

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION



**INVESTIGATION INTO
THE SMUGGLING OF
CONTRABAND INTO
THE JOHN MORONY
CORRECTIONAL CENTRE**

**ICAC REPORT
JULY 2010**



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Madam President
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the smuggling of contraband into the John Morony Correctional Centre.

I presided at the public inquiry held in aid of this investigation.

The Commission's findings and recommendations are contained in the report.

I draw your attention to the recommendation that the report be made public forthwith pursuant to section 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours faithfully



The Hon David Ipp AO QC
Commissioner

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Summary of investigation and results

This investigation by the Independent Commission Against Corruption (“the Commission”) concerned the conduct of Sebastian Wade, a Senior Corrections Officer with Corrective Services NSW (CSNSW). The investigation was primarily concerned with Mr Wade supplying contraband, including drugs, to inmates at the John Morony Correctional Centre (JMCC) in return for payment.

As a result of its investigation, the Commission established that on at least four occasions between mid-2009 and January 2010 Mr Wade obtained contraband from associates of two inmates and gave them to the inmates in return for payment. His attempt to smuggle contraband into JMCC on another occasion for a third inmate was aborted when he was apprehended and arrested by NSW Police.

The investigation also examined the steps taken by CSNSW to prevent the recurrence of conduct of the kind undertaken by Mr Wade as well as the steps that should be taken in the future.

Results

Findings that Mr Wade engaged in corrupt conduct in relation to supplying contraband to inmates are set out in chapter 2 of the report.

Chapter 2 of the report contains a statement pursuant to section 74A(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”) that the Commission is of the opinion that the advice of the Director of Public Prosecutions (DPP) should be obtained with respect to the prosecution of Mr Wade for offences of receiving corrupt payments from associates of three inmates contrary to section 249B of the *Crimes Act 1900* and offences of giving false or misleading evidence to the Commission contrary to section 87(1) of the ICAC Act.

The Commission is also of the opinion that CSNSW should give consideration to taking disciplinary action against Mr Wade with a view to his dismissal.

Chapter 3 sets out the Commissions’ corruption prevention response to the conduct disclosed during the investigation. The Commission has made the following recommendations:

Recommendation 1

That within one year of the CSNSW implementation plan being submitted to the Commission (see p6), staff lockers at all correctional centres with security screening points are relocated so the lockers are placed before the security screening point where staff enter the facility.

Recommendation 2

That the Commissioner of CSNSW instructs gatehouse personnel at security screening points to investigate alerts from metal detector machines and screening wands by:

1. requiring staff to empty their pockets and remove belts and shoes, and
2. examining all items produced.

Recommendation 3

That the Commissioner of CSNSW instructs gatehouse personnel that only totally empty or sealed water bottles are to be allowed into correctional centres.

Recommendation 4

That at all correctional centres, staff appointed to gatehouse duty should not be permanently in this position. All suitable staff should be rotated randomly and at frequent intervals onto gatehouse duty.

Recommendation 5

That at all correctional centres at least one closed-circuit television camera is located in a position where it is able to record searches of staff as they enter and exit.

Recommendation 6

That film footage from the closed-circuit television camera(s) for search areas should be recorded and kept, to enable managers to check at regular intervals that staff were properly searched.

Recommendation 7

That the Commissioner of CSNSW instructs managers to make frequent checks of film footage of searches of staff from closed circuit television camera(s).

Recommendation 8

That walk-through metal detector screening machines be located so staff must walk through at least one when entering and exiting all correctional centres. Staff should be unable to walk around a metal detector screening machine.

Recommendation 9

That CSNSW uses passive alert dogs during random searches of custodial correctional officers while the officers are on parade at the start of their shift, in addition to any other occasions where random searches using passive alert dogs might be performed.

Recommendation 10

That CSNSW uses passive alert dogs as part of random searches of staff lockers and staff vehicles.

Recommendation 11

That CSNSW allocates more resources to making additional canine units available to search staff.

Recommendation 12

That the Premier introduces an amendment to the *Public Sector Employment and Management Act 2002*, and any other relevant legislation, to give the Commissioner of CSNSW non-reviewable powers regarding custodial

corrections officers, similar to the power currently held by the Commissioner for NSW Police under section 173 schedule 1 of the *Police Act 1990*

Recommendation 13

That CSNSW implements a system for identifying and managing staff whose conduct suggests there is a likelihood of them engaging in future corrupt conduct.

Recommendation 14

That the Premier introduces an amendment to the *Public Sector Employment and Management Act 2002*, and any other relevant legislation, to give the Commissioner of CSNSW non-reviewable power to remove custodial corrections officers on the basis of a loss of confidence in an officer's suitability to continue as a corrections officer, similar to the power currently held by the Commissioner for NSW Police under section 181(d) of the *Police Act 1990*.

As part of the performance of its statutory functions, the Commission will monitor the implementation of the recommendations made in this report.

The recommendations will be communicated to Corrective Services NSW with a request that an implementation plan for the recommendations be provided to the Commission.

The Commission will also request progress reports and a final report on the implementation of the recommendations. These reports will be posted on the Commission's website, www.icac.nsw.gov.au, for public viewing.

Recommendation that this report be made public

Pursuant to section 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either presiding officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.

Chapter 1: Background

This chapter sets out some background information concerning the Commission's investigation and those involved.

How the investigation came about

On 27 April 2009 the Manager of Security at the JMCC received information from an inmate that Mr Wade was being paid \$500 to bring steroids and prohibited drugs into the centre for inmates. On 10 June 2009 the Commission received a report from the Commissioner of Corrective Services containing this information. The report was made pursuant to Section 11 of the ICAC Act. This section imposes a duty on the principal officer of a public authority to report any possible corrupt conduct to the Commission.

Why the Commission investigated

The matters reported to the Commission were serious and would, if established, constitute corrupt conduct within the meaning of the ICAC Act. Given the limited powers of CSNSW to investigate allegations made by the inmate, the Commission decided it was in the public interest for it to conduct an investigation. The purpose of the investigation was to establish whether corrupt conduct had occurred, the extent of any such corrupt conduct and whether there were any corruption prevention issues which needed to be addressed.

The Commission's role is set out in more detail in the Appendix.

Conduct of the investigation

The Commission's investigation involved obtaining information and documents from various sources by issuing notices under section 22 of the ICAC Act. Statements were also obtained from 24 witnesses.

As part of its investigation the Commission made extensive use of lawful covert physical and electronic surveillance, including lawful telecommunication intercepts. The surveillance activities indicated a likelihood that Mr Wade

would attempt to smuggle contraband into the JMCC on 25 January 2010. The Commission alerted NSW Police.

On 25 January 2010 Mr Wade was apprehended and searched by NSW Police shortly after entering the JMCC. A quantity of cannabis and a bottle containing alcohol were found in his possession. Commission officers then executed a search warrant on his vehicle in which \$510 cash was located. Search warrants were also executed at his residence and workspace within the JMCC.

Mr Wade was arrested by NSW Police and charged with two counts each of "Supply of prohibited drugs" and "Possession of prohibited drugs".

The Commission also took evidence from eight witnesses during compulsory examinations held between 22 February and 1 April 2010. At his compulsory examination Mr Wade denied taking drugs into correctional centres for inmates. He also denied receiving payment from either inmates or their associates for doing so. However, there was other evidence available to the Commission indicating that Mr Wade had trafficked drugs and other things into JMCC for inmates in return for payment.

The public inquiry

After taking into account the evidence it had obtained and each of the matters set out in section 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry. In making that determination the Commission considered the following:

- The seriousness of the alleged conduct.
- The desirability of establishing whether Mr Wade had trafficked items into JMCC for inmates, the extent of his activities and who else was involved.
- The desirability of publicly exposing any corruption risks and system failures.
- The public interest in exposing the matter outweighed the public interest in preserving the privacy of the persons concerned in the matter.

The public inquiry took place over three days between 27 and 30 April 2010.

The identities of the inmates for whom Mr Wade allegedly trafficked contraband are the subject of non-publication orders made pursuant to section 112 of the ICAC Act. They are referred to in this report as P1, P2 and P3. None of the inmates gave evidence at the public inquiry. The identities of their associates who provided Mr Wade with the items he took into the JMCC are also subject to non-publication orders. They are referred to as A1, A2 and A3. At the public inquiry, evidence was taken from A1, A2, A3, Mr Wade and Ron Woodham, Commissioner of Corrective Services.

The Hon David Ipp AO QC, Commissioner, presided at the inquiry and Ian Pike acted as Counsel Assisting the Commission.

At the conclusion of the public inquiry Counsel Assisting the Commission prepared submissions setting out the evidence and the findings and recommendations the Commission could make based on that evidence. These submissions were provided to Mr Wade and other persons and their submissions in response have been taken into account in preparing this report.

The people

Mr Wade commenced employment as a correctional officer with CSNSW (formerly the Department of Corrective Services) in 2002. He has worked at a number of correctional centres during his employment with the Department of Corrective Services. He commenced work at the JMCC in January 2009. He was suspended from duties on 25 January 2010, following his arrest.

Inmate P1 and his associate A1 are siblings. P1 was at JMCC throughout 2009 and was regularly visited by A1. P1 also communicated with A1 on a regular basis through a contraband mobile phone used by a number of inmates.

Inmate P2 first met associate A2 in 2005. They were close friends. In May 2009 A2 commenced regularly visiting P2.

Inmate P3 and associate A3 are members of a motor cycle gang. A3 had known P3 for more than five years and had been a regular visitor while P3 was at the JMCC. They also maintained regular contact through the contraband mobile telephone used by inmates.

The department

Corrective Services NSW has responsibility for the administration of the correctional centre system in NSW under the *Crimes (Administration of Sentences) Act 1999* ("CAS Act") and related regulations. It operates the majority of correctional facilities in the state.

The Commissioner for Corrective Services, presently Ron Woodham, has overall responsibility for the care, direction, control and management of all public correctional complexes and centres in NSW. There is a governor of each correctional centre and periodic detention centre. The day-to-day custodial duties in each centre are carried out by correctional officers.

The use of telephones by inmates is tightly controlled and inmates are not permitted to have mobile telephones in their cells. Clauses 112 and 113 of the *Crimes (Administration of Sentences) Regulation 2001* deals with the use of telephones by inmates. Inmates are not permitted to make telephone calls without the permission of an authorised officer. CSNSW officers are able to monitor telephone calls as they occur. Inmates' phone calls, apart from those specifically excluded, such as welfare calls and calls to legal representatives, are recorded and hence are available for retrospective review if required.

Part 4A of the *Summary Offences Act 1988* contains offences prohibiting the delivery or introduction of other things into correctional centres. As well as specific offences relating to the introduction of prohibited drugs, syringes and weapons, there are general offences relating to the introduction of other items to inmates within correctional centres. The offences in this Part apply to all individuals whether they are correctional officers or visitors and most carry a penalty of up to two years imprisonment and/or a fine.

Chapter 2: Mr Wade's smuggling of contraband

At his compulsory examination Mr Wade claimed that in attempting to take cannabis and alcohol into the JMCC on 25 January 2010 he was acting under threats made by inmate P3, the person for whom the items were destined. He claimed that he had not intended to deliver the cannabis to P3 but was going to hand it in to the JMCC governor. He denied trafficking drugs into the JMCC for inmates or receiving payment to do so. He denied that the \$510 found in his car immediately following his arrest was money he had received to traffic contraband into the JMCC.

Mr Wade changed his evidence at the public inquiry and admitted that he had lied at his compulsory examination. This admission came after the evidence of three witnesses, A1, A2, and A3 that they had given him items to take into the JMCC for inmates and had paid him money to do so. Mr Wade also had the benefit of seeing and hearing some of the relevant surveillance evidence obtained by the Commission.

Mr Wade admitted that he took contraband into the JMCC for inmates on five occasions from mid-2009 until 25 January 2010. On three occasions between mid-2009 and November 2009 he met with A1 at the request of inmate P1 and obtained compact discs, sunglasses and a T-shirt, all of which he gave to P1. On 20 November 2009 he met with A2 at the request of inmate P2 and was given some cannabis and paprika, which he gave to P2. The fifth occasion was his aborted effort to smuggle alcohol and cannabis into the JMCC for P3. He also admitted that he received \$300 on each occasion from A1, A2 and A3 to take contraband into the JMCC.

Mr Wade acknowledged that at all times he knew it was wrong for him to take contraband into correctional centres or to receive payment for doing so. He understood at all times that it was improper for him to have a personal relationship with inmates or to have contact with inmates or members of their family or friends which was unrelated to work.

Despite these admissions, a number of issues remained unresolved:

- the frequency of his smuggling of contraband to inmates
- the nature of the contraband
- the amount of payments Mr Wade received
- Mr Wade's motivation.

Each of these issues is explored below.

Frequency

There is evidence of only one meeting between A2 and Mr Wade, namely, on 20 November 2009. Mr Wade admitted to this meeting. Both Mr Wade and A3 gave evidence that they met on three occasions in January 2010.

Mr Wade initially identified only three meetings with A1. He said that each meeting was for the purpose of receiving contraband for P1. When pressed he said he could not deny the possibility that there may have been as many as six meetings.

A1 told the Commission that, although she was uncertain, her recollection was that she met with Mr Wade on approximately three to five occasions prior to mid-November 2009 for the purpose of providing him with items to smuggle into the JMCC for P1 and that on each occasion she paid him to do so. Her evidence is supported by what she said in a lawfully intercepted telephone conversation between herself and P1 on 24 November 2009. During the conversation she referred to meeting Mr Wade and said:

"How many times I have gone to [Wade]? I have seen him five times already".

On 25 November 2009 A1 met again with Mr Wade. This meeting was observed by Commission officers.

There is no reason to doubt A1's evidence about the number of meetings she had with Mr Wade. Her evidence is also supported by the contemporaneous telephone discussion she had with P1 on 24 November 2009. In contrast, Mr Wade's recollection of his meetings with A1 is, on his own admission, unreliable. He lied to the Commission and was not a credible witness. In addition, surveillance of a meeting between Mr Wade and A1 on 16 September 2009 shows A1 handing an item to Mr Wade. Although the item could not be identified it is plainly not a compact disc, sunglasses or a T-shirt – the items Mr Wade said he obtained from A1 at the three meetings he identified. This indicates that the meeting on 16 September 2009 was separate from the three identified by Mr Wade in his evidence.

In all the circumstances, the Commission is satisfied that Mr Wade met A1 on more than three occasions for the purpose of obtaining items from A1 to smuggle into the JMCC for P1 in return for payment. However, it is neither possible nor necessary to determine the number of occasions on which Mr Wade met A1 for this purpose.

Nature of the contraband

Mr Wade admitted taking cannabis into the JMCC for P2. He denied taking in any drugs for P1 or P3.

Mr Wade said that the items he was given by A1 were always in a white bag and he never saw drugs inside the bag. He said he was absolutely certain that he did not receive any package like a small container. His attention was then drawn to the video surveillance and photographs taken by Commission officers of his meeting with A1 on 16 September 2009. These clearly show Mr Wade being given a small item. He initially claimed the item was money. He eventually conceded that the item was a container.

A1 told the Commission that she gave Mr Wade a package on each occasion she met him. The packages were given to her by P1's friends. She could not see what was in the packages as the contents were concealed and the packages were wrapped in tape. On one occasion, she was asked by P1 to give some tablets to Mr Wade and she recollected handing over the tablets.

Her evidence with respect to the tablets is supported to some extent by a legally intercepted telephone conversation between A1 and P1 on 24 November 2009, during which P1 reminded A1 to take some tablets with her when she met Mr Wade.

A1's evidence relating to the packaging of the items she was to give to Mr Wade tends to support the view that Mr Wade was given drugs. The packages were wrapped similarly to the package A2 gave to Mr Wade for P2. Mr Wade admitted that package contained cannabis. It is likely the packages A1 gave Mr Wade also contained drugs.

As previously mentioned, Mr Wade admitted meeting A3 on three occasions. However, he claimed that he was not given anything by A3 except on the last occasion when he was given two canisters. He knew the canisters contained cannabis because he could smell the "pot".

A3 agreed he met Mr Wade on three occasions. He said he gave Mr Wade a small amount of cannabis for P3 on the second occasion. However, A3 also told the Commission that he was a regular user of drugs and had difficulty remembering events from one day to the next. He also conceded under cross-examination that he may not have given drugs on more than one occasion. In these circumstances the Commission is not satisfied that A3 gave Mr Wade drugs on more than one occasion.

There was evidence that a number of JMCC inmates had access to a mobile telephone. There is no evidence to establish that Mr Wade provided the mobile telephone. There was also some evidence in a lawfully intercepted telephone conversation between P1 and A1 on 24 November 2009 that a male person was going to bring a mobile telephone charger into the JMCC for P1. There is no evidence that this person was Mr Wade or that he brought in such an item for P1.

Amount of payments

Mr Wade said he was paid \$300 on each of the five occasions he admitted to bringing items into the JMCC for inmates.

This evidence was contradicted by A1. She gave evidence to the effect that the payment varied based on the number of items taken in, and that it was as much as \$1,000 per time. There is no reason to disbelieve A1's evidence on this point.

In a lawfully intercepted telephone conversation between A1 and P1 on 24 November 2009 P1 told A1 to give Mr Wade \$300. If there was a standard payment of \$300 there would have been no need for P1 to tell A1 how much to pay Mr Wade on this occasion.

The Commission is satisfied that the payment Mr Wade received each time he brought in contraband to inmates in the JMCC depended on the number of items involved. The payments ranged from \$300 to \$1,000.

Motivation

Mr Wade claimed that money was not the reason he took items into the JMCC for P1, P2, or P3. He suggested that he would have done so "for free".

Mr Wade claimed that he had worked with P1, P2 and P3 on a daily basis and had a good rapport with them. He claimed he took items into the JMCC in order to maintain

a good relationship with them so they would tell him what was going on and thus assist in the orderly running of the facility. He also claimed drugs would have a calming effect on JMCC inmates.

There is some evidence that Mr Wade was experiencing financial hardship. Mr Wade sent an email to the Assistant Commissioner, Don Rodgers, claiming that his move from Parklea Correctional Centre to the JMCC had resulted in a \$20,000 drop in his income. Money was obviously an important consideration for Mr Wade.

The Commission rejects Mr Wade's assertion that money did not motivate his actions. His claim was clearly self-serving and was not borne out by the facts. The Commission is satisfied that money was Mr Wade's motivation for smuggling contraband into the JMCC for inmates. On each occasion that he admitted taking items into the JMCC for inmates, he received payment. If his motives were altruistic he would not have needed payment.

Findings of fact

In making findings of fact and corrupt conduct the Commission applies the civil standard of proof of reasonable satisfaction taking into account the decisions in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 and *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171.

The Commission is satisfied to the requisite degree that the following facts have been established:

1. On three occasions between mid-2009 and November 2009 Senior Corrections Officer Sebastian Wade obtained items from A1 including compact discs, sunglasses, a T-shirt and probably drugs which he took into the JMCC and gave to inmate P1 in return for payment.
2. There were other occasions between mid-2009 and November 2009 on which Mr Wade obtained items from A1 which he took into the JMCC and gave to inmate P1 in return for payment. The number of times he did so and the nature of the items he took into the JMCC on those occasions are not known.
3. In November 2009 Mr Wade was given cannabis and paprika by A2 which he took into the JMCC and gave to inmate P2 in return for payment.
4. In January 2010 Mr Wade was given cannabis and alcohol by A3 which Mr Wade intended to take into the JMCC and give to inmate P3 in return for payment.

Corrupt conduct

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter. The first step is to make findings of relevant facts. The

second is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of sections 8(1) or 8(2) of the ICAC Act. The third and final step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

As an employee of CSNSW, Mr Wade is a public official and therefore subject to the purposes of the ICAC Act.

Mr Wade's conduct as set out in findings of fact 1, 2, 3, and 4 comes within sections 8 and 9 of the ICAC Act and is corrupt conduct.

For the purpose of section 8 of the ICAC Act his conduct constitutes or involves the dishonest or partial exercise of his official functions as a Senior Corrections Officer and therefore comes within section 8(1)(b) of the ICAC Act. It is also conduct that constitutes or involves a breach of public trust on the part of Mr Wade and therefore comes within section 8(1)(c) of the ICAC Act. His conduct also comes within section 8(2) of the ICAC Act as it is conduct that adversely affected his exercise of official functions and could involve official misconduct and bribery.

For the purpose of section 9(1) (a) of the ICAC Act such conduct could constitute or involve the following criminal offences:

- corruptly receive a benefit contrary to section 249B(1) of the *Crimes Act 1900*
- deliver or attempt to deliver to an inmate or bring anything into a place of detention without lawful authority contrary to section 27E (2) of the *Summary Offences Act 1988*
- introduce or attempt to take in prohibited drugs into a place of detention contrary to section 27B (4) of the *Summary Offences Act 1988*.

Mr Wade's conduct also falls within section 9(1) (b) and 9(1) (c) of the ICAC Act on the basis that his conduct could constitute or involve a disciplinary offence involving misconduct, or reasonable grounds for dismissal, dispensing with his services or otherwise terminating his services for misconduct.

Section 74A(2) statement

In making a public report, the Commission is required by the provisions of section 74A(2) of the ICAC Act to include, in respect of each 'affected' person, a statement as to whether or not in all the circumstances, the Commission is of the opinion that consideration should be given to the following:

- a) obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the person for a specified criminal offence,
- b) taking of action against the person for a specified disciplinary offence,

- c) taking of action against the person as a public official on specific grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An 'affected' person is defined in section 74A(3) of the ICAC Act as a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with an investigation. Mr Wade, A1, A2, A3, P1, P2, and P3 are "affected persons" for the purposes of this section.

During the course of his evidence to the Commission, Mr Wade made a number of admissions. These admissions were made subject to a declaration pursuant to section 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used in evidence against him in any subsequent criminal prosecution, except a prosecution for an offence under the ICAC Act.

However, in the course of the investigation the Commission obtained other evidence that would be admissible in the prosecution of Mr Wade. This includes Commission surveillance evidence and evidence from A1, A2 and A3.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Wade for offences of receiving corrupt payments from A1, A2 and A3 on behalf of P1, P2 and P3 respectively contrary to section 249B of the *Crimes Act 1900*.

Prosecution of offences under the *Summary Offences Act 1988* must be commenced within six months from when the offence was alleged to have been committed. With the exception of the attempt to take cannabis and alcohol into the JMCC on 25 January 2010, offences under this Act are now time barred. Mr Wade is being prosecuted for the more serious offences of "Supply prohibited drugs" and "Possession prohibited drugs" in relation to the events of 25 January 2010. In the circumstances, the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP in relation to offences

under the Summary Offences Act.

At the public inquiry Mr Wade admitted that he knowingly gave false evidence at his earlier compulsory examination. In particular, he admitted that the following evidence was false:

- in taking the cannabis and alcohol to the JMCC on 25 January 2010 he was acting under threats made by inmate P3;
- he had not received payment from A1;
- the reason he gave for meeting A2 (to discuss a home loan application);
- he intended to hand over the items provided to him by A3 to the governor of JMCC when he attended work at JMCC that day.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Wade for offences under section 87 of the ICAC Act of giving false or misleading evidence in relation to the evidence identified above.

The Commission is of the opinion that CSNSW should give consideration to taking disciplinary action against Mr Wade with a view to his dismissal on the grounds that he engaged in the misconduct described in this chapter.

A1, A2 and A3 provided considerable assistance to the Commission in its investigation. Their evidence will be needed for any Crimes Act prosecution of Mr Wade. Mr Wade would be unlikely to be prepared to give evidence against any of A1, A2, A3, P1, P2, or P3 unless he was given an indemnity which, in the Commission's view, would not be appropriate. In the absence of Mr Wade's evidence, there is insufficient admissible evidence to prosecute A1, A2, A3, P1, P2, or P3. In these circumstances the Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of A1, A2, A3, P1, P2 or P3 for any criminal offence.

Chapter 3: Corruption prevention

Custodial corrections officers such as Mr Wade are no ordinary public officials. They interact on a daily basis with convicted criminals and are responsible for inmates' ongoing detention and security, as well as the public's security. Corrections officers' integrity is the main line of defence against inmates continuing to organise crimes from jail and committing crimes in jail.

When a corrections officer engages in corrupt conduct, the ramifications can be serious.

The dangers of an officer trafficking contraband to inmates include:

- an inmate obtaining a firearm or knife that is subsequently used for murder;
- unmonitored mobile phones that enable inmates to plan crimes from inside gaol that target the public;
- unmonitored mobile phones that enable inmates to contact or threaten victims via telephone calls, emails and social networking websites;
- inmates affected by drugs, alcohol and steroids, which poses a danger to corrections staff and other inmates; and
- consumption of illegal drugs, which can harm the health of inmates.

CSNSW management needs to have confidence that corrections officers will perform their job properly and protect the public interest. Corrections officers also need to have confidence that their colleagues are not putting their safety at risk by engaging in corrupt conduct.

A 2007 survey of custodial corrections officers in Queensland found that 99% rated a scenario where an officer supplies drugs to offenders in return for money to be 'serious', 'very serious' or 'extremely serious'.¹

This investigation is the sixth by the Commission into corrections staff trafficking contraband into jails. The repeated nature of the conduct is cause for concern and demonstrates that CSNSW requires new and different measures to help ensure that it does not happen again.

There are three key measures to prevent staff trafficking contraband: security measures to detect contraband, measures to deter corrections officers who are considering trafficking, and closer management of staff whose ongoing behaviour suggests a high risk that they will engage in corrupt conduct.

Commissioner Woodham of CSNSW gave evidence that he had been "...concerned for some time that the shine had come off the ball, so to speak, with security right across the board...". As a result of these concerns, Commissioner Woodham hired an external consultant in early 2009 to review security in a number of jails. The review of JMCC found numerous deficiencies with security measures intended to detect and deter corrupt behaviour.

There are a number of factors to indicate that CSNSW's systems to detect and deter the trafficking of contraband into JMCC and other jails are seriously deficient: Mr Wade trafficking contraband into JMCC at least four times before being arrested even though he had been identified as a risk; Mr Wade's evidence that he had no fear of being detected; Commissioner Woodham's evidence that there are gaps in security across the corrections system; and the findings of the review of security of JMCC from March 2010. The Commission makes 14 recommendations that are designed to address these deficiencies and reduce the likelihood that contraband will be trafficked to inmates in the future.

1. Crime and Misconduct Commission, *Perceptions of Misconduct in Queensland Correctional Institutions*, Brisbane, June 2009, p. 23.

Detecting contraband – gatehouse searches

Searches at the gatehouse of JMCC are supposed to detect contraband carried by staff through three ways:

- when employees go through a walk-through metal detector placed just inside the gatehouse and before the staff change rooms, the detector will beep if any metal objects are detected;
- after passing through the walk-through metal detector, employees are ‘wanded’. This involves the gatehouse employee passing a handheld metal detector wand over the employee to detect any objects containing metal. When the wand beeps, the searcher is supposed to inspect the object;
- any possessions the employee carries should be in a clear plastic bag that allows a searcher to see inside the bag. The contents should be visually examined from outside the bag and if there is anything that cannot be clearly identified, the searcher should ask the employee to remove it so it can be examined.

There were flaws in this system that meant these steps were not effective in detecting contraband being trafficked by Mr Wade. Mr Wade himself gave evidence that his possessions were never checked:

[ICAC Commissioner]: Is it easy to bring the stuff [contraband] in?

[Mr Wade]: Yes.

[ICAC Commissioner]: --- And just bring it in, no one checks?

[Mr Wade]: --- Yes.

Searches either did not detect contraband items or if items were detected, they were not identified as contraband intended for an inmate. Commissioner Woodham gave evidence that there had been a “total breakdown of procedures” at JMCC. Mr Wade himself, when asked what suggestions he had for improving the chance that corrections officers trafficking contraband would be caught, replied there “just has to be better searches”.

One reason that contraband might not have been identified, as such, is because the staff change rooms and lockers at JMCC are located in a place that requires employees to pass through the screening point when entering the jail before they change into their uniforms. This design gives employees, including Mr Wade, a plausible explanation as to why they were carrying items of a personal nature that may actually have been contraband intended for an inmate.

Commissioner Woodham stated that the staff lockers at JMCC and other correctional centres could and should be relocated. While he said this could be done in a matter of days, the Commission recognises that this may be an overly optimistic timeframe for such changes to be made across all corrections facilities and considers that a period of 12 months is more realistic.

Recommendation 1

That within one year of the CSNSW implementation plan (see p19) being submitted to the Commission, staff lockers at all correctional centres with security screening points are relocated so the lockers are placed before the security screening point where staff enter the facility.

A key problem with searches is that gatehouse staff may not be sufficiently vigilant and thorough in their searches. For example, if a metal detecting wand beeps when passed over a pocket the gatehouse searcher should inspect the item. However, if there is a commonplace metallic object, such as a belt buckle, the searcher might assume this is the cause of the beep and not ask for the belt to be removed. Similarly, as metal in shoes can set off a metal detector, the searcher might assume a beep is caused by the shoes and not by an object hidden in the shoe. In fact, a mobile phone, knife or even a small firearm could be hidden behind a belt buckle or in a shoe. If a screening wand or metal detector beeps, the gatehouse searcher should verify that the beep is not caused by belt buckles or shoes by asking the employee to remove the item and screening him or her again.

Everyday items may also be ignored by gatehouse searchers. For example, Mr Wade planned to traffick clear alcohol in a water bottle into JMCC for an inmate, presumably because he thought the gatehouse searchers would assume the liquid was water and ignore it.

Commissioner Woodham described ineffective checking of reactions from handheld screening wands as a “major security issue”. He stated that more thorough checking on the part of gatehouse searchers of CSNSW personnel would be made standard practice throughout the state “within a month”.

Recommendation 2

That the Commissioner of CSNSW instructs gatehouse personnel at security screening points to investigate alerts from metal detector machines and scanning wands by:

1. **requiring staff to empty their pockets and remove belts and shoes, and**
2. **examining all items produced.**

Recommendation 3

That the Commissioner of CSNSW instructs gatehouse personnel that only totally empty or sealed water bottles are to be allowed into correctional centres.

Even with enhanced authority, gatehouse staff may be reluctant to perform thorough searches due to the fact that they are colleagues of, and possibly friends with, the employees they are supposed to search. Such relationships can result in complacency on the part of the searcher, including a reluctance to believe that a colleague would traffic contraband.

Commissioner Woodham stated that rotating the staff assigned to perform gatehouse duties should reduce the likelihood that employees become too familiar with personnel assigned to gatehouse duties.

Recommendation 4

That at all correctional centres, staff appointed to gatehouse duty should not be permanently in this position. All suitable staff should be rotated randomly and at frequent intervals onto gatehouse duty.

One of the most important ways to get gatehouse staff to perform searches properly is to ensure that their managers are either watching searches as they occur or are able to check the search after it is performed. If gatehouse staff are aware that the searches they perform are being recorded and may be reviewed by a superior officer, this should make them more likely to perform adequate searches. Commissioner Woodham stated that in order to improve managers' ability to check the quality of searches performed on staff, the following changes could be implemented:

Recommendation 5

That at all correctional centres, at least one closed-circuit television camera is located in a position where it is able to record searches of staff as they enter and exit.

Recommendation 6

That film footage from the closed-circuit television camera(s) for search areas should be recorded and kept, to enable managers to check at regular intervals that staff were properly searched.

Recommendation 7

That the Commissioner of CSNSW instructs managers to make frequent checks of film footage of searches of staff from the closed-circuit television camera(s).

Poorly designed or located equipment can also allow corrupt staff to evade being searched. As described in the *Security Review of John Morony Correctional Centre*, at the JMCC gatehouse staff were able to bypass the walk-through metal detector by walking around it.²

Recommendation 8

That walk-through metal detector screening machines be located so staff must walk through at least one when entering and exiting all correctional centres. Staff should be unable to walk around a metal detector screening machine.

Deterrence

A key element of preventing corruption is creating deterrence measures that make custodial corrections officers think that they will be caught if they engage in corruption. Mr Wade gave evidence that he was not scared of being caught. In fact, he assumed he would not be searched:

[Commissioner]: *I get the impression that you weren't nervous about bringing stuff in. You assumed that you wouldn't be searched, is that right?*

[Mr Wade]: *Yes.*

Because of the ability of passive alert dogs (PADs) to detect certain kinds of contraband, including very small quantities of illegal drugs, their use in random searches in conjunction with searches by people can have a powerful deterrent effect. If CSNSW staff know that PADs are able to detect even traces of illegal drugs, in addition to drugs themselves, this is likely to be a powerful deterrent to trafficking.

Randomisation of searches adds to the deterrent effect as it means employees cannot predict when they will be searched, creating anxiety about engaging in corrupt behaviour.

Research by the NSW Ombudsman found that PADs sometimes indicate that drugs are present on a person when no illegal drugs are found in a subsequent search by a police officer.³ In the context of a jail, there are legitimate reasons why such indications might occur when illegal drugs are not found, such as a corrections officer handling illegal drugs found in an inmate's cell and residue from the drugs remaining on the officer's clothing.

2. John Klok, *Security Review: John Morony Correctional Centre*, Corrective Services New South Wales, March 2010, p. 9.

3. NSW Ombudsman, *Police Powers (Drug Detection Dogs) Act 2001*, Sydney, June 2006, pp. iii.

Although there are ‘false’ positives where PADs indicate drugs are present but nothing is subsequently found, PADs are nevertheless widely used by police and customs agencies to screen people and their belongings for illegal drugs in public places in front of friends, family and colleagues. In NSW and other jurisdictions, PADs are used to screen members of the public in locations as diverse as airports, entertainment precincts and shopping centres (see the table below compiled by the ICAC). There is no reason why custodial corrections officers should be put in a special category of persons who should not be subject to screening.

The NSW Ombudsman analysed complaints from members of the public who were affected by or concerned about searches involving PADs, and identified several concerns.⁴ Two of the concerns are relevant to the screening of CSNSW staff in groups of colleagues rather than as individuals in a private area:

- feelings of embarrassment if the dog gives a “false” indication, and
- concern about the way CSNSW records information about a person who is indicated by a PAD.

There are simple ways to address such concerns. Staff can be warned prior to a search that PADs may give false indications, which can then be quickly cleared up by a search that finds nothing of interest. Corrective Services

NSW could also introduce a policy that prohibits recording any information about staff that are indicated by a PAD unless a prohibited item is found. As these concerns are not specifically related to corruption prevention, no formal recommendations will be made.

Commissioner Woodham stated that there is no reason why “a number of officers can’t be scanned together” in front of colleagues, and agreed that the start of a shift, when custodial corrections officers are lined up “on parade”, would be the appropriate time to conduct random searches using PADs. For reasons of efficiency in PAD handling, it also makes sense for custodial corrections officers to be screened on parade by a PAD being walked along the lines of officers, rather than officers being screened individually as they arrive at work. Officers may arrive at work in groups and screening them individually would delay their ability to commence their shift on time. Commissioner Woodham also agreed that there would be no difficulty having PADs search staff lockers and vehicles as part of random searches.

Recommendation 9

That CSNSW uses passive alert dogs during random searches of custodial corrections officers while the officers are on parade at the start of their shift, in addition to any other occasions where random searches using passive alert dogs might be performed.

Table 1: Use of passive alert dogs in public places, selected jurisdictions

	NSW	QLD	VIC	NZ	UK	Canada	USA
Airports	✓	✓	✓	✓		✓	✓
Border crossings							✓
Public transport	✓				✓	✓	✓
Licensed premises	✓	✓					✓
Roads/streets (near entertainment precincts)	✓		✓				
Nightclubs		✓	✓				
Sporting and entertainment venues	✓	✓	✓				
Shopping centres	✓						
Workplaces							✓
Schools					✓	✓	✓

4. NSW Ombudsman, *Police Powers (Drug Detection Dogs) Act 2001*, June 2006, p. v-vi.

Recommendation 10

That CSNSW uses passive alert dogs as part of random searches of staff lockers and staff vehicles.

CSNSW has performed random searches of staff using PADs in the past. At the time of writing, CSNSW planned to make three PADs and handlers available specifically to perform searches of staff across the entire system of 31 jails and other CSNSW facilities in NSW.⁵ Given the circumstances, an enhanced program of random searches using PADs is required.

Recommendation 11

That CSNSW allocate more resources to making additional canine units available to search staff.

Dealing with staff exhibiting “red flags” for corruption

In the case of performance issues such as absenteeism, excessive sick leave or poor attitude, CSNSW has systems in place to manage staff. These systems are shaped by the *Public Sector Employment and Management Act 2002*, which allows public sector agencies to place employees on a performance management plan. However, the stakes are so high when a *custodial* corrections officer behaves in a way that suggests he or she may engage in corrupt conduct, that different measures are required. In this respect, there is a clear parallel between custodial corrections officers and the NSW Police, where firm measures are also required to prevent corruption.

Like the NSW Police, CSNSW must be able to identify employees at risk of engaging in corrupt behaviour and to subsequently manage them in a way that reduces those risks, and a model for CSNSW to draw from in this respect is that used by the NSW Police. Management of police officers is guided by the *Police Act 1990*, which was put in place when the government realised the police needed proactive measures to prevent officers from engaging in corruption before it occurred.

Under section 173, schedule 1, of the *Police Act 1990*, the NSW Police Commissioner has broad powers to take action in response to an officer’s misconduct or unsatisfactory performance. Actions described in schedule 1 are non-reviewable by the NSW Industrial Relations Commission. These are:

- Coaching
- Mentoring
- Training and development

- Increased professional, administrative or educational supervision
- Counselling
- Reprimand
- Warning
- Retraining
- Personal development
- Performance enhancement agreements
- Non-disciplinary transfer
- Change of shift (but only if the change results in no financial loss and is imposed for a limited period and is subject to review)
- Restricted duties
- Recording of adverse findings.

The NSW Police Commissioner can take other actions described in section 173 (2) that are reviewable by the NSW Industrial Relations Commission. These are:

- a reduction of the officer’s rank or grade
- a reduction of the officer’s seniority
- a deferral of the officer’s salary increment
- any other action (other than dismissal or the imposition of a fine) that the Commissioner considers appropriate.

The NSW Police Commissioner has the power to take these actions whether or not the police officer has been prosecuted or convicted for an offence in relation to the misconduct or unsatisfactory performance.

Commissioner Woodham agreed that a system of managing officers at risk of corruption along the lines of that adopted by the NSW Police would be “very beneficial”, and stated “hopefully we can stop [another] Wade getting to the stage that he got”. He also gave evidence that with high risk employees, CSNSW is “more reactive than proactive and if somebody we think is really corrupt, like Wade, we manage them in a more covert way than an overt way”. Commissioner Woodham continued on to say that “...we haven’t had the proper intervention strategies in place to get to a Wade much earlier”.

It is the Commission’s view that CSNSW needs a system similar to that of the NSW Police, which allows managers to intervene when staff engage in behaviour that indicates they are at risk of engaging in corrupt conduct. Furthermore, like the NSW Police system, developmental and remedial actions need to be non-reviewable to ensure CSNSW can respond immediately to behavioural red flags.

5. Email from Michael Hovey (contact in CSNSW for Operation Cicero), 17 June 2010.

CSNSW collects intelligence about suspected corrupt conduct by employees and when appropriate investigates this information or passes it on to the appropriate authority. If the information relates to performance, the employee may be put on a performance management plan. However, if the information relates to corrupt or criminal conduct, it is referred to CSNSW's investigations unit and may or may not result in action by management against an officer. The Commission has no reason to doubt the effectiveness of this unit, which is designed to perform investigations. However, CSNSW classifies information on corrupt or criminal conduct in such a way that the information cannot be used outside the investigations unit to manage an employee with a view to preventing corruption.⁶

For an organisation to be able proactively to manage an officer against whom there are alerts for corruption, it first needs to develop criteria for behaviour that constitutes a red flag so that it is able to identify such officers. In the context of a jail, examples of conduct that constitutes an alert or 'red flag' include:

- Interacting only with certain kinds of inmates, such as members of organised criminal gangs.
- Constant reports from reliable informants over an extended period of the corrections officer trafficking contraband into jails for inmates.
- Behaviour during gatehouse searches that appears designed to minimise the thoroughness of searches, such as bullying, aggressive or defensive behaviour.
- Financial pressures.
- Requests to inmates for information, including contact details, about crime figures or inmates' relatives.
- Accessing information about inmates without authority.
- Unapproved secondary employment.
- Police reports of criminal behaviour outside jail.

Mr Wade engaged in conduct of this kind prior to his arrest for trafficking contraband into JMCC. For example, he gravitated towards inmates from organised criminal gangs and at JMCC tended to spend more time with such inmates. Mr Wade also emailed a senior manager complaining that as a result of his transfer to JMCC his salary had dropped \$20,000. Financial pressures are a red flag that an employee may be at risk of engaging in corrupt conduct.

Organisations then need to have a system in place where information about an employee can be selectively released

to the employee's manager, who can then use it to manage the employee. Corrective Services NSW has committees of senior executives that may be appropriate mechanisms to implement such a system in coordination with the manager.

Developmental and remedial measures that could be undertaken as part of a strategy to manage corrections officers deemed at risk of engaging in future corrupt conduct include the kinds of actions described in section 173 schedule 1 of the *Police Act 1990*. Corrective Services NSW is best placed to determine which measures would be most useful in the context of a corrections centre.

Recommendation 12

That the Premier⁷ introduces an amendment to the *Public Sector Employment and Management Act 2002*, and any other relevant legislation, to give the Commissioner of CSNSW non-reviewable powers regarding custodial corrections officers, similar to the power currently held by the NSW Commissioner for Police under section 173 schedule 1 of the *Police Act 1990*.

Recommendation 13

That CSNSW implements a system for identifying and managing staff whose conduct suggests there is a likelihood of them engaging in future corrupt conduct.

When there is an ongoing pattern of behaviour indicating there is a significant continued risk of corrupt conduct, notwithstanding any remedial or developmental action, the Commissioner of CSNSW can no longer have any confidence in that officer's ability to perform his or her job with integrity. In such circumstances the risks for corruption posed by an employee are so great that the employee should no longer remain at the organisation, and it is imperative that the Commissioner of CSNSW is able decisively and unequivocally to remove such officers from the organisation.

Under section 181 (d) of the *Police Act 1990*, the NSW Commissioner of Police has specific powers to remove an officer on the basis of a loss of confidence in an officer's suitability to continue as a police officer, having regard to the officer's competence, integrity, performance or conduct. Commissioners of Police in Victoria, Tasmania and Western Australia have similar loss of confidence provisions in their police force legislation⁸.

6. This is based on meetings with CSNSW's investigations unit, not documents tendered in evidence.

7. Recommendations 12 and 14 are addressed to the Premier because amendments to the *Public Sector Employment and Management Act 2002* fall outside the specific portfolio responsibilities of the Minister for Corrective Services.

8. S68 Police Regulation Act 1958(Vic), s30 Police Service Act 2003(Tas) and s33L Police Act 1892(WA).

Commissioner Woodham gave evidence that CSNSW needs special procedures to deal with people who are suspected of lacking integrity because the risks created by a lack of integrity in CSNSW are so great. He agreed that the power to dismiss officers based on a loss of confidence in their suitability to continue as an employee, similar to that given to the NSW Commissioner of Police under section 181(d) of the *Police Act 1990*, would be “a useful weapon in trying to stamp out corrupt conduct”.

Recommendation 14

That the Premier introduces an amendment to the *Public Sector Employment and Management Act 2002*, and any other relevant legislation, to give the Commissioner of CSNSW non-reviewable powers to remove custodial corrections officers on the basis of a loss of confidence in an officer’s suitability to continue as a corrections officer, similar to the power currently held by the NSW Commissioner for Police under section 181(d) of the *Police Act 1990*.

Conclusion

The Commission shares Commissioner Woodham’s concerns about the standard of security in NSW jails. In the Commission’s view, the current inadequate situation will not be remedied until the Commissioner of CSNSW has the same powers to deal with staff as the Commissioner of NSW Police. The absence of such powers is a serious flaw in the present legislative structure relating to the employment and management of corrections officers.

As part of the performance of its statutory functions, the Commission will monitor the implementation of the recommendations made in this report.

The recommendations will be communicated to Corrective Services NSW with a request that an implementation plan for the recommendations be provided to the Commission.

The Commission will also request progress reports and a final report on the implementation of the recommendations. These reports will be posted on the Commission’s website, www.icac.nsw.gov.au, for public viewing.

Appendix: The role of the Commission

The ICAC Act is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of New South Wales, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the ICAC Act.

The Commission was created in response to community and Parliamentary concerns about corruption which had been revealed in, inter alia, various parts of the public service, causing a consequent downturn in community confidence in the integrity of that service. It is recognised that corruption in the public service not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and co-operating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.



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