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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

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OPERATION ESTRY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 21 MAY, 2018

AT 2.00PM

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THE COMMISSIONER: Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner.

Mr Walker, you gave some evidence before lunch about having a
10 conversation with Mr Duffy about his report to the effect that he didn't need
to do one. Do you recall that?---Yes.

Was that your idea to tell him that or was that someone else's idea?
---I was just told only to have the three reports that we'd put in.

All right. So you weren't specifically told we don't want one from Duffy?
---I was told later we didn't want one from Duffy.

And who told you that?---I can't recall.

20 All right. And when you say later, what time frame are we talking?
---A few hours.

So on 19 February?---Yeah.

And after you had prepared your report?---After they'd been submitted.

Right. As part of the UOF package?---Yes.

Now, I just want to ask you some questions now about the IRM. Do you
30 know what I'm talking about when I say IRM?---Yep.

What does that stand for, do you know?---Oh - - -

Is it incident reporting - - -?---Incident recording module or something like
that.

All right. Now, is that a system in which you enter a computerised report on
a database?---It is, correct.

40 And the database as I understand it used for this purpose is the OIMS, or
OIMS system. Does that ring a bell?---Yes.

And does that stand for Offender Integrated Management System?---Yes.

And so is that the computer database that Correctives use for reporting
incidents of this kind?---Yeah, the IRM part is.

Right.---Reporting of all incidents and whatever happens on a daily basis.

Right. And so if you want to report an incident through an IRM, you go onto a computer. Do you need to log in?---Yes, you need to log in.

Right. And if there's a use of force, you need to complete an IRM on the computer?---Yes.

So there was an IRM drafted in relation to this particular incident?---Yes.

10 And usually it's the relevant officer in charge to perform that task of drafting the IRM. Is that right?---Yes.

So does that mean that with this particular incident it might usually be your role as the senior correctional officer of the IAT?---Yes.

And there was an IRM drafted in relation to this incident?---Yes.

Did you draft it?---No.

20 Who drafted it?---Mr Peebles.

All right. If I can take you, please, to page 95. Mr Walker, would you prefer to work off a hard copy for these documents?---No, it's all right.

Is this the IRM in relation to the incident on 19 February, 2014?---Yes.

So if you see in the top left it's got "Incident Number." Do you see that?---Yes.

30 And then on the right-hand side on that line it's got, "Time reported, 13.23." Do you see that?---Yes.

So is that the time where you first begin making an IRM entry?---Yes, it is.

Right. And just underneath that to the left it says, "Reported by Terrence Walker." Do you see that?---Yes.

And then about four or five lines down it has the location details and refers to "LGW511 Unit Lower C208." Do you see that?---Yes.

40 So that's a reference to cell 208 in Unit 5.1.1, is it?---Yes.

It's got "Incident Category, use of force" and "Incident Type, use of force." Do you see that?---Yes.

And then it has the summary, and it has "User, Walker, Terrence" and the date and then 13.38 was the time of that entry. Did you fill in that summary?---No.

Who filled in that summary?---Mr Peebles.

And how did that come about that Mr Peebles was filling in that summary?
---We went up and saw him with the reports. He hadn't done the IRM at that point, and he was on a computer and he said "I'll do it", so I gave him my password and he typed it in.

All right. So when you went - - -

10

THE COMMISSIONER: Mr Walker, if you can keep your voice up a little bit, if you move a bit closer to the - - - ?---Sorry.

Thank you.

MR DUGGAN: When you went to see him, is this in his office?---No. It was in the office upstairs near the meal room and everything for the general office.

20 So this is above Unit 5?---No, it's out the front of the building.

I see.---It's out the front of the gaol.

Right. I understand. Is that called M block?---I don't recall.

But not, you're not talking about the IAT office above Unit 5?---No, the admin block at the front of the gaol.

30 I understand. So you'd taken your reports to him. Were Duncan and Graf with you at the time?---Yes.

And so you were in the office with Mr Peebles. Was something said about the IRM?---Yes.

What was said to the best of your recollection?---That I didn't know what to put in this report to make it match up and he said, "I'll do it", or words to that effect.

40 All right. And so was he sitting in front of a computer at some point?---He was.

And did he login to the IRM system?---Yes.

And whose login did he use, his, or - - - ?---Mine.

So you gave him those details, did you?---I did.

All right. Now, was there some discussion about the content of the summary between you, or did he just type it out? How did it work?---There would've been some discussion as to the points that were in my report but he had already seen an electronic copy.

All right. When you say "there would've been", do you have a recollection about what was discussed?---No, not clearly.

10 All right. Let me take you to the specifics then. The summary refers to the fact that was an intel based search in cell 208 and you were detailed by the moss. Do you see that in the first line?---Yeah, yes.

You accept that's false?---Yes.

Was there any discussion about that to your recollection, being inserted in this IRM?---No.

So Mr Peebles has just inserted that, has he?---Yes.

20 And I assume that includes the directions to specifically look for buprenorphine.---That's correct.

Now it goes on to say, "As officers entered the cell, the offender, [REDACTED] ran without warning toward the back of the cell in the direction of the toilet." Was there any discussion that you recall with Mr Peebles about that?---There would've been to match it up with the reports that we had written.

30 All right. So he had already seen, you had your reports with you during this process?---Yes, had the hard copy.

All right. And they were provided to Mr Peebles.---Yes, they would've been.

Was there any discussion about the fact that the content was false in those reports?---There would've been.

Do you have any recollection as to whether there was?---Not clearly.

40 Was there any discussion about, let me go back a step. Why is Mr Peebles typing this up? He's a fairly senior officer.---At the point this was happening, I do clearly remember being told, "I think this one's gonna come back and bite us on the ass. We've got to tidy this up."

He said that to you?---Yeah. He told me it was gonna "bite us on the ass".

All right. The last line of this, second last line, rather, “The offender offered medical attention by Justice Health at centre clinic”. Do you see that?
---Yes.

Did you know that at the time?---No.

And the last line, “Reported as a technical use of force on the direction of the general manager.” Firstly, what does technical use of force mean?---I don't know, I've never used that term.

10

All right. And there was no discussion, or was there any discussion, about the use of that term in this summary?---No. That was Mr Peebles writing. I had, as I say, I had never heard that term.

That line refers to the fact that it's reported as technical use of force on direction of the general manager. Do you know what that means?---No, I don't.

20

Are you aware of any direction of the general manager other than the direction that was given, sorry, are you aware of any direction of the general manager in relation to this incident?---No I am not.

But as I understand your evidence, he was present when Assistant Superintendent Taylor gave you direction to sort out the inmates.---Yes, he was.

30

Now the IRM goes on to include various details. Just so I understand how an IRM works, are these details inputted at the same time that the summary is entered?---The details, as you go through it initially, pop up where the questions come up prior to indication. If you tick “no, there's no comment required”, it's a very difficult system to use, actually.

Right. So there's a pro forma with boxes and depending on what you tick, that's where you go next for the question?---That is correct.

And so did Mr Peebles also fill out these further items under the heading “Details”?---Yes, I did not fill out any part of that IRM.

40

All right. So, the IRM then continues. There's a summary there on the right hand side of the comments, about the third comment, “Technical UOF only”, so, UOF is use of force?---Yes.

“Offender fell over cell furniture whilst attempting to dispose of unidentified”, but I assume that's unidentified, “items in toilet”. Your evidence is that that's false.---Yes.

Was there discussion about that, though, that particular item?---Would have been just in relation to the report and matching it up.

Do you have a recollection of whether there was?---Yes, there was.

What, who said what in that discussion?---I would've said something in relation to my report and to what we had colluded.

MR MADDEN: Commissioner, I object to, "I would have said", "I would have said". He said it a couple of times now and this affects my client.

10 THE COMMISSIONER: My impression so far is that when he says it, it's been followed up by another question from counsel assisting. I agree with you it shouldn't be left on that basis but I think Mr Duggan's been fairly careful to say, "When you say I would've", do you recall, and the answers so far have been yes.

MR MADDEN: Well, thank you Commissioner.

MR DUGGAN: Do you have a recollection to the effect of those words being said?---Yes.

20

It refers there to the reason use of force was not fully recorded or captured on CCTV. Do you see that?---Yes.

"No force anticipated, offender fell without any physical contact from officers." Do you see that?---I do.

Was there a deliberate decision not to use the hand-held camera upon entry into the cell?---We did not use the camera. I don't recall any direction being given but we did not use the camera when we went to the cell.

30

THE COMMISSIONER: There was a good reason for that, wasn't there? ---There was.

And that reason being you didn't want recorded what happened inside. ---That is correct.

MR DUGGAN: There's a CCTV camera that gives you a bird's-eye view of the day room. Is that right?---There is.

40 And I assume the CCTV camera would have recorded footage of whatever happened in the day room that morning?---That is correct.

Did you ever see that CCTV footage?---Never.

Have you had any discussion with anyone about that CCTV footage? ---I had a discussion later with Mr McMurtrie.

And when was that discussion?---The next, a couple of days after the incident.

And what did Mr McMurtrie say about the CCTV footage?---That the footage wasn't there.

And was there anything else said about the CCTV footage?---Not at that stage, no.

10 What did you understand him to mean when he said it wasn't there?
---I was of the opinion that it had been deleted.

Right. You said he didn't say anything more about it at that time. Did he say something about it later?---Yes, later on when the investigation started.

All right. Now, you would have been, I assume you would have had some concern about what was on that CCTV footage?---I did.

20 And so you had a discussion – I'll go back a step. In 2015 there was an investigation internally within Corrective Services New South Wales. Is that right?---That's correct.

And so did you have a discussion with Mr McMurtrie in 2015 about the CCTV?---I did.

30 What was the effect of that discussion?---The outcome of that discussion was that I was told he had all the reports on the screen of the computer to go to Sydney but when they grabbed the footage from or the package from the computer that night that the footage for the CCTV would not be there.

Right. So did he indicate at any stage that there was CCTV footage?
---Never told me.

But when he said that it wouldn't be there, was he referring to CCTV footage?---Yes.

So did you understand there to exist CCTV footage but that Investigations Branch wouldn't get it?---That is correct.

40 Was there anything else that occurred during that conversation?---No, only that he referred to them as fools in Sydney or along those lines and that once they got that part of the package they wouldn't have any footage at all.

All right.

THE COMMISSIONER: Is the practice to download CCTV footage and put it on a thumb drive or disc or on a computer so that it can then accompany the paperwork?---I believe that is the case.

Thank you.

MR DUGGAN: Are you able to view CCTV footage which has been recorded earlier in the day as an IAT officer?---We can do, most staff can. It's, the easiest way to do it was attend the control room and it had the ability there to replay footage.

10 Right. Okay. But there would be someone else in the control room at the time I assume?---Generally two staff members in the control room. There may have been only one, sometimes it was only half-manned on lockdown days.

Right. And the control room would be fairly secure I expect?---It is.

But you can't watch CCTV footage from your computer in the IAT room? ---No.

20 Are you aware whether the Intel manager can do it from his office?---Yes, he can.

Did you have any discussions with anyone else that indicated that they had seen the CCTV footage of the day room?---No.

30 There's an entry, just going back to this IRM. There's an entry under the detail section which says, "If not fully recorded", so I assume that's a reference to if not fully recorded on CCTV or some other video, "were photos of inmates taken?" And on the comments it says, "Still photos as part of standard centre procedure." Do you have any knowledge of whether photos were taken of injuries on 19?---I have no knowledge of any photos being taken on that day.

Now I expect from your evidence earlier that you didn't make that entry?---I did not.

Who did?---Mr Peebles.

40 And are you able to provide information as to why he would've said that if there was no still photos that you're aware of?---Just makes it look good as part of the procedure. Someone looks at the form in Sydney, it would look like it's very plain.

Was there any discussion about whether or not still photos existed?---I had no discussion about still photos.

Did you ever have a concern that the absence of still photos might be a problem down the track?---Yes.

And when did you have that concern?---From the day of the incident.

And did you have a discussion with anyone about the fact that there were no still photos?---No.

Just talking more generally now, and not just this IRM, in 2015 there was an investigation within Corrective Services.---Yes.

10 And I think your evidence is you had some concerns at that point about what might happen.---Yes.

And those concerns were because of the fact that an injury was sustained on inmate in cell 208.---Correct.

And then there was a filing of false reports by yourself and others.---Yes.

20 Was it a concern of yours that there was some fairly senior officers, for example, Assistant Superintendent Taylor who had given an instruction to sort out an inmate?---Yes.

And I assume that the recommendation in relation to this IRM was that no further action would be taken.---Yes. But I had no part of the review process.

THE COMMISSIONER: Excuse me.

MR DUGGAN: But that's a pretty serious chain of events, you'd accept. ---Yes, it is.

30 Now in 2015, were there discussions between yourself and others about where this might end up?---Yes, there were.

And who were those discussions with?---Mainly between the IAT team, Duncan, Graf and myself. We knew once the investigation was on we'd done the wrong thing, especially myself as leader of the team.

Was there more than one discussion that you're referring to, or just the one? ---There was several discussions.

40 All right. And did they take place at work or outside of work?---Mainly at work.

All right. And are you able to tell us of the content of one of those discussions?---It's just our, the content was the discussion on the, what may happen, what will be the outcome of the investigation, whether we'd still have jobs. As it came out I was fined \$1,000.

All right. So did Officer Duncan express some concerns to you?---Yes, he did.

What concerns did he have?---His concerns were that, where we would be under a penalty process which staggers your career and what would come from the outcome of it and then his career path into another area might be held up.

10 All right. And was there discussion or anything said that you'd actually done the wrong thing or was the concern just being investigated?---The concern was being investigated but I knew at the time I'd done the wrong thing.

But was anything said by Duncan and Graf to that effect?---No, they were concerned about the investigation process themselves.

20 Right. Was there any discussion about things like CCTV and still photos and the like?---From memory I believe I did tell them that the CCTV footage had been deleted. The, the still photos I had no knowledge of what was there, I didn't even read it.

All right. So you've just said that you told Duncan and Graf that CCTV footage had been deleted. Was that in 2015?---Yeah, that was just before the investigation went through.

All right. And that was at work?---Yes.

30 What about with Assistant Superintendent McMurtrie, did you have discussions with him in 2015?---Yes, that's how I knew they were deleted. He told me that he had removed them from the system.

Right. I understand. Did he say anything about the investigation?
---Well, he told me they wanted the package sent down to Sydney for the investigator and that when, when they got it off the screen, as I said before, the footage wouldn't be there.

Did he express any concerns at that time about the investigation?---Not greatly.

40 And what about Governor O'Shea, did you have any conversation with him in 2015 about this incident?---Yes, I did.

What was the effect of that conversation, to the best of your recollection?
---Can't recall fully. It was in relation to, you know, be careful what you do and the investigation's going to go, and then he called me up and told me I'd been, had to face a disciplinary fine.

But they seem to be fairly high-level comments about, that might be said in any investigation. Did he say anything about this particular incident or what you might say or anything like that?---Yeah, it was in relation to that incident was what he was talking to me about.

So how did this conversation come about, did you contact him, did he contact you?---I think the one where I got fined he would have contacted me 'cause I had to go up and sign paperwork to say I'd received the documents from the department.

10

And do you recall the discussion?---No, not clearly.

Do you recall communicating with him about saying anything about your concerns about this investigation?---Yes, I did.

What did you say to him?---I said to him I was worried about it and he said, "It'll be okay. You'll get through it," or to that effect.

20

Did you tell him at any stage that your report was false?---No.

Or that the IRM was false or misleading?---No, I didn't.

Did he say anything to you which would indicate he had that understanding?---No, he didn't.

30

Now your evidence is that Mr Peebles has created this IRM, or at least entered the details under Summary and Details. Did you have a discussion with him in 2015 or some other time about the investigation?---Yes, there was several discussions in relation to it.

And what discussions did you have with Mr Peebles?---I was just concerned about what was going to happen.

And you communicated that to him, did you?---Communicated that to him, yes, and a couple of other staff members. I was very concerned.

40

And what did you say when you expressed concern to Mr Peebles and those others?---I just told them that I was worried and I didn't know what was going to come out of it. I was highly concerned what would come out of it, whether I would be charged, or - - -

And was there an understanding as to why you might be charged?---Well, I was of the opinion I'd be charged with assault. That's my own summation.

And was that discussed with anyone?---Only with the IAT.

So with Duncan and Graf?---Yeah, I think I may have discussed it with Mr Turton that I had concerns, too.

All right. But Mr Peebles has filled out this IRM that you say contains false information.---It does.

Did he know the information was false?---Yes.

And how are you able to say that?---He wrote it. He wrote it off a false report.

10 But how did he know the reports were false, to your understanding?---He was there at the time and he was there as the reports were written and passed across from Mr McMurtrie.

So he was present during a relevant discussion with Mr McMurtrie about the reports?---I assume they were. I was not present.

I see. But to your knowledge, how do you know that Mr Peebles knew that his IRM entry was false?---It was being discussed as it was being written as to what was in it and what we were trying to match up to the information I'd
20 been given to put into the report. Number one part being the drugs that was never there, so from there on in, everything else was false.

So, that was discussed, that the drugs were never there? The drug intel was never there.---No, the, the fact that the drugs were put into that IRM that we were there for a drug search.

That was discussed with Mr Peebles while he was drafting the IRM.---Yeah. It never happened.

30 All right. And was the fact that you had to make up a cover story to cover up for what actually happened, discussed?---Yes.

And what, to the best of your recollection, was said about that with Mr Peebles?---We just matched it off the report that we had written.

So the fact that you had to match - - - ?---Match the fabricated report with the fabricated IRM.

40 But there was discussion about that, was there?---Well I was standing there while he was writing it.

But was there a discussion about the need to match them up?---Well, yes there would've been.

Do you remember, though?---Not clearly but there was discussions had at the time, the IRM has to match up with the reports because it all goes as a package.

And is there any discussion you have had with John O'Shea which would indicate to you that he had an understanding this had been covered up?---I spoke to him on several occasions. He told me it would be all right.

And so when he said "It would be all right", what was he referring to?---The initial investigation and what had been done to fix it, we were just told to stick with the story that we had.

THE COMMISSIONER: Who told you that?---Mr O'Shea.

10

MR DUGGAN: So you said "we", was that a conversation with you and Mr O'Shea?---Yes.

And others?---Don't recall.

And so he said, I think your words were, "Just stick to your story." Is that right?---Yes.

And so when did he say that?---Just as we'd been informed that the investigation was starting to occur through Corrective Services.

20

In 2015.---Yes.

And so you, I think, indicated you've had a number of those types of conversations with him. Is that right?---A couple of conversations, yes, along that line. I was very concerned and worried.

So you contacted him, did you?---I believe so on one occasion at least.

So there's one occasion you've told me about in 2015. When was the other occasion?---They were all around that similar time frame leading up to the investigators coming up.

30

What about with Mr Taylor? Did you have any discussions with him?
---None at all.

All right. Did you have any discussions with any other Corrective Services officers about your concerns about this cover up?---Mr Turton spoke to me on a few occasions.

40

And when was that?---Before and after the event.

Which event?---The investigation.

So what conversations did you have with him before the investigation?
---Minimal ones. He just told me that I shouldn't have done it and I shouldn't have been led by who I was led by to go and do that job.

All right. And who was he referring to when he said you were led by someone?---When we were sent to do the job by the managers.

So that would be Taylor giving you the instruction in front of the others.
---Instruction in front of the other staff, yeah.

THE COMMISSIONER: You mentioned a moment ago that before the Corrective Services interview you had a discussion with Mr O'Shea and I don't recall what you said but it was something to this effect, that he said,
10 "You stick with it and we'll all be O.K." Did he indicate to you that he at some point would speak with the investigators?---Yes, he did.

Can you recall now what he said?---Not exactly, just said, "I'll speak with them and it will be O.K."

Thank you.

MR DUGGAN: Now the incident we've been talking about happened on
20 19 February.---Yes.

Were you at work on 20 February?---No.

I assume you came back to work a couple of days later.---Yes, I think two or three days later.

Was this event that happened on 19 February a pretty big event in the gaol?
---It was, there was a lot of staff talking about it.

I anticipate that discussions move pretty quickly in the gaol. Is that - - - ?
30 ---Rumours run very fast.

Were there many discussions you had with anyone when you came back to work for the first time after this event?---Not really, but there was rumours running around that certain staff members had put reports in, but that was all second hand. I can't go further with that.

Do you recall anyone on 19 saying that [REDACTED] shouldn't go to hospital?
---Not to my knowledge. I didn't know he'd gone to hospital until he actually left the centre, I was never advised that he was going to hospital.
40

So did you ever say to anyone "I don't want him to go to hospital because then we'll have to" - - - ?---No, it's not my call.

Whose call is it?---The nurse would've made the call, the nursing unit manager.

All right. And are you aware of any discussion in which she informed an officer that her call was that he needed to go to gaol?

THE COMMISSIONER: Hospital.---Hospital.

MR DUGGAN: Sorry, hospital?---Yeah, no, I don't. I had no, I had, as I say I had no knowledge that he needed to go to hospital, I was only told later that he had gone to hospital.

10 All right. When did you first become aware that drugs had been found in Mr [REDACTED] puffer?---I was never told they were in the puffer, I was told three days later when I came back to work that [REDACTED] had been searched and they found drugs on him.

And who told you that?---Would have been one if the IAT on the day. I couldn't be sure.

20 All right. And did anyone suggest to you that they were actually [REDACTED] drugs or not, was there any discussion about that?---There was no discussion. All I was told was that the IAT were told to stand down and other officers were tasked with doing the search.

And who gave that direction for IAT to stand down?---I was led to believe it was Mr McMurtrie.

All right. And who passed this information on to you, do you recall?
---From memory, Mr Duncan and Mr Graf.

Is it hard to get drugs into Unit 5?---It is difficult but it does happen.

30 Right. Are inmates strip-searched on their way into that unit?---Yes, inmates are strip-searched, they're also escorted everywhere by staff and even when they go to visits they are placed into overalls before they go over to the visit and when they come back, then they're searched back in the unit and they are kept separated from the others, but the only way they can probably do it would be through a contact visit where they ingest whatever they've been given.

40 All right. I assume that their property is also searched thoroughly when they come into the gaol?---Their property is fully searched. In that area, anything that was going into that area, that trolley with all their gear, no matter where they come from, would have been fully searched a second time.

Now, in relation to the IRM, or rather the UOF package of which the IRM forms part, are you aware of who reviewed that package?---No, I am not.

Usually who would that package be reviewed by?---Manager of security and I think the general manager would generally have a look too.

And are you aware of a policy whereby if the reviewing person was a participant they shouldn't review the package?---Yes, I am.

Do you have a view about what should happen if those who usually review such a package were all participants, as to who should review?---I believe it should go to an outside source, which would be either a general manager I would presume from another centre or a security unit.

10 Has that ever happened in your experience?---I couldn't tell you. I have no knowledge of it.

Right. So you wouldn't necessarily find out if an IRM you've submitted has been reviewed externally?---No, I would not be told.

All right. Did you ever have a concern that if you told the full story on 19 February or thereafter as to what actually happened that there might be some consequence for you?---Yes.

20 And what was your concern?---I was concerned to be charged by the department and lose my job, possibly outside charges.

Would there be any consequence in your workplace, other than what might be imposed upon you by your employer?---I don't understand that.

So, let's assume that you didn't speak to anyone about what had happened, you went and filed a report, said you got a direction from Mr Taylor in front of Messrs O'Shea, Kennedy, Peebles and this is what happened, would there be any blow back at work?---Heaps.

30 What sort of blow back would there be?---You'd be put on the dogs straight away.

So on the dog, is that common language in the gaol?---Put on the dog, I will be put on the dog today for giving this evidence.

Right. And what does that mean on a day to day basis, what happens when you're on the dog?---It's a bit like, it's a bit like having leprosy. No one wants to talk to you.

40 All right.---You become an outcast, ostracised.

And is that because you are seen to have given up your mates?---That is correct.

THE COMMISSIONER: It's an expression though that's usually used amongst prisoners, isn't it?---It's used very heavily among staff that submit reports to either ICAC or through to Sydney, it's the same term.

MR DUGGAN: And you say that you're no longer with correctives.---No I'm not.

But you still have friends within that organisation?---I still have some people I see but it was never a place I built friendships outside of work greatly.

10 Right. But I thought you indicated a second ago that you might have concerns that even today you'll be referred to as a dog?---Oh, I will be.

All right.---And that will, you see these people, I don't go to point to socialise with a lot of people but everyone will be talking about it.

Are you concerned about any reprisals against you physically?---Possibly.

THE COMMISSIONER: I'm not asking you to name names, but from what class of people?---People associated.

20 Those people within Corrective Services?---Correct.

If it's any consolation to you, Mr Walker, I can tell you that under our legislation, section 93 I think, anyone who attempted to carry out reprisals for the evidence you've given today would be in very, very serious strife. Do you understand that?---I understand, thank you.

MR DUGGAN: Now, that concern that you had about being put on the dog, that concern I assume didn't go away at any stage?---No.

30 Was there any discussion with others about that concept?---No, I didn't discuss that with anyone but it was, formed a greater part of my leaving Corrective Services, too.

And you mentioned Officer Duffy earlier being honest, he's, is he someone who is treated differently within the correctional centre because of that honesty?---By some people, yes.

40 And in what way is he treated differently?---I believe Mr Duffy was involved in another investigation many years ago and that's sort of followed him a little bit, which is unfortunate.

And is that the same with Officer Turton?---That is correct.

Can I just clarify a couple of matters from earlier in your evidence? I think I understood you to say that there was no search at any time of cell 208 on the inmates on 19 February?---None.

And you gave some evidence earlier about the room in which Mr Peebles drafted the IRM. Is that next to the governor's office?---Close to the

governor's office, it's the, I think they call it the executive meeting room, a situation room. It's a large room, big table and chairs around it.

Did the governor or anyone else come in while the IRM was being drafted?
---No, just the two first class from IAT, myself and Mr Peebles.

Right. Can I ask you this, Mr Walker. The incident occurred after some abuse over the knock-up system and the inmates were confined to their cell. Is there any reason why there was what seems to be a fairly disproportionate response of going into the cell?---I believe it's just an overreaction.

Was it intended to send a message to the wing or what, is there any explanation?---I don't know what the intention was.

THE COMMISSIONER: Can I just ask you something. You said a little while ago, before I forget, you said I think that you weren't there the next day, that is the 20th.---I wasn't there.

But you subsequently found out that Mr McMurtrie had told the other IAT officers who had been present on the 19th that they should stand down from the search which was going to take place. Did anyone explain to you why that was so?---Mr Duncan told me he was told it was because they'd been involved in the incident the day before.

Is that a procedure within the prison?---Never had it happen.

Never had it happen. Can you think of any rational reason - - -?---Had I have been on I would have been quite offended to be told to stand down.

Right. Why is that?---It's their task, target searches are quite often done with the IRT.

Can you think of any reason why that instruction may have been given?
---Don't know.

Don't know. Okay.---Wasn't there.

Sorry, Mr Duggan.

MR DUGGAN: That's all right. Thank you, Commissioner.

Mr Walker, the initial complaint, as I understand it, was in relation to a television. Are you aware of that?---No.

Can I take you to a document, please. We'll just get it up on the screen if we may. Now, this is an email from Dale Ashcroft to you on 19 February. Do you see that?---Yeah.

Who is Dale Ashcroft?---The manager of security at Oberon Correctional Centre.

Right. And was that where he was in February 2014?---Yeah.

Is he a friend of yours?---Yes. Probably won't be after today but - - -

And is that because - - -?---Because I'm a dog.

10 Right. I understand. Now, he sent you an email saying, "You're a thug, Walker." Do you recall receiving that email?---Yes, I did.

And that's sent at 2.23pm on 19 February.---The IRMs, when they are generated and they're sent, they basically go state wide, all senior staff can actually see what's happening at different centres at the same time. I just took it as a joke at the time. I found no malice in it.

20 And I expect it probably was meant for humour value, but did you have any discussion with him about what had happened that day?---No, none at all.

And from a different correctional centre he's able to access an IRM entry?---Yes. You can access entries from the whole state.

But how would, I mean he wouldn't go searching for this, he must have known there was - - -?---I'm not sure of how they search the system normally but a lot of staff, specially up in the management areas, watch and see what's going on at other centres too, watching the trends, what are happening.

30 So is there some, to your understanding, and if you don't know you don't know, but is there some alert that goes out if there's a use of force or other incidents?---I don't know. I don't believe so.

You don't know how Officer Ashcroft, or why he sent this email?---I believe he'd read the IRM or saw the IRM, "proper use of force", and just sent it. And as I say, I only took it as a joke and a laugh. I, we, I hadn't discussed anything with him.

40 But you'd accept the strong inference that he was aware that something had happened in this cell in the morning?---The IRM that had been written, obviously he'd assume something. But as I say, I just believed it was a joke.

The IRM certainly doesn't refer to any assault.---Yeah, I don't know. I can't answer that.

You hadn't had any discussions with him about why he sent this email?---Never.

I tender that email, Commissioner.

THE COMMISSIONER: The emailed dated 19 February, 2014, from Dale Ashcroft to Mr Walker, will be marked Exhibit 49.

#EXH-049 – EMAIL FROM DALE ASHCROFT TO TERRENCE WALKER RE: BEING A THUG DATED 19 FEBRUARY 2014

10

MR DUGGAN: Excuse me for one moment.

THE COMMISSIONER: Certainly.

MR DUGGAN: Can I just take you to page 95. Now, this is the IRM again. On the right-hand side, there's the time reported and I asked you about that. In the top left corner it says, "Report date/time." Is that a print date or is that some other date or time that you're aware of?---Just a print date. I presume it's just the time on the computer or the time in the system.

But you're not aware of why that prints that time and date there?---No.

Can I take you, please, to Exhibit 45 at page 41? I might ask if the witness can be shown a hard copy because I might ask him to mark it if that's convenient. Now, you have in front of you, a plan of one of the units in the gaol. Do you see that?---Yes.

And does it assist you to say that that's a plan of Unit 5, does that correlate with your - - -?---Yeah, it does.

Yes. And in the bottom right corner of, sorry in the top right corner, there's the number 208. Do you see that? It's the second last cell on the top right. ---Oh, yes, yep.

Now, does that accord with your recollection as being the cell that you entered on 19 February?---I actually think it was the cell further up, but I couldn't be sure.

All right. I might just – do you have a pen in front of you, Mr Walker? ---No, I don't.

THE COMMISSIONER: I can provide one.

MR DUGGAN: Thank you, Commissioner.

THE COMMISSIONER: It's red.

MR DUGGAN: Do you see on that map the officer's station that you were talking about earlier?---Yes.

Can you mark that room with an "O", please? And do you see the day room on that plan?---I do.

Can you write "day room" in that room, please, being the day room that you entered - - - ?---Yeah.

10 - - - on that particular day? And can you please perhaps mark with the words "entry door" with an arrow the door that you came into the unit through on 19 February from Unit 3? Thank you. If I might be able to have a look at that document, please.

THE COMMISSIONER: Are you proposing to tender it at some stage, Mr Duggan?

MR DUGGAN: Yes, I'm happy to tender that - - -

20 THE COMMISSIONER: Separately?

MR DUGGAN: - - - as a separate exhibit, Commissioner, and it might be made available this evening for people to see what he has marked.

MR GREENHILL: Can't it be shown on the screen now?

MR DUGGAN: There's been a request to show it on the screen. I'm not sure it can be shown on the screen, but - - -

30 THE COMMISSIONER: Pass it around.

MR DUGGAN: I can pass it around.

THE COMMISSIONER: Because everyone should have their own copy, shouldn't they, I think? They ought to and they can mark it on their own copy. Thanks.

MR DUGGAN: While that's happening, Mr Walker, we might go to some other evidence. If I can show you some photos. There's a copy for the
40 Commissioner, so hopefully we can bring these up on the screen as well, Commissioner.

THE COMMISSIONER: Thank you.

MR DUGGAN: Now, if you can assume from me that these images were taken from video footage obtained recently this year, they're numbered in the bottom right. If you can go to page 2, please. There are two green doors in that photograph. Do you see that?---Yes.

Do you recognise that building?---I do.

What is that building?---That's 5 Unit at Lithgow Correctional Centre.

Right. And is one of those doors a door you entered through to go into the day room?---The door on the far left of the picture.

10 The far left is the door you went through. And the door on the far right, is that the door you're referring to when you said that if the inmates were around, you'd use that door?---That is correct.

If we can go over the page to page 3, please. Do you recognise where that photo was taken?---It's inside the office.

So that's the office or officer's station you were talking about?---It could be either end, I don't, there are various, there are various, oh, no, because it's got the camera set up, I, it's the 5.1 Office.

20 All right. And if you can see in the bottom right there's a device there that looks like a mobile phone from the 1990s.---Yeah.

What is that?---That's the inmate call system.

So is that the knock-up system?---That's what is termed as the knock-up system, yes.

30 All right. And so if an inmate called in cell 208, that's where it would ring?---Yes.

And the top left hand corner, there's a television screen. What does that usually show on it?---The rear yards of the cells.

All right, thank you. And that glass panel with the bars on it, what area is that office looking onto?---It's looking into the day room.

All right. If you can go over the page, so, that's the same office looking into the day room, is it?---Yes.

40 And as you're looking from that perspective, do you recall where the cell 208 was that you entered on that day?---I thought the door opened the other way, so I, I believe it was one cell further up.

All right, but on the right hand side or the left hand side?---On the right hand side.

All right. So if you go over the page to page 5, is that the day room?---That is.

And that door at the back of that room, is that the door you came through from Unit 3?---Yes.

So that leads out to the compound, does it?---It does.

All right. And I think that was marked, someone else in the room has it but I think that was marked entry door on that map I showed you earlier, that's that door?---Yes.

10

And you can see the cell numbers at least on the left hand side of the page, can you see 202 and 203?---Yes.

Do you remember whether that was one of the cells that Mr [REDACTED] was taken into after the incident?---I don't know, I never saw him get put into a cell there.

All right. But - - - ?---All I know is that it was relatively opposite from where we were.

20

Right. So somewhere in that area?---Yeah, it was just a vacant cell.

All right. If you can go over to page 6, please. That barred window on the left hand side, what is that room?---That's the office.

That's the office.---Yeah, that's the station.

And the main door in the middle of the paragraph, what is that?---It's a door to, it's on the other side. A door they used to use as a kitchen or a storage room, it was also used sometimes for urinalysis.

30

All right. Now, the main purpose of this photograph is to look at the black box in the left hand corner of the room.---Yeah.

What is that?---CCTV camera under a cover so it can't be smashed.

All right. So when you were giving evidence earlier about the CCTV footage of the day room, it's from that camera that you were talking about, that footage?---Yes.

40

Can you go to page 7, please? I asked you some questions earlier about inmates making phone calls from within a locked cage.---Yeah.

Is that the cage in the middle of that photograph?---It is.

And that's in the day room, is it?---Yes.

And to the right hand side, you've got two window panels either side of a door. That's the officer's station, is it, or the office?---It is.

And if you can go to page 8, please? Can you just see in your copy, in the top right is the CCTV camera, do you see that?---Yes, I can.

And this is a view looking down the day room towards the office, is it?
---Yes.

10 And if we can just over to page 9, please? As I say, these are recent photographs, so that person is not involved in this case or inquiry. When you say that you entered into the cell and you say it was the third or second last door on the right hand side of that photograph, do you?---I believe it was the third door from the far end.

Now, when you went into the cell, can you remind me again, who would have been in that room at the time?---Initially just the two inmates.

20 Sorry, not the cell, in the day room?---In the day room? I don't recall anyone being out in the day room when, when we first came into the unit.

Oh, not when you first came in but just before you went to the cell, there was yourself, there was Officer Duncan.---Myself, Duncan, Graf, Duffy and the two Watsons.

And you don't have any recollection of the governor or the MOS, probably the acting MOS?---I didn't see anyone come down.

30 Do you know, I think you gave evidence you'd be able to see from the officers' station what was going on in that day room?---You would be able to see yeah, what's in the day room, yes.

THE COMMISSIONER: Who normally occupies the offices, sorry, the office?---Normally, on a normal day, there's three to four staff in that area.

Are they staff of a particular description?---Just correctional officers and a senior correctional officer, in charge of the wing.

40 Who would that have been on the 14th, do you know?---I couldn't tell you, sorry. And they would not have been, even if they were rostered in there, I don't know whether they would have stayed in that area. Sometimes they did, sometimes they didn't.

MR DUGGAN: Would it have been Jane Lohse or you don't recall?
---That's quite possible. She was the main senior in that area.

Do you recall seeing her in that area on the day?---No.

And just in terms of coming from Unit 3, going into Unit 5, through the day room and into the office, you're given your instruction and you said, standing there was Governor O'Shea, Mr Taylor, Mr Peebles and Mr Kennedy possibly. That's a pretty senior line-up in the gaol. Is that common for them to be in that area?---Not, not all four like that at once, no.

If I can take you to the next page, page 10. So, I think you gave some evidence about the solid door to the cell, you could see it in the photograph?---Yep.

10

And cell 208 is on the left, 209 is on the right and you can see the flap in that photograph, on the door that you can open that flap, I expect?---Yes.

But is your evidence that you can't really talk through the flap because there's Perspex there or - - -?---Yeah. Oh, it's very hard to, to hear through.

But is that a hole there or is that glass or - - -?---No, it's a piece of material, clear Perspex or that type of material, about a centimetre thick. It's very hard to break.

20

So, is this a fair summary, that a flap is there to look in but not to communicate with?---Yeah.

And there, you can see that the grille door. So, when you were talking about someone submitting themselves to handcuffing, the middle area of the grille is where you put your hands through?---Yes.

30

Where you have an inmate who might be hurling some abuse or kicking the door or whatnot, but not hurting anyone else in the cell, not hurting themselves and obviously not able to hurt anyone outside the cell, would you usually ignore that or would you go into the cell?---They're just whingers in that area most of the time and it's understandable because they're locked in a small area, they've got a small exercise yard and they just make use of that knock-up system just to be a pain in the bum.

All right.---Basically they just do it just to annoy the staff.

40

All right. And if we can go over the page to page 11, what does that picture show?---The silver panels, the knock-up system with the button on it.

All right.

THE COMMISSIONER: That's within the cell, is it?---It's inside the cell, yes, Commissioner.

MR DUGGAN: And I assume that's a light on the right-hand side, is it? Or do you not know?---I'd assume it's a light, yes.

Now, if I can take you to page 12, please. Now, I should indicate, Commissioner, that this photograph was taken recently and the cell has changed since 2014. As you'll see there's no bunk bed in there.

THE COMMISSIONER: Is that a single bed on the left, is it?

MR DUGGAN: It looks like that, Commissioner. And there are some earlier photographs that we'll go to at some point that show that the toilet has also been refurbished. I think it was initially a porcelain toilet, not that
10 silver toilet. But the purpose of this photograph is just to indicate the size, the approximate size of this cell. So does that accord with your recollection, Mr Walker, that this is the size of the cells in that unit?---It's the size of the cell, but yes, that's been refurbished.

And so if you were moving into that cell and the inmate had jumped off their bunk, I think your evidence was that you would have your back to whoever was coming through the cell door?---That's correct.

And you gave evidence that Officer Duncan and Duffy I think came through
20 to take the inmate down. Do you remember that evidence?---Yes.

It may seem obvious from the photograph but can I suggest that there's not a lot of room in that cell to conduct that manoeuvre?---Yeah, that's correct.

Can I go over to the next page, please. Do you recognise that room?
---That's the executive staff office in, above 5.1, 5.2.

All right. And on the next page do you recognise that room?---That's the
30 IAT room which is adjacent.

Right. And lastly on page 15, does that look to you like the footage produced by the CCTV camera in that top corner?---It does.

So that would show certainly the comings and goings out of a cell in the back corner?---Correct.

Commissioner, can I tender the page 41 of Exhibit 45 which is the map that's been marked up.

40 THE COMMISSIONER: Certainly.

MR DUGGAN: If that's a convenient time.

THE COMMISSIONER: Exhibit 50.

#EXH-050 – MAP OF 5 UNIT AT LITHGOW CORRECTIONAL CENTRE MARKED BY TERENCE WALKER TO IDENTIFY THE OFFICER’S STATION, DAY ROOM & ENTRY DOOR

THE COMMISSIONER: It might be an idea overnight if we get copies of that for others, unless, is it going to be put on the restricted - - -

10 MR DUGGAN: I suspect it will be put on the unrestricted website I suspect.

THE COMMISSIONER: It will be put on the public website.

MR DUGGAN: Yes.

MR GREENHILL: Mr Commissioner, could I just be excused for a while?

THE COMMISSIONER: Sure.

20 MR GREENHILL: A short time.

THE COMMISSIONER: Silly question, Mr Walker, what are those green things that, they look like draught, the green things running around the edges.---They were made up, your Honour, because what they do is they flick, they pull the string out or the cotton out of the beds, or dental floss, and they hook a piece of line and flick it across the floor and they pass notes and whatever else they wanted to do with the line. You go in there, it’s not uncommon to see five or six lines across some of the wards, they pull it across the floor with them, so they were put there as, they’re like a draught
30 stopper, very heavy, just to prevent them from passing stuff across.

I thought it might’ve been through the cold weather you get up in Lithgow. ---No, actually that’s probably one of the warmest units in the gaol.

Okay, thank you. So I'm going to mark that Exhibit 51.

#EXH-051 – PHOTOS OF LITHGOW CORRECTIONAL CENTRE TAKEN MAY 2018

40

THE COMMISSIONER: Sorry, you did tender the photos, didn't you?

MR DUGGAN: Yes.

THE COMMISSIONER: Yes, that’s Exhibit 51.

MR BRASCH: Can I raise one matter, Commissioner, in relation to those photographs? Did I understand they're just being printed?

THE COMMISSIONER: Yes.

MR BRASCH: I'd like the opportunity to get some instructions in relation to a couple of the photographs in particular which may, if there's any concerns about those being made publically available. There is general cell areas but there were also some other more private rooms and material there.
10 I don't know whether that is of any concern to the Commissioner that they be made publically available.

THE COMMISSIONER: Certainly. So we won't make those public yet.

MR BRASCH: Thank you, Commissioner.

THE COMMISSIONER: You'll have instructions in the morning, will you?

MR BRASCH? Sorry?
20

THE COMMISSIONER: You'll have instructions in the morning?

MR BRASCH: I'll get instructions overnight if the photographs will be, we'll make arrangements to get copies of the photographs and I'll get instructions overnight. Thank you.

THE COMMISSIONER: Okay.

MR DUGGAN: Now Mr Walker, you referred to an investigation in 2015?
30 ---Yes.

And you were interviewed in that investigation.---Yes.

And you gave a particular version of events in that interview.---I did.

And that version of events is not consistent with the one you've given today, obviously.---It's fictitious.

And you were initially spoken to by investigators from ICAC in, I think,
40 August 2017.---I was.

And again, that version that you gave to those ICAC officers is obviously inconsistent with the version you've given today.---Yes.

Are you able to explain that inconsistency?---Out of loyalty I lied on the first two, or the first of the investigations and then I just wanted to come here and tell the truth.

Has that been easier because you're no longer an officer of Corrective Services?---Yes. It would've been very hard to do if I was still employed by Corrective Services. As I said, I would've put been on the dog and ostracised.

Now, I need to ask you some questions about another topic. [REDACTED]

10

20

30

40

MR DUGGAN: Excuse me one moment, Commissioner. Commissioner, I don't have any further questions for this witness but can I indicate that there are two transcripts which will be placed on the restricted website later this afternoon. The first one is a transcript of Mr Walker's evidence in an ICAC investigation with investigative officers on 9 August, 2017 and also a transcript of a compulsory examination on 9 March, 2018.

THE COMMISSIONER: Do I mark those now or do we leave that until perhaps tomorrow?

MR DUGGAN: Perhaps tomorrow, I think, and they can be tendered.

THE COMMISSIONER: If they're going on the restricted website tonight, can I indicate that it would be my expectation that those who want to ask this witness questions will be in a position to do this tomorrow, that's my expectation. And the other thing I should say is that within one of those transcripts my recollection is that there's some material concerning the witness's health which goes a little beyond the questions which were asked in public and I just ask those present, their lawyers, to be a bit sensitive about that. If there's a real issue then of course questions can be asked, but you'll see what I mean when you read it. But I do ask those present to just

be a little bit sensitive about what they do ask and to make sure that it's relevant. Shall we adjourn now?

MR DUGGAN: Just one more thing before we do, Commissioner, if I may. Mr Walker referred to the investigation in 2015. If I can tender the investigation report that arose out of that Corrective Services investigation and also a letter from Assistant Commissioner Corcoran to Mr Walker in relation to the contravention and the punishment that he received.

10 THE COMMISSIONER: Do you want those marked separately?

MR DUGGAN: Yes, that might be convenient.

THE COMMISSIONER: Can I ask you can I ask you who the author of the report was?

MR DUGGAN: Principal Investigator Glasheen.

20 THE COMMISSIONER: We'll mark that Exhibit 52.

#EXH-052 – FORMAL INVESTIGATION REPORT BY JOHN GLASHEEN RE: TERRENCE WALKER DATED MARCH 2015

THE COMMISSIONER: And we'll mark the covering letter Exhibit 53.

30 **#EXH-053 – LETTER FROM KEVIN CORCORAN TO TERRENCE WALKER RE: ISS CASE NO 14-0227 DATED 22 DECEMBER 2015**

MR DUGGAN: I don't think it's a covering letter. So, the report is dated March, 2015 and then on the 22 December, 2015, this Assistant Commissioner wrote to Mr Walker in relation to the punishment.

THE COMMISSIONER: So, that was disciplinary, per se?

40 MR DUGGAN: Yes. I'm happy to hand them up if that assists.

THE COMMISSIONER: That's okay, we'll mark the letter Exhibit 53.

MR DUGGAN: Thank you, Commissioner. Nothing Further from me, Commissioner.

THE COMMISSIONER: All right, then. Unless anyone else has got anything to raise, we'll adjourn until 10 o'clock tomorrow.

THE WITNESS STOOD DOWN

[3.33pm]

AT 3.33PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.33pm]