothing was found. Now one dog could miss it, the dog will have a day off now ... we had two scat dogs each ... we said well for the bloody fox to get over there he's got to swim across, he's got to be a good swimmer, and we said, look there's nothing here. Well we came back and it was only a week, two weeks, three weeks, I don't know, where this fellow picked up two scats.*<sup>535</sup>

#### ***Evidence of Craig Bester***

[1024] Mr Bester stated he took the scat dogs through Bruny Island after the scat was found and never had a reaction.<sup>536</sup>

#### ***Evidence of Nick Mooney***

[1025] Mr Mooney nominated this scat as having a 'question mark' over it for him. He described it as an oddity, due to its location but that there had been reports of fox sightings there before and after the scat discovery.

[1026] He listed potential possible issues from contamination to GPS location errors. He stated:

*I have talked to the guy who collected that scat and he went through his processes and he was sure there wasn't a mistake but it still doesn't mean that there wasn't. There are lots of opportunities ... fox positive scat from Bruny Island is a weird result and perhaps it was a mistake in the lab that one but there are other opportunities for mistake. Perhaps a shooter from Bruny Island dumped a fox carcass after he had skinned it – there are still plenty of fox carcasses brought in by shooters, occasionally quarantine picks one up and something got eaten. But then I discussed that with the guy who does the analysis, Dr Stephen Sarre in Canberra and he said the interpretation of food in a scat as distinct from the producer of the scat – he was very*

<sup>534</sup> Scat Register.

<sup>535</sup> Transcript, Garry Reid, pp 13–14.

<sup>536</sup> Transcript, Craig Bester, pg 36.

*confident that he could tell the difference so he thought it was not food content but anyway, I am not that educated on those techniques so I can only take his word for it.*<sup>537</sup>

[1027] He completed an analysis of the process around this scat and concluded that one of three options was possible:

- issue between collection and the analysis result
- fabrication by planting the scat in the field, or
- there is a fox on Bruny Island.<sup>538</sup>

[1028] He reported 26 points in the process of managing that particular scat where there was a potential for an issue to occur. He believed it may have been as simple as a tagging error but stated that he assumed the testing process was sound. He recommended a 5-step process to reduce potential issues for every positive scat located. In essence, he recommended a comprehensive review of each of the 26 points for each fox positive result.

### ***Evidence of John McConnell***

[1029] Mr McConnell did not have any involvement on Bruny Island. However he stated:

*We went from an organisation that, I suppose you could say was a little bit too cloak and dagger, and no one knew what we were up to, but then we made ourselves very open to the public. So by advertising that you're going to have ... the great poo hunt, ... and notifying everybody what we were up to ... where we were going to be ... I was always felt it made us vulnerable for corruption ... for the wrong thing happening, or being setup, and to me, the Bruny Island didn't add up.*<sup>539</sup>

### ***Evidence of Robert Gaffney***

[1030] Mr Gaffney was a scientist with the FEP and was on the Technical Advisory Board.

[1031] He stated in regards to the Bruny Island fox positive scat:

*Alarm bells went off both within the research program but also ... the genetics lab in Canberra, and within the technical advisory panel ... we reviewed all of the data and said, "Well okay, can this be wrong?" ... and the answer was no ... we couldn't ... allocate any of that evidence towards ... a particular person or a particular incident was showing towards being skulduggery ... one of the reasons why the information was released at the time ... we couldn't rule it out.*<sup>540</sup>

[1032] Mr Gaffney was asked if there was any corroboration of foxes living on Bruny Island. He said there were rumours that someone had two foxes on the island and that one had died so the other was let go. He was unable to state the source of the information other than someone said something at a party once.<sup>541</sup>

<sup>537</sup> Transcript, Nick Mooney, pg 10.

<sup>538</sup> Nick Mooney, Undated letter.

<sup>539</sup> Transcript, John McConnell, pp 21–22.

<sup>540</sup> Transcript, Robert Gaffney, pg 6.

<sup>541</sup> Ibid, pg 23.

[1033] When asked if he could offer an explanation as to how one scat could come to be on Bruny Island without any other evidence or information, he stated:

*Well, that ... comes back to explanation; was it a false positive? ... Was it contamination? Was it an animal that has eaten, you know, let's say a raven that's eaten fox that would then still come up as being in a pellet? Was it skulduggery? Was it somebody else, as in skulduggery within the program? Or was it skulduggery from outside the program? ... I don't believe that anybody from outside the program could be bringing in – you know, the way the scats collection program was conducted you would need to bring in hundreds and hundreds and hundreds of scats. You would need to know where we were going to search: that information was kept confidential ... I don't believe somebody from the public would know that I was going to be there in that area and put out scat, because I might not walk over there, I might chose to walk over in that direction; in that 9km (search area).<sup>542</sup>*

[1034] When asked about a management response to the Bruny Island scat, he stated,

*I think it was after the Bruny Island fox ... the lock on the scat room was changed, and that was because we just found that ... there were too many people had access to the scat room. So they changed the lock; they changed the process within which to (access it).<sup>543</sup>*

[1035] He also stated there was blind testing done at the same time at the University of Canberra to check their results.

### **Evidence of Peter Cremasco**

[1036] Mr Cremasco said about this scat:

*Simon [Fearn] may have referred to something [about the Murdunna scat]. I don't recall any specific – anything aside from office chatter I suppose or individual chatter. It was the same with the Bruny Island scat where you come down to "well, no – we should (include it)", what, you know, people are going "we can't have that there" and my argument was "why not?" and I will still stick by that to this day. Why not? The same procedures that we applied everywhere else in the State were applied at Bruny. Just because it doesn't fit your preconception of what should happen, doesn't mean you chuck it out. I mean, give me a good reason why it should be chucked out and don't just say it is because it is on Bruny. It is awkward, make no mistake about that, but it is there.<sup>544</sup>*

### **Evidence from Natural Values Atlas**

[1037] A search of the NVA located a fox sighting at Bruny Island on 1 October 2005. One report was an observation of an animal crossing the road on South Bruny, from a distance of 50m. It was an adult animal and a healthy specimen, golden colour with a big bushy tail. The animal's gait was like that of a fox. The reporter stated that he traps foxes in Victoria.<sup>545</sup>

<sup>542</sup> Ibid, pg 24.

<sup>543</sup> Ibid, pg 28.

<sup>544</sup> Transcript, Peter Cremasco, pg 18.

<sup>545</sup> NVA: 1 January 2005 – 21 May 2010.

[1038] There were sightings recorded from August 2010, which coincided with an Information Session on foxes on the Island.

### ***Analysis of evidence***

[1039] The Bruny Island scat was an anomaly within the scat data. The scat was located on an island, with a significant water barrier and access restricted to a ferry. There were no contemporary fox sightings reported on the NVA before the scat was found. No corroboration of fox presence was located in the period of 12 months after the find.<sup>546</sup>

[1040] Most staff referred to this scat as concerning, given its location.

[1041] The University of Canberra stated that their testing regime had a high accuracy (99.6%). The testing was by design more likely to produce false negative than false positive results. The evidence suggests it is highly probable that this scat could be a false positive test.

[1042] The investigation notes the presence of Mr Reid near the location site of the fox positive scat several days before the find.

## **2 Murdunna scat**

[1043] On 28 April 2009, a fox positive scat was located at Murdunna (on the Tasman Peninsula). It was located during the Scat Collection Survey by FEP officers.<sup>547</sup> It was located on top of a sheep carcass.<sup>548</sup>

[1044] Mr Gaffney said this scat caused concern and was reviewed as part of the review process for the Bruny Island scat. He referred to it as the Nubeena scat.<sup>549</sup> The Commission received information from other FEP staff who noted concern with this scat, given its location.

### ***Evidence from Natural Values Atlas***

[1045] There were two reported sightings near Murdunna in 2002, and one sighting reported on 27 September 2009.

### ***Analysis of evidence***

[1046] The Murdunna scat was another anomaly within the scat data. This scat was located on a section of land with a significant water barrier and access restricted via the short bridge at Dunalley. There were no contemporary fox sightings reported on the NVA before the scat was found. Little corroboration of fox presence was located in the period of twelve months after the find.

[1047] The University of Canberra stated that their testing regime had a high accuracy (99.6%). The testing was by design more likely to produce false negative than false positive results. The evidence suggests it is highly probable that this scat could be a false positive test.

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<sup>546</sup> Scat Register.

<sup>547</sup> Scat Register.

<sup>548</sup> DPIPWE website.

<sup>549</sup> Transcript, Robert Gaffney, pg 5.

### 3 Foam located in scats

[1048] Mr Fearn identified two fox positive scats that contained similar artificial product, namely foam, during a scat content analysis. These scats were located in the northwest of Tasmania, 80km and six months apart. The same dog, dog handler and investigator located both scats.

[1049] The scats containing the foam are as follows:

No.	Scat No.	Date	Location	Method of detection
26	6130	16/6/08	Burnie	Dog
38	10309	16/12/08	Boat Harbour	Dog

[1050] The foam is the same colour and appears remarkably similar to foam that is used in the soft leg hold trap.<sup>550</sup> The traps are used just below ground level and a lure is often used to attract a fox. A foam pad is used to ensure dirt and stones did not slip underneath the pressure plate and interfere with the trigger mechanism. When caught foxes struggle, bend the trap and gnaw at anything to release them. It is not uncommon for the foam to be ingested as part of that process. The foam is not impregnated with palatable material such as drugs as it would interfere with the scent.

[1051] The foam found in the scats is round and the same shape as the pressure plate which the fox steps on to trigger the trap. Mr Gigliotti (a supplier of fox scat) confirmed that the traps and foam were being used by his trapper in 2008 and that he supplied the Department with fox scat at that time.<sup>551</sup> The foam is currently lodged at the QVMaG.

[1052] Soft leg hold traps were authorised for use in Tasmania, however no record could be located of actual deployment within the landscape. Training did occur for FEP staff, but they were not used as general deployment would have potentially trapped untargeted animals.

#### ***Evidence of Simon Fearn***

[1053] Mr Fearn completed the report that first raised the foam in the two scats.<sup>552</sup> In interview, he stated:

*I was pulling those scats apart looking for insect remains (and) I found 2 scats collected by Garry REID had both contained identical pieces of sponge rubber foam and they were full of fox grooming hairs, they were collected 6 months and 80 kilometres apart, and they both contained identical pieces of foam.*<sup>553</sup>

[1054] He stated he originally believed this may have come off bedding by foxes being held in captivity. He later learned about the leg hold traps.<sup>554</sup>

<sup>550</sup> Telephone call to Frank Gigliotti, 15 May 2017.

<sup>551</sup> Ibid.

<sup>552</sup> Fearn Scat DNA Report 2011.

<sup>553</sup> Transcript, Simon Fearn, pp 9, 42.

<sup>554</sup> Telephone call from Simon Fearn, 20 June 2017.

[1055] Mr Fearn stated that he found one other scat with artificial material in in. This was scat #2718 located at Aberdeen by Carlos de Sancha and it contained a large piece of plastic.

#### ***Evidence of Craig Bester***

[1056] Mr Bester stated he was aware of this evidence. He stated it could be explained if it came from a fox in captivity or that foxes were renowned scavengers who would eat anything. He stated foxes had been known to eat plastic, but conceded that had not been the case in Tasmania as no other artificial content had been found in other scats.<sup>555</sup>

#### ***Evidence of Nick Mooney***

[1057] Mr Mooney stated these traps were designed to target an individual animal, and that they would require a permit and servicing. They were not routinely used in Tasmania to his knowledge due to potential non-target captures, and he had never seen one in operation in Tasmania.<sup>556</sup>

#### ***Evidence of Peter Harrison***

[1058] Mr Harrison stated he was unaware of foam being located in any scat. He stated that he was trained in soft leg hold traps at Prospect but had never used them nor knew of any that were deployed in Tasmania. He thought that Burnie Tip may have used them, but conceded he had never seen any.<sup>557</sup>

#### ***Evidence of Robert Gaffney***

[1059] Mr Gaffney states he is only aware of the foam product being located in the scats due to the 2011 Fearn Report. He said however that *'there have always been rumours ... as far as I was aware there was nothing that could be actually pinned down on any particular person at any particular time ...'*<sup>558</sup>

#### ***Evidence of Garry Reid***

[1060] Mr Reid located both scats. He stated in relation to #10309 (located at Boat Harbour) that

*There was just a number of them that just didn't seem to add up, you know, that they were fox scats, you know, they just didn't seem to add up, because fox will do more than one little scat, they do two or three together and they usually join together and – like the ones at Boat Harbour, they were a bit suss but I didn't think any more about them, Peter just collected them and we sent them off ... there was a hole in the fence and the, you know, and the dog just walked across and sort of kinda smelt it so we picked it up and it came back as positive.*<sup>559</sup>

<sup>555</sup> Transcript, Craig Bester, pg 38.

<sup>556</sup> Transcript, Nick Mooney, pg 4.

<sup>557</sup> Transcript, Peter Harrison, pp 145–146.

<sup>558</sup> Transcript, Robert Gaffney, pp 33–34.

<sup>559</sup> Transcript, Garry Reid, pg 17.



[1061] He stated he had seen photographs of the foam but that he didn't know the location where the scat was found, and speculated that it may have come from a tip area.<sup>560</sup>

#### ***Evidence of Bob Harwood***

[1062] Mr Harwood is the team leader of the Burnie Waste Station. He has held that position for 15 years.

[1063] He states there was a landfill facility in Burnie in 2008. At no time did Burnie Council ever deploy soft leg hold traps. He states the Program went through the Burnie tip area several times over the years and put in cameras but to his knowledge, no evidence of foxes was located.<sup>561</sup>

#### ***Evidence of Jonathon Linden***

[1064] Mr Linden is the Manager, Asset Services at Burnie Council. He has held that position for some years. He states there is and was no landfill facility in or near Boat Harbour and their waste was transferred to Circular Head in 2008. He is not aware of any occasion where the council ever deployed soft leg hold traps in general.<sup>562</sup>

#### ***Evidence of Alan Johnston***

[1065] Mr Johnston stated he was aware of the scat containing foam:

*It's sort of one of these things of concern and a lot of discussion took place around that and it's, you know, it's one of these things you can fall either way. I mean the suggestion was that that's proof that it was a scat that had been wrapped in polystyrene or something or other and posted in the mail or whatever but equally, you know, again this is the, I suppose, the level of knowledge I had about it and the level of knowledge I think that the program had about it through that period of time, it could equally have been just evidence that it was a fox that had been scavenging in a rubbish bin.*<sup>563</sup>

[1066] He stated he had not heard of a link to foam in a leg hold trap but rather the suggestion to him it was contamination from packaging.

[1067] He stated that the information about the foam in the scats was originally obtained from the Fearn Report 2011 and the issue was put before the Technical Advisory Panel.<sup>564</sup>

#### ***Evidence of Frank Gigliotti***

[1068] Mr Gigliotti expressed some surprise as to the size of the foam piece in the scats.<sup>565</sup>

#### ***Evidence of Peter Cremasco***

[1069] Mr Cremasco stated he knew about the foam from the Fearn Report 2011.

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<sup>560</sup> Ibid, pg 28.

<sup>561</sup> Telephone conversation with Robert Harwood, 20 June 2017.

<sup>562</sup> Telephone conversation with Johnathon Linden, 20 June 2017.

<sup>563</sup> Transcript, Alan Johnston, pg 47.

<sup>564</sup> Transcript, Alan Johnston, pg 48.

<sup>565</sup> Telephone conversation with Frank Gigliotti, 15 May 2017.

[1070] He said that foxes are known to scavenge around tips and eat mattress foam and they are opportunistic hunters. He agreed there was abundant wildlife here, but stated that was also the case on the mainland. He said that he considered some aspects of the matter but didn't delve into it too deeply.<sup>566</sup> He suggested other artificial products were found in the scat and thought *'it was nothing out of the ordinary'*.<sup>567</sup>

[1071] He stated he considered sending it off for testing but the decision of the Project Leadership Team was *'the mind-frame at the time which was this is not – a criminal case, this is not. At what level do you go to investigate it?'*<sup>568</sup>

### **Analysis of evidence**

[1072] The in-situ photographs of the scat do not show any visible foam. The pieces of foam were identified inside the scats, during routine content analysis. The scats were determined to originate from two different female foxes. Scat #6130 was recorded on the scat docket as being 'fresh', while #10309 was recorded as being dry.

[1073] One scat originated from Boat Harbour and the other from Emu Heights, Burnie. The distance between each location is approximately 33km. The scats were located 6 months apart. There appears no evidence to suggest that these two pieces of foam have been tested to determine if they are from the same product.

[1074] Relevant literature on fox diet suggests they are opportunistic hunters that can scavenge in bins when living close to human habitation. The scat located in Emu Heights, Burnie was on the other side of the city to the Burnie tip. Boat Harbour does not have a landfill waste station. Only one other fox positive scat was located with artificial content (plastic in #2718 at Aberdeen).

[1075] The appearance of the foam is consistent between scats. There has been a suggestion made that they could even fit together, however there is no evidence this was attempted.

[1076] The available evidence suggests that, more probably than not, this foam is from a soft leg hold trap. While FEP officers were trained in use of the traps, there is no record of their deployment in Tasmania, including at the Burnie landfill waste station.

[1077] The evidence suggests that the foam has been ingested by a fox whilst under trap or in captivity, and that these scats were placed into the landscape with human intervention. There is no evidence or information that would implicate a civilian being responsible so suspicion may reasonably be attached to an FEP officer, namely the persons present and locating the scats.

[1078] This matter will be referred to in Part C.

<sup>566</sup> Transcript, Peter Cremasco, pp 29–32.

<sup>567</sup> Ibid, pg 33.

<sup>568</sup> Ibid.

#### 4 **Scat #6307**

[1079] On 17 March 2008, scat #6307 was located on a fence post, 1.2m off the ground. It was located by Mr Fearn and Mr Dowde at Conara (near Campbell Town) during strategic monitoring.

##### ***Evidence of Joe Dowde***

[1080] Mr Dowde recalls finding this scat. He believes it is a regurgitated deposit by an owl or a corvid pellet. He said, *'That was one of the things I brought up from cross-contamination. I believe that that had been cross-contaminated with a possible fox-positive scat somehow in the drying room because I don't believe that to be a fox scat'*.<sup>569</sup>

##### ***Evidence of Peter Cremasco***

[1081] Mr Cremasco said that the scat could have been from an owl that had eaten part of a fox or something with fox DNA in it. He questioned the sense in retrieving the sample: *'Now, why someone would have retrieved that from the top of a fence post, I have no idea, but they did'*.<sup>570</sup>

[1082] He agreed with the possibility of contamination and also thought it could be due to an error in testing.

##### ***Evidence from the Natural Values Atlas***

[1083] There were only three sightings reported in the 12-month period before 18 March 2008, in the area south of Epping Forest to south of Campbell Town. One was a call to a carcass on the roadway that was found to be a large ginger cat, and two others that appear of low value.<sup>571</sup>

##### ***Analysis of evidence***

[1084] Several officers referred to this scat as being difficult to reconcile as a legitimate fox scat. The underlying inference is that the scat may have been contaminated at some point, although there is no specific evidence that would lead to that conclusion. The alternative is that the DNA testing process was in error.

[1085] There is no allegation or suspicion that is levelled in this matter at an FEP officer in relation to fabrication of evidence. It was appropriate at the time to respond in accordance to the precautionary principle. However, there is sufficient concern for this scat to not be included in the evidence list without some appropriate caveat noting the concerns relating to it.

<sup>569</sup> Transcript, Joe Dowde, pg 47.

<sup>570</sup> Transcript, Peter Cremasco, pp 40–41.

<sup>571</sup> NVA.

## 5 Suspicious scats #10614 and #10616

[1086] Several staff referred to these scats as being of concern. The scats were located on 16 September 2009 at Supplie Road, Cygnet by Steve Locke and one other FEP officer in response to a fox sighting.

[1087] The scats were located near to the sighting by Phoebe Schrapel which occurred on 5 June 2009. Ms Schrapel reported that she saw an animal running across the road which she described as being orange in colour with black ears, bushy black tail and about the size of a small-medium sized dog. On 10 June 2009, Mr Locke spoke to her and arranged a date / time for a site visit. Three scats were picked up, a dog handler attended on 23 June 2009 and there were no 'sit' responses from the dog in the area.<sup>572</sup>

### **Evidence of Steve Locke**

[1088] Mr Locke said that he completed a search for scats on the properties surrounding the reported sighting location and picked up several scats for analysis. He recalls along the way he spoke to a resident of one of the properties who was a local farrier. The property owner had some knowledge of FEP operations and mentioned that he had, in the past, unsuccessfully applied for jobs with the Program.

[1089] Mr Locke found a scat at the exact location the fox reported by Ms Schrapel had run across the road. He subsequently found a scat within 5m of his vehicle. He stated that the scats were fox positive and commented that *'this was extremely surprising and in my view, very unlikely given that we found no other evidence elsewhere in the area'*.

[1090] He states he was further concerned when the hair analysis of one of the scats showed Bennett's wallaby hair. He states that species is rare in that particular area compared to the much more numerous pademelon. He recalls reporting his concerns to Mr Cremasco, Mr Mackay and Mr Fearn. He doesn't remember individual responses but generally there was an acknowledgement that the circumstances did seem like coincidences. He stated it was not clear if or how anything could have been fabricated and that no further investigation took place.<sup>573</sup>

### **Evidence from Natural Values Atlas**

[1091] There were no other sightings in the two years prior to this date; there were reports of fox smell and possible dens in the year to follow but none of the reports provided any further evidence.

### **Evidence of Mark Mackay**

[1092] Mr Mackay was the team leader in Hobart. He recalls the Cygnet scats. He states the find was *'pretty unusual, from that location'*.

[1093] He said he was tasked with putting in a baiting operation and it was the closest ever done to a town and he was concerned particularly for domestic animals.<sup>574</sup>

<sup>572</sup> NVA.

<sup>573</sup> Email from Steve Locke, 18 April 2017.

<sup>574</sup> Transcript, Mark Mackay, pg 59.

### **Evidence of Peter Cremasco**

[1094] Mr Cremasco stated he was concerned over these scats:

*It flagged it for me ... there was nothing apart from the fact that there were those bloody two scats there on their own from a sighting report. Now, did someone put them out there and then ring up ... having spoken to the investigator, I was a little bit suspicious in the actual locality and the landscape where they were found, it is almost like they were meant to be found.*<sup>575</sup>

### **Analysis of evidence**

[1095] Several staff referred to these scats as being anomalies within the scat finds. Mr Locke advised his supervisors who acknowledged this; however there appears to have been no investigation. It is difficult to determine the legitimacy of these scats. The underlying inference is that they may have been planted into the landscape by a civilian. There is no allegation or suspicion that is levelled at an FEP officer. Nearly all FEP officers involved with this scat raised concerns over its legitimacy.

[1096] There is insufficient evidence to determine this matter. It was appropriate at the time to respond in accordance with the precautionary principle. However, there is sufficient concern for these scats to not be included in the evidence list without some appropriate caveat noting the concerns relating to them.

### **FEP officer Carlos de Sancha was directed to fox positive scat by Peter Harrison**

[1097] On 23 August 2007, Mr de Sancha attended at a property at Aberdeen for strategic monitoring duties. He located a scat and recorded that it was suspicious on the exhibit docket. It was analysed and determined to be fox positive. There were rumours around the office that Mr de Sancha was directed to that scat by another FEP officer.

### **Evidence of Carlos de Sancha**

[1098] Mr De Sancha recalls collecting this scat. He states that recording the word 'suspicious' on the docket meant that he was suspicious it was a cat, dog or fox scat. He stated a review of other scat dockets would reveal similar wording.

[1099] He recalls the scat as having non-organic matter in it, which attracted his attention due to the renowned scavenging nature of foxes. He states he was never directed to the exact location of the scat, but was dispatched by his then supervisor Ken West to that general area, which was part of his allocated daily duties.<sup>576</sup>

### **Evidence of Peter Harrison**

[1100] Mr Harrison stated he was not aware of any allegations.<sup>577</sup>

<sup>575</sup> Transcript, Peter Cremasco, pg 36.

<sup>576</sup> Statutory Declaration, Carlos de Sancha, 20 April 2017.

<sup>577</sup> Transcript, Peter Harrison, pg 147.

### **Analysis of evidence**

[1101] The origin of this rumour is unable to be confirmed. No person interviewed raised this matter. Mr de Sancha stated this never occurred. Mr Fearn could not provide any further information when contacted.

[1102] There is no evidence available that Mr de Sancha was directed to a scat by any employee.

### **Mr Fearn was directed to amend his 2009 report into scat content**

[1103] In September 2009, Simon Fearn submitted a report on the invertebrate remains of all (then 39) DNA fox positive scats. The report states:

- no scat contained an endemic species from Tasmania or elsewhere
- 14 scats contained no insect remains
- 11 contained readily identifiable insect remains
- 5 were considered to be non-carnivore scats, and
- 9 contained secondary prey items such as ants.

[1104] The report was conceptualised by Mr Fearn and authorised by Mr Johnston. Mr Fearn said that the analysis was completed in response to issues being raised about anomalies in fox positive scat detection. The report was provided to Mr Johnston and Mr Johnston directed Mr Fearn to remove a section of the report. Mr Fearn stated that Mr Johnston specifically directed him to remove the section, Evidence of non-mammalian carnivore scats (pages 6-8). This section provided suggestions that some of the fox positive scat were more consistent with the appearance and content of bird pellets or other non-mammalian scats.<sup>578</sup>

### **Evidence of Simon Fearn**

[1105] Mr Fearn was retained on contract to complete a report. Mr Fearn said:

*The terms of reference for the report were for me to investigate the contents of scats- focussing on insect remains- to establish the identity and possible geographic origins of the insect remains in the fox DNA positive scats as identified by the Canberra based genetic researchers lead by Professor Stephen Sarre up to that time. Rumours of hoaxing of fox scats by one or more staff members had been circulating widely within the Fox Program. It was my suggestion to Alan Johnstone that one way of possibly identifying any mainland fox scats being placed in the evidence stream would be to identify any insect remains in the scats as a hoaxer would not be aware of what insect remains were present in a scat and that it might be possible to identify species of insect that were only known to occur on mainland Australia. Conversely, insects endemic to Tasmania might also be identified thus providing strong evidence that a particular scat originated in Tasmania.*<sup>579</sup>

[1106] This report was dated September 2009. It raised issues that some fox positive scat had all the characteristics of bird pellets and none of the characteristics of carnivore scats.

<sup>578</sup> Fearn Scat Content 2009.

<sup>579</sup> Email from Simon Fearn, 14 March 2017.

[1107] Mr Fearn provided the report to Mr Johnston in his office. Mr Johnston became upset after reading the report and returned it to him, directing him to remove any reference to the non-characteristic carnivore scat. He informed Mr Fearn that some staff would not understand the content and may misinterpret it.<sup>580</sup> Mr Fearn submitted a second version of the report.<sup>581</sup> He said:

*I was told to remove all the information about the scats that I didn't think were scats so the first part of the report just dealt with the insect remains that I found because the sample size was small, I suspect all the insects I found occurred both in Tasmania and South East mainland.*<sup>582</sup>

[1108] Mr Fearn stated his contract had concluded but that he was kept on by Mr Johnston to complete his work, due to growing concerns over issues with the fox positive scats.<sup>583</sup>

[1109] The area of the report that was removed raised concerns over scat:

- #809, #814 were likely to be bird pellets. Mr Fearn provided reasons including their appearance, the lack of fur and bones in their content and a lack of powdery substances usually observed on carnivore scats but absent in most bird pellets.
- #5299 was described as highly unusual and did not resemble a carnivore scat. It was composed entirely of cropped grass, with no powdery residue. There were two unidentified macropod (kangaroo family) hairs in it, which could have been grooming hairs.
- #5304 was described as highly unusual and did not resemble a carnivore scat. This was composed of mass of bone and desiccated tissue. The bone appeared to be entirely of frog and possibly snake. Bones still had muscle attached and there was no powdery residue. Frogs play a small role in the diet of foxes. It appeared to be the product of regurgitation from a snake.
- #6307 was described as highly unusual and did not resemble a carnivore scat. This scat was located on top of a 1.2m fence post, contained sheep wool and barley and had no powdery residue. Bird pellets often contain stock grain that was left on the ground and their scat is commonly found on fence posts. It also identified another insect that was not a usual item for fox consumption.
- #15089 contained a large insect with no tooth damage. He cited research as to the way foxes ate insects and noted tooth damage in other scats that had insect remains. It also contained a type of praying mantis that attaches itself to tree trunks and limbs off the ground and makes little noise to attract a fox. There was no literature located that this insect was ingested by foxes. It also resembled #809, #814.

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<sup>580</sup> Ibid.

<sup>581</sup> Fearn Scat Content 2009 (September version).

<sup>582</sup> Transcript, Simon Fearn, pg 7.

<sup>583</sup> Transcript, Simon Fearn, pg 18.

[1110] Mr Fearn stated he was concerned over whether the University of Canberra had been advised of the issues raised in his report.

[1111] He stated that the revised version of his report was placed on the intranet for staff to view at one stage.<sup>584</sup>

[1112] The excerpt that was removed from this 2009 Report, was later included in the 2011 Report by Mr Fearn, *Overview of context and reliability of DNA fox positive scats*.

### ***Evidence of Alan Johnston***

[1113] Mr Johnston stated he had some memory of the report, doesn't recall it being as formal as the example provided to him during his interview and that he would have passed it onto Mr Cremasco to manage. He does not recall asking Mr Fearn to remove any part of it.<sup>585</sup>

### ***Evidence of Peter Cremasco***

[1114] In relation to Mr Fearn and the review of scats, Mr Cremasco said:

*He's a good operator and came to end of contract, we knew there were going to be other contracts coming up, I wanted to hang onto him because he was one of the operators that I liked to keep ... for the purposes of doing entomology work on some of the scats as a bridging thing because I thought, well, it'd be good to get it done. There'd be so many questions about it and we hadn't really done anything.*

...

*The ongoing rumours that had been going around about some of the scats were owl pellets and all the other stuff and I thought ... go through the scats and see whether we could find either a specific Tasmanian insect remains or specific mainland insect remains which would help to give us an idea of whether we were looking at some serious hoaxing ... if they were specific mainland (insect remains) then you'd say okay, we have got some crap happening.<sup>586</sup>*

[1115] Mr Cremasco said he told Mr Fearn to remove parts of a later report (now identified to be in 2011). He confirmed that *'the driver for suggesting that the report be revised was due to my considered opinion that Simon had jumped to conclusions, hadn't given any thought or space to other plausible explanations, and the conclusions within the report did not appear objective ... [and that he] would never have asked for any references to the foam being removed, as they were reported facts. It was the conclusion that I suggested be amended. These reasons were explained to Simon at the time.'*<sup>587</sup> He stated that some of the conclusions reached by Mr Fearn went too far and were insinuating that some staff members had been involved in planting scat.<sup>588</sup>

<sup>584</sup> Email from Simon Fearn, 14 March 2017.

<sup>585</sup> Transcript, Alan Johnston, pp 52–53.

<sup>586</sup> Transcript, Peter Cremasco, pg 48.

<sup>587</sup> Peter Cremasco, Response to draft investigation report, 20 November 2017.

<sup>588</sup> Transcript, Peter Cremasco, pp 48–50.



### ***Evidence from University of Canberra***

[1116] On 13 May 2010, the University of Canberra notified the FEP that they had re-tested six fox positive scats, collected between 2006–2009 (#814, #809, #5304, #6307, #5299 and #15089). It was suggested that a subsequent physical examination of the scat and its content suggested that these scats were not of mammalian origin.

[1117] Testing involved:

- re-analysing the original DNA extraction, and
- new DNA extraction from the original sample.

[1118] #814 and #809 had used a Qiagen kit method, whilst the others used a new process using a chelex method. The new DNA extractions from the original samples used the chelex method.

[1119] The original DNA extraction showed a positive result to mammalian origin for all six scats, #814 and #809 showed weak amplification. Five scats showed the fox brand, however #5309 did not. The new DNA extraction showed a positive result to mammalian origin, #809, #5304, #6307 showing a weak amplification and three scats showing no fox brand, #814, #809, #6307. #5304 showed a weak result to the fox brand. #5299 and #15089 showed strong mammalian and fox brand results using both tests. Three scats were submitted to Phase 2 testing, being sequenced, and all returned fox positive results.

[1120] The conclusion was that fox positive DNA was found in three of the scats. The report indicated that the failure to detect fox DNA in the other three samples was likely due to the DNA being degraded over time to a point below the tests threshold for detection.<sup>589</sup>

### ***Analysis of evidence***

[1121] Mr Fearn stated that his contract with the FEP finished, but he was asked to continue in the role of a consultant. This is confirmed by Mr Cremasco. It is further supported by a three-month period that is not accounted for in his contact to the FEP (18 June – 28 September 2009). The date of his report is September 2009 and the terms of reference for the Report are, also generally, confirmed by Mr Cremasco. The report led to the re-testing of scat by the University of Canberra.

[1122] Mr Fearn was able to produce both versions of the report. DPIPWE also provided the unabridged report.

[1123] Mr Johnston stated he did not ask Mr Fearn to exclude parts of the Report. He viewed the report in order to assist his memory. Mr Johnston did refer to the report referencing foam, which is not contained in either of these two reports in 2009, but rather in the 2011 report. Mr Johnston had left the FEP in 2011 when that report was submitted.

[1124] Mr Cremasco appears confused about the difference between this and the 2011 report. There were numerous reports submitted by Mr Fearn. The components of the

<sup>589</sup> University of Canberra, Letter to DPIPWE, Scat re-testing, 13 May 2010.

report he recalls requesting Mr Fearn to remove material from relate to the 2011 report.

[1125] The evidence suggests that it is more probable than not that this report was submitted by Mr Fearn and that changes were requested and made to this document.

[1126] This matter will also be referred to in Part C, as it provides some evidence that the issue of scat anomalies was being raised in 2009.

**Staff were required to provide reports in draft format, in order to be immune from Freedom of Information requests**

[1127] There were concerns raised by FEP staff members that documents and reports were to be submitted in draft format to ensure they would be immune from public access under statutory provisions authorising the release of government documents.

[1128] This was a management response to numerous and increasing requests that were being made by persons outside of the FEP. Those person(s) were believed to be seeking information in order to draw negative inferences about the Program.

**Evidence of Simon Fearn**

[1129] Mr Fearn states that his 2009 report was required to be in draft form, while his 2011 report was to be provided only in hard copy.

[1130] He said that the 2009 report was to be provided in draft form to ensure it could not be accessed under the statutory access legislation. Mr Fearn stated that Mr Johnston told him this.<sup>590</sup>

[1131] He stated that Mr Elliott was unaware of his 2009 report and asked him to complete his overview of the DNA fox positive scats. He said Mr Elliott stated he would receive the report only in hard copy:

*I gave him the document ... he only wanted a hard copy, it was not to be entered into any paper trail – it was not even for anyone else to see, it was just to give him a briefing so that he could get his head around it ... I don't know what he did with that information, I gave him a comprehensive document with everything in it, every, every possible issue I could see with the evidence ... he was a man I found him to have a lot of integrity, he could see there was massive problems with the program ... how it was being run, he could see that staff were just out of control just running their own show ... he really did make an effort to, to get everyone on the same page, update all of the policies and procedures and SOPs to make people do their jobs properly.<sup>591</sup>*

**Evidence of Jodie Elmer**

[1132] Ms Elmer stated in response to a question of marking reports or documents as draft:

*I think that from the fox program perspective, a lot of things were kept in draft so that it could minimise Freedom of Information Act things being asked of just everything that we do all the time. They are – they were a draft – without getting people into trouble. I*

<sup>590</sup> Transcript, Simon Fearn, pg 18.

<sup>591</sup> Ibid, pg 26.

*don't know. But it was a thing of, you know, we get FOI'd every five minutes. Some things it's just – if you keep it in draft format, it's forever changing anyway, and being fixed up. But I think that came from quite high above. I don't think it came from our managers. I think it came from, like, general managers past and all of that'.<sup>592</sup>*

### **Evidence of Joe Dowde**

[1133] Mr Dowde stated in regards to the Fearn Report 2009: *'I believe it was kept in draft form because they didn't want it to go public or to be able to be accessed under Freedom of Information or RTI'.<sup>593</sup>*

### **Evidence of Peter Cremasco**

[1134] Mr Cremasco stated he couldn't recall specifics regarding directions to complete reports in draft form, but conceded most documents did end up in draft form.

[1135] The SOPs were found to be in draft form. When asked why, he stated they were in a state of continual flux and *'in hindsight just got to the stage of having them actually signed off as version one ... I can't think of any reason why they would have remained in draft all the time'*. He conceded it would be very difficult to discipline any staff employee, especially Mr Reid, should those procedures be retained in draft form. He stated the decision would have been Mr Johnston's and then his.<sup>594</sup>

### **Evidence of Alan Johnston**

[1136] Mr Johnston stated he had some memory of the Fearn Report 2009 but didn't recall it being as formal as the example provide to him during his interview, and that he would have passed it onto Mr Cremasco to manage. He does not recall informing Mr Fearn to put it in draft form.<sup>595</sup>

[1137] In regards to the premise of providing reports in draft form he states: *'I have no recollection of it. Again, my memory of how FOI operates is gone ...'.<sup>596</sup>*

### **Evidence of Craig Bester**

[1138] Mr Bester states he has no knowledge of reports being put in draft form to make them immune from RTI or FOI. He does state he recalls a report that Mr Fearn completed.<sup>597</sup>

### **Evidence of Nick Mooney**

[1139] Mr Mooney stated he was unaware of reports being requested in draft format.

[1140] He indicated that the Kinnear Report in 2003 was completed in several drafts. The purpose of this was to ensure the outcome of the report was achievable and appropriate to Tasmania. He states that he recalls senior management asking for the report to be altered on the basis that one recommendation was not achievable (aerial

<sup>592</sup> Transcript, Jodie Elmer, pg 51.

<sup>593</sup> Transcript, Joe Dowde, pg 52.

<sup>594</sup> Transcript, Peter Cremasco, pg 60.

<sup>595</sup> Transcript, Alan Johnston, pp 52–53.

<sup>596</sup> Ibid, pg 63.

<sup>597</sup> Transcript, Craig Bester, pg 61.

baiting) and to include the next best option (surface baiting). When asked why an independent reviewer's report would be sought to be changed, rather than added to, he explained that he believed the aerial baiting would result in a negative land owner response.<sup>598</sup>

### ***Evidence of Matt Marrison***

[1141] Mr Marrison said that FEP staff were advised by senior managers, at various times, *'that documents could be kept inaccessible from FOI/RTI legislation by marking them as 'Draft' but I was never sure if this was correct'*.<sup>599</sup>

### ***Evidence of Craig Elliott***

[1142] Mr Elliott said that, when he started with the Program (2011), there were a lot of procedures that were in draft that had never been finished. He stated he was unaware of the reason why, but conceded it would be difficult to enforce any provisions contained within a draft document.<sup>600</sup> He confirmed that he rejects entirely Mr Fearn's claim that Mr Fearn was directed by him to keep any document in draft or to only provide him with a 'hard' copy.<sup>601</sup>

### ***DPIPWE Reports***

[1143] The 2009 Fearn report provided by DPIPWE to Inspector McCreadie, in 2016, was marked to be in draft form.

[1144] It is noted that an Rtl request (063, 7 July 2016) sought the uncensored Fearn Report 2009 and that this was provided.<sup>602</sup>

### ***Other reports***

[1145] It is noted that:

- *Audit of Imported Fox Scats* (P Cremasco, 2010) is in draft form
- *Audit of Imported Fox Scats and Skins* (J Elmer, 2011-2012) is in draft form
- *Evidence of foxes in Tasmania: a catalogue of all FEP hard evidence* (S Fearn, 2009) is not in draft form
- *Caring for our Country Funding Proposal* (unknown, 2009-2010 to 2012-2013) is in draft form
- *Precautionary Broad Scale baiting Strategy for Optimal Fox Habitat in Tasmania* (2009) is in draft form
- *Standard Operating Procedures for the importation of fox products for training, monitoring or research activities* (2009) is in draft form

<sup>598</sup> Transcript, Nick Mooney, pp 70–72.

<sup>599</sup> Email from Matthew Marrison, 30 March 2017.

<sup>600</sup> Transcript, Craig Elliott, pp 24, 28.

<sup>601</sup> Craig Elliott, Response to draft investigation report, 21 November 2017.

<sup>602</sup> McCreadie Report 2016, pg 47.

***Analysis of evidence***

- [1146] Mr Fearn was confident that his 2009 Report was directed to be made in draft form to make it immune to public disclosure. Part of the report was potentially controversial as it highlighted issues with the scat evidence. The Program was already the subject of much scepticism regarding its evidence. Other staff knew of the report and of the request for it to be in draft.
- [1147] The full report provided by DPIPWE is still in draft form. A number of documents from the period that were provided to this investigation remain in draft form. The Commission's investigation was not provided with draft documents before 2007 and after 2011.
- [1148] Some staff have referred to the management directive that reports should be in draft form to avoid public disclosure.<sup>603</sup>
- [1149] Mr Cremasco stated he has no knowledge of why documents remained in draft form, unless they were a work in progress. He conceded it would be very difficult to have disciplined anyone if the standard operating procedures were in draft form. Mr Elliot stated one of the tasks he organised when he started in 2011 was to get all standard operating procedures out of draft form.
- [1150] Several staff referred to the number of Fol / Rtl requests that were being made and the amount of work and effort that went into responding to that.
- [1151] The evidence suggests that it is more probable than not that reports were encouraged to be submitted in draft form to avoid Fol / Rtl requests.
- [1152] This aspect of the investigation will be referred to in Part C.

**Photographs were not released as they did not look like carnivore scat**

- [1153] There were suggestions that photographs were not released to the public or under Rtl /Fol provisions for fear of attracting criticism as some scats do not look like carnivore or fox scat.
- [1154] An example of this was scat #6307. An Rtl response to DPIPWE (date not provided but likely to be 2014-2016) provided the image.
- [1155] Mr Johnston said that it was not the case that images were not released.

***Analysis of evidence***

- [1156] While there is no evidence of this, it is probable that there would be a tendency to provide the 'best' photograph that depicts what the photograph is proposed to represent. If the photograph was deleted or not displayed when all other scat images were displayed then it would be of concern. However it was released in the Rtl process.

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<sup>603</sup> Mr Elliott confirmed that he refutes any allegation that this directive was made by him: Craig Elliott, Response to draft investigation report, 21 November 2017.

[1157] No further investigation has occurred into this area. There is a suggestion about a photograph taken by Adrei Konyn being deleted which is addressed later in this report.

### **Suspicious scat #6076**

[1158] Mr Konyn states he believes a scat planted in the environment by a civilian should have tested positive but did not.

### ***Evidence of Adrei Konyn***

[1159] Mr Konyn states that, in late 2008, a friend approached him at the Tasmanian Field and Game Meeting at Longford. The person told Mr Konyn that he had been hunting on the Panshanger Estate at Longford when he saw two FEP officers on an internal road in the estate. The officers had a vehicle and each officer had a dog with him. The officers walked along the road and dropped objects on the ground before getting in their vehicles and leaving.

[1160] The person said that when the officers left he followed the pathway they'd taken on the road to see what they had dropped. He found what he believed to be a number of fox scats. He said he put them in his freezer.

[1161] Mr Konyn said, '[My friend] *then asked me where I was working tomorrow. I told him I was checking the sand pads on Glen Esk Road. He said words to the effect, "Keep your eyes open, young fellow."* The next day I checked the sand pads along Glen Esk Road and found a carnivore scat on one of the bags; took a picture and put it in a bag, and put in my car'. Mr Konyn suspected that his friend had planted the scat on the sand pad and that it would be a fox positive.

[1162] Mr Konyn kept the scat in his vehicle until a dog handler and dog were available. Mr Reid's dog checked the scat and had a positive reaction to it. This was witnessed by Mr Bester.

[1163] Mr Konyn said he told everybody about it and they were excited because it was the first evidence that came off a sand pad. Mr Bester later told him the test had come back, but it was a snake scat. Mr Konyn said he knew what snake scats looked like, and it did not look like a snake scat.

### ***Evidence of Craig Bester***

[1164] Mr Bester initially could not recall this matter, however later said: *'that does vaguely ring a bell, actually'*.<sup>604</sup> However his evidence was vague and inconclusive, and he said that he was not aware of any allegations that the scat was planted.

### ***Evidence of Garry Reid***

[1165] Mr Reid recalled the incident. He stated the scat had been located by Mr Konyn in the Midlands and Mr Konyn had asked Mr Reid to 'run' his dog over them. His dog and another dog had a positive reaction to the scat. He recalls the scat coming back as fox negative and Mr Konyn being upset about it as he was sure it was fox positive.

[1166] He states this scat was tipped out of the bag onto the ground.

<sup>604</sup> Transcript, Craig Bester, pg 60.

[1167] He stated there were times when scats were re-tested when more than one dog reacted positively to the scat and that some then returned as fox positive.<sup>605</sup>

***Evidence from Scat Register***

[1168] The Scat Register shows this to be #6076. It is recorded as being found on a sandpad on 16 December 2008 by Mr Konyn. It notes that a dog reacted to the scat. The analysis was recorded as non-mammalian.<sup>606</sup>

***Documents / Reports***

[1169] No internal documents have been provided that establish any further evidence / information that any FEP officers were present on this land to have the opportunity to participate in the fabrication of evidence.

***Analysis of evidence***

[1170] The investigation considered duty sheets and travel document for FEP field officers and dog handlers however these records were incomplete and could not exclude any specific person from the Glen Esk area for that period. No document available could identify a specific person to be in that area at the relevant period.

[1171] The person who viewed the original behaviour by alleged FEP staff is now deceased; the information provided cannot be validated, and there are no further avenues to obtain that information.

[1172] The positive reaction to the scat by two dogs is noteworthy. The scat is available for further testing. Mr Konyn stated the scat was reported to be a snake scat, however it is noted that the testing does not determine other species. It was determined to be non-mammalian. No further investigation has been undertaken in regards to this matter as it does not specifically address an allegation of fabrication of evidence.

[1173] The evidence suggests that it is more probable than not that the scat is non-mammalian in origin.

***Craig Bester provided another FEP officer with a map to the location of a scat***

[1174] The evidence relevant to this allegation is largely confined to that of Mr Konyn.

***Evidence of Adrei Konyn***

[1175] Mr Konyn stated that in February or March 2008, he was heading out of the office to complete survey work at Longford. He was called back by Mr Bester, who handed him a map of a property to attend. The map was hand drawn and Mr Bester told Mr Konyn to follow the map and he would find a scat. Mr Konyn assumed he meant a fox positive scat.

[1176] Mr Konyn attended the nominated property with another FEP officer, Jonathon Knox. They walked in the direction the map nominated and Mr Knox located the scat on the dam wall. Mr Konyn stated he never told Mr Knox of the map. The scat was analysed and returned a DNA fox positive result. The result was celebrated by staff at the office when the result came back. He further states that he didn't know at the time whether

<sup>605</sup> Transcript, Garry Reid, pp 60–63.

<sup>606</sup> Scat Register.

this was normal for the survey teams to get this information, and '*I didn't know whether I thought it was a bit odd how easy it was to find the scat, but I thought it was just a good tip off*'.<sup>607</sup>

- [1177] He states that he did not keep the note, did not tell Mr Knox about it and did not confront Mr Bester about it at any time. He later became suspicious of this matter after a number of other things happened with Mr Bester.

#### ***Evidence of Craig Bester***

- [1178] Mr Bester denied any allegation that he provided a map to a fox positive scat in the field.

- [1179] He stated that he may have got a call from a landowner about a suspicious scat, but does not recall such an incident. He stated there would be a call record if that had been the case.<sup>608</sup>

#### ***Evidence of Johnathon Knox***

- [1180] Mr Knox said that he was not present when the scat was found but that he was in the team that went to that property on the day with Mr Konyn and Regan Parkinson.<sup>609</sup>

#### ***Evidence of Regan Parkinson***

- [1181] Mr Parkinson stated that he was with Mr Konyn when the fox positive scat was found and not Mr Knox. He described the manner of finding. Mr Parkinson identified his handwriting on the scat docket completed at the time of finding.

- [1182] He stated it was located on a dam wall on top of wheat stubble. He located it and believes it was stuck to the underlying wheat. He had no suspicions or concerns about Mr Konyn or the scat find. He does not remember Mr Bester calling Mr Konyn back before they left the compound.

- [1183] He said, '*We were lucky to find it ... no possible contamination occurred with that sample*'.<sup>610</sup> He said that he attended this property on several occasions during his secondment to the FEP.

#### ***Sighting Register***

- [1184] The Sighting Register shows no reports relating to the fox hotline for the period 1 January to 27 March 2008.

#### ***Scat Register***

- [1185] The Scat Register shows fox positive scat #8044 was located at Longford, on 26 March 2008 by Mr Knox and Mr Parkinson.

<sup>607</sup> Transcript, Adrei Konyn, pp 21–22.

<sup>608</sup> Transcript, Craig Bester, pp 52–53.

<sup>609</sup> Telephone conversation with Johnathon Knox, 17 May 2017.

<sup>610</sup> Telephone conversation with Regan Parkinson, 17 May 2017.



### ***Documents / Reports***

- [1186] No internal documents have been provided that establish any evidence / information that any FEP officers were present on this land to have the opportunity to participate in the fabrication of evidence.

### ***Analysis of evidence***

- [1187] Mr Konyn gave a credible account of this matter. He spoke highly of Mr Bester, despite several allegations of potential wrongdoing. He states he later became suspicious of this matter, after a number of other things happened with Mr Bester.
- [1188] Mr Konyn suggested that there could be an innocent explanation and that the landowner had contacted the Fox Hotline and reported the scat. The Sightings Register does not support that suggestion.
- [1189] There is sufficient evidence to satisfy that Mr Konyn is incorrect with whom he states he was with at the time; the evidence shows it was Mr Parkinson. Records taken contemporaneously on the docket support this. However, it is noted that Mr Knox was present at the same property and part of the same team. If Mr Knox became more enthusiastic after the scat was identified as fox, this may have contributed to the error.
- [1190] Mr Bester denied providing the map. Whilst Mr Konyn was in error regarding who he was with, his other evidence is credible. If there is no innocent explanation for this incident, it provides a serious level of conspiracy to create this fabrication of evidence. It would involve a person placing fox scat into the environment and that person or another directing an FEP officer to it by a map. It would require long-term trust not to divulge the matter.
- [1191] Whilst FEP officers appear to have been present on this land prior to the discovery of this scat, there are no documents / reports that can provide any more specific evidence to this.
- [1192] At this time there is insufficient evidence that the level of conspiracy required is present.

### ***Adrei Konyn located a fox positive scat that no longer is on the evidence list***

- [1193] The evidence relevant to the allegation is largely confined to that of Mr Konyn.

### ***Evidence of Adrei Konyn***

- [1194] Mr Konyn made a statement to DPIPWE investigators prior to his interview with the Commission. His statement was taken over the phone by a DPIPWE officer and provided to the Commission.
- [1195] During the Commission's interview, Mr Konyn was asked whether the content of the statement was true and correct. He said it was with the exception of one part:

*Scat was later sent for analysis and the results came back as fox positive. It was the only fox positive scat I found during my time working for the FEP'. When asked why he wanted to change the statement, he said, 'That last bit I believe is that fox scat that*

*I – well, a scat that I found was negative. I am absolutely, 100 per cent sure I did find a scat in Longford. I thought I did, and I must have been mistaken.*<sup>611</sup>

[1196] Mr Konyn was asked why he now thought it was a fox negative scat, he stated that the DPIPWE interviewer had told him he had not found a fox positive scat with Mr Knox at Longford.<sup>612</sup>

[1197] Mr Konyn stated that he recalled the celebration by staff at being notified of the fox positive test result.<sup>613</sup>

#### ***Evidence of DPIPWE interviewer***

[1198] The officer advised that Mr Konyn stated that the fox positive scat was located with Mr Knox. The Scat Register stated the scat was found with Mr Parkinson. Mr Konyn stated that Mr Parkinson was not the sort to get excited about a fox positive scat and that he was sure he was with Mr Knox.<sup>614</sup>

#### ***Evidence from Scat Register***

[1199] Scat #8044 was located on 26 March 2008, at Longford by Mr Konyn. It was a fox positive scat.

#### ***Analysis of evidence***

[1200] This was an unfortunate misunderstanding that nearly led to evidence being altered and could have raised further issues about fabrication of evidence with changes to the Scat Register. It is highly probable that this was a genuine mistake.

[1201] The evidence is that Mr Konyn located a fox positive scat at Longford on 26 March 2008.

#### **An FEP officer asked Adrei Konyn to organise a false telephone call to the Fox Hotline to gain access to a property**

[1202] On 8 October 2008, a female reported that she had been driving in Devon Hills when a large black cat, like a puma, had jumped onto her car as she drove along. FEP officers were returning to the Prospect Office when they heard the incident being discussed on the commercial radio in their vehicle. They decided to detour and investigate. They located the property where the cat had been observed to run to and they jumped the fence to look around. They located a large paw print in the mud, about 20m from the entrance gate.

[1203] The crew went to the office and obtained casting material and then returned to the print and took a cast. It was provided to Mr Bester the next day who organised for it to be sent to Nick Mooney for identification.

<sup>611</sup> Transcript, Adrei Konyn, pg 15.

<sup>612</sup> Ibid, pg 16.

<sup>613</sup> Ibid, pg 22.

<sup>614</sup> Email from Courtney Collins, 25 May 2017.

### **Evidence of Adrei Konyn**

[1204] Mr Konyn said that:

*Craig Bester then took me to the side and said words to the effect, "Can you get anyone to do a fake report so we can get access to the property?" I said, "What do you mean?" He said, "Just get someone to call up and make a fake report, don't worry about it; it's done all the time." I went along with Craig and was happy to be in with the managers. I called my sister-in-law ... and asked her to call the Fox Hotline and report a fox sighting. She told me that she had made the call, and I'm not sure what she said because I wasn't there. Not long after Jodi (Elmer) told us about (the call).<sup>615</sup>*

[1205] He said that Mr Bester had stated the fake telephone calls were done all the time to gain access to properties. He stated there was resistance by some property owners to have FEP officer on site for business reasons. He said: *'I was just naïve. I just took it on like, "Okay, yes." Stuff is done all the time. You ring up and you get on. It was neither here nor there'.*<sup>616</sup>

[1206] He stated he never asked his sister-in-law about this. He stated he never told anyone else about it at the FEP.

[1207] The officers gained access to the property and completed an investigation that revealed no other evidence. Mr Konyn said that he never heard back about the identification of the print.

### **Evidence of Craig Bester**

[1208] Mr Bester stated he recalled a cat print at Devon Hills. It was identified as a domestic cat print but recalls it was very large.

[1209] He denied asking any staff member to organise a false call to the Fox Hotline in order to gain entry to a property.<sup>617</sup>

### **Evidence of Nick Mooney**

[1210] Mr Mooney does not recall any large cat print at Devon Hills being sent to him.<sup>618</sup>

### **Evidence from the Natural Values Atlas**

[1211] On 9 October 2008, a female who identified herself as Melissa, rang the Fox Hotline and provided the following information which was recorded:

*Witness advised saw animal moving from east to west. The animal had a real orange body and an extremely bushy tail. The witness also advised of a bright eye shine. Animal was near skid marks on the road near Haggis Gate (100m before). Staff met with owner of "Hafferstone". Sign searched immediate area and installed 3 cam traps on adjacent property (Haggerstone). 15/10/08 – Cam traps in for 2 weeks produced nothing of interest.<sup>619</sup>*

<sup>615</sup> Transcript, Adrei Konyn, pg 22.

<sup>616</sup> Ibid, pg 28.

<sup>617</sup> Transcript, Craig Bester, pg 68.

<sup>618</sup> Transcript, Nick Mooney, pg 64.

<sup>619</sup> Natural Values Atlas.

### ***Analysis of evidence***

[1212] This matter was not referenced by any other FEP officer during the investigation.

[1213] The only further evidence that could possibly be obtained is from Mr Konyn's sister-in-law. If she were to confirm this, it would provide direct evidence against Mr Konyn.

[1214] During the course of the investigation, there were no further allegations involving false calls to the hotline by a staff member, with one exception at Devonport. This did not involve Mr Bester.

[1215] Mr Konyn provided convincing evidence as to this matter and the Scat Register entry provides corroboration of it. This evidence incriminates Mr Konyn and there is sufficient evidence available to find he fabricated evidence. That fabrication was to organise a telephone call to the Fox Hotline, provide false information with the purpose to gain access to a property. It is an isolated incident that has little bearing on the Program overall or funding. However, it provides a glimpse into a culture of impropriety.

[1216] However, on the balance of probabilities, there is insufficient evidence and strength of evidence to determine whether Mr Bester asked him to do this.

### **Contamination issues**

[1217] There are a number of references within this report to the issue of contamination of fox scat, based on concerns raised by FEP officers interviewed during the investigation. Reference was also made to the Old Beach blood event.

[1218] The following were provided as possible contamination points:

- implements used more than once to push scat into bags in the field<sup>620</sup>
- paper bags containing wet or sweating scat being placed against another bag as they were being carried around in the field<sup>621</sup>
- paper bags containing wet or sweating scat being placed against another bag as they were being transported in a vehicle from the field to the workshop. There were reports of scat being in vehicles for four days before being taken into the workshop.<sup>622</sup>
- implements being used to cut up training scat being wiped on trousers and then used in the field<sup>623</sup>
- scats being taken into the office area for viewing under microscopes<sup>624</sup>

<sup>620</sup> Transcript, Peter Harrison, pg 81.

<sup>621</sup> Ibid, pg 79.

<sup>622</sup> Transcript: Garry Reid pg 75, Adrei Konyn pg 42.

<sup>623</sup> Statutory Declaration, Matthew Marrison, pg 5.

<sup>624</sup> Transcript, Peter Harrison, pg 76.

- scats being placed on top of each other, *'on the dissecting table there was a heap of scats literally that high, all on top of one another, just piled on top of one another'*<sup>625</sup>
- scats being placed in the drop box (for after hours deposit) on top of each other<sup>626</sup>
- bags with wet scat not being double bagged<sup>627</sup>
- scats being tipped out onto the ground.<sup>628</sup>

[1219] Other potential sources of contamination included:

- fox product being brought into the State outside of authorised protocols for use by members<sup>629</sup>
- fox product in the office area
- fox training scat being carried with dog handlers on a daily basis in the field
- transference of DNA via wet scat and paper bags
- transference of DNA onto clothing and items while receiving and separating imported training scat
- scat being exposed to fox source DNA when being tipped onto the floor or ground.<sup>630</sup>

[1220] Processes evolved and became more rigorous over time. No exact records could be located as to the date of significant change; however Mr Elliott confirmed that the Standing Operating Procedures (SOPs) had an 'effective' or 'approved' date on them as standard practice.<sup>631</sup> SOPs and training were in place early in the Program, however there was evidence from a large number of staff that processes were not stringently adhered to and that staff had consistent concerns in regards to contamination. SOPs were reported to remain in draft form until 2011, when Mr Elliott ensured they became a live document. It appears as if processes were tightened up as a result of the scat anomalies.<sup>632</sup>

[1221] The majority of staff voiced concerns over contamination and include:

- Ms Elmer states she observed behaviour contrary to established processes in regard to the Seymour scat #5551 that could have led to contamination. The scat was taken into the office area. She states she and others voiced concerns over its

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<sup>625</sup> Ibid, pg 77.

<sup>626</sup> Ibid, pg 83.

<sup>627</sup> Ibid, pg 80.

<sup>628</sup> Transcript, Garry Reid, pp 60–63.

<sup>629</sup> Statutory Declaration, Matthew Marrison, pg 6.

<sup>630</sup> Statutory Declaration, Matthew Marrison, pg 6.

<sup>631</sup> Craig Elliott, Response to draft investigation report, 21 November 2017.

<sup>632</sup> Mr Elliott confirms that it was not the scat anomalies that drove the tightening of processes, but rather a desire to consolidate and finalise the Program's procedures: Craig Elliott, Response to draft investigation report, 21 November 2017.

inclusion in the evidence list. Further that Wynyard scat #6424 had handling errors and was excluded from the evidence list.

- Mr McCarthy described the scat storage at one point during the survey as 'atrocious' with significant potential for contamination. He states he saw hundreds of scats on top of each other in wire baskets in the scat room.
- Mr Cremasco said *'that there had been so much concern about contamination and handling processes of scat that when the Wynyard scat #6404 returned as a fox positive scat, it was excluded from the evidence list as an example to the staff of the consequence of not following procedure. It went from here into the office and then it was back into the paddock, it got opened up in different places. It's not how we're supposed to do stuff. We've already got so many questions about potential contamination or other stuff, how many times do we need to drum it into you guys that this is, you know, you just – try doing as you're told for once and following procedure and it was just a case of... pull it (off the list)'*.<sup>633</sup>
- Mr Harrison said *'on the dissecting table there was a heap of scats literally that high, all on top of one another, just piled on top of one another... scats in the office and looking through the microscope at them ... stuffed ... foxes in the office ... using the same icy pole stick (to flick into the paper bag in the field) ... restricted access to storage room, put in letterbox and scat put in that on top of each other'*.<sup>634</sup>
- Mr Cremasco stated, *'so we certainly spoke to the University of Canberra and Steve Sarre about what was the possibility that, you know, bags stored together potentially you could get cross-over of DNA. Steve was not overly concerned about it and I guess, from our perspective, it was, "Well, these were all bags picked up in the paddock, if one got contaminated from another, it still meant that there was fox DNA in there," although what it would probably up by doing is showing more pieces that evidence than anything. But he wasn't concerned. He thought that the possibility of that happening was low'*.<sup>635</sup>

[1222] Mr Johnston was asked what level of review was done to establish the possibility of contamination in fox positive scats found by the same person on or about the same day. He stated:

*We probably didn't do what you just described ... people with greater technical knowledge of these things than myself made some assessments about those sorts of things, about the individual scats and so forth but perhaps not thinking down in the way you just described.*

[1223] The exclusion of scat (#6424 – Wynyard bait Hole) from the evidence list in 2010 (for handling errors) is evidence of the potential for contamination. When strictly applied there was at least one further scat (#5551 – Seymour scat) that should have been excluded on the same basis.

<sup>633</sup> Transcript, Peter Cremasco, pg 30.

<sup>634</sup> Transcript, Peter Harrison, pg 77.

<sup>635</sup> Transcript, Peter Cremasco, pg 42.

- [1224] On 7 May 2008, there is an entry in the Scat Register copied from a scat docket filled out by Mr Reid. That entry states that scat #4343 was '*found in garden by owner. Dog (Timmy) sat at scat. May be contaminated with 4344 as they were placed together in one bag*'. In this instance scat #4343 was analysed as fox positive, whilst scat #4344 was found to be negative.<sup>636</sup>
- [1225] Mr Harrison conceded there was one occasion where DNA contamination was possible when one paper bag touched another that contained a wet or sweating scat.<sup>637</sup>
- [1226] There were a number of fox positive scat detections that may have been subject to contamination arising from the use of paper bags. Scats were collected and kept in the same carry bag, then put into a container for transport in the vehicle. Sometimes scat was kept for days in the vehicles. Wet scat provided opportunity to leak through the paper bags and to contaminate adjoining bags.
- [1227] Mr Reid was interviewed by an investigator as part of an investigation under Employment Direction No 5 into his actions during the FEP. Mr Reid indicated that he never handled the live scat as that was the responsibility of the investigator.<sup>638</sup> He also stated, '*once a dog finds a scat I don't touch it. The investigator does*'.<sup>639</sup>
- [1228] The Scat Database provides batch numbers to track the transport of scats from Launceston to the University of Canberra. This shows a surprising link to fox positives being located in batch numbers:

Fox Positive Scat	Batch No.
5552*, 5553*, 6130*, 10374*, 6131*	080618PI
10377*, 10378*	080627P1
5304, 4995	071213
4344*, 5299*, 5300*	080512
6406, 6307 <sup>#</sup>	080318
6451, 16317	090903
10614 <sup>+</sup> , 10616 <sup>+</sup>	090721P1
7926, 15089 <sup>#</sup> , 7754	090721
10301*, 10304*, 10305*	081119P1
16416 <sup>**</sup> , 15318 <sup>**</sup> , 14420	091012
14024, 13918	110823
918 <sup>^</sup> , 702 <sup>^</sup> , 814 <sup>^</sup> , 809 <sup>^</sup> , 819 <sup>^</sup>	061201

<sup>636</sup> Scat Register.

<sup>637</sup> Transcript, Peter Harrison, pg 79.

<sup>638</sup> Garry Reid, ED5 Response to Simon Overland, 3 March 2017.

<sup>639</sup> Transcript, Garry Reid, pg 47.

[1229] The above information was provided by DPIPWE close to the completion of the Commission's investigation. A preliminary analysis shows the following:

- 12,886 scats in 135 batches were sent for analysis between 1 January 2006 and 30 June 2014
- 12 batches show multiple fox positive results using DNA testing
- 60 fox positive scats were detected
- 34 fox positive scats were obtained from multiple batches, and two batches returned 10 fox positive scats
- four multiple batches include 13 of Mr Reid's fox positive scats ie half those he located or transported (\*)
- the two scat located on fence posts are included in these multiple batches (#)
- the scat nominated by Mr Fearn as being bird pellets are also included (^); these scat were all re-tested in 2010 with varying results
- both Cygnet scat appear on the list (+)
- both scat located in unlikely areas, such as Bruny Island and Murdunna appear on the list (\*\*).<sup>640</sup>

[1230] This could be reflective of contamination issues during postage or flawed testing. It is noted that a large number of these scat were detected by Mr Reid. Mr Reid has been criticised regarding the number of fox positive scats located and contamination could potentially provide a reasonable explanation for this.

[1231] The most likely point for contamination relates to the field and transport officers. However Professor Sarre had also noted the risk of contamination within the testing laboratory with the Technical Advisory Panel in 2007. This issue remains of concern at all times and is always a possible contributor to positive forensic results.

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<sup>640</sup> Scat Register.



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## **PART C**

**Allegation: that employees of the FFT or the FEP, or the Department, knowingly used false information or misrepresented information of the fox events for the purpose of continuation of the Program and securing ongoing funding**

[1232] Each fox event will be referred to and examined in relation to relevant media activity and other report findings. There are two main junctures where there were substantial increases in funding:

- The establishment of the FFT, and
- The establishment of the FEP.

[1233] The catalysts and contributing events will be examined to determine whether evidence was misrepresented and, if it was, the extent and responsibility for the misrepresentation.

[1234] Funding applications have not been re-examined. As reported by Inspector McCreadie:

*A thorough review of all funding grant application has been undertaken and no evidence was located to show that knowingly false or fraudulent information was relied upon for the purpose of obtaining state or Commonwealth funding. I note that some of these issues were examined in detail at the PAC inquiry 2009, and they made no findings that there was false or misleading information to obtain funding, albeit their terms of reference did not seek to examine those issues specifically.<sup>641</sup>*

## 1. Public communications

[1235] During the course of the Commission's investigation, it became apparent that there was a tendency to view and state information or evidence of fox events at their highest level. This information or evidence was sometimes used to portray foxes living in Tasmania.

[1236] A key part of the management response was the involvement of the community. However it is important to ensure that any information or evidence is being portrayed accurately.

[1237] A side effect of not providing information to the community would be to attract scepticism and criticism. Such responses can challenge an organisation and if not managed, can increase. The critic may become 'louder' in order to be heard, and may embellish matters for their own purposes; the organisation may 'circle the wagons' and rigorously defend itself or attempt to dismiss or ignore the critic. The organisation may also default to presenting information at its highest in order to convince the critic of its worth.

[1238] In communications, the Program used phrases such as 'hard evidence', 'physical evidence' or 'evidence of foxes'. No authenticity rating or qualifying standard was applied. The media articles, interviews, public forums and representations to Parliament provided the community with the details of the fox events. The community expected that information would be accurate. The information was about foxes living in Tasmania and the objective was to locate and eradicate them.

<sup>641</sup> McCreadie Report 2016, pg 37.

[1239] There were issues with the fox events which can be attributed to a range of matters including poor management and case management practices, poor record keeping, cultural issues and hoaxing.

[1240] There appeared at times to be an urgency to releasing evidence and information without proper consideration, and a reluctance or perceived need to subsequently correct information. Employees speaking to the media engaged in speculation at times and provided incorrect information that rallied the critics.

## **2. Failure to correct evidence**

[1241] There appears to have been no adequate independent regular reviews of the evidence and most internal reviews had terms of reference that excluded a review of the evidence.

[1242] Management appeared to dismiss concerns raised about evidence or personnel until employees were prepared to document them. Concerns were relegated to hearsay and it appeared the only management strategy utilised was confronting the employee to whom the concern related. In 2009, concerns were raised about evidence and documented by an employee, however the employee reported that he was informed to alter the document to remove the contentious sections of the report.

[1243] Behind the scenes it appears that some response occurred. Evidence was re-tested, trials occurred and some preliminary data was analysed.

[1244] The matters were documented again in 2011 when the new manager commenced with the Program. On this occasion it appears the concerns were dismissed on the basis of being 'old news'. In one instance, an employee was reported to have become disruptive and vocal on issues and this appears to have overshadowed the content of the concerns.

[1245] Others, external to the Program, noticed anomalies in the scat evidence. It took a concerted and extended effort to bring those concerns to a point where they would be investigated.

[1246] The employees about whom some allegations were made were also let down by the management response. The reluctance to delve into the issues and adequately investigate the concerns led to contributory or circumstantial matters being missed or not being discovered.

[1247] Communication with the media was pre-emptive and many critical aspects of the evidence were reported incorrectly. The failure to correct an error and to continue with the original statement was a feature of the Program.

### **2.1. Evidence provided to Cabinet**

[1248] In the latter part of this investigation, DPIPWE provided material that is relevant to the alleged reliance on false information. In particular, this related to a Cabinet Minute signed on 29 September 2006.

[1249] A draft Minute appears to have been prepared by the Department of Premier and Cabinet at the request of the then Premier, Paul Lennon. The draft was sent to the Secretary of DPIW, Kim Evans, on 10 August 2006, who then circulated it to Departmental staff for comment. At that stage, it was proposed to submit the minute to Cabinet on 14 August, however the final Minute was not signed until 29 September.

[1250] The purpose of the Minute was:

*To inform Cabinet that recent events in Tasmania have confirmed the presence of foxes in the State and to seek Cabinet approval to implement a long term (ten year) program for the eradication of foxes in the State.*

[1251] The Minute notes that:

*This is a very high priority due to the potentially catastrophic consequences to the State's environment and economy. The timing is crucial.*

[1252] Of interest to the Commission are statements made in the Minute and whether these are consistent with the knowledge of the Department at the time.

#### **References to a 'breeding population'**

[1253] The Minute states both '*that recent events have confirmed the presence of a breeding population of foxes in the State*' and that '*[t]here are strong indications of a breeding population of foxes in Tasmania*'. The latter statement was made under the sub-heading, '*Recent Fox Present Evidence*'. Both statements were present in the draft Minute.

[1254] The key fox events which may go to supporting the statements have been considered in this report. The timing of preparing the draft Minute (distributed on 10 August) coincided with the finding of the Glen Esk fox. Additional 'recent' events included the chicken kill and blood spots at Old Beach (May 2006) and the Lillico fox (February 2006).

[1255] By the time the final Minute was signed (29 September 2006), there was no apparent change in the status of any of these 'recent' fox events.

[1256] In relation to the Lillico fox, it is notable that Nick Mooney had at the time described '*the discovery of the juvenile fox carcass as catastrophic*'.<sup>642</sup> The age of the fox was the first indirect evidence of possible breeding in Tasmania, and was supported by corroborative evidence of fox positive scat nearby. The precautionary approach dictated that this carcass could be evidence of possible fox breeding in Tasmania. In 2008, Mr Mooney stated that the fox was '*worrying evidence of breeding*'.<sup>643</sup>

<sup>642</sup> *The Mercury*, Fox Taskforce to be slashed, 1 March 2006.

<sup>643</sup> Nick Mooney, Physical Evidence of Foxes in Tasmania since 1998, 15 April 2008.

[1257] In June 2006, the IACRC report noted:

*The most recent piece of evidence, a fox cub located at Lillico Beach (February 2006), was again impossible to exclude as a hoax but even worse, raises the greatest of concerns that foxes in Tasmania are breeding.*<sup>644</sup>

[1258] The events at the time appeared to confirm fox activity in certain areas of the State. It is less certain that the events provided proof of a breeding population however it is apparent that such a possibility was envisaged.

[1259] It is considered reasonable for the Minute to have at least stated that the recent evidence (in 2006) provided '*strong indications of a breeding population of foxes in Tasmania*'.

### **Reference to discoveries being 'hard evidence'**

[1260] The Minute references '*hard evidence collected to date, including the most recent discoveries on the presence of foxes...*'. The final Minute included a more extensive list of 'discoveries' than the original draft Minute, and ranges from the Burnie fox (1998) to the Glen Esk fox (August 2006).

[1261] 'Hard evidence' has been discussed earlier in this report (see s 4.5). It is apparent that the term was originally applied loosely and Program staff were unclear as to the exact definition.

[1262] The issue was discussed by the IACRC report (released in June 2006). The IACRC reported that public criticisms '*raised suspicions over the veracity of the hard evidence obtained by the Taskforce*'<sup>645</sup> and that '*[d]iffering opinions and interpretations were also expressed by others on the validity of hard evidence*'.<sup>646</sup> The report defines hard evidence and notes that '*the claim of hard evidence has been publicly refuted*', however does not go on to recommend a changed approach to the term.

[1263] Nick Mooney, in an overview provided to the Program's Steering Committee on 29 August 2006, referred to the bulk of the events outlined in the Cabinet Minute as 'hard evidence'. He also differentiated between hard and 'soft evidence', the latter being reports of fox sightings.

[1264] In the context of known evidence at the time, it is not considered misleading for the term 'hard evidence' to have been applied to the fox events outlined in the Cabinet Minute.

[1265] It was noted during the investigation that the term 'hard evidence' was replaced by 'physical evidence' sometime after the IACRC report; however there was no identifiable definitive point or decision where this commenced.

<sup>644</sup> IACRC Report 2006, pg 23.

<sup>645</sup> IACRC Report 2006, pg 22.

<sup>646</sup> Ibid.

## 2.2. Internal concerns

[1266] This investigation has identified that concerns were raised about operational issues and procedures over the life of the Program. In particular, concerns were raised about the veracity of evidence, including fox scats.

[1267] It is apparent that the Program had a well-established governance structure. This included:

- Steering Committee (later called the Management Committee)
- Technical Advisory Panel
- Stakeholder Reference Committee

[1268] While this investigation has not reviewed all minutes associated with the above entities, it is apparent that the structure provided a suitable platform for operational and strategic issues to be addressed.

## 3. Fox cub imports

[1269] In May 2001 there were a number of credible fox sightings in the Longford area. The ICS and JTF1 were established to investigate information that fox cubs had been imported into the State and to determine whether criminal offences had occurred.

### 3.1. Media / Reviews / Public Comments / Challenges

[1270] There was little if any media attention at the commencement of the ICS. The first publicity occurred after the report was finalised into JTF1.

#### **19 July 2001 (*Examiner*) – ‘Police say fox import untrue’**

[1271] Tasmania Police had investigated the alleged importation of fox cubs and determined it had no substance. The article referred to the investigation being completed by two senior detectives over the past three weeks.

#### **7 October 2001 (*Sunday Examiner*) – ‘Gang bred foxes’**

[1272] The article states that PWS officers believed a group had deliberately introduced foxes into northern Tasmania to improve hunting. The group had gone to the mainland and had imported the fox cubs on two occasions. On the first occasion the cubs had been released into the Longford area. On the second, they were released to three locations across the State. No charges could be laid in relation to the matter.

[1273] It stated a police investigation found it difficult to confirm the allegations and that the timeframe to commence summary proceedings under the Statute of Limitations to had already expired. It provided information about the potential damage of the fox should it become established in Tasmania.

**October 2001 (Examiner) – Police told: Renew fox import probe**

[1274] The article informed that police had been told to re-open the investigation into the imports by Minister Llewellyn. This came as additional information was received, additional physical evidence had been located in and around the Longford area and there were more sightings.

[1275] Although undated, this article helped lead to the establishment of JTF2 in 2002.

**January 2002 – Bloomfield advice**

[1276] The report<sup>647</sup> notes that foxes are the greatest known threat to Tasmania's wildlife in our time, and that eradication from Tasmania will only occur by the application of a thorough, comprehensive and extensive program.

**31 January 2002 – FFT established**

[1277] The FFT was allocated funding of \$2.4 million over two years.

**March 2002 – Minister announces \$50,000 reward**

[1278] For the conviction of fox importer

**26 March 2002 – Nick Mooney**

[1279] Mr Mooney is quoted in the journal, *Nature*:

*The information that the authorities have received leaves no doubt that foxes were deliberately brought to Tasmania.*<sup>648</sup>

**March 2002 – Second Joint Task Force established**

[1280] During JTF2, further information was obtained into the original fox cub importation report. It included that there were as many as three occasions of cub importations, nominated different suspects, identified a property on Pateena Road as being of the location the cubs were raised, that the cubs were raised in a bush pen on a Labrador dog bitch, and that a tree limb had fallen and compromised the pen resulting in the fox cubs escaping.

**5 June 2002 (Mercury) – 'Fox Plot: How animal dumpers escaped the law'**

[1281] The article alleges that authorities know who imported the foxes into the State. The foxes were released at four sites however the people involved were unable to be charged as the timeframe to prosecute under the Statute of Limitations had expired. It referred to a review of the statute to make criminal proceedings easier.

**12 September 2002 (ABC Catalyst) – 'Tassie Fox: A Biosecurity Threat'**

[1282] In that program, the following persons stated:

<sup>647</sup> Timothy Bloomfield, Fox plan for a fox free Tasmania, December 2001.

<sup>648</sup> Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

- Nick Mooney: '*Bringing foxes into Tasmania is probably the most foolish and stupid thing I could think of being done*'.
- Dr Clive Marks: '*I would call it an example of bio-terrorism; we're dealing with something which is akin to September 11 for wildlife in Tasmania*'.
- Chris Emms (Wildlife Ranger): '*In ten, fifteen years' time we're going to be judged by our children as to how effective we were*'.

### **19 September 2002 – Senate**

[1283] Senator Shane Murphy raised doubts over the importation based on the JTF1 report. In response to the Catalyst Program, he said:

*I have never heard such a load of rubbish in all my life ... the reality is this: the police conducted an extensive investigation in Tasmania in so far as it related to the introduction of foxes into the State by a person or persons unknown.*<sup>649</sup>

### **2003 – Kinnear Report**

[1284] The report notes:

*Tasmania's fox-free status was breached as the direct result of a deliberate introduction of several foxes into the Burnie and Launceston areas.*

### **2004-2007 – Fox Eradication Management Strategy**

[1285] The strategy referenced the fox cub imports.

### **2005-2006 Funding Proposal**

[1286] The proposal did not mention fox cub imports.

### **15 June 2006 – Tasmanian Parliament**

[1287] The Minister, David Llewellyn informs Parliament:

*We took action in 2002 when three litters of fox cubs were bought back to the state by people who were identified, but were not able to be charged.*

...

*Certainly the police followed these issues up. I am convinced that those litters were distributed ... It was on that basis we established the effort to try to rid the state of foxes.*<sup>650</sup>

### **2006 – IACRC Report**

[1288] The report refers to the Tasmania Police findings, comments on the police investigation focusing on criminal charges relating to fox cub importation and that it finished before physical evidence came to light. The report took a precautionary

<sup>649</sup> Commonwealth Parliament, Senate Hansard, 19 September 2002.

<sup>650</sup> Tasmania Parliament, House of Assembly, 15 June 2006.



approach to the possible incursion of foxes into the state of Tasmania, and given the importance and value of the unique ecology of Tasmania, found:

*Despite the suspicions raised, it was impossible for the review to discount all the hard evidence presented and we concluded that indeed an unknown number of foxes had been deliberately and/or accidentally introduced and that some of these and possibly their progeny are still living in the wild in Tasmania. With this in mind, eradication of foxes from Tasmania must still be the single intent of the Taskforce ... Tasmania Police reported the findings of its investigation and concluded that there was no substance to the information provided ... We understand that this police investigation dealt only with the importation of foxes per se and finished before any hard evidence came to light e.g. the Longford footprints or the "Bosworth" fox.*

### **2007 – Evidence List**

[1289] The list did not refer to fox cub imports.

### **2009 – Landcare Research Report**

[1290] The report notes:

*However, a more deliberate attempt to establish a population was apparently made in late 1999 with an alleged introduction of 11 foxes from two litters released at three places in Tasmania ... unsubstantiated allegations surfaced that litters of foxes had been smuggled into Tasmania and released in 1999 (and possibly 2000 and 2001) ... Of great concern to Tasmania have been anecdotal reports from a number of sources, including first-hand witnesses, suggesting importation and breeding of foxes in Tasmania into the 1970's and possibly later. These reports culminate in allegations that a number of fox litters were imported and released in Tasmania at the turn of the century (an investigation by Tasmania Police concluded that there was no substance to the claim).*

### **2009 – PAC**

[1291] The Committee's report states:

*Of great concern to Tasmania have been anecdotal reports from a number of sources, including first-hand witnesses, suggesting importation and breeding of foxes in Tasmania into the 1970's and possibly later. These reports culminate in allegations that a number of fox litters were imported and released in Tasmania at the turn of the century (an investigation by Tasmania Police concluded that there was no substance to the claim).*

### **2009 PAC – DPIPWE submission**

[1292] The submission to the PAC noted that:

*... unsubstantiated allegations surfaced that litters of foxes had been smuggled into Tasmania and released in 1999 (possibly 2000 and 2001).*

**2010 – letter from the Minister to Dr Clive Marks**

[1293] The Minister advised:

*... that particular line of inquiry has not been used as the basis of my Department's belief that foxes are present in Tasmania, nor has the Department formed any conclusion about how any of all of the foxes currently known (and unknown) to be present in the state got here.*

**2013 Kitchell Report**

[1294] The report does not refer to the importation of fox cubs.

**2014 ABC Radio interview – Nick Mooney**

[1295] Mr Mooney stated:

*I don't know, to me it's a story, it might be a very credible story when told by some people, but I don't have a strong view of it, because I've seen no evidence.*<sup>651</sup>

**28 June 2014 – Dr Clive Marks**

[1296] Dr Marks stated:

*In 2001 it was widely reported that red foxes had been deliberately released in the island state of Tasmania. Although this claim was later revealed to be baseless ... In 2001, claims of up to 19 foxes from the Australian mainland had been released in Tasmania and were widely communicated by media ... despite a Tasmanian Police investigation finding this claim to be anecdotal and without any evidentiary basis. Nonetheless, opportunistically acquired post mortem specimens of foxes lead some researchers to conclude that they had originated from the claimed release in 2001.*

**29 April 2016 – DPIPWE List of Fox Evidence**

[1297] The report does not refer to the importation of fox cubs.

**3.2. What eventuated as a result of this evidence?**

[1298] JTF1 was established to investigate the importation information in June-July 2001. Its purpose was to investigate criminal charges relating to importing the fox; it was conducted covertly and occurred over a duration of less than a month. The concluding report was that there was no evidence of foxes being imported into the State. No charges were laid.

[1299] The ICS was created separately to JTF1. Its role was to locate any foxes in the wild and eradicate them, and had a duration of eight months. The ICS located fox footprints at Woodstock Lagoon, investigated the Longford fox (later deemed a hoax) and the Symmons Plains fox carcass, all which occurred after JTF1 had been completed. During this time, credible fox sightings in and around the Longford area persisted.

<sup>651</sup> Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017..

- [1300] JTF2 received additional information regarding the importation of foxes into the State. It investigated and located circumstantial corroborative evidence; however there was insufficient evidence to charge anyone with a criminal offence and, in any event, the timeframe to prosecute had expired under the Statute of Limitations.
- [1301] The ICS transformed into the FFT in 2002, to provide more resources (\$2.4m over two years) to eradicate foxes in Tasmania. Information relating to the importation of fox cubs contributed to the evidence to justify the establishment of the FFT.
- [1302] This fox event does not appear to have directly contributed to the establishment of the FEP.

### 3.3. The changing weight of this evidence

- [1303] The determination of JTF1 was continually referred to across media within the community and ceased by 2010.
- [1304] Information is able to form part of the basis of management response actions. The strength of the information relating to fox cub imports was at its highest in 2001 and 2002. However none of the quotations or remarks listed above raise the information to the status of evidence. It has never been listed as the 'hard' or 'physical' evidence of foxes in Tasmania, and is not currently referenced on the DPIPWE website.
- [1305] The information was supported by evidence of foxes in the area at the time. There was no other viable explanation for fox presence in the area at that time. Several employees stated that, the Longford fox and the Symmons Plains foxes were believed to be the fox cubs that had been imported and there was genuine excitement as it was believed the fox cubs were being eradicated.<sup>652</sup>
- [1306] There was some information received during JTF2 of a third litter being reared and released. This investigation uncovered no additional information to support this.

### 3.4. Reporting of incorrect information

- [1307] One concern raised during the Commission's investigation was that Tim Bloomfield and Nick Mooney informed Dr Marks that:
1. Tasmania Police had confirmed that known parties had released foxes in Tasmania
  2. The site and property where the foxes had been held had been confirmed
  3. The sites where the foxes were released and numbers of foxes concerned was known, and
  4. Tasmania Police would soon seek to charge the people responsible, but as the investigation was covert, Dr Marks could not be supplied with the details.<sup>653</sup>
- [1308] In relation to points 1-3, the information was known, however it was not particularly strong. There was more than one suspect and the location of the property where the

<sup>652</sup> Chris Emms, Glenn Atkinson, Stan Matuszek.

<sup>653</sup> Email from Clive Marks, 3 April 2017.

cubs were believed to have been reared was located years after the event. There was information as to the sites and numbers of foxes concerned.

[1309] The last point may have been 'wishful thinking': Tasmania Police were part of JTF2 and police assisted PWS with a number of searches during that time. Neither Mr Bloomfield nor Nick Mooney were part of JTF2. This investigation has located no evidence that matters were referred to Tasmania Police, and Mr Mooney has confirmed that it is doubtful that he informed Dr Marks about the actions of Tasmania Police as he knew that the actions related to the PWS Wildlife Rangers.

[1310] The source of this information has not been explored and may be explained by a response that they were 'getting closer'. The nuances are sufficiently subtle not to amount to misrepresentation. Nothing hinged on the information being specifically accurate.

### **3.5. Analysis**

[1311] The allegation that the information was misrepresented appears based on the premise that police did not adduce sufficient evidence to charge a person with a criminal offence. This would have required either an admission by the offender(s), a direct eye witness or significant forensic evidence, none of which were likely to eventuate. The matter was historic, so it could not involve apprehending an offender in the act. The timeframe to prosecute under the Statute of Limitations had already lapsed when the JTF1 commenced.

[1312] There is no evidence that any public officer misrepresented the information. Any misrepresentation appears to be based on continual reference to the information as 'evidence' and the belief that the JTF2 investigation uncovered additional relevant information. However it is unlikely that sufficient admissible evidence would have been obtained to lead to criminal charges, even had the timeframe to prosecute not expired.

[1313] It is apparent that, in 2001–2002, the ICS and FFT applied the precautionary principle. There was corroborative evidence to support a fox presence. However there was no other credible and contemporary evidence about how the foxes got to Tasmania. In 2002, during JTF2, there was corroboration of some of the more specific details of the original information.

[1314] The information did not amount to admissible evidence in legal proceedings, but it could have been used as a basis for internal investigation and management actions for the ICS and the FFT.

[1315] There is no doubt that some statements made in relation to this fox event portrayed a degree of certainty that it was accurate; however the overwhelming majority of communications had their basis in information, not fact.

### **Finding**

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**There is no conclusive evidence of misrepresentation relating to this fox event.**

## 4. Longford fox

[1316] This fox event first arose in July 2001, when a photograph appeared in the *Examiner*. In early November 2001, a DNA analysis initially indicated that this fox and the Symmons Plains fox were siblings. The event was determined to be a hoax in September 2002. The people in the original were identified and one made informal admissions to the hoax.

### 4.1. Media / Reviews / Public Comments / Challenges

#### **9 November 2001 – Evidence the DNA relationship deemed strong**

[1317] Dr Nick Robinson, Department of Natural Resources and Environment (VIC) advises Peter Mooney that *'The two samples have a high similarity to each other (could possibly be full siblings as they share a high proportion of alleles. Both samples could not be reliably assigned to any urban Melbourne population'*.<sup>654</sup>

#### **13 November 2001 – Evidence the DNA relationship reduced in strength**

[1318] Dr Robinson subsequently advises Peter Mooney that *'it is difficult to say how probable it is that the two are full siblings without parental genotypes ... they might also be from the same inbred population on the mainland, hence a high allele sharing'*.<sup>655</sup>

#### **24 November 2001**

[1319] Peter Mooney states on ABC Radio, *'[t]he DNA sampling of those two different animals have come out to prove that they're actually siblings. So that means we have had a litter'*.<sup>656</sup>

#### **4 June 2002 – Parliament**

[1320] Minister Llewellyn states:

*The DNA analysis of both foxes showed they were siblings or a close relative ...*<sup>657</sup>

#### **19 September 2002 – Commonwealth Parliament**

[1321] Senator Shane Murphy raises issues in relation to fox evidence.<sup>658</sup>

#### **September 2002 – Evidence**

[1322] Glenn Atkinson's investigations reveal this fox is a hoax and Mr Atkinson informs his supervisor of this on 27 September 2002. He stated in his 2005 report that management believed exposing the hoax and ridiculing those involved would not be conducive to the free flow of information into the Program.

<sup>654</sup> Peter Mooney, Email from Dr Robinson, 9 November 2001.

<sup>655</sup> Peter Mooney, Email from Dr Robinson, 13 November 2001

<sup>656</sup> *Outsmarting Tasmanian's foxes, Can it be Done?* <http://www.abc.net.au/radionational/programs/earthbeat/out-smarting-tasmanias-foxes-can-it-be-done/3643598>.

<sup>657</sup> Tasmania Parliament, Hansard, Legislative Council, 4 June 2002.

<sup>658</sup> Commonwealth Parliament, Senate Hansard, 19 September 2002.

**November 2002 – Bloomfield Report**

[1323] Mr Bloomfield states the carcass and the skin are closely related, and that the foxes are at least cousins.<sup>659</sup>

**17 December 2002**

[1324] Nick Mooney states the DNA testing showed they were closely related, at least cousins.<sup>660</sup>

**December 2002 – Bloomfield Report**

[1325] This event is not referenced in the report.

**March 2003 – Kinnear Report**

[1326] The report states this event is deemed undetermined as no further evidence had been obtained to assist in its resolution.<sup>661</sup>

**2003 – DPIWE publication**

[1327] It is stated that the Longford and Symmons Plains foxes had a direct DNA relationship.<sup>662</sup>

**15 August 2004**

[1328] Nick Mooney states that initially there was a high degree of genetic likeness between the Longford and Symmons Plains foxes, but that this was later revised.<sup>663</sup>

**2004-2007 – FFT: Fox Eradication Management Strategy**

[1329] It is stated that the DNA results between the Longford and Symmons Plains foxes showed a possible relationship, initially as high as siblings, but then later revised to a lower level.

**2 September 2005 – report**

[1330] Technical officer Catriona Thompson confirmed that the DNA samples could not offer any conclusive results.<sup>664</sup>

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<sup>659</sup> Bloomfield 2002.

<sup>660</sup> Nick Mooney, Email to Birding Australia, 17 December 2002. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>661</sup> Kinnear Report 2003, pg 12.

<sup>662</sup> *Game Tracks* (2003), Issue 8.

<sup>663</sup> *Sunday Tasmanian*, Hoax theory on fox pelt, 15 August 2004. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>664</sup> Catriona Thompson, Letter to Chris Parker, 2 September 2005.

**15 June 2006 – Parliament**

[1331] Mr Llewellyn recalls that the DNA analysis was determined to be siblings. It was clear he did not reference any documents at the time of the statement.<sup>665</sup>

**June 2006 – IACRC Report**

[1332] The report records that the authenticity of the information remained questionable.<sup>666</sup>

**2006-2007 – FEP: Operating Plan**

[1333] There is no reference to the Longford fox in the list of fox evidence.

**15 April 2008 – DPIWE document**

[1334] Nick Mooney lists the physical evidence for foxes in Tasmania and there is no reference to the Longford fox.<sup>667</sup>

**31 March 2009 – DPIPWE document**

[1335] A submission to Parliament states the Longford fox skin was an '*unresolved piece of evidence*'.<sup>668</sup>

**July 2011 – DPIPWE document**

[1336] A report states that the Longford fox pelt was an unresolved piece of evidence and most likely a hoax.<sup>669</sup>

**4.2. What eventuated as a result of this evidence?**

[1337] This event contributed to the establishment of the FFT and JTF2 in 2002. However, even if this event was excluded, there was likely sufficient reason for the FFT to have been established.

**4.3. The changing weight of the evidence**

[1338] This fox event was the first occasion where the remains of a fox were able to be retrieved. Employees were wary of it due to the anonymity of the persons who claim they shot it. It required an initial precautionary management response. It was supported by other evidence both before and after it.

[1339] Employees of the ICS considered the fox event was suspicious, however until it was deemed to be a hoax, it was an important piece of evidence. It validated the fox cub importation theory and sightings in the Longford area. It focused the management response action to the Longford area and contributed to the establishment of the FFT.

[1340] The significance of the DNA link with the Symmons Plains fox cannot be understated. It was portrayed as indisputable evidence of a fox presence that, unless eradicated,

<sup>665</sup> Tasmania Parliament, House of Assembly, 15 June 2006.

<sup>666</sup> IACRC Report 2006, 3.2.7.

<sup>667</sup> Nick Mooney, Physical Evidence of Foxes in Tasmania since 1998, 15 April 2008.

<sup>668</sup> PAC 2009, DPIPWE submission.

<sup>669</sup> Fearn Evidence Catalogue 2011.

would lead to an established fox population. It could have meant that it was one of the fox cubs that had been reared and released or it may have been evidence of breeding.

- [1341] The DNA link between the two foxes was a contributing factor in establishing the FFT. There is some evidence that would suggest in 2001, the DNA link was reported to the community at its absolute highest level, without truly reflecting the meaning of the analysis that was provided.
- [1342] It was deemed a hoax in September 2002 and was removed as 'hard evidence' from Evidence List. However management decided not to publicise this fact. Mr Atkinson wrote in his report, *'Management's feeling was that, as this evidence never enjoyed a lot of credibility in the first place and was certainly not the only evidence of foxes in Tasmania, that it was preferable to move on and make no reference to it.'*<sup>670</sup>
- [1343] The event had enjoyed credibility as portrayed in the media reports and it was referred to in Departmental documents and in Parliament in future years. The event has reduced in importance, and has been listed as undetermined or unresolved since that time.

#### 4.4. Analysis

- [1344] This fox event was initially considered of medium value evidence due to its anonymous sources. Those sources went to the trouble of sending a fox pelt to PWS.
- [1345] The DNA analysis and genetic link to the Symmons Plains fox elevated this fox event into a legitimate piece of evidence. There was information / evidence located before and after this fox event that would conclude there were foxes living in the Longford area.
- [1346] The high value DNA probability link was known to be in error within days but was not disclosed. The information was provided directly to Peter Mooney (then fulfilling the role as head of the ICS on a part-time basis in conjunction with his substantive position) in November 2001, yet he had continued to state the high value DNA link on ABC Radio.
- [1347] In September 2002 it was proven to be a hoax by Mr Atkinson. Mr Atkinson's report identifies management's decision not to publicise this fact. There was a deliberate decision not to inform the community. The reasons may have been legitimate, however the consequences were enormous to the Program at a critical point before the FFT was established and whilst a review was being completed.
- [1348] The DNA link continued to be referenced but was reduced to 'cousins'. By 2005, the FFT was seeking confirmation of the results and they were again informed it was inconclusive. The Minister appeared not to have been informed and in 2006 repeated the DNA link of being siblings.
- [1349] This fox event had enjoyed elevation to a legitimate event and nothing was done to reverse that perception and provide an accurate account of the event. The evidence suggests that the facts surrounding this fox event were not corrected immediately in

<sup>670</sup> Glenn Atkinson, Summary of Investigation into fox cub release, 5 December 2005.



2001 nor from 2002 in relation to the DNA link with the Symmons Plains fox, and in the ongoing recording of its status as unresolved. The result of declaring this event a hoax would likely have influenced the credibility attached to the Symmons Plains fox due to the publicity regarding the DNA link between both foxes.

[1350] The reason why this fox event continued to be referred to in the media was largely due to management not wishing to report the hoax. It was a deliberate decision. It caused a dilemma in how to manage the reporting of the event. DPIWE did not formally report on this matter again, although it obviously had input into reviews that did and continued to inform the then Minister's view of it.

[1351] Taking all matters into consideration, it appears that the failure to publicise this fox event as a hoax and to retract or correct information was a deliberate decision and could amount to a misrepresentation of the evidence. It has not been established who was ultimately responsible for this decision.

[1352] What is apparent is that information was not free flowing between all parties and no one was taking responsibility for correcting the facts as they changed.

[1353] It is difficult to now speculate on the impact a full disclosure of the circumstances of this matter would have had. It may have impacted on the establishment of the FFT, but it is doubtful. There was other credible information and evidence available, even without this fox event.

## **Findings**

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**On the basis of evidence obtained by the Commission, there is:**

- **evidence of misrepresentation to the public by embellishment of the DNA link and a failure to retract or correct public information after 14 November 2001.**
- **evidence of misrepresentation by omission, by failing to publicly nominate the Longford fox event a hoax after September 2002.**

## **5. Symmons Plains fox**

[1354] The fox carcass was presented by Mr Bosworth in September 2001 as a fox he had shot at Symmons Plains. A partial autopsy identified an endemic long tailed mouse in its stomach. The fox was hailed as proof that foxes were living in Tasmania.

### **5.1. Media / Reviews / Public Comments / Challenges**

#### **28 September 2001 – 'Shot fox first proof'**

[1355] *The Mercury* reports: '*It is the first confirmed fox kill and first concrete evidence of the existence of the introduced species in Tasmania*'. Minister Llewellyn links this fox event to the fox cub importation information.

**29 September 2001 – ‘Top-shot Eric tells how he ended great fox hunt’**

- [1356] *The Mercury* reports Mr Bosworth’s account of the fox kill. The article also mentioned several other sightings or events that relate to foxes in Tasmania.

**23 October 2001 – Parliament**

- [1357] Minister Llewellyn stated the fox had been ‘*feeding off various indigenous faunas and floras as well*’.<sup>671</sup>

**9 November 2001**

- [1358] It was believed that the DNA relationship to the Longford fox was strong.

**13 November 2001**

- [1359] The DNA relationship was reduced in strength.

**24 November 2001 – ABC Radio**

- [1360] Peter Mooney states on an ABC radio report that the DNA sampling of the two animals has proven that they are siblings and that this was evidence of breeding. He said that the stomach contents contained

*conclusively Tasmanian foods, in other words, Tasmanian native rats, Tasmanian skinks ... the DNA sampling of those two different animals have come out to prove that they’re actually siblings. So that means we have had a litter.*<sup>672</sup>

**1 December 2001**

- [1361] Nick Mooney notes that the bird components and skins located in the stomach were not from endemic species.<sup>673</sup>

**4 June 2002 – Parliament**

- [1362] Minister Llewellyn states that the fox’s stomach contained small animal species only found in Tasmania and stated this was the most ‘*significant event that proves foxes are in the State*’ and repeated that the DNA analysis of both foxes showed they were siblings or a close relative.<sup>674</sup>

**July 2002**

- [1363] An article questioned the presence of the endemic mouse in an area where it is not known to have habited.<sup>675</sup>

<sup>671</sup> Tasmania Parliament, Hansard, 23 October 2001.

<sup>672</sup> *Outsmarting Tasmanian’s foxes, can it be done?* <http://www.abc.net.au/radionational/programs/earthbeat/out-smarting-tasmanias-foxes-can-it-be-done/3643598>.

<sup>673</sup> Nick Mooney, File Note, 1 December 2001.

<sup>674</sup> Tasmania Parliament, Hansard, Legislative Council, 4 June 2002.

<sup>675</sup> Tasmanian Field Naturalists Club Inc, Bulletin No 307, July 2002.

**19 September 2002 – Commonwealth Parliament**

[1364] Senator Shane Murphy raises issues in relation to fox evidence.<sup>676</sup>

**November 2002 – Bloomfield Report**

[1365] Mr Bloomfield stated this fox event was evidence of a low level fox presence; it contained evidence of ingesting Tasmanian native fauna.<sup>677</sup>

**17 December 2002**

[1366] Nick Mooney states that the fox had ingested an endemic mouse and that the DNA testing showed they were closely related, at least cousins.<sup>678</sup>

**March 2003 – Kinnear Report**

[1367] The report states the animal had a native animal in its stomach.<sup>679</sup>

**2003 – DPIWE publication**

[1368] It is stated that the Longford and Symmons Plains foxes had a direct DNA relationship.<sup>680</sup>

**15 August 2004**

[1369] Nick Mooney states that, initially there was a high degree of genetic likeness between the Longford and Symmons Plains foxes, but that this was later revised.<sup>681</sup>

**2004-2007 – DPIWE Publication**

[1370] It is stated that the DNA results between the Longford and Symmons Plains foxes showed a possible relationship, initially as high as siblings, but then later revised to a lower level.<sup>682</sup>

**June 2006 – IACRC Report**

[1371] The IACRC reported the matter and raised no specific concerns.

**2006-2007 – FEP Operating Plan**

[1372] It is stated that the stomach contents of this fox had two endemic species present, a mouse and pademelon.

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<sup>676</sup> Commonwealth Parliament, Senate Hansard, 19 September 2002.

<sup>677</sup> Bloomfield 2002.

<sup>678</sup> Nick Mooney, Email to Birding Australia, 17 December 2002. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>679</sup> Kinnear Report 2003, pg 13.

<sup>680</sup> *Game Tracks* (2003), Issue 8.

<sup>681</sup> *Sunday Tasmanian*, Hoax theory on fox pelt, 15 August 2004. Mr Mooney has confirmed that he was speaking on behalf of the Program and on the basis of his knowledge at the time: Nick Mooney, Response to draft investigation report, 13 November 2017.

<sup>682</sup> DPIWE, Fox Free Tasmania: Fox Eradication Management Strategy 2004-2007.

## 5.2. What did this evidence mean at the time?

- [1373] This fox event validated the fox cub importation theory and sightings in the Longford area. It focused the management response to the Longford area, and contributed to the establishment of the FFT.
- [1374] The significance of the DNA link with the Longford fox cannot be understated. It was portrayed as indisputable evidence of a fox presence that, unless eradicated, would lead to an established fox population.
- [1375] This event has always been relied upon to support that there was a living fox present in Tasmanian in 2001.

## 5.3. What eventuated as a result of this evidence?

- [1376] This fox event contributed to the establishment of the FFT and JTF2 in 2002.

## 5.4. The changing weight of this evidence

- [1377] The weight of this fox event has never really altered. There have however been concerns raised over its legitimacy. The presence of the endemic mouse was deemed solid evidence at the time. New evidence was presented in 2008 that led to questions over the identification of the endemic mouse.

## 5.5. How this evidence is currently listed (website)

- [1378] The evidence is recorded as:

*Fox Evidence 2001*

*September 2001: A male fox is shot near Symmons Plains (known as the 'Bosworth' fox) and the carcass retrieved. Contents of gut revealed evidence of an endemic species, indicating that the fox had been living in the wild in Tasmania.*<sup>683</sup>

## 5.6. Analysis

- [1379] The only part of this evidence that was potentially misrepresented related to the number of endemic materials contained in the stomach of this fox. Emails obtained by the Commission reveal that there was an initial and preliminary analysis by ICS employees that the contents of the stomach also contained an endemic skink and bird. By 1 December 2001, the only endemic material relevant to this fox was the long tailed mouse.
- [1380] There is information available that casts doubt about the veracity of the evidence relating to the long tailed mouse. However, the investigation suggests that there has been no misrepresentation of this evidence.

<sup>683</sup> <http://dpi.pwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011#FoxEvidence2001>

- [1381] The referral to the DNA link to the Longford fox as a sibling was wrong. The referral to any familial link was wrong; it was inconclusive and that was known on 13 November 2001.
- [1382] The statement that there was a pademelon scat in the stomach of the fox was an unfortunate error and was quickly corrected in the public arena and only appeared in one official document.
- [1383] There are no statements about Mr Bosworth (the alleged shooter of the fox) being a highly reputable person. The highest valued comment available is that he consistently informed the same story. Mr Bosworth's credit was taken into account by the FFT and was not misrepresented.
- [1384] Allegations that Mr Bosworth shot the fox in Victoria and brought it to Tasmania were investigated. There was no need for the FFT to disclose the outcome of this matter.

### Finding

**On the basis of evidence obtained by the Commission, there is evidence of misrepresentation by embellishment of the DNA link to the Longford fox as a sibling and a failure to retract or correct this issue.**

## 6. Establishment of the FFT

- [1385] The FFT was established in January 2002 with funding of \$2.4 million over a two year period. It initially consisted of 22 staff, with teams located in Burnie, Launceston, Campania and St Helens.

### 6.1. Evidence

- [1386] Passages from the Budget Estimates hearings in June 2002 reflect the status of the evidence in 2002. The Chair asked what evidence there was about foxes living in Tasmania. Minister Llewellyn replied:

*You would recall that about 18 months ago we first had the allegation that there had been several litters of foxes brought into the State. We got the Police and the department [DPIPWE] on to that particular job and they analysed that and worked for some time in trying to assess whether or not they could get to the bottom of the issue. In the end there were a lot of people interviewed but no conclusive allegations materialised to the stage of charging people.*

*As time went on there was a series of reports of people sighting foxes and in the original allegations it was alleged that litters were distributed in and around Longford, in and around the south of Oatlands and on the east coast near St Helens. When over time this constant spread of information about sighting the foxes came in and when it was all coordinated and so on it corroborated those original allegations because all the sightings were occurring in these areas where it was alleged that the fox litters had been distributed. Longford, south of Oatlands, Campania and in that region and near St Helens.*

*Ultimately there were two foxes shot [Erick Bosworth's Symmons Plains fox & the Longford fox photo] – one which you cannot draw any conclusion about because the people who shot the fox although they had a photograph in the newspaper ... Longford. They eventually sent the pelt of the fox to the Parks and Wildlife Service and that was a recently-skinned fox skin. There were DNA tests done on it and so on and it matched in respect to this source of origin again the alleged stories that were there.*

*Subsequently a further fox was shot near Symmons Plains and that was recovered, analysed and the stomach contents and so on analysed and found to be containing small animal species and so on that were only here in Tasmania ... was perhaps the most significant event that proves that foxes are in the State. On top of that the DNA assessments that were made put the second fox as being a sibling or a close relative of the first fox and having originated in southern Victoria from the area where these foxes were alleged to have come. So all of the circumstantial evidence and this latest hard evidence adds up to the fact that this is the case.*

*On top of that we get maybe six or eight reports a week of fox sightings on the fox hotline, 80 per cent of which we believe to be legitimate sightings particularly when we know they come from people who have been fishing and foxes have come down within a few metres of these people and investigated what was going on and then disappeared and so on. I have noticed in the newspapers some people are very dubious about this but certainly I am not and I do not believe that we can afford to take risks so there could be a number of foxes – between maybe 11 and 20 that are in the State at the moment ... they are very cagey, shy animals and it is no wonder people do not see them readily because they have learnt to avoid people.<sup>684</sup>*

[1387] Another member asked the Minister what evidence there was that foxes are being imported into Tasmania. The Minister replied:

*Unsubstantiated ... we are highly suspicious of how it happens and believe we probably know but, there is one thing to have an indication and high suspicion and there is the other of having the evidence to actually prove it and there is also the matter of the statute of limitations with our current legislation. It may be that we might have to change that in the future because I think there is only a six-month statute of limitations on charging people in this area and we have issued a reward, as you know, of \$50,000 and so it is a substantial one for knowledge leading to the conviction of persons. We have had quite a big response from Crime Stoppers through that and all these reports have been investigated by the police. When we did have the police on the original issue that matter was given very serious consideration; there was an inspector and a number of police officers who worked hard at trying to find an outcome but were not able to (advance it).<sup>685</sup>*

<sup>684</sup> Tasmania Parliament, Hansard, Budget Estimates, 4 June 2002.

<sup>685</sup> Ibid.

## 6.2. Analysis

- [1388] The fox cub importation was information. It was represented as such, as can be observed in the above quotation. It required a precautionary management response to minimise the threat that foxes posed and to eradicate them where they existed. There was sufficient information to pre-empt the devastating effect an established fox population would have in Tasmania. Rearing and releasing a number of fox cubs had the potential to establish the fox in Tasmania. The credible fox sightings provided sufficient additional weight to proceed with this precautionary approach. The management response was to establish the ICS and JTF1. Such a response appears reasonable based on the knowledge at the time.
- [1389] The response provided additional evidence of foxes in that area. The Longford fox provided corroboration of the cub release, as did the Woodstock fox print and the Symmons Plains fox. No fox event was able to be excluded from evidence by the time the FFT was established. It is clear that some of the events continued to be investigated long after the FFT was established. JTF2 located additional information and determined that the Longford fox was a hoax. Disclosure of that information was deemed by management to be inappropriate in the circumstances. That fox event experienced a formal decline in stated value before being categorised as unresolved.
- [1390] The Woodstock fox print was strong evidence of the existence of foxes and remains so.
- [1391] The Symmons Plains fox remains as evidence of a live fox living in Tasmania. However, there are identifiable issues with this fox event.
- [1392] Any misrepresentation, either by embellishment or omission, does not appear to attach itself to any specific individual other than statements made in the media by Peter Mooney in November 2001. However the Longford fox was not formally exposed as a hoax until September 2002.
- [1393] It is evident that poor record keeping, case management and general management practice also contributed to this issue.
- [1394] It appears that the exclusion of the Longford fox would have made little difference to the establishment of the FFT. Its disclosure as a hoax in 2002 may have averted the speculation that has dogged the Program since that time.

### Finding

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**There is no conclusive evidence that the FFT was established on the basis of any misrepresentation of evidence known at the time.**

## 7. Burnie fox event

[1395] The Burnie fox was found dead on the highway at Burnie in October 2003. Its presentation was that it was a probable incursion from the Burnie Wharf. The animal was around two years of age, had low fats levels, nothing in its stomach and had died from blunt trauma.

[1396] No person came forward to identify themselves as the driver of a vehicle that hit the fox. An anonymous contact was made to indicate the fox had been beaten to death aboard a vessel that had berthed at the Wharf and dumped away from the area.

### 7.1. Media / Reviews / Public Comments / Challenges

[1397] This fox event received little media coverage. The then Minister, the Hon Bryan Green MP appeared on the front page of the *Advocate* on 15 October 2003.

[1398] Newspaper articles at the time suggested that it had been run over by a motor vehicle. It had no stomach contents and low fat content.

### 7.2. The changing weight of this evidence

[1399] The previous piece of 'hard' evidence listed by DPIPWE in the Burnie area was a fox positive scat in October 2002.

[1400] Information was received suggesting that the fox was killed on a boat and placed on the roadway. However the veracity of the information could not be established due to the anonymity of the source. The wounds to the fox were sufficient to be attributed to a collision involving a vehicle or being beaten.

[1401] With the fox being found so close to the wharf, it is difficult to raise an argument that it was living wild in Tasmania. Incursions from the wharf had been proven (1998) and there was a risk of further incursions given the known fox population at Webb Dock in Melbourne.

[1402] There has been no change to the weight of this evidence and it has been listed as 'hard' or physical evidence in every report since its time of finding.

### 7.3. How this evidence is currently listed (website)?

[1403] The evidence is recorded as:

*Fox Evidence 2003*

*October 2003: A fox carcass (female) is found on the verge of Bass Highway on the outskirts of Burnie. Police retrieved the carcass.*<sup>686</sup>

### 7.4. Analysis

[1404] The evidence suggests that the fox is a result of an incursion into the nearby Burnie wharf, from a boat travelling from Melbourne. At the very least, the event is merely

<sup>686</sup> <http://dpiipwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011>.



evidence of a fox being found in Tasmania, but is not 'hard' evidence of foxes living or breeding in Tasmania.

## Finding

**There is no conclusive evidence of misrepresentation relating to this fox event.**

## 8. Lillico fox event

[1405] The carcass of a fox was recovered from the Bass Highway at Lillico in February 2006. It had been reported previously in December 2005 and not located. It was a young animal of around 3-4 months of age and due to its condition no cause of death was able to be established.

### 8.1. Media / Reviews / Public Comments / Challenges

#### February–March 2006

[1406] Articles published in the *Advocate*, *Examiner* and the *Mercury* newspapers, cite the importance of the find:

*'... prompted fears the state has a breeding population'*

*'The Government has spent \$4.4 million on foxes to date, but funding for the taskforce is decreasing annually and it is understood it has less than half the numbers of staff it had at its peak in 2002 when there were 23 employed'*

*'Tasmania's Fox Taskforce is due to be slashed to just four full time employees in the coming months, despite fears that foxes might be breeding in the state ... the State Government confirmed it planned to reduce the taskforce by more than half in the next financial year ... while admitting to reducing the taskforce, Primary Industries and Water Minister Steve Kons said the remaining staff would be supported by contractors as required. He also did not rule out the possibility of changing the planned cutbacks'*

*'If the tests come back positive, the carcass will represent the first juvenile fox found in Tasmania'*

*'Yesterday two more people had come forward ... Taskforce Manager Chris Parker said that one man had thought the fox had been dead for a week or two when he stopped to look at it on December 27 last year ... litters usually comprised two to four cubs and foxes mated in winter and gave birth in September or October. This meant that there could be between three and five foxes in the Lillico area'*

*'... the precautionary principle needs to be invoked ... by dramatically reducing funding over the past three years the Lennon government is condemning the taskforce to failure ... by all means evidence of foxes needs to be scientifically assessed to the highest of standards to rebuild the public's faith ... no broad scale eradication of pest animals had ever succeeded in Australian history'*

*'It appears to be the last piece of circumstantial evidence needed to confirm that the Government is faced with the mighty problem that foxes are breeding here'*

### **June 2006 – IACRC Report**

[1407] The report states:

#### *3.2.13 Lillico Beach*

*This could be the first confirmed case of foxes breeding in the wild in Tasmania; if so this has obvious and potentially ominous implications.*

#### *4.2 Hard Evidence*

*February 2006: Dead fox reported by roadside at Lillico Beach and carcass retrieved by Taskforce. Tissue, hair and jaw samples confirmed positively as fox. Age of fox (approx. 4-6 months) provides first hard evidence of foxes breeding in Tasmania ...*

#### *4.7 Processing of Evidence*

*The most recent piece of evidence, a fox cub located at Lillico Beach (February 2006), was again impossible to exclude as a hoax but even worse, raises the greatest of concerns that foxes in Tasmania are breeding*

#### *4.11 Summary Based on Evidence*

*A recent piece of evidence, a fox cub located at Lillico Beach (February 2006) raises the greatest of concerns that foxes in Tasmania are breeding.<sup>687</sup>*

*The most recent piece of evidence, a fox cub located at Lillico Beach (February 2006), was again impossible to exclude as a hoax but even worse, raises the greatest of concerns that foxes in Tasmania are breeding.*

### **2009 – PAC Report**

[1408] The report references evidence from Nick Mooney:

*It is a bit difficult with foxes because Australia's 30 or 40 million foxes came from six or seven animals, so they are all related. This complicates things. There is no proof of establishment and the only adjunct evidence of establishment is the juvenile fox retrieved from the side of the road at Lillico in 2005. That was a young fox, so unless it had arrived shortly before it is hard to avoid thinking that it was a result of breeding ... We have no evidence of establishment.<sup>688</sup>*

### **2009 Landcare Research**

[1409] The report did not specifically reference this event.

#### **8.2. What did this evidence mean at the time?**

[1410] This fox event involved a fox young enough to still be in the protection of its mother. It could have been evidence of a breeding occasion. Despite a significant management response in the months that followed, no other contemporary evidence was located.

[1411] This evidence contributed to the establishment of the FEP.

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<sup>687</sup> IACRC Report 2006.

<sup>688</sup> PAC 2009, pg 21.

### 8.3. The changing weight of this evidence

[1412] There has been little change to the weight of this evidence since its identification. It is difficult to reconcile the FFT not discovering additional evidence. The young age of the fox would suggest that the animal would not be roaming. Its mother would have been present and each fox would have deposited four to six scats a day. There have been concerns raised about this fox event both internally and externally to the Program. The person who claims to have shot the fox has some credibility issues.

### 8.4. How this evidence is currently listed (website)

[1413] The evidence is recorded as:

*Fox Evidence 2006*

*February 2006: A dead fox is observed by a tourist at the roadside at Lillico Beach. The Fox Eradication Program is advised and retrieves the carcass. Subsequent tissue, hair and jaw analysis confirmed the animal to be a juvenile fox estimated to be 4-6 months old. The witness (who was on vacation) initially sighted it on Christmas Day 2005 but did not report it until she returned to work and mentioned what she had seen to a colleague. The colleague advised her to immediately call the Fox Eradication Program. Upon receipt of the call, field officers were dispatched to the scene and collected the remains of the carcass.<sup>689</sup>*

### 8.5. Analysis

[1414] This evidence was located within 10km of the Devonport docks, although there is no reference to this in any document reviewed.

[1415] The original analysis of this fox event was that it should be regarded as potential evidence of a breeding population. However, as time went on and with no further evidence of foxes being located, that assumption should have been re-evaluated and a complete analysis of all facets of the fox event, persons involved, evidence and information should have occurred to determine what this evidence actually meant. No dens were located, when foxes usually have several when breeding to move cubs when under threat. No other contemporary fox positive scat was located.

[1416] When a person came forward to state he shot the cub, a full investigation should have occurred into his claims. It does not appear that this occurred.

[1417] This fox cub was merely evidence of a fox cub lying on the Bass Highway, Lillico. Anything further than this is assumption or deduction that was not based on hard evidence. The circumstances of its deposit on the roadway are unknown. There is some information about how that occurred, but the provider is not credible.

[1418] To ensure accuracy any reference to this piece of fox evidence should include a descriptor as to it being an undetermined piece of evidence of a fox living in Tasmania.

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<sup>689</sup> <http://dpi.pwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011>

[1419] The evidence would suggest that the nature of the event has not been misrepresented.

### **Finding**

**There is no conclusive evidence of misrepresentation relating to this fox event.**

## **9. Old Beach blood event**

[1420] Blood spotting on a piece of wood and in a sand trap was recovered at Old Beach in May 2006. A barbed wire trap had been erected by the FFT after some chickens were killed in a pen on that rural property. The blood was analysed and was deemed fox positive.

[1421] Extensive camera, sand pad and site searches were completed. No other fox evidence was located. A second chicken kill was reported and dog DNA was located on the carcass.

[1422] Neither the property owner nor the Program officer investigating the event believe the blood located at the scene came from a fox living in Tasmania.

### **9.1. Media / Reviews / Public Comments / Challenges**

#### **14 June 2006 – Fox Alert at Old Beach**

[1423] The *Mercury* reported an investigation at Old Beach where blood was detected and may have been from a fox, and that the results were expected later on the day of publication. It states:

*The latest investigation comes just weeks before the Taskforce is due to be further scaled down after a reduction in annual funding ... scheduled to close in 2007 ... State Government declined to say yesterday whether this week's state Budget would contain any additional money for the taskforce.*

[1424] It stated that an independent review of the Program had yet to be released but was due later in the year.

#### **15 June 2006 – DNA proves to be fox**

[1425] The *Mercury* reports the blood located at Old Beach was confirmed to be fox positive. It referred to a fox positive scat in Conara and the Lillico fox carcass, as recent evidence. It reported that this attack sparked calls for a dramatic rethink of the eradication effort. There was a call for more funds in the Budget that was released on the day the article was published. DPIWE stated there had been no further discussions about funding since the blood was identified as fox positive.

[1426] The article notes that the Director of the Tasmanian Conservation Trust stated that the Taskforce suffered bureaucratic mismanagement and inadequate resourcing.

### **15 June 2006 – Talking Point**

[1427] The *Mercury* outlines issues with the entire evidence list, to date and stated:

*The Government is undoubtedly caught in no man's land separating the vocal sceptics who want money spent on feral cats rather than non-existent foxes and the agriculture sector and wildlife experts who want no stone left unturned to ensure foxes are cast off the island.*

...

*In 2003 just as there was talk of the Taskforce winding down, a dead fox was found on the Bass Highway near Burnie. Tests were inconclusive as to whether the animal was a recent arrival or Tasmanian born.*

...

*[Referring to the Conara scat and the Lillico fox and now the blood] Those who believe foxes are in Tasmania will shudder as yet another sign of fox establishment, those who do not will again allege hoax or conspiracy.*

### **2013 Kittell Report**

[1428] The report mentions the blood as one piece of 'considerable physical evidence of fox'.

#### **9.2. What did this evidence mean at the time?**

[1429] This fox event contributed to the establishment of the FEP. Three events occurred within 2006, as well as the publication of the 2006 IACRC Report. There was significant management action in response to this matter.

#### **9.3. The changing weight of this evidence**

[1430] There has been little change to the weight of this evidence since its identification. There have been concerns raised both internally and externally to the Program. Its inclusion in the evidence list remains controversial.

#### **9.4. How this evidence is currently listed (website)**

[1431] The evidence is recorded as:

*Fox Evidence 2006*

*May 2006: Blood is collected at the site of a large chicken kill at a coop in Old Beach (near Hobart). Analysis confirms the blood to contain fox DNA. The blood was recovered from barbed wire placed around a hole in the coop in the hope of gathering fur for testing.<sup>690</sup>*

<sup>690</sup> <http://dpiwwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011>

## 9.5. Analysis

- [1432] The original analysis of this fox event was that it should be regarded as potential evidence of a fox living at Old Beach. However, with no further evidence of foxes being located, that assumption should have been re-evaluated and a complete analysis of all facets of the event should have occurred. No images of foxes were detected on hours of camera footage, no fox positive scats were located and there were no credible sightings in that area before media coverage occurred.
- [1433] The FEP investigator raised concerns about this fox event, as did other staff both at the time and during the Commission's investigation. The DNA analysis concluded the blood spots were fox positive. The DNA testing used the same methodology as the scat DNA testing and includes a margin of error. The test was reported to be carried out on two samples that returned the same result.
- [1434] There is some suggestion of contamination, but there is no conclusive evidence on that issue. There was no evidence of hoaxing.
- [1435] This appears to be a case of preferring a scientific finding, while maintaining a number of serious concerns about the environment and investigation. Better investigation methods deployed earlier may have been able to solve this issue.
- [1436] This evidence amounts to blood spots being located on a property at Old Beach that were identified as fox positive after analysis. Anything further than this is assumption and has no basis in evidence. The circumstances of its deposit on the wood and sand are unknown. The highest presentation of this fox event is that it was blood from a fox living in Tasmania and that occurred at the time of analysis.
- [1437] To ensure accuracy any reference to this piece of fox evidence should include a descriptor as to it being an undetermined piece of evidence of a fox living in Tasmania.

### Finding

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**There is no conclusive evidence of misrepresentation relating to this fox event.**

## 10. Glen Esk fox event

- [1438] A fox carcass was located on Glen Esk Road, Cleveland in August 2006. The carcass presented as recent road-kill. Concerns were raised about this fox event almost immediately: questions were raised in relation to the time and cause of death and the circumstances surrounding the finding of the carcass.
- [1439] Despite what was reported in the media, there was no person who identified as the driver and who saw a fox run out from the side of the road. However there was a person who stated they ran over the fox on the roadway. There was subsequent information to suggest that the carcass was imported from the mainland and was planted.

## 10.1. Media / Reviews / Public Comments / Challenges

### **26 June 2006 – Independent Review Highlights Fox Eradication Efforts**

[1440] The media release quoted the Minister referring to the recommendations of the IACRC Review Report 2006:

*Mr Llewellyn said in line with the review's findings the fox free program would continue with in excess of \$2.4 million State funding over the next four years ... Our Government recognised in 2001 the threat the fox posed to our rich natural heritage and primary industries sector ... As we approached the end of that initial five year program, it was obviously important to have an independent review undertaken to look at what has been achieved and what our future plans should be.*

### **3 August 2006 – Critics savage funding cutbacks**

[1441] The *Mercury* reports that the State Government was under pressure regarding a cut back in funding after the discovery of the Glen Esk fox. Senator Eric Abetz called on the Government to increase funding, stating the Federal Government maintained funding whilst the State Government had reduced it. Minister Llewellyn stated the State Government would spend \$25 million over the next four years and provided 60% of the current funding. The Australian Greens, and the Tasmanian Tourism Industry Council also commented on ensuring foxes were eradicated in Tasmania.

### **13 November 2006 – Eradicating the Fox from Tasmania**

[1442] The media release reports the announcement of a funding commitment of \$56 million over a ten-year period:

*Since the Invasive Animal CRC review we have had a fox carcass discovered as road-kill near Conara. This followed the confirmation of fox blood at a multiple chicken kill at Old Beach near Hobart in May this year and the recovery of the carcass of a young fox from the roadside near Lillico Beach in February.*

### **5 February 2007 – Correspondence**

[1443] Alex Schaap (General Manager, Biosecurity and Product Integrity Division, DPIW) advised Dr Obendorf (via email) that:

*I might just say in passing that I have never thought this find (Glen Esk fox) to be of great consequence in terms of evidence of fox invasion. For my money, the discovery of a whole carcass is just a matter of chance and with a small population, the chance of finding a carcass is pretty low. So, using presence or absence of carcasses as an indication of fox population is not terribly useful. Fortunately there are other forms of evidence that serve that purpose much better and that evidence has demonstrated the presence of foxes. I accept that some elements of the evidence may have been fabricated by some troubled soul but it is not plausible in my assessment for all the evidence to be explained away in that way.*

## **22 June 2007 – Fox Force Recruitment Induction**

[1444] The media release states:

*To date, DPIW has taken possession of four fox carcasses from Tasmania, seven fox scats (droppings), fox hair and DNA confirmed fox blood. It has recorded fox footprints and received more than 1400 reported sightings in the past five years ... The Tasmanian Government has committed an extra \$2.53 million each year for the coming ten years to the fox eradication effort. This is in addition to a further \$2.53 million in 2007-08 from the Australian Government, following on from the \$472,000 it contributed last year, and we look forward to their continued involvement in ensuing years.*

### **10.2. What did this evidence mean at the time?**

[1445] This evidence was significant. It was located at a critical juncture for funding. It presented as the first carcass that employees were able to locate in an early time frame to that of its death.

[1446] The evidence contributed to the establishment of the FEP.

### **10.3. The changing weight of this evidence**

[1447] As soon as details in regard to this evidence were published, it was questioned. These questions related to inconsistencies in regard to the carcass, its physical state and time of death.

[1448] Emails from Dr Obendorf to FEP officers and between the officers themselves show a high level of discussion over the concerns, and include:

- On 3 August 2006, there was extensive analysis ordered in respect to all samples taken from the carcass to determine whether there was any evidence it had endemic matter in or on it.
- On 5 August 2006, Nick Mooney stated there were inconsistencies in the results of his comparative tests for temperature cooling and physical state of the animals (cat, brown hares) and he arranged for attempts with other animals and for foxes in Victoria to determine the veracity of the Glen Esk fox.
- On 11 August 2006, there is evidence of a clear review process regarding the evidence before any was made public.
- On 31 August 2006, Dr James Harriss, Mayfair Veterinary Clinic at Sandy Bay, stated, '*I have reviewed all the written material ... my opinion ... fox was killed on the road at the location described in the report and was not a hoax situation*'.

[1449] There were managerial concerns in having Dr Obendorf view the carcass, as it might have encouraged similar requests. However it was decided it would be constructive for this to occur as it may assist with resolving any issues.

[1450] The emails show logical, objective and reasonable thought sequences by FFT employees, and the evidence was reviewed at length and involved independent persons.



- [1451] There were some obvious issues and areas where there was not agreement, but the precautionary response was warranted, there was no evidence of hoaxing that would reach any threshold to not adopt that response at the time.
- [1452] Over the years, the issues have largely remained unresolved. The FFT finished in 2006 and the FEP commenced in 2007. That was a different program, being more scientifically focused. This fox event was a catalyst for the increased funding and realisation of the FEP.
- [1453] In 2016, credible information was obtained that the carcass was placed into the landscape by a named person and there was a suggestion that an employee was a complicit with that occurring. The latter has now been investigated and it has been determined there is no evidence of that occurring.

#### **10.4. How this evidence is currently listed (website)**

- [1454] The evidence is recorded as:

*Fox Evidence 2006*

*August 2006: A male fox carcass is collected on Glen Esk Rd, near Cleveland in the northern midlands.* <sup>691</sup>

#### **10.5. Analysis**

- [1455] The original analysis of this fox event was that it should be regarded as potential evidence of a fox living in the Glen Esk Road area. There was fox positive scat located in the area both in the months preceding and after the carcass was found. There are concerns about the validity of some of those scats.
- [1456] The event was presented as recent road-kill and as such had a dramatic impact when it was presented to the community. However concerns were soon raised about the time of death of the fox and this was subsequently revised to a later time. The reason it was revised appears due to concerns being raised externally. It is doubtful that further investigation into this matter would have occurred without that concern.
- [1457] Three trials were completed on other animals in an attempt to explain the physical state of the fox at the time of finding; the only document provided to the Commission relates to the first trial. The evidence suggests that unless information suited the version of a recent road kill, it was dismissed. The case was being built around trying to establish that it was a recent road kill event rather than it was not.
- [1458] The evidence appears to have been referred to publicly at its highest interpretation at all times. However, it suffered from a lack of practical investigation and focused on the 'science' in preference to other evidence.
- [1459] In some circumstances this could amount to misrepresentation, however it is unlikely in this case. It appears to be more a lack of overall investigation methodology and a focus on the scientific evidence.

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<sup>691</sup> <http://dpi.pwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011>

- [1460] The evidence amounts to a fox carcass being located on Glen Esk Road; anything further is assumption or deduction that is not based on the evidence. There was information provided to the Commission that the fox was planted on Glen Esk Road. That information is credible and if correct could now throw doubt on the presentation of the fox as described by employees at the time of seizing the carcass. With proper investigation skills these issues may have been uncovered or resolved at the time.
- [1461] The evidence suggests this fox event was not misrepresented at the time but had a large number of issues and unresolved concerns around it.
- [1462] To ensure accuracy any reference to this piece of fox evidence should include a descriptor as to it being an undetermined piece of evidence of a fox living in Tasmania.

### **Finding**

**There is no conclusive evidence of misrepresentation relating to this fox event.**

## **11. Establishment of the FEP**

[1463] The main contributors to the establishment of the FEP were:

- June 2006 IACRC Report
- Fox events portrayed as evidence of recent fox activity in Tasmania: Lillico fox, Old Beach blood spots and Glen Esk fox.

### **2006 IACRC Report**

[1464] The report concluded that foxes were in Tasmania and eradication was still possible:

*After examining all of the available evidence on foxes we conclude that an unknown number of foxes have been deliberately and/or accidentally introduced to Tasmania since 1998 and that some of these and possibly their progeny are still living in the wild in Tasmania. This should be the starting premise for the way forward; not debating the merits of past actions or the veracity of all reports.*

*The likely density of these foxes is still at a stage where eradication is achievable provided the necessary resources are made available.*

*While we interviewed many who claimed that the evidence for presence of foxes has been the subject of continuous hoaxing and fabrication, not one person was prepared to match their conviction with the risk of doing nothing and foxes becoming permanently established in Tasmania.<sup>692</sup>*

The report recommended that current staffing levels be retained and increased should reporting escalate:

*Taskforce staff levels are expected to be five FTE (three field staff) in 2006/07 with the current commitment indicating that the Taskforce will be disbanded from July 2007. The review team strongly recommends that 2006/2007 staffing levels be maintained*

<sup>692</sup> IACRC Report 2006.

*indefinitely to allow the monitoring program to be fully implemented. Only on the basis of outcomes from the monitoring program (to 07/08 at least), should staffing levels beyond 2008 be considered for change. If incoming reports escalate, greater resources will be required to upgrade eradication efforts.*<sup>693</sup>

### **Fox events**

- [1465] The Old Beach blood and Glen Esk Road fox events provided physical evidence of foxes living in Tasmania. However both events, as well as the Lillico fox event, had issues with the circumstances of their finding. Those issues were known at the time and it remains unclear as to whether there was disclosure of those issues and if not the impact they may have had.
- [1466] The fox events were cited as hard evidence of foxes possibly breeding in Tasmania in a Cabinet Minute provided to Cabinet in September 2006. The background and the Commission's consideration of the Minute is provided in section 2.1 of this report.
- [1467] The State Government responded to these events with a 10-year funding program. This was a long-term strategic response and different to that provided previously (funding every two years). There was evidence to support this response and due to its length could be a precautionary response to the entirety of evidence to date. If this is the case, errors in the reporting of specific fox events is unfortunate but not evidence of calculated misrepresentation. Errors appear to have occurred due to lack of care and diligence in presenting information, and poor investigative and management practices.

### **Finding**

**There is no conclusive evidence that the FEP was established on the basis of any misrepresentation of evidence known at the time.**

## **12. Interlaken skull**

- [1468] A skull was located on a tree stump between December 2008 and March 2009. The person who had possession of the skull took FEP Officers to the location he had found it at Interlaken, however was unable to locate the exact site and nominated a possible area of 20ha.
- [1469] The skull was identified as belonging to a fox and a DNA analysis was required to confirm such. Analysis determined it was not from the Symmons Plains fox.

### **12.1. Media / Reviews / Public Comments / Challenges**

#### **May 2009 – PAC Report**

- [1470] This evidence was not referenced in the final report.<sup>694</sup>

<sup>693</sup> Ibid.

<sup>694</sup> PAC commenced to take evidence in the effectiveness of the Fox Eradication Program in Tasmania – evidence taken May, June, October and November 2009).

### **11 February 2010**

[1471] The *Mercury* refers to this discovery. It cited the funding amount and public scepticism relating to the Program.

### **29 September 2009 – Parliament**

[1472] Mr Parkinson MLC stated that neither Program officer who attended the matter found any reason to doubt the finder's version of events. He describes the skull as one of many pieces of evidence that support the need for the eradication effort and makes a final comment that the Program should not be unreasonably distracted by an ongoing need to substantiate the presence of foxes.<sup>695</sup>

### **2013 – Kitchell Report**

[1473] The report states:

*This scepticism, in the face of considerable physical evidence of fox presence (scats, carcasses, blood, skull, footprints) along with thousands of sightings, seems to be based on either a belief that the scientific analysis is somehow defective and/or that a comprehensive hoax is being perpetrated.*

#### **12.2. What did this evidence mean at the time?**

[1474] This skull was the first piece of non-scat evidence located since 1 August 2006. Its discovery coincided with evidence being taken in the PAC.

[1475] The discovery of this skull had no influence on any matter.

#### **12.3. The changing weight of this evidence**

[1476] Mr Johnston states there were serious discussions about whether to include this in the list of evidence. There was a policy at the time to share the information, rather than cover it up, and as such it was deemed appropriate to list it as evidence. The circumstances of the find were explained to the media at the time.<sup>696</sup>

[1477] Many staff were either unaware this fox event was listed as evidence or disagreed with its inclusion.

[1478] This evidence has not changed weight.

#### **12.4. How this evidence is currently listed (website)**

[1479] The evidence is recorded as:

*Fox Evidence 2010*

*February 2010: Skull collected near Interlaken identified as fox skull through DNA testing*

<sup>695</sup> Tasmania Parliament, Legislative Council, Hansard, 29 September 2011.

<sup>696</sup> Transcript, Alan Johnston, pp 65–66.

*Results received on Friday 05 February 2010 from the Australian Museum in Sydney report that a skull collected in Tasmania has been identified as a fox skull through DNA analysis.*

*The skull was collected by a member of the public and submitted to a Fox Eradication Program (FEP) Field Officer in July 2009. No lower jaw was collected. The person who collected the skull indicated that it was found in the Interlaken area sometime between December 2008 and March 2009. A subsequent search by FEP Investigators, Scat Dog Teams and Field Staff (in October 2009) of the general area in which the skull was found did not locate any additional evidence of fox activity.*

*DNA analysis was undertaken after physical examination by several experts was unable to differentiate if the skull came from a fox or dog. Fox skulls are very similar in appearance to some dog skulls, as the species are both members of the canid family. The variety of sizes and shapes of the domestic dog skull means that there is no simple measurement or feature to separate them from fox skulls; definitive identification can only be made through DNA analysis.*

...

*The confirmation of the skull being from a fox follows the collection of a [fox positive scat \(1\)](#) in the Interlaken area on 05 May 2009. No DNA genotype has yet been obtained for this scat or any other fox positive scats collected in the region: Tunbridge (2 scats), Oatlands (2 scats) and Conara (1 scat).*

*The Interlaken area was the focus of monitoring operations during 2009 as a result of physical evidence of fox activity and credible public sighting reports being received from the region. A fox-baiting program (covering 255 sq km) was completed in the Tunbridge-Interlaken area in April-May 2009.<sup>697</sup>*

## 12.5. Analysis

- [1480] The circumstances of the skull's discovery provided little basis to affirm that it was evidence of a fox living in Tasmania. It is no different to other imported fox product recovered in the State. It appears to have been included on the basis that it couldn't be excluded, yet it is difficult to reconcile how failing to list it would be detrimental. The skull should not have been included in the Evidence List.
- [1481] The information provided in the above entry of the DPIPWE site however does sufficiently explain the circumstances of this discovery to enable the reader to determine whether this matter amounts to evidence of foxes living in Tasmania. As such it has not been misrepresented.

## Finding

**There is no conclusive evidence of misrepresentation relating to this fox event.**

<sup>697</sup> <http://dpiipwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011>.

## 13. Scats: locating and testing

- [1482] In 2007, the FEP commenced utilising DNA analysis of collected scat from the landscape to identify fox presence. Over 13,000 scats were collected from around Tasmania from 2007–2014.
- [1483] Sixty-two scats were identified as fox positive by the University of Canberra. There were blind tests completed on several occasions that produced no error in the testing. By 2009, the University of Western Australia was able to identify individual foxes through DNA analysis. Fourteen individual foxes were identified.
- [1484] Scat dogs were introduced in 2007 to assist locating fox positive scat. Scat dogs located at least 25 fox positive scat. The remainder were located by field officers completing various tasks.

### 13.1. Media / Reviews / Public Comments / Challenges

#### June 2006 – IACRC Report

- [1485] The report completed a comprehensive review of the Program. It identified issues in the ICS and FFT and was an important contributing factor in establishing the FEP. It highlighted the issues of scepticism and hoaxing. It stated that:

*a rigorous, almost forensic approach to all aspects of Taskforces duties is required to support ongoing Government investment ... transparent process especially when critics raise doubts over the veracity of evidence ... for the public to move from indifference to acceptance of any future evidence of foxes.*

- [1486] Further the report stated:

*Investigation of the hard evidence and reports associated with the above cases shows some deficiencies in protocols for collection and reporting. Specific guidance is required to maintain the integrity of the Taskforce and its actions in relation to the collection and treatment of evidence. These steps will reduce the questions that are continually raised by sceptics on the reliability of the evidence in future cases.*

...

*With the potential for such hoaxing, it is of paramount importance that each report or investigation of evidence (especially hard evidence) is clinically analysed and documented. Reports and evidence need objective assessment; everything from the integrity of the person making the report, to the feasibility of the circumstances surrounding the sighting or detection of hard evidence. It will take compelling evidence to convince the Tasmanian public that a fox or foxes may be present in Tasmania. A critical element for gaining public confidence will be a lack of negative or sceptical reporting in the media.<sup>698</sup>*

- [1487] It stated that there were funds requested for clinical analysis in 2005-2006 but this had been carried over to 2006-2007. This included \$65,000 for a project officer to coordinate scat movement and \$30,000 for analysis by the University of Canberra (at

<sup>698</sup> IACRC Report 2006.

\$20 per test). A further \$80,000 was provided for laboratory requirements to set up testing facilities.

### **20 September 2007**

[1488] This was the first occasion where an issue was raised about the scat evidence. Scats were sent to the University of Canberra for analysis. A file note states that one scat was shown positive to Phase 1 of the test and was mammalian DNA. The Phase 2 sequencing results showed it closely resembled a fox scat but was only 88% to the most closely related fox sequence and was different to the other Australian foxes that have been sequenced at that time. No explanation could be provided for the result and it was speculated that it could be from a species for which sequencing is not currently available.

### **14 April 2008**

[1489] Dr Obendorf stated he was awaiting:

*the publication of a series of scientific peer-reviewed papers with detailed 'Materials & Methods' sections on all the field activities and evidence of the presence of foxes in Tasmania.*<sup>699</sup>

### **5 November 2008**

[1490] DPIPWE sought to have all scat samples divided into three parts: one for storage at the QVMaG; one sent for dietary analysis; and one to be retained by the University of Canberra for future testing.<sup>700</sup>

[1491] Documents provided by DPIPWE during the Commission's investigation included a report by Nick Mooney dated 17 April 2008, *Physical Evidence of Foxes in Tasmania since 1998*. Mr Mooney reviewed all the evidence and provides context to the respective finds. In regard to scat evidence, the following are two examples:

#### **Cleveland Scats**

Date: 28/9/06, 1/10/06, 10/10/06, 10/10/06, 12/10/06

Place: On 3 properties within 6km of the Cleveland Fox carcass retrieval site.

Finder: 2 members of the FFT – during operational Tactical Monitoring and opportunistic (by NJM).

Type: In the months after the Cleveland Fox incident collection of carnivore scats was undertaken in the vicinity. 110 scats were picked up and sent for DNA analysis; 5 contained fox DNA. The exact position of these fox scats has not been made public to avoid harassment of landowners by sceptics.

Curation: A portion of the scats are held at the University of Canberra. The remainder has been sent to Barbara Triggs for full content analysis. All remaining material is to be returned to the FEP.

<sup>699</sup> <http://tasmaniantimes.com/index.php?/article/what-do-the-latest-dna-positive-fox-scats-tell-us/>

<sup>700</sup> DPIPWE, Letter to University of Canberra, 5 November 2008.

*Issues: A decision on probability of a match of these scats and the Cleveland fox has not been possible because of insufficient DNA quality. The scats could not be aged.*

*Conclusion: At least one wild fox was present in the Cleveland area in late 2006. This is important corroborative evidence for the Cleveland Fox.*

### **St Peters Pass Scat**

*Date: Collected 26/7/07*

*Place: St Peters Pass*

*Finder: A FEP field officer*

*Type: Scat found during tactical response scat collection activities. The exercise was carried out in response to a weight of sightings reports. The scat was confirmed to contain Fox DNA through analysis at the University of Canberra.*

*Curation: A portion of the scat is held at the University of Canberra. The remainder has been sent to Barbara Triggs for full content analysis. All remaining material is to be returned to the FEP.*

*Issues: The long turn-around time for scat DNA analysis meant that this result was received six months after the scat was collected. Using the scat detector dogs as a 'filter' to prioritise scats in the lab may help significantly reduce this turn-around time for likely fox positive scats. As with previously collected scats, this scat cannot be aged.*

*Conclusion: At least one wild fox was present at St Peters Pass in early to mid-2007.<sup>701</sup>*

### **30 January 2009**

- [1492] The *Mercury* reported that three scats had been located late the previous year at Burnie, Wynyard and Boat Harbour. The FEP Manager stated there were sightings, suspicious animal kills and evidence was mounting around the State.

### **26 & 31 January 2009**

- [1493] The *Advocate* published letters from three persons who considered that fox evidence was a hoax, sightings were false or unreliable and previous located carcasses were planted, as were the fox positive scats.

### **25 February 2009**

- [1494] The IACRC responded to an allegation by Mr Rist that fox scat was being planted into the landscape. The IACRC stated it would take time and effort to locate scat on the mainland and export them, that it is not a normal thing to do and that the importers would not know where to put the scat in order for them to be found by the FEP

<sup>701</sup> Nick Mooney, Physical Evidence of Foxes in Tasmania since 1998, 15 April 2008.



**9 March 2009**

- [1495] The *Examiner* published a letter calling for an objective and independent investigation into whether foxes were in Tasmania.

**13 March 2009**

- [1496] The *Mercury* reported that five of the 30 fox positive scats located to date, were from five individual foxes. One was identified as female and it speculated that could indicate breeding or potential to do so. This article was repeated in the *Examiner* and *Mercury*.

**19 April 2009**

- [1497] The *Examiner* reported there were now eight fox positive scats located that were able to identify individual foxes. It included both genders and speculated they could be breeding.

**29 May 2009**

- [1498] The *Mercury* reported a reduction in positions at the FEP due to the State Government failing to renew contracts of some employees.

**8 June 2009**

- [1499] The *Mercury* reported that the State Government was examining options to end funding arrangements and had commissioned a major review of the Program that including an exit strategy. Dr Obendorf stated the lack of endemic pademelon presence in the scats located in Tasmania was an anomaly and not representative of linking the fox to the environment. He stated it indicated the scats may not have originated in Tasmania. It was confirmed that review was to occur at about the same time as the already approved PAC investigation.

**June 2009**

- [1500] The *Mercury* reported that the exit strategy would only be used if there was certainty that there were no foxes left in the State. Minister Llewellyn stated there were no current plans to downgrade the number of employees in the Program.

**15 June 2009 – Fearn Report**

- [1501] Mr Fearn reviewed the location of all 'hard' evidence from the Program. It provided a detailed account of the search to recover seized evidence from historical fox finds. It made recommendations as to the handling and storage of evidence to ensure future security of physical evidence.<sup>702</sup>

**15 July 2009**

- [1502] The *Mercury* reported there were now 10 individual foxes that had been identified by genotyping scat.

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<sup>702</sup> Fearn Evidence Catalogue 2011.

**27 July 2009**

- [1503] The *Examiner* published an article that outlined the evidence and the case for the sceptics.

**6 August 2009**

- [1504] The *Advocate* published a letter from Dr Tony Peacock (Chief Executive Officer of the IACRC). He states that recent allegations of planting fox scat into the landscape would require a large amount of scat to be planted as persons didn't know where FEP staff would be, and provided support for the Program.

**14 August 2009**

- [1505] *Tasmanian Country* published an article that stated foxes were in the State, referred to the evidence, stated it focused around scat detection and recommended alternative methods of killing the fox should now be considered.

**19 August 2009**

- [1506] The *Advocate* reported a reduction in the funding for the FEP. The TCT had sought federal funding of \$2.83 million over four years but had only received \$1 million for the period 2009-2010. The spokesman for the Federal Minister stated there had been no reduction and further funding would be dependent on the next review.

**20 August 2009**

- [1507] The *Examiner* reported a call for additional funding as a response to the two fox positive scats located in Cygnet.

**20 August 2009**

- [1508] The *Mercury* reported a reduction in funding and that the FEP stated the fox had infiltrated the south of the state and referred to the two scat located at Cygnet. It stated nine scat had been located in the year to date. This article was also published in the *Advocate*.
- [1509] The *Mercury* also reported that Dr Obendorf had concerns over the scat evidence in general. He stated that despite hours of footage from camera traps no fixed image had been secured and that no other evidence had been located to confirm the 40 scats located to that date, were from foxes living in Tasmania.

**22 August 2009**

- [1510] The *Mercury* reported the Federal Government had not approved a request for an additional \$2.8 million in funding and as a result it was forecast that jobs would be cut.

### **August 2009 – Landcare Report**

[1511] The report stated:

*We suspect a fair part of the effort of the team has gone into the debate with sceptics who doubt the existence of foxes in Tasmania – now surely resolved by the ongoing DNA evidence for all but the most ardent conspiracy theorists.*<sup>703</sup>

### **14 September 2009**

[1512] The *Mercury* reported on a public fox information session held at Cygnet Town Hall the week prior. The session was attended by 80 persons and went for two hours longer than planned and there was much concern over the fox presence in the area after the discovery of the two fox positive scats in Cygnet.

### **September 2009 – First Fearn report**

[1513] Mr Fearn submitted a report that analysed the invertebrate remains of all (then 39), DNA fox positive scats and states:

- No scat contained an endemic species from Tasmania or elsewhere;
- 14 of 39 contained no insect remains;
- 11 of 39 contained readily identifiable insect remains. Five were considered by the author, to be of non-mammalian origin, #814, #809, #5304, #6307, #5299 and had been collected between 2006-2009; and
- nine scats contained secondary prey items such as ants.

[1514] Mr Fearn reported that he was required by his Manager, Mr Johnson, to remove any reference to those he considered to be of non-mammalian origin, on the basis that other employees would not understand it. Mr Johnson has no memory of this requirement.<sup>704</sup>

### **December 2009 – PAC report**

[1515] The Committee's assessment provided confidence in the management of evidence, especially scat evidence:

*appropriate strategies for dealing with scats from the very first time they pick them up. There is no human handling, no exposure to outside elements. They are dried in specific and locked circumstances and then posted to us here at the University of Canberra. We treat them in a very strict protocol to make sure that the risk of contamination is minimised'.*

[1516] It was reported that the scientific evidence revealed that fox scats have been found in various locations around Tasmania, and should be considered as persuasive evidence based on the improbability that a person was importing and spreading fox scats.

<sup>703</sup> Landcare Report 2009.

<sup>704</sup> Transcript, Alan Johnston, pg 54.

### **23 December 2009 – Tasmanian Times website**

- [1517] Specific allegations were made by a former FEP officer that fox scats and other evidence was planted into the landscape.<sup>705</sup>

### **12 March 2010 – Arthur Rylah Institute for Environmental Research**

- [1518] It appears that a funding application to the Arthur Rylah Institute for Environmental Research, was prepared via Mr D Ramsay. One objective was to review all evidence and produce a fox habitat suitability map for Tasmania and a current distribution map for foxes in Tasmania. It stated:

*We propose to analyse the locations of hard fox evidence combined with information on survey effort from both strategic surveys and investigations ... that incorporates both spatial structure ... and imperfect detection of monitoring ... to produce an unbiased map of the current distribution of foxes in Tasmania.*<sup>706</sup>

### **13 May 2010**

- [1519] The University of Canberra notified the FEP that it had re-tested six fox positive scats and that they correspond to those Mr Fearn stated could have been of non-mammalian origin.
- [1520] The conclusion was that fox positive DNA was found in three of the scats (being the most recently obtained). The report indicated that the failure to detect fox DNA in the other three samples was likely due to the DNA being degraded over time to a point below the test's threshold for detection.<sup>707</sup>

### **1 September 2010: Letter to Dr Marks**

- [1521] A letter was sent to Dr Marks from the then Minister for Environment, Parks and Heritage, David O'Byrne. It stated:

*No credible evidence has ever been presented, including to the recent Public Accounts Committee enquiry, to support the view that hoaxing using planted scat has occurred. However the unfortunate truth is that hoaxing is certainly possible and if done well would be very hard to detect. Having said that, based on scat contents there is no evidence to suggest that scats discovered by the Program and used as evidence of fox presence in the state, have come from the mainland. If you have any actual evidence, or indeed further advice as to how the Program could minimise this risk, such advice would be welcomed ... the basis upon which the Program now operates is that there is an unknown but most likely low density and widely spread out number of foxes living in the wild in Tasmania, which is supported by hard evidence. The current list of evidence, collected since August 2001, includes:*

*4 carcasses (Burnie, Symmons Plains, Lillico and Cleveland)*

<sup>705</sup> <http://tasmaniantimes.com/index.php?/article/foxes-here-says-report/>

<sup>706</sup> Application for Research Funding, 12 March 2010.

<sup>707</sup> University of Canberra, Report on repeat DNA analysis of six scats previously determined to contain fox DNA, 13 May 2010.

*2 confirmed set of footprints (Woodstock and Burnie)*

*1 blood sample from Old Beach*

*56 scat*

*1 skull.*

### **September 2010**

[1522] The previously tested scat, plus one other that was located on a fence post, were re-tested. The results were not duplicated and some were not re-identified as fox positive. An explanation about DNA degrading below test threshold was provided. Mr Fearn was not made aware of this testing.

### **June 2011 – Second Fearn Report**

[1523] The report explored the invertebrate remains of all (then 57) DNA fox positive scats. He identified foam in two scats. No endemic species were identified from either Tasmania or the mainland.<sup>708</sup>

### **July 2011 – Fearn Report**

[1524] Mr Fearn provided another comprehensive report.<sup>709</sup> He critically analysed scat content, investigation and documentation and stated that, between 2000–2011:

- some scats contained insects that live in trees and are not found in fox scat, two contained similar artificial foam, some appeared to be snake scat or bird pellets, some were located in areas they couldn't have been left by a fox, such as on top of fence posts, some had carnivore content within the scat and foxes were not known to consume carnivores, appeared to be other carnivore scat such as quolls
- nearly half the scat were located by two employees, Mr Reid and Mr Harrison. Mr Reid located all scats that had sufficient DNA to genotype an individual animal, all scat that contained fox grooming hairs and both scat that contained foam.

[1525] He reported that these anomalies provided a basis for serious doubts to be raised about the provenance of a number of the fox positive scat. He stated that there were concerns about the DNA testing and what effect that would have on the Program, it could be attributed to a testing error rate, that contamination may have occurred, accidental placement of scat in the landscape and that hoaxing could have occurred, specifically by an employee.

### **September 2011**

[1526] Mr Fearn and Ms Olivia Barnard reported on the amount and location of scat around den sites and other locations, and analysed the scat dog's ability to detect it. The

<sup>708</sup> Fearn Scat Content 2011.

<sup>709</sup> Fearn Scat DNA Report 2011.

report indicated that scat is not normally located in isolation in the landscape, as was being located in Tasmania.<sup>710</sup>

- [1527] The study noted that no photographs of foxes were obtained by cameras placed outside of dens. The report recommended that the trial be repeated in Phillip Island, however Mr Fearn understands that did not occur due to funding issues at the time.<sup>711</sup>

### **2013 – Kitchell Report**

- [1528] The report stated that:

*This scepticism, in the face of considerable physical evidence of fox presence (scats, carcasses, blood, skull, footprints) along with thousands of sightings, seems to be based on either a belief that the scientific analysis is somehow defective and/or that a comprehensive hoax is being perpetrated. Of course, either is theoretically possible; however, both are highly improbable. The Panel has seen no evidence that either hoaxing or faulty science are involved and, in the absence of any such evidence, it is essential that a precautionary approach be adopted and for fox eradication efforts to proceed.*

- [1529] The report recommended:

*In order to confirm or otherwise the robustness of the current scat collection and testing processes it is recommended that an independent forensic laboratory be commissioned to review the efficacy of the University of Canberra's DNA analysis and field practices in collecting, handling and storing scats.*

- [1530] Mr Elliott stated that the recommendation of this report for an independent review of the field practices and testing of scats was not completed. He stated a report had been completed as to why it wasn't pursued however this was not supplied to this investigation.<sup>712</sup>

### **2 May 2014**

- [1531] The *Sydney Morning Herald* reported tests completed at the University of Portugal found one test used by the University of Canberra could result in a high number of false positive tests:

*None of the more than 3000 sightings since 2001 have been corroborated with physical evidence of foxes,' the independent group said in a media release. 'Despite this, the [program] used these anecdotal sightings to justify the program and to support the conclusion that foxes were widespread in Tasmania.' All of the physical evidence found was provided by third parties, mostly anonymously. The independent group said at least five cases were indisputably hoaxes and 14 had doubts around them. University of New England wildlife scientist Graham Hall said many of the program's errors had their origin in basic scientific process and poor professional rigour. "We were frequently advised that the program had been extensively*

<sup>710</sup> Quantification of fox scat density near dens: a report of a pilot study conducted at Warrnambool, Victoria (2011).

<sup>711</sup> Telephone conversation with Simon Fearn, 15 May 2017.

<sup>712</sup> Email from Craig Elliott, 27 June 2017.

*reviewed,” Associate Professor Hall said. “But our independent analysis raises the question of how rigorous were the reviews? Obviously, you can’t find what you don’t look for”.*<sup>713</sup>

#### **14 May 2014**

[1532] The *Examiner* reported that a group of scientists:

*... aimed to replicate and assess the FEP data using qualitative and laboratory analysis, not that of uncorroborated anecdotal sightings by the public ... according to Dr Marks, the 61 fox positive scats reported by the FEP over the past 13 years closely resembled a statistical pattern expected from false positives.*

#### **2015 – Independent scientific review**

[1533] The review, *Report to Tasmanian Government: Anomalies in the detection patterns of fox scats in Tasmania*, was completed by Dr Clive Marks et al., and provided to DPIWE. The review concluded:

*Analysis of the spatiotemporal distribution, detection patterns and distribution associated with a subset of scats marked with fox grooming hairs revealed multiple anomalies that have an extremely low probability of occurring by chance. Consequently, it is highly improbable that the scats marked with fox grooming hairs arose from an extant fox population in Tasmania. Given that these samples and anomalies were associated with one staff member, data fabrication should be considered as the most plausible explanation.*

[1534] Since this last entry there has been approximately 40 other articles questioning the FEP and evidence, including reference to a Police investigation and an Integrity Commission investigation.

### **13.2. Evidence from employees**

#### **Evidence of Simon Fearn**

[1535] Mr Fearn was requested to analyse the content of scat in 2009 to determine whether there were signs of endemic species in Tasmania or the mainland. This request was approved by Mr Johnston and Mr Cremasco. He completed that report in September 2009.

[1536] When Mr Elliott commenced with the FEP in 2011, Mr Fearn was requested to complete additional reports. In his 2011 report, Mr Fearn noted misidentification of content of previous samples sent for analysis:

*During the author’s examination of positive scats returned from Barbara Triggs, it became apparent that hairs, feathers and other biological materials had been misidentified or completely overlooked in subsequent reports to the Program (Fearn, 2009). The author has in recent times re-sent hair samples to Barbara Triggs but also the same or duplicate samples to Georgianna Storey of ‘Scats About’, NSW. These analyses have identified a range of additional species represented in scats that were*

<sup>713</sup> <http://www.smh.com.au/environment/50million-phantom-fox-under-challenge-in-tasmania-20140502-zr3fs.html>

*missed in the original analysis including hairs from Dasyurus spp. The author anticipates that if all the fox positive scats are re-examined with instructions for thoroughness, further Dasyurus and F. cattus hairs will be identified.*<sup>714</sup>

### **Evidence of Robert Gaffney**

[1537] Mr Gaffney was a scientist on the Technical Advisory Panel.

[1538] In relation to the anomalies in scat evidence, he stated:

*We did do a review of the evidence particularly when the anomalies came up, which were the ... Nubeena scat ... and the Bruny Island scat, and ... alarm bells went off both within the research program but also within the ... genetics lab in Canberra, and within the technical advisory panel. And we reviewed all of the data and said, "Well okay, can this be wrong?" All of the data was then reviewed, and the answer was no; we couldn't ... allocate any of that evidence towards ... a particular person or a particular incident (that) was showing towards being skulduggery ... that was one of the reasons why the information was released at the time ... we couldn't rule it out, so therefore it was ... put it on the public record as part of the program.*<sup>715</sup>

[1539] Mr Gaffney stated he had not read the 2011 Fearn Scat Report but had seen some parts of it that were emailed to him. He stated the Technical Advisory Panel had neither sought nor been sent the report. He stated the report had never been peer reviewed and he considered it to be the author's opinion only.

[1540] Mr Gaffney stated:

*Because I didn't think at the time it changed anything. The things like Simon's claims that some of the scats were random pellets and that sort of thing. I never saw those. I did find it interesting at the time that nobody else who's considered an expert in birds was involved in assessing those. My area of expertise is birds. Nick Mooney, even though he wasn't part of the program any more, his area of expertise is very much in birds of prey and other, you know, carnivorous birds so corvids ... so that's one person's opinion and you can send a photo and you can say, "What do you think this is?" and you can – usually you send it around and say, "Okay, (indistinct word) to this, we think it's a scat," or, you know, but even if it was a corvid pellet, doesn't rule out the fact that it may have eaten fox and therefore fox DNA – it doesn't rule out fox DNA at all ... some of the claims in there, that's his opinion.*<sup>716</sup>

[1541] When asked about Mr Reid (FEP dog handler), Mr Gaffney said he knew Mr Reid found more fox positive scat than others, and suggested this was due to him working in a fox hotspot and that he may have had a better dog. He stated:

*the possibility of skulduggery had been raised ... it didn't exclude all of the evidence. So changes were made to the program to try and prevent that from happening in the future, and in the future we still got some scats being found.*<sup>717</sup>

<sup>714</sup> Fearn Scat DNA Report 2011.

<sup>715</sup> Transcript, Robert Gaffney, pg 6.

<sup>716</sup> Ibid, pg 35.

<sup>717</sup> Ibid, pg 40.



[1542] Asked about the anomalies he stated:

*Well, you know, “what’s going on here?” That’s the – that’s probably what instigated it: what’s going on? Yes, you’ve got these rumours of possible, you know, untoward activities. You’ve got this randomness of data that’s really hard to explain. You’ve got this ... so, maybe that’s what stimulated Craig to do the – the review [of handling procedures].<sup>718</sup>*

[1543] He stated he was unaware of whether Mr Reid located any further scat after the changes were implemented.

### **Evidence of Alan Johnston**

[1544] Mr Johnston stated that:

- he doesn’t recall any actual allegation of Mr Reid planting scat or that it was a concern he had located so many scats
- he considered Devonport a hotspot and Mr Reid was a dog handler, and his assessment was that it didn’t seem out of order
- he was unaware of the number of scats containing fox hair, he was vague on the number of genotype scats located by Mr Reid, thought there was one with foam in it and it was intimated to him it was contamination from packaging but he thought it was more from scavenging
- he was unaware of the performance of Mr Reid’s dog compared to others;
- Mr Reid had filled in an entry to the Scat Log for another dog handler;
- there was no direction given to Mr Reid and Mr Harrison to not work together – it was more like share your experience with others and nothing was ever said about Mr Harrison seeking legal advice
- he didn’t conduct an in depth investigation into the matter but did advise the Technical Advisory Panel
- he did not recall asking Mr Fearn to remove part of his report in 2009 about scat content.<sup>719</sup>

[1545] In relation to the rumours and the failure to investigate these thoroughly, he said:

*I suppose you want to have confidence in your staff so that’s the first thing, you start there, and in the absence of I suppose compelling information to tell you that something is really happening rather than just some speculation, you know, which often used to be in the media or on the radio or whatever, stories about people planting scats, unless there is something compelling, you know, and you’ve got what you hope are robust protocols, you know, I guess unless you’ve got something compelling telling you otherwise, you have to work on the assumption that these things are real and, you know, we were bombarded through all sorts of media situations with sort of accusations that this stuff was going on so, I mean we couldn’t but be aware of the possibilities.<sup>720</sup>*

<sup>718</sup> Ibid, pg 38.

<sup>719</sup> Transcript, Alan Johnston.

<sup>720</sup> Ibid, pp 49–51.

### Evidence of Peter Cremasco

[1546] Mr Cremasco stated that:

- he was aware of the issues with Mr Reid and supported him up until the occasion Mr Reid changed the entry in the Scat Log and denied doing it. He states his faith was shaken at that stage.
- he was aware of the high fox positive scat detection rate of Mr Harrison and Mr Reid, and of rumours about scat being imported by Mr Reid
- he was aware Mr Reid and Mr Harrison were told not to work together and that they continued to do so
- Mr Harrison threatened legal action if the allegations continued
- many processes were changed in response to the concerns
- there were questions about the validity of the DNA testing
- the margin of error on the DNA testing was in the vicinity of the number of fox positive scats identified
- he disagreed with Mr Johnston not taking more forceful action against Mr Reid for what occurred with the Scat Log entry
- agreed there was discussion about removing all Mr Reid's evidence from the Evidence Lists
- agreed he never completed any in-depth analysis or conducted or caused an investigation to occur into the allegations pertaining to Mr Reid and that any analysis he conducted was superficial
- was not initially aware of the definition of the term 'hard evidence' as provided by the IACRC
- he disagreed with the Interlaken skull being placed on the Evidence List
- he felt some of the responses to the issues were prevented by management
- all matters were discussed in the Project Leadership Team Meetings, which were conducted by the then Manager
- he found a large number of issues when he completed the 2010 audit of training scat, and
- he fully expected to be criticised for some of the matters that had occurred.<sup>721</sup>

[1547] In effect Mr Cremasco confirmed a large amount of what other employees were indicating were issues. Other FEP managers were not as forthcoming.

[1548] Mr Cremasco provided a 'plausible' theory to the reasons for the why the physical evidence ceased to be detected in mid-2011:

*Tasmania has been subject to spurious incursions of single or small numbers of foxes over the years and I will add to this statement that nowhere in my time, in all the*

<sup>721</sup> Transcript, Peter Cremasco.

*evidence I have seen have I seen any evidence of active breeding in this State – I discount that completely. And that, with the formation of the fox eradication program in 2007, increased penalties, increased scrutiny on stuff, the shenanigans petered away, foxes that came in didn't have a long life, probably taken out by the variety of wallaby baiting and other stuff that was going on and then the availability of scats in the landscape simply dropped off over time. It is a plausible explanation. It doesn't match the sighting reports but I think you will find that the sighting reports are more matched to public awareness than actual foxes in the landscape so I wouldn't be too over awed by the sighting reports.*<sup>722</sup>

### **Evidence of Craig Elliott**

- [1549] Mr Elliott stated he applied for and took the job after visiting Tasmania as part of the application process. He stated he was given the impression that the Program was in 'good shape' but, having accepted the position and commenced, found that this was not the case. He confirmed that there was no mention of technical issues such as scat contamination, at a meeting he had prior to taking the job.<sup>723</sup> Issues started emerging quite early and he was approached by staff over a variety of issues, causing him to re-structure reporting lines for more effective management.
- [1550] He stated he was informed of allegations, rumours and innuendo of wrong doing both internally and externally, but that he never saw any evidence of it.
- [1551] He stated that he observed a list of evidence when he arrived and that to a lay person it would indicate evidence of foxes living in Tasmania but '*one of the things I was always very careful with saying it's an indicator, until you have – well, quite often I would find it would come down to person's individual experience*'.<sup>724</sup> He stated he never asked for definitions of evidence and believed they were built up over time.
- [1552] He stated he went through a series of management changes to make processes more objective. He contended with cultural issues and the negative response by employees to perceived attacks by critics.
- [1553] In relation to Scat Content Report 2011, he stated he was aware of the report and stated he took it to be Mr Fearn's opinion. He noted that the report questioned Mrs Triggs' analysis capability; he considered Mrs Triggs to be one of Australian best hair analysts of wildlife whilst Mr Fearn was an unpublished scientist and as a result he preferred her opinions.
- [1554] He relied on the PAC recommendation and 2009 Landcare Research Reports that recommended ceasing to review the evidence and to get on with the job of eradication. He said that if new evidence was brought to him he would have considered it, but that didn't occur. Everything that was brought to him had been dealt with before. He stated he reported to Alistair Scott who was of the same opinion.<sup>725</sup>

<sup>722</sup> Ibid, pg 23.

<sup>723</sup> Craig Elliott, Response to draft investigation report, 21 November 2017.

<sup>724</sup> Transcript, Craig Elliott, pg 10.

<sup>725</sup> Ibid, pg 33.

[1555] Mr Elliott stated that:

- he considered there were a range of reasons why single scat were located
- there were discussions about why foam was in the scats and stated one option was that a fox was being held in captivity and had eaten foam
- he was not aware of Mr Reid and Mr Harrison being formally spoken to about their high rate of fox scat detention
- he was not aware that Mr Harrison and Mr Reid were told to not work together
- he was vaguely aware that Mr Reid's son had worked at a Wildlife Park, but didn't know that it had held captive foxes and was sending training scats to the Program
- he was unaware of Mr Reid being observed picking up fox scat from the mainland, and
- he was unaware of Mr Reid being reprimanded for falsifying an entry in the Scat Log.<sup>726</sup>

[1556] The following passage from his transcript challenges Mr Elliott:

INVESTIGATOR: ... is it really up to Simon Fearn? He's brought the data issues along to you and gone, "You might have a problem here." Is it his responsibility to go out and find that evidence and speak to the staff that perhaps he didn't get on with? Or is this your responsibility to have taken over and gone, "I need to have a look underneath this to see what's going on?"

MR ELLIOTT: Again, I come back and go, "What's new here?" When Simon has made allegations, but what am I meant to do with it? I mean, these allegations have been around for years.

INVESTIGATOR: Well, the rumours have been around for years. You said you weren't told about it when you first came in by Alan Johnson, or Peter Cremasco. So surely this is being produced to you as, "Here's an actual written document," rather than staff being – wandering around and having something to say in the coffee room. "Here's a document which" – I think anyone who read that would go, whether it's right or wrong, that raises significant concerns. Perhaps that's something that management should have a good look at.

MR ELLIOTT: Again, I don't see them being new concerns. So as I said earlier, these sort of things have been kept on floating around. I've been given instructions that – or recommendations to stop the debate about the evidence and whether foxes are here or not, get on with delivering the program. I see where you're coming from in saying, "Yes, there's stuff in here." I could have devoted time to it, however I'm looking at it saying, "These are repeating things that have already been examined."

[1557] Mr Elliott conceded he was unaware of a lot of information that was put to him in the interview. In relation to the anomalies in scat evidence he stated:

<sup>726</sup> Ibid.

*There's concerns being raised repeatedly about the evidence. It doesn't change the fact that there's a risk here and the program needs to deal with that risk. Some of the statistics around it, and I did talk with some of the now external people about this, of what – is this normal? No-one could ever answer me that question of the scats we're finding doesn't make sense.<sup>727</sup>*

[1558] He denied asking Mr Fearn to provide him with a paper copy of his report into DNA reliability. He states he did receive a paper copy and wrote on it and gave it back and that he preferred electronic copies so he could amend them easily.<sup>728</sup>

[1559] Mr Elliott was challenged in relation to Dr Marks' requests for information:

INVESTIGATOR: *I will put it to you that you have had Simon Fearn's report (Fearn Scat DNA Report 2011) which talks about issues, you then got these requests from Clive Marks and whatever his motivation is, at the end of the day, he is going to be putting that evidence together, why wasn't this looked at as an opportunity rather than the suspicion and concern that was there?*

MR ELLIOTT: *I think the history of the relationship with Clive Marks and David Obendorf probably kicked in there. They certainly didn't, from my opinion, they weren't actually constructive in terms of trying to help solve any problems. My view and I will be honest, I think I was probably proven right, they have only used it just as an opportunity to criticise the Department. So, I don't know what caused the original bad blood with Clive Marks, and the program, there seemed to be some issue back in the very early days where he was involved and something blew up. If you ask people like Nick Mooney, who was fairly integral to the program in the early days, if you wanted to get a reaction out of Nick, you just mention Clive's name, so whatever happened there started it off. I was aware of Clive making comments critical of the program, so I was certainly cautious in terms of the degree of trust that I had of him.*

[1560] Mr Elliott couldn't recall referring matters to the Technical Advisory Board, but concedes that one of their duties was to advise on matters such as this. He states:

*I wasn't seeing new information. As far as I was aware these were all things that had been raised repeatedly over the years and I'm looking at going with the, sort of, approach of get on with the job and finish off the program of – do we go back and reanalyse things that, in my view, had already been analysed and looked at.<sup>729</sup>*

[1561] He stated he provided counselling to Mr Reid for losing training scat in 2011. Mr Reid was unable to locate it months later and believes he accidentally disposed of it. Mr Elliott stated:

*But, as I say, I looked at what's going on, is Garry Reid being sloppy, not following a fairly simple procedure and I thought it was appropriate at the time to give him the warning ... The other information around him, as in, you know criticism of him or concerns about him or rumours about him, to me there wasn't enough to tip over and*

<sup>727</sup> Ibid, pg 48.

<sup>728</sup> Ibid, pg 51.

<sup>729</sup> Ibid, pg 57.

*say, the guy's bringing scats into the State and planting them there to then find them.*<sup>730</sup>

- [1562] He does not recall any discussion about removing all Mr Reid's fox scats from the Evidence List.
- [1563] He couldn't recall being given a document from Mr Cremasco, Mr Marrison and Mr Bates asking for evidence to be independently reviewed.
- [1564] The investigator put to Mr Elliott that an email existed about Mr Fearn's overview of DNA evidence and sought to identify the source of the information that was included:

INVESTIGATOR: *Michael Askey-Doran has written an Email which I have got a copy of here, and this is what he says in it in relation to this report:*

*'My understanding is that Simon commenced the report under Alan Johnson and then when Craig started he reviewed the report and asked Simon to make changes, hence version 5. The changes were not around removing information or changing conclusions but around tightening up the language and improving the report in general. The report was regarded as an internal report but provided advice based Simon's opinions and such there was no obligation for DPIWE to accept all or any of the advice. It's my understanding that some of the advice regarding the origin of some of the stats was not supported and alternative advice from very experienced scientists was accepted'.*

- [1565] Mr Elliott stated that he could not recall giving the information provided in the email.
- [1566] He stated he did not further Mr Fearn's reports as the original assessment of an expert stood and he considered the report to be Mr Fearn's opinions.

### **13.3. What did this evidence mean at the time?**

- [1567] The focus of the FEP on locating and analysing scats provided a significant evidence shift in the Program. Scat dogs were utilised to locate fox scat and to prioritise the analysis of scat. Dogs allowed vast areas of landscape to be searched for fox presence and were able to locate potential evidence that may be overlooked by field officers.
- [1568] This evidence informed both management and strategic responses. The ability to identify individual foxes promised to provide information about the movement and breeding of foxes in Tasmania and to inform targeting of resources.
- [1569] In 2006, the Program was provided funding for a period of ten years. The location of scat evidence was not linked to any applications for ongoing funding, but rather focused resources.
- [1570] It appears that in 2009, there were intentions to cut funding. The two Cygnet scat were referred to in the media at this time.
- [1571] The last fox evidence was a scat located in July 2011. The FEP ceased in 2014 when it was absorbed into the Invasive Species Branch.

<sup>730</sup> Ibid, pg 60.

### 13.4. The changing weight of this evidence

[1572] The initial response to this evidence was that it was direct and irrefutable evidence of foxes living in Tasmania. Concerns were later raised due to the anomalies in the content and presentation of the scats and their dispersal across the State.

### 13.5. How this evidence is currently listed (website)

[1573] All scat evidence is listed on the DPIPWE website. An example is as follows:

*Fox Evidence 2010*

*Forth (1)*

*The scat was collected on 24 March 2010 during Phase 3 of the strategic carnivore Scat Collection Survey.*

*The Forth scat was collected approximately 2km south of Lillico Beach, the site of an identified fox carcass collected in 2006. Other fox positive scats collected from this region include 6 fox positive scats that have been collected in the Spreyton Region through investigations following sighting reports in 2007 and 2008.*

*This is the only fox positive scat to be identified from Phase 3 of the Scat Collection Survey. Phase 2 resulted in 12 scats being identified as fox positive while 6 fox positive scats were identified from Phase 1*

...

*North Bruny Island (1)*

*Scat collected on 21 May 2009 during Phase 2 of the strategic carnivore Scat Collection Survey. North Bruny Island is located 47km south of Hobart and east of Kettering*

...

*Murdunna – Forestier Peninsula (1)*

*Scat was collected near Murdunna on 28 April 2009 during Phase 2 of the strategic carnivore Scat Collection Survey. The scat was found on top of a sheep carcass.*

*Murdunna is located halfway down the Forestier Peninsula (southeast Tasmania) and is approximately 40km east of Hobart (as the crow flies).*

*The scat was collected from a region of identified core fox habitat but physical evidence of fox activity had not previously been collected in this general area. The nearest physical evidence to the current site was collected from Campania (approximately 50 km away, as the crow flies), where a fox positive scat was collected on 11 March 2009.<sup>731</sup>*

<sup>731</sup> <http://dpiipwe.tas.gov.au/invasive-species/programs-and-alerts/fox-eradication-program/fox-evidence-update/fox-evidence-2001-2011>

## 13.6. Analysis

### Management 2006–2011

- [1574] The issues with the scat evidence appear to have started as early as 2008. An internal report raised issues in 2009 and again in 2011. External speculation commenced in 2009 and became more specific by 2010, before finding a basis in analysis in 2014. Dr Marks was required to go to extraordinary lengths to obtain data to analyse, despite the Minister welcoming his input. Dr Marks still has not been provided with full disclosure of the DNA testing in order to replicate and validate the results. The 2013 Kitchell report recommended independent verification of the testing process and that also has not occurred.
- [1575] Mr Fearn's 2009 Scat Content Report appears well researched and merited a thorough response. Unbeknownst to Mr Fearn, there does appear to have been a response to his report in May 2010, including re-testing by the University of Canberra of the scats Mr Fearn nominated as being non-mammalian in origin. An additional scat was also tested as it had been collected from a fence post. The results were that some were fox positive and some were not. It was suggested (with some justification) that degradation over time may have been responsible.
- [1576] DNA capability testing was reviewed through laboratory blind scat testing between May and December 2010; however there is some confusion as to whether Professor Sarre was aware of this. Professor Sarre had also previously conducted blind testing at his laboratory. The results were that all fox positive scat was identified. This occurred after both of the PAC and Landcare Research Report in 2009.
- [1577] Mr Fearn states he was asked to remove the controversial paragraph that cast doubt over some of the scat results. He states Mr Johnston told him to do this and the reason provided was that staff wouldn't understand it. His report reveals a well thought, objective and easy to follow process, hardly one that employees with the FEP should have any difficulty understanding. Mr Johnston stated that he couldn't recall making this request. The media response to the Program at the time was volatile, the PAC was taking evidence and the 2009 Landcare Research Review was occurring. Mr Fearn's concerns were not raised in any of these forums. No explanation has been provided as to why this matter was not investigated or provided to a number of experts for comment. There is sufficient evidence at this time to suggest that Mr Johnston did require Mr Fearn to remove the controversial paragraph.
- [1578] It also appears that by 2009–10 other management responses occurred. These included:
- discussions about foam being located in two scat and the high rate of detection by Mr Reid and Harrison
  - an attempt to address concerns with Mr Reid and Mr Harrison by rotating investigators and dog handlers out of their original teams, and ensuring they were working across the State



- audit of training scat by Mr Cremasco that located many issues including missing fox scat and anomalies with record keeping
- changes to processes and security restriction to the training scat room, and
- raising awareness of the capability of genotyping scats to identify individual foxes, a suggestion of Mr Fearn's in an attempt to stop possible hoaxing.

[1579] It is apparent that staff knew of the allegations against Mr Reid and Mr Harrison. The attempt to address concerns with them directly occurred whilst Mr Johnston was Manager. This places it within a time frame of prior to late 2010.

[1580] The response by management to serious allegations against Mr Reid and Mr Harrison appears superficial. It required a full and comprehensive investigation. Mr Johnston stated he wasn't aware the allegation amounted to actually planting the scat in the landscape, yet in his evidence he stated the foam located in the scat may have been from packaging. Mr Cremasco states the allegations were about planting scat into the environment.

[1581] Mr Johnston appeared to not have any knowledge of surrounding circumstances, such as the number of fox scat located by Mr Reid with fox grooming hair, and that Mr Reid found all the scat with sufficient DNA to genotype. He believed there was only one scat with foam in it. It appears that discussions occurred to explain a least some of the issues. The explanations were speculative but appear to have been accepted. Employees stated Mr Johnston avoided conflict; Mr Johnston agreed with this however stated he would take action if required.

[1582] Mr Johnston formally responded to Mr Reid falsifying the Scat Log. Mr Cremasco stated Mr Reid never admitted to writing in the entry but did acknowledge his handwriting. Mr Johnston and Mr Reid both informed the investigation that Mr Reid had filled in an entry for Mr Cunningham.

[1583] Mr Johnston stated he required a threshold of the provision of compelling evidence to take the matter further. The purpose of an investigation would be to provide that or to locate the actual issue. Some attempts were made to do this. Mr Johnston had previously involved an independent investigator into the matters involving Chris Parker which led to his removal. Mr Johnston could have sought advice from Tasmania Police, integrity testing of Mr Reid could have occurred, mail traces put into place, staff interviews, and interviews of persons sending training scat as well as other investigative aspects to determine if Mr Reid was contaminating scats or planting them in the environment. It is not known if these investigative enquiries would have resolved the issues, but they don't appear to have been tried.

[1584] For Mr Johnston not to fully investigate this matter could potentially amount to a lack of care and diligence. It prevented the matter from being resolved in a timely manner in 2010. There was a good opportunity to uncover any misconduct by Mr Reid and Mr Harrison or to exonerate them. Aspects of Mr Johnston's evidence could nearly have amounted to plausible deniability: he stated Mr Cremasco dealt with a lot of the matters, yet Mr Cremasco stated he did so with the full support and knowledge of Mr Johnston.

[1585] These decisions were made after the findings and recommendations of the 2006 IACRC Report and potentially after the PAC Findings and Landcare Report was received. Mr Cremasco also bears some responsibility with this matter.

### **Management from 2011**

[1586] Mr Elliott commenced at the FEP in 2011, taking the position previously occupied by Mr Johnston. Around this time, Mr Fearn provided his Scat Content and DNA reports in a further attempt to have issues surrounding the scat evidence addressed. Fox positive scat were located up to July 2011 (only two scat were located after Mr Elliott commenced with the Program).

[1587] Mr Fearn stated his reports were sanctioned and Mr Elliott informed him he only required a paper copy of the Scat DNA Report 2011. Employees stated they were unaware of what Mr Fearn was being tasked with but believed it was secretive. Mr Elliott denies he required the DNA report in hard copy, but stated he did receive it in paper copy, wrote on it and gave it back.

[1588] The report raised concerns of hoaxing by Mr Reid and Mr Harrison, as well as the issues that had previously been raised in his 2009 Scat Content report eg foam being located in scat, high detection rates recorded by Mr Reid and Mr Harrison, and dispersal anomalies. This report is well reasoned, logical and of sufficient influence to have caused a review to determine the exact nature of the previous management response. Mr Elliott stated he was not told of a number of previous responses such as attempting to address matters with Mr Reid and Mr Harrison.

[1589] Mr Elliott said that he considered that these matters had all been raised and dealt with previously so he would not act without new evidence. He said that he wanted new evidence or for something more than office gossip, however it appears that Mr Fearn provided him with exactly that. Mr Elliott did not pass on the Scat DNA Report to the Technical Advisory Panel, a forum that was specifically formed to address such issues and provide advice. However Mr Gaffney (who sat on that board) received excerpts and Nick Mooney had a copy.

[1590] Once again a thorough investigation at this point had the potential to uncover a lot of information that has now been obtained by this investigation. Independent testing of scat samples could have been completed at this stage as well as testing of the foam to determine if it came from the same source.

[1591] Mr Fearn's Den Report in 2011 reported on the scat density near dens and thus provided new evidence of concerns over scat dispersal in Tasmania. Mr Elliott approved the investigation that led to that report. Mr Elliott could not explain the scat dispersal pattern and stated he could not make sense of it.

[1592] Mr Elliott's comments about following the recommendations of the PAC Findings and Landcare Research Reviews have merit. It has been suggested by a large number of staff that Mr Elliott tried to make a difference, but that the problems were too ingrained.

[1593] It is not known the extent to which Mr Elliott's manager was aware of these issues.

### 13.7. Conclusion

[1594] The lack of appropriate management of the issues over the years led to speculation and suggestions of wrong doing. It impacted on employees who in the main worked extremely hard and diligently throughout the Program.

[1595] The Program had been criticised since its inception as to how it dealt with evidence. The IACRC Report 2006 provided clear direction as to what was needed:

- a rigorous, almost forensic approach to all aspects of Taskforces duties
- transparent process especially when critics raise doubts over the veracity of evidence
- specific guidance in relation to identified deficiencies in protocols for collection, treatment and reporting of evidence
- clinically analyse and document evidence and objectively assess all aspects of it, and
- lack of negative or sceptical reporting in the media.

[1596] Processes were tightened, restrictions on access to scat rooms were implemented, employees were given information about new testing processes, employees who were the subject of allegations of fabrication were spoken to and blind testing was applied to the DNA testing in an attempt to validate the process. The actual timing of these responses is difficult to determine.

[1597] The later recommendations of the PAC (in 2009) were made to address inaction in response to serious allegations that would not go away. The PAC recommendation included that:

*The Taskforce continue to question, examine and review all the available data to inform and improve the eradication effort.*

[1598] It is apparent that these recommendations were not followed by management. All aspects of the scat anomalies should have been thoroughly investigated and subject to independent review.

[1599] It was also reported by the PAC that there was rigor attached to the collection of scats and a lack of contamination between scat. However the evidence suggests neither was as robust as presented.

[1600] By 2010, Dr Marks had raised questions and sought data in relation to the scat anomalies. Dr Marks was independently raising the same issues that Mr Fearn had done previously. This should have also been a catalyst for the Program to address all the issues thoroughly. By 2014, papers were published in relation to these issues.

[1601] It is unknown whether the response to the information was based on improper motives or whether it was just poor management practice. The evidence tends to support the latter. Rather than deliberate misrepresentation of evidence, the issue appears to be a failure to properly investigate and determine the nature of the anomalies by management at the time.

[1602] In summary, it appears that the Program was operating in a difficult climate. Some issues took too long to address for a variety of reasons, notably Mr Johnston's shortcomings in managing the Fearn report and the Reid scats issue. However there is insufficient evidence to support a finding of misconduct on the part of Mr Johnston, Mr Cremasco or Mr Elliot.

### **Finding**

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**There is no conclusive evidence of misrepresentation relating to the locating and testing of scats. However the evidence suggests that better management practices by Program managers Alan Johnston, Craig Elliott and Peter Cremasco would have led to a more adequate response to the scat anomalies and concerns about Garry Reid.**

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## **PART D**

**Allegation: that David Llewellyn failed to manage a conflict of interest while he held the dual Cabinet roles of Minister for Police and Emergency Management, and Minister for Primary Industries, Water and the Environment**

## 1. Alleged conflict of interest

[1603] The complainant contended that one of the key events that led to the establishment of the FEP was the information that fox cubs had been imported into the state. He states that Tasmania Police investigated this in 2001, and found there was no evidence to support the claim.

[1604] The complainant contends that Mr Llewellyn's dual Ministerial roles created a conflict that resulted in him improperly favouring DPIW's concerns about the existence of foxes in Tasmania over evidence to the contrary provided by the police investigation.

### 1.1. Evidence

[1605] The information that fox cubs were imported into Tasmania was a contributing factor in establishing the joint task forces involving Tasmania Police and PWS, the ICS and the FFT.<sup>732</sup> Other credible information also contributed to the establishment of these entities.<sup>733</sup>

[1606] In 2001, Mr Llewellyn held the dual roles of Minister for Primary Industries, Water and Environment, and Minister of Police.<sup>734</sup>

[1607] Both Departments were represented in JTF1 (conducted 20 June-13 July 2001).<sup>735</sup> The focus of JTF1 was to investigate and prosecute criminal offences relating to the importation of a prohibited animal (a fox).<sup>736</sup> A briefing note specifying the information received on the fox cub importation was completed by Glenn Atkinson and provided to police officers assigned to JTF1.

[1608] The final report of JTF1 indicated that, while the identified persons of interest were known hunters and poachers who had resided in the Longford area, there was, '*no solid physical, forensic / scientific evidence to support any findings of illegal importations of fox or the presence of fox in Tasmania*'.<sup>737</sup> Consequently, no criminal proceedings eventuated.

[1609] Additional physical evidence was located just after the completion of JTF1. This included: a published photograph of two males under a Longford road sign holding up a fox (on 17 July 2001); fox footprints at Woodstock Lagoon (6 August 2001); and the discovery of the Symmons Plains fox carcass (23 September 2001). The Symmons Plains fox was reported to have an endemic mouse in its stomach contents.<sup>738</sup>

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<sup>732</sup> First Joint Task Force Report.

<sup>733</sup> Sightings Summary Report: 21/3/17 (specifically the English couple staying at Longford Caravan Park that heard two foxes calling to one another and a highly regarded naturalist sighting a fox at close range on Illawaha Road, Longford).

<sup>734</sup> Transcript, David Llewellyn, pg 4.

<sup>735</sup> First Joint Task Force Report.

<sup>736</sup> Second Joint Task Force Report 2002.

<sup>737</sup> First Joint Task Force Report.

<sup>738</sup> Nick Mooney, Physical Evidence of Foxes in Tasmania since 1998, 15 April 2008.

[1610] The photograph of a fox under the Longford sign was later deemed a hoax by Mr Atkinson.<sup>739</sup> While the veracity of the Symmons Plains fox was later questioned, at the time the identification of an endemic mouse within the stomach contents of that fox was compelling direct evidence of a fox living in Tasmania.

[1611] In December 2001, Tim Bloomfield was appointed to conduct an independent review of all fox evidence and to undertake a 'risk assessment' for the purpose of making recommendations on how the Government might handle the fox situation in the State. In November 2002, Mr Bloomfield cited his earlier advice to the Department:

*There is no room for bargaining with the dollars or resources. Future generations perhaps even this one will not ask how much the program cost but why was it or why was it not successful.*

...

*The potential for problems caused by foxes in Tasmania is so great and likely to be devastating that the foxes must be dealt with until their presence can be reliably dismissed.*

...

*Foxes are the greatest known threat to Tasmania's wildlife in our time and the eradication of foxes from Tasmania will only occur by the application of a thorough, comprehensive and extensive program. The control measures selected must be applied at sufficient distribution and frequency that there can be confidence that all individual (foxes) will have been treated.*<sup>740</sup>

[1612] There were many independent reviews and other reports of the eradication efforts in those early years. All of those reviews identified the potential serious threat of foxes establishing a breeding population in Tasmania.<sup>741</sup>

[1613] On 31 January 2002, the Minister announced the establishment of the FFT with allocated funding of \$2.4m over two years.<sup>742</sup>

[1614] In March 2002, the Minister announced a reward of \$50,000 for information leading to the conviction of a person for introducing foxes into Tasmania. The Crime Stoppers telephone number was provided and information was received. This resulted in the establishment of JTF2. Its role was to investigate importation information being reported on the Fox Hotline, as and when it was required.<sup>743</sup>

[1615] JTF2 received additional information about the fox cub imports which corroborated the original fox cub importation report.<sup>744</sup>

<sup>739</sup> Glenn Atkinson, Summary of Investigation into fox cub release, 5 December 2005.

<sup>740</sup> Referenced in Bloomfield 2002, pg3.

<sup>741</sup> Sally Bryant, *Fox Free Tasmania Action Plan*, 2002; Kinnear Report 2003; IACRC Report 2006.

<sup>742</sup> PAC 2009, pg 12.

<sup>743</sup> Second Joint Task Force Report 2002.

<sup>744</sup> Fox Summary 2005; Notes from interview with John Mikulski, 24 July 2017.

[1616] When interviewed as part of this investigation, Mr Llewellyn stated that he did not have a conflict of interest and that the Ministerial roles were complementary.<sup>745</sup> He said that, as the information made for:

*a very serious situation and could cost the State hundreds of millions of dollars, it was my responsibility to act on it and I did that in two ways as Minister for Police to seek some further evidence of what had been alleged and secondly ... as Minister for Primary Industry in setting up the task force to address the issues that had emerged, and in particular the sightings of foxes that occurred at the time.*<sup>746</sup>

[1617] He further stated that, as the Minister for both portfolios, he was more effective in managing the fox issue.

[1618] He stated, as Minister for Primary Industries and Water, he never had a need to question the veracity of the information being supplied to him, nor does he believe he was misled by DPIW officers. He acknowledged that the police investigation was somewhat superficial, and that a more forensic approach may have been more appropriate.<sup>747</sup>

## 1.2. Analysis

[1619] This allegation does not suggest any private interest advantage (monetary or otherwise) to Mr Llewellyn. It relates to the potential compromise of either role in regard to decision-making and preference of material supplied by two Government departments.

[1620] While the focus of each of Mr Llewellyn's Ministerial portfolios were very different, they were both impacted by the possible introduction of foxes into Tasmania. The Minister had to be mindful of potential conflicts that may have arisen in holding the portfolios, and for such conflicts to be managed.

[1621] JTF1 and JTF2 focused on investigating criminal offences, with a view to prosecution. The threshold to establish a criminal conviction is 'beyond reasonable doubt', achieved with measureable, tangible and admissible evidence. Neither task force was able to obtain any admissible evidence to commence proceedings.

[1622] In contrast, DPIWE had to respond to a biosecurity threat of a significant invasive species. The threshold in such cases is governed by the precautionary principle. Put simply, the principle serves the adage 'better safe than sorry', and stipulates that it is not necessary to wait for scientific certainty to take protective action.

[1623] Fox experts have consistently warned that the presence of an established fox population in Tasmania would threaten the abundance and survival of many native species, and have serious impacts on agriculture and tourism.<sup>748</sup>

[1624] The original information of the fox cub imports was corroborated to the point where the persons named in the briefing note to JTF1 existed, their location corresponded to

<sup>745</sup> Transcript, David Llewellyn, pg 4.

<sup>746</sup> Ibid, pg 6.

<sup>747</sup> Ibid, pg 12.

<sup>748</sup> IACRC Report 2006.



the reported area and it was known that they were hunters and poachers who travelled to Victoria. Further credence came from a number of excellent sightings in the reported area.

- [1625] JTF2 received information that complemented that of JTF1 regarding fox cub importation. It corroborated and strengthened some of the original information, even if it post-dated the establishment of the FFT. The task forces included officers from PWS and Tasmania Police, thus negating the argument that it was a police investigation only. It is apparent that Mr Llewellyn was aware of the JTF1 report and took it into account in his deliberations.
- [1626] From a biosecurity perspective the requirement to act decisively was overwhelming and prompt action was taken to address the threat of foxes establishing in the Tasmanian landscape.
- [1627] It is considered that the dual portfolios of the Minister would have provided him with a more balanced and informed view as to the situation in order to make the necessary decisions.
- [1628] There is no evidence that there was an actual, potential or perceived conflict of interest on the part of the then Minister David Llewellyn in his dual portfolio roles. Nor is there any evidence the portfolios were compromised.

### **Finding**

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**On the basis of the Commission's investigation, there is no evidence to suggest that David Llewellyn had a conflict of interest while holding the dual Cabinet roles of Minister for Police and Emergency Management, and Minister for Primary Industries, Water and Environment.**

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## **ATTACHMENTS**

### **Procedural fairness submissions**

## 1. Peter Cremasco

*Note: page and paragraph numbers referenced in this submission have been amended to align with the final report*

Please find below my comments to the Draft Investigators Report for Operation Koonya. I've numbered them according to the paragraph numbers included in brackets in the draft report.

[865] I'll make the point that access was revoked to ALL staff except those directly involved in preparing 'evidence' scats for analysis. This arose due to my discovering that there were potentially dozens of keys available to that room, and the realisation that access couldn't be controlled at that stage. Locks were changed and security keyed. One copy was kept in a safe with DPIPWE Mt Prospect Facility Maintenance, and the other was held by Tom Priestley who packaged survey/investigation scats for despatch to Canberra for analysis.

[873] I'd clarify my statement (440) by adding that Garry and Peter H were also the pair that got assigned to investigate most of the northern reports in the early days due to their proximity to the locations of those reports.

[898] I can't recall the use of liquid paper arising as an issue with the Reid incident. I do recall that, during the audit, we noted that liquid paper had been used on some past entries, and that it was not consistent with good record keeping.

[925] I don't recall Mr Reid's son being mentioned.

[1036] For clarification, my third sentence should be amended to read "It was the same with the Bruny Island scat where you come down to 'well, no – we should (include it)' "

[1115] I'd like to expand on this by adding that the driver for suggesting that the report be revised was due to my considered opinion that Simon had jumped to conclusions, hadn't given any thought or space to other plausible explanations, and the conclusions within the report did not appear objective. For the record, I would never have asked for any references to the foam being removed, as they were reported facts. It was the conclusion that I suggested be amended. These reasons were explained to Simon at the time.

[1546] I would need to listen to the recording of that particular part of the interview but the section on definition of hard evidence seems contradictory. How could I not be aware of the definition of hard evidence and then say that the definition would rule out all FEP evidence. There may have been a mixing up of terms here. When IACRC was mentioned, I was thinking of the Invasive Animals Cooperative Research Centre – and I am not aware that they had defined hard evidence. Perhaps the investigator was referring to the International Anti-Corruption Resource Centre. Somewhere in that conversation, I though mention was made of the Fox Group (which I took to mean the group that includes David Obendorph and Clive Marks). I am aware of their definition of hard evidence (which appears to be a construct by the authors), and I

suspect I was referring to that when I stated that none of our evidence would stack up.

[1578] I refute that the threats of legal action caused us to not address concerns with Harrison and Reid. We continued to rotate investigators and dog handlers out of their original teams, and had them working across the State.

[1585] The 2006 IACRC report and the PAC Findings were, to some degree, in conflict with the NZ Landcare Review which recommended less time trying to address critics and 'proving' evidence, and more time and effort towards actual on-ground eradication activities (at that time, the precautionary baiting program).

During the 7 years I was with the program (as either Section Head or Principle Advisor) I noted that the workplace was quite dysfunctional and swamped with continual rumours and allegations. I had numerous people approach me, either in my office or outside the premises, with stories and allegations. While some of those conversations were noted, not once were any of those people prepared to go on the record or put their signature to a statement. I was not going to pin anyone to the wall based on allegations that were likely to not be backed up by the accusers.

Thank you for the opportunity to review the draft, and I hope you find the amendments and clarifications helpful in the conclusions in the final report.

## 2. Alan Johnston

*Note: page and paragraph numbers referenced in this submission have been amended to align with the final report*

Thank you for the opportunity to respond to the Draft Investigator's Report. I wish to draw your attention to an error in the report which I believe has then coloured some aspects of the findings.

Page 148, [957] states: "Mr Reid and Mr Johnston were both employed in the area of Water Compliance at DPIWE before transferring to the FEP"

This is repeated in Page 244, [1581]: "Mr Johnston worked in the same area as Mr Reid before either joined the Program."

This is factually incorrect. I did not work for the Water Compliance Branch of DPIWE prior to working in the FEP. As advised in my interview (see page 5), prior to working in FEP I was Manager of Regional and Business Development Branch and prior to that was Project Manager in Service Tasmania and Manager of Animal Health Branch. My job in Water Compliance followed on from my time in FEP. I was Manager of Water Compliance from 2011 to 2013. This could all be verified by DPIWE.

I am not sure of Mr Reid's employment prior to FEP but it was certainly not in any of the Branches that I was part of.

Page 148, [957] also claims: "it is evident that the two had a familiar relationship"

I do not believe that I had ever met Mr Reid prior to his commencement in the FEP and as outlined above we had certainly not worked together previously. I would also strongly refute that we had a familiar relationship. My relationship with him was the same as for all other employees, that is a professional working relationship. I can assure you that I had no personal friendship with Mr Reid.

It appears to me that this incorrect assessment of my prior work experience and my relationship with Mr Reid has then flowed through to colour various aspects of the assessment of my performance as Manager of the FEP.

I request that you correct the errors in the draft report as outlined above and consider whether this then warrants some adjustment to other parts of the document.

I also note that there are also some errors in the transcription of the interview.

Page 2 suggests that I discussed the Notice with my sister. I did not say that and in fact I don't have a sister.

Page 3 suggests that I spoke to someone named John Bennett about this matter. I did not say that as I don't know anyone called John Bennett. I spoke to John Whittington, Secretary of DPIWE.

Yours sincerely

Alan Johnston

### 3. Nick Mooney

*Note: page and paragraph numbers referenced in this submission have been amended to align with the final report*

Thank you for your letter of 20 October 2017 and the opportunity to comment on the draft investigation report into fox related matters.

I understand that this opportunity is provided pursuant to section 46(1)(c) of the Integrity Commission Act and the Investigator's obligation to observe the rules of procedural fairness. I note there may be a further opportunity, at the discretion of the Commission's Chief Executive Officer, for me to provide comment pursuant to section 56 of the Act.

My comments fall into three categories: the allegations concerning the Glen Esk fox; my public statements on fox related matters; and observations of fact.

Before turning to these categories, I feel that it is important to restate my role with the department in general and Program (a collective term for the original Incident Control System, the Fox-free Taskforce and the Fox Eradication Program) in particular.

I am a wildlife biologist with a BSc (hons) majoring in Zoology. After volunteering part time with the Tasmanian Parks and Wildlife Service from 1972 I joined that department in 1977 as a technical officer eventually gaining a junior professional position in 1982 conducting research into the management of Tasmanian wildlife. I was employed by that department, in its various permutations, until my long planned resignation in October 2009. In that time, I focused heavily on promoting the conservation of wildlife amongst development, birds of prey in forestry and rehabilitation of raptors being specialities.

I have particular skills in identification of animal tracks and other field sign. As a result, I was involved in Departmental monitoring for thylacines and foxes from the early 1980s and was involved in physical responses to periodic spates of fox sighting reports, including that of a fox escaping a ship at Burnie in 1998.

Through the 1980s I undertook management of predator – stock interactions focusing heavily on eagles, Tasmanian devils' and lambs.

Through the 1990s I also added development of wildlife tourism to my duties in an effort to better engage the community with wildlife. I was also closely involved in emergency responses to whale strandings, oil spills and wildlife disease and was prominent in developing the government response to Devil Facial Tumour Disease.

Since resigning I have continued many of my past activities as a wildlife advocate volunteering for various conservation projects but also working as a consultant and a tourism guide.

When an Incident Control System was established in response to the report of fox vocalisations and the report by one of Tasmania's best naturalists of a fox at close quarters in 2001 I was assigned part time to give advice on searching for foxes amongst Tasmania's prolific wildlife.

That advisory and training role continued under the informal title of Science Advisor when the Fox Free Taskforce was established. I helped develop baiting techniques to

target foxes and was asked to comment on some evidence. I was also routinely asked to respond to requests for interviews from the press. I was never a full-time member of the Program and at most, my involvement with fox related matters at any point may have taken up half my time. I had carriage of many other matters in my on-going, substantive employment and would happily have accepted the scaling back or closure of the Program at any time, if the evidence warranted it.

Despite my limited involvement in the Program, I gained a relatively high public profile in connection to their activities due to my involvement with the media on their behalf. I was one of a small number of those involved who was comfortable talking to the media and over time I gained a media profile that was perhaps disproportionate to my role with the Taskforce. I became, in effect, a spokesperson for the Program.

I sat on the Technical Advisory Panel for the Program for several years before and about a year after my leaving the department.

### **Glen Esk Fox**

The draft Investigator's report identifies specific allegations that this fox carcase was 'planted' by a member of the public and that I was involved in or at least aware of this fabrication.

I reject entirely that I had any involvement in, or knowledge of, the fox carcase being planted, if this had in fact occurred.

#### *The allegation*

The substance of the allegation concerning my involvement is set out in paragraph [663].

I presume that each of the statements in paragraph [663] is attributable to the person who has made the allegation, although the shifting structure of the sentences may make this a little less than clear. From a presentation perspective, it might be preferable if the elements of the allegation were presented as dot points from an initial clause which reads "the person alleged" or "the allegation was".

It is entirely unclear whether the Investigator spoke to the person who made the allegation, or relies on the allegation as related by the complainant. The brevity of the allegation as related in the draft report and the absence of any reference to interview with the source of the allegation tends to suggest that the Investigator was relying on the allegation relayed by the complainant. This should be clarified in the report.

If the Investigator did not have an opportunity to speak to the person who made the allegation, the report needs to recognise that the allegation is hearsay only, and could not be tested with the person who made it. If the Investigator did have an opportunity to speak to the person who made the allegation, the report should expand on that conversation (noting that the report contains clear, attributed excerpts of the Investigator's conversation with me).

As described in paragraph [663], the allegation is speculative in form. It includes an assumption as to motive and the basis for my alleged involvement appears to be limited to some association I had with the person alleged to have planted the carcase or at least been witness to such.

*Motive*

As to motive, the attributed motive is incorrect.

I do not have access to any material that describes the purpose of the meeting scheduled on 1 August 2006, and had no knowledge at the time that the meeting was to wind back the Program. I understood the meeting to be a routine one and the first I knew of the suggestion that the meeting was specifically to discuss winding back the Program was during the Commission's investigation.

My employment with the Department did not depend on continuation of the Program. As noted above, the Program's activities were in addition to my usual duties and did not result in any increase in my wages. While I claimed some allowances for fox related work, the work I was not doing as a result of fox work would have entailed more field work and hence more allowances. If anything, Program work was a financial disadvantage to me.

Before, through and since the Program, I held the view that well established foxes would be arguably the worst single thing that could happen to Tasmania's vertebrate wildlife and the effective control, let alone eradication of foxes, would be likely impossible once they were well established. Therefore, I advocated a strong application of the Precautionary Principal; considering the extreme risks (probably accentuated with the concurrent demise of Tasmanian devils from disease) acting before everything that ideally should be known was known. I still hold that opinion, and view an over-reaction to any evidence of foxes as less risky to Tasmania than an under-reaction.

My strong commitment to the Taskforce's activities needs to be understood in this light.

I was not opposed to winding up the Program, if we were satisfied there were no wild foxes.

*Association*

I am unable to respond to the suggestion that the basis of my involvement or knowledge was an association I had with the person alleged to have planted the carcass. No information is offered to identify that person.

It is possible that I do indeed know the person (as I know very many people) but I do not know who the person is, and I can only guess what my "relationship" with them is. I ask, therefore, that you confirm to me the identity of the person alleged to have planted the carcass.

If you are unable, or unwilling, to identify the person alleged to have planted the carcass, then the Investigator's report needs to be clear that this information has not been made available to me and thus I have not had an opportunity to respond to it at any level.

*Coincidental presence*

As to Mr Mackay's comment that I went quiet and told him to "put his foot down", I was very concerned by the information from Mr Parker.



If the report was correct and it proved to be a genuinely road-killed Tasmanian fox, it was the worst possible news, because it was current evidence they persisted when we all hoped there would be no more evidence. I would have asked Mr Mackay to put his foot down as I wished to investigate promptly and any carcase will only degrade over time.

I observe that a complex series of events has to unfold for the hoax to have occurred coincidentally, as is claimed to occur:

1. a fox must be picked up dead in Victoria, fresh enough for the hoax;
2. that fox cannot have anything foreign to Tasmania in its gut or fur;
3. the fox must be quickly transported, little degraded, to be deposited at Glen Esk Rd (requiring the hoaxer to be able to arrange transport on short notice);
4. The suggested ship transport must dock very early in the time range it might dock;
5. the timing of all this must coincide with Program officers being in transit to the meeting at which a winding up of the Program is to be discussed.

The “coincidence” asserted requires significant effort and the coordination and cooperation of multiple people and so the suggestion of involvement of any Taskforce participant is very unlikely in my opinion.

If I was in any way complicit or had knowledge of a hoax before it happened, I suggest it would have been advantageous for me NOT to have been there; such meetings are easy to avoid (especially since I had many other duties) and I was only there as part of the general management team, not by specific invitation.

#### *Other comments*

In general, I find it peculiar that, despite the long controversy associated with the Taskforce’s activities, and the apparently quite specific nature of the allegations, this allegation only surfaced in 2016. The source of the allegations concerning the planting of the Glen Esk fox would by then have had 10 years’ access to all manner of information on the Glen Esk fox from public talks, my report on the Department’s web site to what program staff and witnesses may have said and endless discussion on Tasmania Times and elsewhere so they may have gleaned much about the incident.

I do not see the significance of my statement reproduced in paragraph [679] to the description of events. At times in discussion, I thought to ‘vent’ on what I see as the motivations and double standards of the complainant and some sceptics.

I was asked by the Commission about a number of events I had never heard of and people I have not had contact with in decades which indicated there are anecdotes of which I am unaware. Speculating on such does not seem useful unless it is in answer to questions. I see the statement in paragraph [679] as such a “vent”. Such venting, however, does not help the Commission in this investigation.

I have a range of more specific, factual comments on the Glen Esk fox discussion in the report, which are set out in the attachment to this email.

I do not know anything more that I can offer that helps the Commission although I have and will fully answer any questions put to me by the Commission.

### *Findings*

I agree that it is not possible to discount that the Glen Esk fox was a hoax, a term I use here to describe the planting of a fox killed outside Tasmania.

I find it difficult to follow the suggestion that there is credible information to support a hoax finding. The only material provided in the draft Investigator's report in support of such a finding is the description of the allegation in paragraphs [662] and [663].

There is no description in the draft Investigator's report of the factors that the source would not have been able to fabricate. Nor is it clear how the information could not be contaminated by the complainant, as the allegation was first made to the complainant.

I object to the finding that "there is no conclusive evidence that any employee of the Program was complicit". This statement contains an imputation that there is some evidence to support complicity, but no such evidence is offered. The recited allegation is only an allegation, not evidence. Further, the entire section focuses heavily on my own involvement, so that the imputation is suggestive of evidence that I was personally complicit. There is no such evidence.

### *Conclusion*

In respect of the Glen Esk fox, I request that:

1. paragraph [663] be restructured to make clear that all elements of the paragraph are allegations only;
2. the report state clearly whether the Investigator met with the person who made the allegations and, if that did occur, provide some description of this engagement or, if it did not occur, state that the allegation is hearsay only;
3. the report address the absence of any actual motive on my part for being involved in, or accepting, the planting of evidence;
4. the report state clearly that the identity of the person alleged to have planted the carcass has not been divulged and so I am unable to address the assumption that I was involved because of some connection I might have to the person;
5. the report note the complex chain of events required to effect the allegation;
6. you consider the need for the quote in paragraph [679] of the report;
7. my rejection of any involvement with, or knowledge of, planting of the Glen Esk fox be recorded; and
8. the word "conclusive" be removed from the second finding (after paragraph [744]).

### **Public Statements**

The draft Investigator's report makes reference to conflicting statements I made in relation to fox cub importation and the DNA analysis of the Longford and Symmons Plains foxes. (Paragraphs [113] and [1279] compared to [127] and [1295] for importation and paragraphs [189], [273], [278], [360], [1324], [1328], [1366] and [1369] compared to [198] and [209] for DNA analysis.)

The statements are accurately referred to, without explanatory comment. In each case, my comments were made in good faith and to the best of my knowledge.

In 2002, the view inside the Program was that fox cubs had been imported. This view was scaled back over time, but I believe it was an honest and reasonable view at the time.

I had no personal knowledge of the DNA analysis. I was relying what I had been told by the then Investigations Officer. As soon as I received different advice, I updated my public statements.

I request that the report note that on each occasion I was acting as a spokesperson for the Program, and was reporting views honestly held.

### **Observations of Fact**

Attached to this email is a table of specific comments on the draft Investigator's report, by paragraph. The tabulated comments are meant to clarify and otherwise further explain/expand points I was making in interview or statements I had made in the media, in reports etc.

The tabulated comments also include what are essentially editorial suggestions offered in good faith and intended to assist the Commission's report. These comments involve simple mistakes (eg in job descriptions in the text).

...

I also draw your specific attention to my comments at paragraph [444] (rejecting an allegation made against me personally), [552] (concerning my involvement in the Old Beach incident) and [1307] (rejecting a statement attributed to me) and request these be incorporated into the Investigator's report.

...

Given the nature of some of the allegations made against me, and of the changes I have requested to the draft Investigator's report, I ask that you confirm back to me the approach that you intend to take on each of my requests, and provide me with a further opportunity to comment on any amended version of the Investigator's report. I would expect this to occur as part of the procedural fairness requirement in section 46(1)(c) of the Act.

I note that, once the Investigator's report has been finalised and provided to the Commission's Chief Executive Officer, the Chief Executive Officer is required to prepare recommendations under section 57(2) of the Act. I request that the Chief Executive Officer provide me with a draft of his report, including recommendations for comment under section 56 of the Act.

Thank you in anticipation

Nick Mooney  
Wildlife Biologist

Item reference as bracketed in the Commission's draft report	NJM COMMENTS
Executive Summary	Agfest Fox (2001). Saying "no direct evidence was found" is perhaps not the best description since it implies a search was made. The alleged incident was not reported until months after the event, the container and associated infrastructure being well and truly gone and not available to examine. To my knowledge no search could be made for direct evidence.
113	<p>A pervading view inside the early Program was that there was substance to the report of importation of cubs via the Bass Strait ferry in recent years (to 2001) and I was reflecting that view; I was a spokesperson at the time.</p> <p>It was also widely believed in the Program that informants about that supposed importation had 'gone to ground' when Tasmania Police took over the investigation from Wildlife Rangers.</p> <p>I had nothing to do with investigating that supposed import but given the sightings reports, the Woodstock Prints and the Bosworth Fox I thought on the balance, it probably did happen. I was also aware of a file of reports of both deliberate and accidental imports that Wildlife Rangers had put together post 2001 (eg eg people bringing in individual live foxes as pets and the claimed 2001 incursion via Agfest).</p>
127	<p>Given I heard no more (after the Tasmania Police report) about the supposed import of cubs my view of that became even less strong. I had not been asked my view for many years - hence the 2014 date.</p> <p>...</p>
189	<p>I had been told by the then Investigations Officer for the Program that the 2 foxes were identified as related, possibly as cousins or even closer. That loaned credence to the report of a litter(s) being imported. My statement was accurate as far as I knew.</p> <p>I sometimes used the term 'hard evidence' to describe something physical that seemed credible evidence of fox(es) in Tasmania.</p>
198 and 209	<p>By the mid 2000s the informal understanding within the Program was that the Longford Fox was very likely a hoax but I never heard a briefing nor saw a report to that effect. ...</p> <p>The second genetic analysis giving the result the Longford and Symmons Plains Foxes were not closely related, consolidated my view that the Longford Fox was likely a hoax.</p>
229 and 230	...

3.3	The Symmons Plains fox was obtained by the Program on the 23 <sup>rd</sup> September 2001 and therefore could not have been used to hoax the prints found on 6 <sup>th</sup> August. That suggestion (referred to under other issues at the commencement of section 3) is bizarre.
263	I was told by a skink expert that the partial remains of the skink could not be identified unless by DNA analysis which would necessitate analysing all potential species in Tasmania for reference (incredibly expensive). It was decided not to do this.
273 and 278	That was the state of my knowledge of the supposed relationship between the foxes. I do not know exactly when the later advice (that the relationship was not close) was received by the Program.
285 and 1261	...
356	<p>There has never been a Science Advisor for the division of Resource Management and Conservation (RMC) in DPIPWE. That Department has a variety of branches and scores of scientists, many more senior to me. I was a Wildlife Management Officer (classified as a level 2 scientific officer) in the Wildlife Management Branch of RMC.</p> <p>When the Parks and Wildlife Service (PWS, a separate division to RMC within DPIPWE) activated an Incident Control System In 2001 in reaction to the fox issue, the then PWS General Manager asked for me to be attached as a 'Science Adviser' a title invented at the moment. The title was used for a few years to describe what I was sometimes asked to do but it petered out since it was informal and had no authority.</p> <p>Unlike the PWS, RMC has no training or structure to run an ICS although individuals are routinely seconded for technical advice in wildlife based ICSs (eg responses to whale strandings).</p>
357	Mr Bosworth was known to hunt along the Western Tiers, a place arguably more suitable for the Long-tailed Mouse.
360	...
434	<p>Long-tailed Mice indeed had not been identified in that area but no small mammal survey had been done near there. Records of the species (indeed most species) were and still are spasmodic right through what we know to be both core and marginal habitat. The data base still is very incomplete. The species has been recorded in habitat very similar to that within the Symmons Plains area (eg near Buckland), especially considering hill tops and their rain shadows in the midlands. The issue is a classic case of absence of evidence not being evidence of absence.</p> <p>The reference book Mammals of Australia (3<sup>rd</sup> edition) edited by R. Strahan and S. Van Dyck and published by the Queensland Museum in 2008 maps all mainland Tasmania as range for the species (page 638).</p>
444	I did not remove those legs nor feet.

460 and 1263	I think "sighting" really should be "sighting report". The former is an abbreviation I often tried to correct/nuance in newsletters and other public information right through my experience with the Program. The use of "sighting" alone, to me, infers a fox was seen when somebody actually reported what they thought may have been a fox.
479	...
483	Craig Bester reported to me that the person did not want to be a subject of derisive public scepticism such as was routine by then. Hence the reported subterfuge. Unfortunately such request for confidentiality became the norm.
504	I do not know why I thought it may have been shot with a shotgun. I probably presumed that because I had been told the person shooting it had been hunting rabbits. Shot can pass completely through small animals leaving no fragments.
523	<p>The main aim is to get fur (hence the method is called a hair trap). Pushing past barbed wire is unlikely to result in immediate blood spill unless there is an unusually sharp protrusion. Any such blood would in any case likely not fall until the animal had passed (unless it was entangled or otherwise lingered).</p> <p>The wire was placed as simple opportunistic innovation by Mr Mackay and its simplicity a legitimate action because when dealing with foxes one must take account of their neophobia and change as little as possible in the vicinity otherwise they will be alerted.</p>
552	I did not visit the site nor neighbours.
576	There was/is no such position as a Chief Scientific Officer for DPIPWE and I have never filled any position that could be regarded as anything like that. Also see my comments to 353 above.
620 and 673	<p>We had been travelling to the office for a routine meeting in a departmental vehicle (Mr MacKay's) to be handed in before reissue of another and therefore stripped of equipment. It was a day trip for a meeting where we were not expecting to be in the field so had little but our phones.</p> <p>I assumed Mr MacKay, as an area coordinator, had training and authority in interview and since he was in uniform and knowing I had more experience with examining dead animals I asked him to deal with the witnesses while I dealt with the fox, to me a sensible division of labour.</p> <p>At the time our phones did not have cameras - why we could not get photos until other Program staff arrived. If I had realised any witnesses had a phone camera I would have borrowed it (or tried to). Phone cameras were a novelty in 2006, at least to me.</p> <p>On seeing the fox the first thing I asked a witness (I don't know whom) leaning on the vehicle tray was "you're not ragging us are you?" and he said "no, honestly - we found it up there" or words to that effect, indicating a place some tens of metres away.</p>

	<p>After some time (about 30 mins I think) other Program staff arrived with an SLR camera, new plastic bags etc and the fox (still in situ in the flat-tray ute) was photographed by Craig Bester then bagged by me in a new plastic bag.</p>
625	<p>That numbers estimate (50) was a projection from the numbers of road-killed foxes on Phillip Island (Vic) compared to the number of free-living foxes estimated to be there. In many respects Phillip island is comparable to rural midlands Tasmania – why I made the comparison.</p>
635 and 674	<p>After a superficial examination including feeling under its armpits (which were slightly warm to my naked hand) and the feet (cold), I asked for a knife. A pocket knife was produced, I think by Mr Mackay, and I made a deep stab in the chest wall then poked my finger in, the idea being to see if the core was cold, warm or hot. It was slightly warm. I then poked my finger up its rectum which was similarly warm.</p> <p>A (surprised) witness asked me what I was doing and on being told it was to get an idea of temperature he said “why don’t you use my thermometer?” or words to that effect. He went off to a vehicle and returned with a soil probe digital thermometer which I then used to get the temperatures I recorded in my notes as given to the Commission and long described in a report on DPIPWE’s website. On asking, the witness kindly let me keep his thermometer to later compare readings over a variety of temperatures with a high quality mercury thermometer (they compared well).</p> <p>During the taking of one of those temperatures (chest, rectal and ambient) Mr Mackay was nearby and I showed him that reading in passing (he was actively moving about talking to witnesses). I don’t recall which figure he witnessed. There were other people that came and went observing as I repeated measurements including temperatures and otherwise examined the carcass. Insp McReadie told me at least one witness he interviewed for the 2016 Tasmania Police investigation remembered me showing them a thermometer reading.</p> <p>I had not had any previous experience trying to estimate time of death by temperatures relative to a cooling curve.</p>
636	<p>The pathologist doing the post mortem exam (Dr Richmond Loh) drew my attention to the onset of what he described as rigour mortis – I was an observer except for helping vacuum the fur – Dr Loh was doing the handling of the carcass. I have attended many post mortems (of animals) and knew how particular pathologists were about their duties.</p>
637	<p>The scat was one of several carnivore scats fitting the general description of what foxes produce that I collected (bagging separately in new ‘pie bags’) during a solo reconnaissance along a railway easement northeast of Conara some weeks after the Glen Esk fox was found. Shortly after collection (that day I think) I gave the scats to Craig Bester who was then arranging storage and transport of scats for analysis. Being an opportunistic collection, those scats were not a priority for analysis. I was later told one was fox-positive.</p>

639	<p>I certainly went quiet – with dread. If indeed the report was correct and it proved to be a genuinely road-killed Tasmanian fox it was the worst possible news because it was current evidence they persisted when we all hoped there would be no more evidence.</p> <p>...</p> <p>It also meant we were in for a long bout of destructive criticism, something very destructive to the Program and wearing for staff.</p> <p>For several years I had been heavily engaged in developing DPIPWE's response to Devil Facial Tumour Disease and the last thing I wanted was an increase in my involvement with the fox issue.</p> <p>...</p>
642 and 645	<p>Although I am on the public record for repeatedly stating that "given enough effort almost anything can be hoaxed", I never once thought the dead fox was engineered to coincide with the meeting I was heading to. I remain appalled by the inference that I was involved.</p>
644	<p>I left the carcase bagged in a new plastic bag on grass in the shade while searching for ice at Epping and Cleveland. On finding very little I went post haste to Mt Pleasant with the fox.</p>
654	<p>...</p> <p>I took The Glen Esk fox direct from the field to Dr Kim Barrett's surgery (staying with it there) then to the Animal Health Labs at Mt Pleasant I had already rung to forewarn. It was immediately logged then put into the fridge by Dr Loh from where he took it a short while later for the formal examination.</p>
660	<p>I undertook the first temperature testing responses (on fresh dead hares and a cat) the very next night well before any doubts had been raised By Dr Obendorf or anyone else. I did this because I quickly found there was a lack of data to plot a cooling curve for comparing the Glen Esk fox results to. Much later, further testing was done by others (on my urging but not under my supervision) with actual foxes (in Vic) to improve the accuracy of the curves.</p>
675	<p>The comparative tests I have reported (on brown hares and a cat) were of work done very soon after the Glen Esk fox was found and are included in my report on the Glen Esk fox soon put on the Department's website. I presume the other trials referred to were the data taken from foxes shot in Victoria much later by Annie Phillips (a vet) and Matt Pauza (a scientific officer) of the Nature Conservation Branch, cooling graphs of which I offered to the Commission but which were apparently already in hand.</p>
679	<p>The whole issue has been subject to extreme amounts of scuttlebutt and I was talking about the uselessness of adding yet more layers of speculation.</p> <p>I was asked by the Commission about a number of events I had never heard of and people I have not had contact with in decades which indicated there</p>



	<p>are anecdotes of which I am unaware. Speculating on such does not seem useful unless it is in answer to questions.</p> <p>At times I thought to 'vent' on what I see at the motivations and double standards of the complainant and sceptics advising him but such venting does not help the Commission in this investigation.</p> <p>I do not know anything more that I can offer that helps the Commission although I have and will fully answer any questions put to me by the Commission.</p>
683	I agree. With other Program staff at the scene (including at least one with compliance interview training) and an imperative to deal with the carcass I presumed there would be thorough interview of witnesses. ...
684	<p>With respect that opportunity occurred earlier with the 2003 Burnie Fox with less satisfactory results (eg no temperatures taken).</p> <p>I would argue the science as it could be applied at the time was not so much at fault as was the follow up investigations with people.</p>
685	...
692	...
697 and 706	...
699	...
702	I do not recall checking that draft press release but may have.
705	That conversation took place opportunistically on site before I left with the fox.
708	I agree and that interpretation has confused the issue.
712, 713, 714 and 683	I agree in that in retrospect nobody from the Program I know of made the effort to collate all witness information. I focused on the carcass because that's where my experience lay.
721 and 725	Histology and appearance of internal fluid is usually used to confirm whether a carcass was frozen (or not). Cells of particular soft tissues burst when frozen releasing characteristic fluids when defrosted. Dr. Loh specifically told me he thought the carcass had not been frozen before his examination.
726 and 727	That was not the intent of measuring temperature since a long defrosted carcass could be at ambient temperature or either side of such, ambient changing more quickly than that of a carcass with its substantial thermal inertia. The intent was to place the animal on a 'cooling curve'. On finding such was not available in publications I set about getting some data with hares and a cat, others later using foxes (in Vic)
729	Bird scavenging on the carcass might be expected if there was no better food nearby. Birds such as ravens usually only scavenge on eyes when they otherwise cannot easily enter the carcass and feed. The Glen Esk fox had multiple open wounds which would likely offer far better feeding opportunities

	for birds. Finding such a carcase (eg possums or wallabies) without obvious signs of scavenging is common (I have examined literally hundreds).
735	The truck type reported was a fertiliser spreading truck which has extremely deeply and widely treaded tyres.
742	Unfortunately 'hooking' has been used (illegally) in Tasmania for catching Tasmanian devils (shark hooks nailed to trees at tip-toe height). Several such animals I examined over the decades showed extreme trauma, vastly more than anything evident in the fox's mouth.
1025	By "sightings" is meant sighting reports or reports of sighting an animal the observer thought might be a fox.
1057	...
1269	I understand that Wildlife Rangers (now Compliance Officers) were investigating reports of importation of cubs <b>before</b> the close quarters sighting report by Mr Spencer and reports of fox vocalisations nearby by English tourists. I was unaware of those investigations until a conversation shortly after the on-site meeting to consider the naturalist's sighting report.
1279	That was the strong view amongst many of those considering the issue (prior to Tasmania Police involvement).
1295	I had held that view for many years before 2014 but not been asked except perhaps in the PAC inquiry.
1307	I doubt very much I informed Dr Marks of that because I knew it wasn't so. I don't know what Mr Bloomfield told Dr Marks. I may have told Marks that Wildlife Rangers felt sure they knew who had brought foxes to Tasmania but couldn't press charges because they had not enough evidence. Such lines of investigation often peter out through lack of evidence.
1324, 1328, 1366 and 1369	That was to the best of my knowledge at the time ... and I corrected it when the later information came to me (much later).
1334	Talk within the Program was consolidating the view that it was hoax although I had no official debrief nor saw any report to that effect. By 2004 there were several pieces of physical evidence with what I regarded as more credibility and they became my focus.
1448	...
1491	...
1589	...

## 4. Garry Reid

It appears from reading the Draft Report that answers to a number of individual reports there was very little attention paid to a number of results reported to be Fox Scats. I base this on at least 4 Scats found by me were green ( less than 24 hours old) photos of which are on file with Lucille Cuprina (sheep blowflies) present on the Scats. These flies are only attracted to fresh targets. Plus 4 to 6 Scats were found by other people and I only confirmed them as fox with the dog and did not handle the scat at any point. I feel that this report was needed but a lot of evidence could have been investigated better

Regards

Garry Reid

## 5. Department of Primary Industries, Parks, Water and Environment

Thank you for the opportunity to provide comment on the draft investigation report relating to the Integrity Commission's response to allegations of alleged misconduct in the management and operation of the Fox Free Taskforce (FFT) and Fox Eradication Program (FEP) previously run by the Department of Primary Industry, Parks, Water and Environment (and prior iterations of this Department).

The Department welcomes this report and the clear findings that there is no direct evidence to support the allegations of misconduct that have been levelled at the management and operation of the FFT or FEP. Specifically, the Department notes that:

- there is no direct evidence of any employee having fabricated or falsified evidence; and
- there is no evidence that any employees knowingly relied on false information for the purpose of continuation of the Program or to secure ongoing funding.

As has been reasonably concluded throughout the report, the Department's focus in the management and operations of the programs established in response to evidence of fox activity in Tasmania was based on a biosecurity risk management approach centred on the 'precautionary principle'. What is clear is that the impact of the establishment of a foxes in Tasmania would have a devastating impact on Tasmania's biodiversity and agricultural industries; the rightful focus of these programs was on ensuring a fox population did not establish.

The Department acknowledges the comments made in relation to the culture of the FFT and FEP as well as those relating to some of the people practices that impacted on these programs. It is noted that much of the criticism relates to recruitment practices early in the program and does not represent current practice.

The Department is focused on continuous improvement; since the closure of the FFT and FEP we have implemented a range of improvements to support program delivery and the health and wellbeing of our employees:

- In 2016, the Department established a People & Culture Division to ensure strategic impact and direct influence on Executive decision-making in relation to a wide range of strategic HR issues including (but not limited to) organisation design, change management, employee development, workplace culture and performance management.
- Undertaken a comprehensive review of Corporate Policies including an Issues Resolution Framework, better support our employees to address matters as they arise
- Reviewed the Leave Management and Workplace Flexibility Policies to better support work /life balance;
- Created a Project Management Office within the Department to better plan and implement large or complex projects;

- More recently, we have engaged an independent consultant, renowned as an international leader in people management practice, to undertake a comprehensive review of our current recruitment practices.

I am confident the changes outlined above have significantly improved the people practices in our Department and that our commitment to continuous improvement, including leveraging the lessons learned from this report, will further strengthen our position.

While the Department was open, transparent and compliant with all requests for information and documentation made by the Integrity Commission we acknowledge the concern raised regarding availability of historical records and information. A considerable amount of information dating back over 17 years was requested from the Department. Much of that information, particularly from the early years, was in hard copy and poorly archived and noting that the Agency has had a number of records management processes over that period. The Department worked with the Investigator to ensure that Commission's requests were prioritised in order to support progress of the investigation. The Department is not aware of any failure to provide documentation as requested.

Yours sincerely

John Whittington

**SECRETARY**

INTEGRITY  
COMMISSION

