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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC  
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 23 MAY, 2018

AT 2.00PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Mr Duggan, I understand there may have been a problem with the CEs or the CE of - - -

MR DUGGAN: Yes, Commissioner, I did promise to ruin my colleague's lunch by getting some transcripts up on the website, but unfortunately that hasn't happened.

10

THE COMMISSIONER: What a shame.

MR DUGGAN: Commissioner, I think I will finish my cross-examination of Mr Duncan today, I'm not sure whether that raises a problem for anyone else here in terms of cross-examination.

THE COMMISSIONER: Well, what I was proposing to do was that so that people could have an opportunity to review the material overnight was to stand over this witness till tomorrow. Does that cause you any problems?

20

MR EURELL: I have a difficulty tomorrow, I'm in the Full Bench of the Industrial Relations Commission, but both myself and Mr Duncan could be here Friday.

THE COMMISSIONER: What's tomorrow, Thursday, isn't it?

MR EURELL: Thursday, yes.

MR DUGGAN: I think we can accommodate that, Commissioner.

30

THE COMMISSIONER: All right. We may have to shuffle some other witnesses around though?

MR DUGGAN: We may do, although we have one inmate tomorrow, he'll need to go first at 10 o'clock.

THE COMMISSIONER: Right.

MR DUGGAN: And Mr Graf hopefully will also commence his evidence tomorrow. I don't expect to commence him today.

40

THE COMMISSIONER: Okay. And there's a Mr Ashcroft, isn't there?

MR DUGGAN: Yes. He's a short witness and I hope to call him after Mr Duncan.

THE COMMISSIONER: All right.

MR DUGGAN: But today, I can interpose him in terms of my examination and any other cross-examination of Mr Duncan.

THE COMMISSIONER: Okay. And the witness, sorry, the prisoner, or the inmate rather, who's coming tomorrow is who?

MR DUGGAN: Mr [REDACTED]

10 THE COMMISSIONER: Okay. Well, everyone should be ready to ask questions of Mr [REDACTED] Did he have a compulsory examination?

MR DUGGAN: He did.

THE COMMISSIONER: All right. Is there any reason why that shouldn't go onto the restricted website tonight?

MR DUGGAN: No. I can't think of any. There may be some information in there that needs to be the subject - - -

20 THE COMMISSIONER: Redacted, yes.

MR DUGGAN: Suppression or a redaction but I don't see why the examination itself shouldn't go up.

30 THE COMMISSIONER: All right. That will be useful because then we can make sure that he's finished and, yes, finished. All right. Well then let's proceed on that basis and if there are any changes to that that occur to you as being required after we adjourn today then perhaps we can just email those to a representative. I think we've got all their contact details, haven't we? Yes. All right. Well, let's proceed in that way.

MR DUGGAN: Thank you, Commissioner. Mr Duncan, can I please show you Exhibit 45, page 74? Can you just take a moment to read that document to yourself?---Yeah.

You've read that?---Yeah.

40 If you can assume that the print date or the date on the bottom of the document is likely to be wrong - - - ?---Yeah.

- - - so please don't be distracted by that date.---Yeah.

Now, and in fact it is inconsistent with the first one which talks about 19 February 2014.---Yeah. Yeah.

Have you ever seen that document before?---Yeah. I, I think I saw it when I came here previously.

Did you see it at any time in 2014?---I, I don't recall it but I could've, I don't know.

Is it possible that Mr Walker showed it to you in the IAT room on 19 February?---It is possible.

Do you recall having any discussion with Mr Walker around lunch time on 19 February about intelligence of a large quantity of Suboxone in [REDACTED] cell?---No.

10

Or that being the reason to be stated in reports as to why you'd attended the cell that morning?---No.

Do you have any recollection at all about having an understanding that that was to be the cover story for attending the cell?---No.

When you, do you have any recollection being in the IAT room around lunch time on that day and preparing reports?---I don't actually.

20 You would have discussed your report with your senior officer, would you, on that day?---I would have, yeah.

But you say you have no recollection of it.---Correct.

Why would you have discussed your report with your senior officer on that day?---We, we discussed all the reports we did.

And why is that?---We just did.

30 THE COMMISSIONER: To make sure they were consistent?---Oh, just, yeah, just little things you, like, what, you know, oh, who cuffed him again? Or just little things like that, often. Yeah.

We're not talking about often. We're talking about on the day.---On the day, I don't remember.

MR DUGGAN: Have you ever fudged the details in reports so that one of your colleagues or yourself doesn't look too bad?---No.

40 You sure about that?---Pretty sure.

Never done it under pressure from anyone else?---No.

Can I take you to your report, please, which is at page 100. Is that your signature on that document, Mr Duncan?---Yes, it is.

Does that refresh your memory in terms of a recollection about preparing this report?---No.

You accept that is your report?---Yeah, I accept it's my report.

And would you have discussed your report with Mr Walker?---I, I would imagine that I would have, yes.

And would you have discussed this report with Mr Graf?---I would have thought so, yes.

10 And is it correct to say that you'd usually be sitting next to each other, the three of you, when you prepare a report in relation to an event?---Well, at that time, yeah, the computer, well, the computers have always been side-by-side, so yeah, you would be beside each other, or at least two officers would be.

And there's no mention of Mr Duffy in this report, is there?---No.

And he was clearly there?---Yes.

20 That would have been a deliberate omission I suggest?---Yes.

And can you just explain why you would have deliberately omitted Mr Duffy?---I would have been told to.

By whom?---I would imagine Mr Walker but I don't know that.

THE COMMISSIONER: Well, what the possibilities?---Quite probable.

30 MR DUGGAN: Again there's no mention of any scuffle, use of force in this document, is there?---No.

In fact you were preparing this incident report because there was a use of force.---Yeah.

If there wasn't a use of force there would be no need for the report?---Yeah.

So why is there not a use of force mentioned?---Again I would have been directed to leave that out.

40 But you understand that the report makes no sense if it's - - -?---Absolutely.

- - - prepared in relation to a use of force but the use of force is absent - - - ?---Yeah.

- - - from the report. Are you able to explain that?---Well, I believe the story was that he fell on the toilet or something of his own accord.

And you say the story, how did you come to be aware that that was the story to run with?---I don't know. I would presume through Mr Walker.

Again it's a pretty big event to come up with a story to cover the use-of-force incident, think very carefully about it, Mr Duncan.---Yeah, I appreciate the gravity of this event. I don't have a good memory of it. Things that stick in my memory, like I was saying earlier, like times when I've used force and an inmate tried to stab me, like, things like that stick more in my memory than, than this obviously has.

10

Well, you're able to recall that when you entered the cell the inmate was standing up, you're able to recall the precise location in relation to the compound in which Mr [REDACTED] was restrained, you're able to tell me that you didn't immediately see into the cell but then when you turned your head round the corner you could see into the cell, you remember those details. ---I do.

And they're no more important than falsifying a report like this, are they? ---Absolutely not.

20

But yet mysteriously your recollection has left you on the very same day in relation to serious omissions and inclusions in this report.---Yeah.

Well, I want to suggest to you that your evidence is dishonest.---It's not. I can't explain my memory. I really wish I could remember it all, but I don't.

THE COMMISSIONER: Did you forget that you in fact were involved in restraining Mr [REDACTED] Yeah, I, I don't have any memory of that.

30

But you must have as of 19 February, 2014.---At that time I must have, oh, yeah, look, I would have known then if I did or not.

Why did you leave that out of the report?---I can't explain that, sir. I don't know.

Wasn't it to mislead those who might read it into thinking that there was no use of force at all?---It would appear that way, yes.

40

Well, is there any other explanation you wish to offer?---No.

That's why it was done, wasn't it?---Yeah.

Thank you.

MR DUGGAN: Thank you, Commissioner. Just in relation to this report, the second line refers to the fact that the IAT was called to search cell 208 in 5.1 Unit. That's, that's not correct, is it?---Not as I know it now, no.

You don't have any recollection of it being otherwise?---No. Just got told to go into a cell, by my memory.

Clearly, and you've given this evidence earlier, you're close to Mr Walker?  
---Yes.

And you were aware at the time, or certainly since, that he struck the inmate in relation to this incident?---Yeah.

10 And there's no mention of that obviously in your report.---Correct.

And so there's an element, I want to suggest, of protecting Mr Walker in preparing this report.---Yeah, of course.

An element of cover up.---Yeah.

And you felt comfortable at the time, did you, covering up for Mr Walker?  
---I wouldn't say I felt comfortable with it.

20 But you were happy to do it?---Well, I did it.

Did you value your friendship to Mr Walker and protecting him over putting in an honest report?---I did.

You understand that at the time you had a duty as an officer of Corrective Services to be honest in your reporting function?---Yes.

And you've described a moral code, if I can put it that way, of putting a friendship above that duty. Do you understand that?---Yeah.

30

Is that moral code something that you've come across with other people you work with?---I guess so, but I don't think it's ever been put into question, if that makes sense.

Maybe I can put it this way. If you did prepare an honest report in relation to this incident and it implicated another officer, for example, Mr Walker, is it possible that you'd be labelled a dog, for example?---Can you please issue that question again?

40 You've omitted certain details in relation to this incident to protect Mr Walker.---Yes.

Let's assume that the incident report contained the truth and implicated Mr Walker- - - ?---Would I be labelled as a dog?

Yes.---Yeah.

THE COMMISSIONER: Can I just ask you this, what repercussions does that have within the gaol if you were labelled a dog?---Ostracised, you'd be ostracised, yeah, that's the main. You'd be ostracised, depending, depending on, I, I haven't experienced it but I can imagine it could inhibit advancing your career. That's just an assumption on my behalf.

Have you ever been in a situation where an officer has walked in the door and other officers have said, "Do we need to use flea powder?"?---No.

10 No. Sorry, Mr Duggan.

MR DUGGAN: It's all right. You've said there that if you don't adopt the moral code that you subscribe to, that it may impact on your career.---Well I made that assumption, yes.

Is that because this moral code runs up and down the hierarchy to your, in your experience?---I, I wouldn't say in my experience but to my, I would believe it does, absolutely.

20 That's your understanding of how it works?---Yeah. Yeah.

And people like Mr Duffy for example, he wouldn't share that moral code I assume?---I couldn't answer that for you. Obviously he wrote an honest report, so I guess not.

You've heard some evidence about him being sidelined in effect?---Yeah.

Because there was a suspicion that he might in fact tell the truth?---Yep.

30 And can I suggest that, or can I ask you are there generally considered to be two types who work in Correctives, those who will adopt the moral code that you adopt and people like Mr Duffy who will report things truthfully and honestly?---I've never thought about it in all honesty.

Is that the reality though in your experience?---Look, I, I guess it, I guess it is. I think it's probably, you could probably look into it on a deeper level than that, but yeah, I guess there are people that are willing to back their mate and, as, you know, for want of a better term, and ones that would go no, I'm, you know, hard line that's right, that's wrong, and not wavering.

40

And there is some pressure or ostracism in relation to those who behave truthfully and honestly?---Oh - - -

They're punished for that, put it that way.---Well, yeah, I guess so. I've never thought about it like that until now.

Do you recall, Mr Duncan, the preparation of the IRM?---No, no.



Can I take you to it, please. I think it's at page 95. Have you seen that document before, Mr Duncan?---Yes.

Do you recall seeing it in 2014?---I don't recall seeing it then but I don't recall not seeing it either.

Is it correct to say that usually the IRM will be filled out by the officer in charge of the IAT, the senior officer?---Yes.

10 Do you have any recollection of whether or not Mr Walker was assisted in the preparation of this document?---No, I have no recollection of that.

You don't have any recollection of this document not being filled out in the IAT room but in M Block?---No, I don't know.

In an office with Mr Peebles?---I don't know.

You have no recollection of that?---No. I know it's been said since obviously but I don't know.

20

I want to suggest that would not be a common occurrence for someone like the manager of security, even if he was on detached duty that day, that someone like the manager of security would assist in the preparation of a report like this?---That would be correct.

Do you have any recollection of still photographs being taken?---No.

30 Or discussion about the fact that there weren't any but that that could be explained away later?---No. My first recollection of the, the photos or lack thereof or anything suggesting it was the, was back here in March or whatever it was, March?

I want to suggest to you that where it says in this IRM that, "The offender tripped over the cell furniture and fell heavily onto the toilet," that's not correct, is it?---I didn't see that, no. Yeah, no, I didn't see that.

You didn't see the inmate try and throw anything in the toilet?---No.

40 You're not aware of any search operation of the cell or the inmates?---No.

And you're not aware of any directions or intel before you went into the cell specifically to look for buprenorphine?---No.

Now, if I suggested to you that that intelligence was false, you'd have nothing to counter that, I anticipate.---No. No.

You can see just at the bottom of the screen there, there's a question on the left hand side, "Reason use of force was not fully recorded or captured on

CCTV”, and if you go across it has, “no force anticipated”. Do you recall whether you anticipated that force might potentially arise?

---No. I, the reason why I said was fourth in, I'm usually the first in the cell earlier, was if I, I, in my memory, I would've thought, if I thought there was a use of force about to occur, I would've positioned myself further up the order to go into the cell, just out of what I would usually have done, so to answer your question, no.

10 But if you were going to enter the cell, would you usually handcuff the inmate before entering the cell?---No, not always. No. There has been a change since what I, I mentioned earlier, there was actually an Islander inmate attempted to stab me during the use of force, planned use of force, there's been a change within that unit where there are grille doors available and you can cuff them, but that's what's been adopted since then, but back at that time, no, not necessarily.

But you are aware that you could have cuffed the inmate through the grille door in the unit?---You had the physical ability to do, to do that, yes.

20 But you're talking about policy change, are you?---I don't know if it's in a hard policy change but it was certainly a procedural change that we adopted. Whether that got put into writing, you know, I'm not sure.

Would you usually ask the inmate to go to the back of the cell?---Typically, yes.

And that would be irrespective, I assume, of whether or not there was anything anticipated?---Yeah. Typically. But there are times when you get them to come forward as well, depending on the circumstances.

30 Did you ever view the CCTV footage of the day room - - - ?---No.

- - - in relation to this incident? Were you at work on the following day?---I was.

Did it come to your attention that Mr [REDACTED] had made a phone call to his father in which he said he'd been bashed by the squad?---Yes.

40 And you understand what I mean by the squad?---Yeah. By IAT, yeah.

So was there some discussion about that?---I think the biggest discussion would've been around, I think there was a death threat made or threats to get them, or something.

So is that a reference to a comment that someone might be waiting at the gate or outside the gate?---Something like that, yeah.

So what was the discussion, do you recall?---No, I don't even recall if that was then. I sort of remember that further down the track. No, I don't recall.

Do you have any recollection of a search operation? I'm not suggesting you participated, but a search operation that day in relation to Mr [REDACTED] cell?  
---As in the following day, after, on 20?

10 Yes. Yes.---Yeah, I, I remember there being a search and I remember waiting in the, being told not to go near it and I'm sure I waited either in the office of that unit, or back in IAT office. But I think the 5.1 office but I can't be sure.

Who told you to hold back?---I believe it was Mr Kennedy. Mark Kennedy. Mark Kennedy. But again, I'm not 100 per cent certain of that, but, I think.

IAT often assist in search operations?---Correct.

Were you irritated that you were told to hold back?---No.

20 Were you, was there a reason why you were told to hold back?---Because of the use of force the day previous.

Did Mr Kennedy say that?---I don't know. He, he may have, I, I'm not sure. If it wasn't said it was certainly, we knew that was the reason why.

THE COMMISSIONER: Why would that be?---I guess the, it sounds ridiculous now, doesn't it? I guess to negate any recourse of allegation or anything, I presume.

30 Allegation of what?---Assault or anything like that, or that we're, you know, that he's been assaulted and that the same officers have gone back in, like, I - - -

Maybe gone back in and planted something there?---Well that's certainly the rumour since.

Is it? Yes.---Yeah. I'm bloody thankful, to be honest, I didn't get sent into there.

40 I bet you are.---Yeah.

MR DUGGAN: So you heard a suggestion that a drug was planted in the belongings of - - - ?---I've heard rumours, yeah.

And when did you first hear such a rumour?---I, I don't know.

Pretty soon after the event, or a year later, or two years?---Mate, I don't recall hearing that rumour immediately, but I don't know, yeah, I don't know.

Excuse me, Commissioner. Commissioner, I don't have any further questions for this witness.

10 THE COMMISSIONER: Maybe I'll just take up one matter. Could we have page 444 of the compulsory examination put on the screen? I just want to ask you some questions about some evidence you gave down here on the last occasion, I'll put the transcript in front of you, 444. Now you're being asked questions about why you did certain things, and you'll see down on the left hand column there, there are numbers, 10, 20?---Yes. Yeah.

Okay. If we say line, line 19, you're asked this question, "Have you done it to protect Mr Walker?", and you said, "Yeah, probably".---Yeah.

20 "Has there been any element of protecting Mr Graf?" And you said, "No, no, well, my memory of Mr Graf is exactly what, exactly what I said." "Yeah. And that's in your report".---Yeah.

"Is there any element of trying to protect Mr Duffy?" and you answered "No", and then you were directed back to that page, "Report", which talks about being called to search the cell.---Yeah.

30 And you were asked this question, "Do you remember any pressure being put on you to say that that was the reason you attended the cell?" And you said, "No, no, I don't recall it." And then this was put to you, "All right. In terms of your usual practice, I know you've said, you know, how you conduct yourself, so if you left that kind of information out, there would've been a reason?" And you said, "Yes." Question, "In terms of your usual practice, did you usually leave out important information?" Answer, "No, no." And you, you were then asked this question, "So this might have been quite an ethical dilemma for you at that stage?" And you said, "No. I know that's contradictory." Question, "You felt perfectly comfortable covering up?" And you said, "Yes." And then you were asked this, "And why is that?" "Because I honour mateship above everything else, above, you know, leaving something out of a report." And then the Commissioner, who  
40 I think was the Chief Commissioner asked you, "Why do you have to report use of force within the gaol?" You answered, "It's just a reportable incident, it's part of your duties. I've never questioned it, to be honest, it just has to be done." And you were asked this question, "You put mateship above that duty?" Answer, "Yes." Now are the views that you express there, views that you hold today?---Certain mates, yeah.

Yes. All right.---I mean like, I don't think, I don't know how much you understand, like you would have read, I read an interview conducted with

Mr Peebles and it stated that [REDACTED]  
Well, his intervention was to send me there.

At the time I was probably a metre, I might have been a little bit further than you and I apart [REDACTED]

10

I can understand that when somebody's in physical danger, but what you seem to be suggesting in the evidence you gave in the compulsory examination was that you honoured mateship over telling the truth.---I did, yeah.

And is that a view you still have today?---Mate, honestly, not if it's going to cause me getting into trouble.

20

All right.

MR TAYLOR: Commissioner, can I seek a suppression order in relation to the details of the evidence the witness just gave - - -

THE COMMISSIONER: Yes.

MR TAYLOR: [REDACTED]

30 THE COMMISSIONER: No, I can well understand that.

MR TAYLOR: Thank you.

THE COMMISSIONER: Does anyone want to say anything else in relation to that?

MR DUGGAN: No, I would endorse that submission, Commissioner.

40 THE COMMISSIONER: Okay. Just bear with me for one moment. Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988 that other than publication to or by Commission officers, this witness's evidence in relation to his involvement with [REDACTED]

**BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 THAT OTHER THAN PUBLICATION TO OR BY COMMISSION OFFICERS, THIS WITNESS'S EVIDENCE IN RELATION TO HIS INVOLVEMENT WITH**

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THE COMMISSIONER: Thank you.

MR TAYLOR: Thank you, Commissioner.

THE COMMISSIONER: Now, have you finished Mr - - -

20

MR DUGGAN: I've finished with Mr Duncan. I was going to tender his compulsory examination from 8 March, 2018.

THE COMMISSIONER: All right. We'll mark that Exhibit 60.

**#EXH-060 – TRANSCRIPT OF OP ESTRY COMPULSORY EXAMINATION OF ELLIOTT DUNCAN HELD ON 8 MARCH 2018**

30

MR DUGGAN: Commissioner, we're just losing track as to which section 112 orders you've revoked. My recollection was you had revoked the one in relation to Mr Duncan.

THE COMMISSIONER: Well, it can be assumed that I will be revoking the orders as we go along and if I haven't revoked the order in relation to that I do so now.

MR EURELL: I think you had. I expressed concern about something Mr Duncan had disclosed if anyone recalls and - - -

40

THE COMMISSIONER: I think that's right.

MR EURELL: - - - and the Commission then made an order in respect of the amendment to the 112 order affecting the compulsory examination transcript.

THE COMMISSIONER: Yes. No, you're right. The intent was that this material could be used within the hearing.

MR EURELL: Yes.

THE COMMISSIONER: So that everyone is in full receipt of fairness. It wasn't my intention that this material be published to the world at large. Is that your understanding or - - -

MR DUGGAN: Sorry, Commissioner, did you say it was not your intention to publish it at large?

10 THE COMMISSIONER: I thought the nature of the application was to allow people to review this material and ask questions. Is there any reason why it shouldn't be published to the world at large?

MR DUGGAN: No.

THE COMMISSIONER: No. All right. Then, I revoke the section 112 order.

20 **VARIATION OF SUPPRESSION ORDER: SECTION 112 ORDER REVOKED**

MR DUGGAN: Thank you, Commissioner. Commissioner, in my submission Mr Duncan shouldn't be released from his summons at this stage. He may be subject to further cross-examination. It may even be possible to do that tomorrow. I've just been informed that - - -

30 MR EURELL: I've been in touch with Ms Fishburn, who thinks she'll probably be free tomorrow.

THE COMMISSIONER: Oh, terrific.

MR EURELL: She's just trying to confirm at the moment that what she had thought she was in tomorrow has now fallen away. She indicates to me she'll get back to me as soon as she can.

40 THE COMMISSIONER: Well, thank you for that. That's very helpful. Is anyone in a position to ask Mr Duncan any questions this afternoon? I'm not expecting you are but, you are?

MR GREENHILL: Indeed I am.

THE COMMISSIONER: Thank you, Mr Greenhill.

MR GREENHILL: Mr Duncan, I appear for Mr Graf. Look, I want to take you to something that you said when you were compulsorily examined before Commissioner McDonald earlier this year on 8 March, 2018, at page 459, I'll go back to page 458. It's dealing with when you went into the cell,

where Mr Walker had entered before you, correct?---Yeah. Whereabouts on the page are you, sir?

Down the bottom. Right towards the bottom of page 458.---Yep.

Do you see, "All right. He orders [REDACTED] to get off, and that's what you were witness, maybe not him ordering him but you saw Mr Graf take hold of [REDACTED] yes?"---Yep.

10 "Did you grab hold of [REDACTED] or were you more there as a physical presence? Oh," apparently was your answer. And then you asked this over the top of page 459, "Nothing really turns on, there's criticism involved if you touched him or not." Answer, "No, look, I, I don't remember exactly but I think I grabbed hold of him but I don't really know to be honest."---Yep.

And now I suggest that you didn't in fact take hold of him but that Mr Graf took hold of the prisoner.---I believe Mr Graf took hold of him. I may have.

20 But you don't know?---But I think, even if we're both doing it, Mr Graf certainly took hold of him first.

Yes. And took hold of him and took him off the top bunk?---Yeah.

Yes. Now, thank you. Are you still mates with Mr Walker?---Yes.

Thank you, I have nothing further, Mr Commissioner.

30 THE COMMISSIONER: Thank you. Anyone else prepared to chance their hand?

MR MADDEN: I don't have any questions, Commissioner.

THE COMMISSIONER: And that'll be the position tomorrow?

MR MADDEN: Yes.

THE COMMISSIONER: Yes. Mr Willis? I'm not forcing you on. If you think you need time, by all means.

40 MR WILLIS: Commissioner, at this this point in time, I don't have any questions for this witness but I would like to complete my reading of his compulsory transcript before I say definitely I have nothing.

THE COMMISSIONER: All right. Is there anyone who definitely wants to ask the witness further questions but is not on a position to do so at the moment?



MR TAYLOR: I may be in that boat, Commissioner. I need to get some instructions. Mr Walker's not here.

THE COMMISSIONER: Right. Fair enough.

MR HARRIS: Commissioner, yes, I think I'm in the same position as Mr Willis. I'd hate to be the one that brought him back only for me to say, "I've got no further questions," but just at this stage, on behalf of Mr Taylor, I'm not sure.

THE COMMISSIONER: Okay.

MR HARRIS: Thank you.

MR DUGGAN: Perhaps we can do it this way, Commissioner, if it suits. My friends can let us know by email or otherwise if they do require him back and if he's not required then obviously we'll, we'll let Mr Duncan know but I don't think he needs to come back to be told there are no questions.

THE COMMISSIONER: No.

MR EURELL: Perhaps tacking onto that, I'm going to have to be in touch with my learned friend this afternoon concerning whether or not Ms Fishburn can - - -

THE COMMISSIONER: All right.

MR EURELL: - - - step in, and if she can, if Mr Duncan's not required, it sort of falls away and if he is required then we'll be in touch and I'll communicate to Mr Duncan whether or not he needs to return.

THE COMMISSIONER: All right.

MR EURELL: If that's acceptable to the Commissioner. I don't know whether it is.

THE COMMISSIONER: I'm not going to release you from your summons yet, and you've heard the discussion going on. You may have to come back tomorrow, but there's some prospect you won't and we'll do our best to let you know as soon as possible what the position is.---Thank you, sir.

All right. But you're free to go at the moment.

**THE WITNESS STOOD DOWN**

**[2.55pm]**

MR BRASCH: Commissioner, for my part, I can indicate that we don't have any questions for this witness.

THE COMMISSIONER: You don't have any questions?

MR BRASCH: No.

10 MR DUGGAN: And can I reiterate, it won't be 10.00am tomorrow at any point because we've got the other witness.

THE COMMISSIONER: Yes. So if you've got to come back you will be coming back later in the day.

MR DUNCAN: Okay. So hang around Sydney indefinitely until I hear otherwise. Is that fair to say?

THE COMMISSIONER: I'll try and find out for you.

20 MR HARRIS: Commissioner, I can indicate I'll be able to advise very shortly this afternoon, I'm just going through this now and I don't want this gentleman to be unnecessarily inconvenienced at all, so - - -

MR EURELL: He's staying overnight anyway, Commissioner.

MR TAYLOR: I should be in a position also to advise this afternoon.

THE COMMISSIONER: You can give advice this afternoon?

30 MR TAYLOR: I believe I'll be able to give instructions this afternoon.

THE COMMISSIONER: Okay. Well then I'll let you - - -

MR TAYLOR: I'll be able to advise whether or not I do have any questions of this witness.

THE COMMISSIONER: Okay, that's fine. We'll let you go now and somebody will be in contact with you hopefully later this afternoon as to what the position is.---Okay, thank you.

40

Thank you. Who's next, Mr Duggan?

MR DUGGAN: Mr Ashcroft.

THE COMMISSIONER: Come forward, Mr Ashcroft. And Mr Ekstein, you have been authorised to appear for Mr Ashcroft. Is that correct?

MR EKSTEIN: Yes. Ekstein.

THE COMMISSIONER: Ekstein, sorry. Do you take an oath or an affirmation?

MR ASHCROFT: Affirmation, thank you.

THE COMMISSIONER: Just bear with me for one moment. Mr Ekstein, do you seek a declaration under section 38?

MR EKSTEIN: Yes. I do, Commissioner.

10 THE COMMISSIONER: Thank you. Just let me explain to you, sir, what your obligations as a witness are. I'm sure I'm probably repeating things that Mr Ekstein's already said to you. As a witness, you must answer all questions truthfully. You must produce any item described in your summons or required by me to be produced. The Act gives you the right to object to answering a question or producing an item and the effect of the objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or subject to two exceptions in any criminal or disciplinary proceedings. The first exception is that this protection does not prevent your evidence from being used against you in a prosecution for an offence  
20 under the ICAC Act. Now I'm not sure whether you've been here when other witnesses have sought a declaration that your lawyer now seeks for you but I can remind you if you have, or tell you if you weren't here, that the most important offence or the most significant one from which you are not protected is giving false or misleading evidence. Do you understand that?---Yes, I do.

And the penalty for that can be imprisonment for up to five years, so it's a very serious matter. Now are you still with Corrective Services?---Yes, I am.

30 Well, the second exception applies to you because you're a New South Wales public official. The evidence given by a New South Wales public official such as yourself may be used in disciplinary proceedings against you if the Commission makes a finding that you have engaged in or attempted to engage in corrupt conduct. It's only in the event of that, such a finding, that that can occur. Now I'm proposing to make the declaration that was sought by Mr Ekstein and I'll do so now.

40 Pursuant to section 38 of the Independent Commission Against Corruption Act 1988, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR**  
10 **THING PRODUCED.**

THE COMMISSIONER: So the effect of that is you don't have to object to each question as it's asked, you've got a blanket protection under section 38, subject to those very important exceptions that I pointed out to you.

Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner.  
20

Mr Ashcroft, can you please state your full name for the Commission.  
---Dale Ashcroft.

And are you currently the manager of security at Oberon Correctional Centre?---Yes, I am.

Was that your position in February 2014?---No, it was not.

What was your position at that time?---My rank was senior assistant  
30 superintendent.

THE COMMISSIONER: Would you mind just keeping up your voice a little bit?---Oh, sorry. My rank was senior assistant superintendent.

MR DUGGAN: And that was at Oberon?---Yes, I was at Oberon at that time, yes.

And are you friends or were you friends with Mr Walker in February 2014?  
---Yes, and I still am, yes.  
40

And you'd speak to him on a fairly regular basis then?---Not regularly, no.

Oberon and Lithgow are part of the same cluster. Is that right?---Yes. I was actually on secondment to Oberon from Lithgow.

From Lithgow.---Yep.

Did that mean though that you were full-time in February 2014 at Oberon or you were in both places?---Yes, full-time.

I want to show you an email, Mr Ashcroft, if I may. It's an email from you to Mr Walker on 19 February, 2014. Do you see that?---Yes.

You accept that you sent that email?---Yes.

10 And it's headed, the subject heading is "What?" Do you accept that?---Yes.

And the short contents of it are, "You're a thug, Walker."---Yes.

And what was that intended to relate to, Mr Ashcroft?---Well, I had read the IRM on the incident that was involved, Terry was involved in on that day, so it was sent as a joke and it was sent basically to see if he was okay.

20 Why would he have not been okay, Mr Ashcroft?---Well, Terry, I think it has been explained a number of times, has gone through a rough period, he was going through a rough period then, excuse me, through a tough marriage break-up, so I was just, yeah, checking. It's hard with Terry, you can't just ask him if he's okay 'cause he just won't tell you.

All right. Can I take you to page 95, please. Now, that's an incident report of 19 February, 2014.---Ah hmm.

And please read as much of this document as you need to, to familiarise yourself with it.---Yep.

30 Is this the IRM you are talking about?---That's the IRM that I read, yes.

Which part of this IRM caused you to have concern for Mr Walker?  
---Well, I thought it was quite funny that the inmate, I know it's not funny now, but just the way it reads, that he entered the cell and the inmate tried to run towards the toilet and tripped, the concerning part for me was, and I guess that's what the "what" was, was that it was recorded as a use of force and I thought it wasn't a use of force, it was an inmate injury, so that's why I had "What?" on there with a question mark.

40 And I'll ask the question again. What was it about it that gave you concern for Mr Walker?---Well, as I said in my interview, I believe that IAT was being utilised far too much, not just at Lithgow but right across the state, and that was my concern for Terry.

So this IRM suggests that an inmate has tripped over and injured himself during a routine search.---Yes.

What are you referring to when you say "IAT is being used too much"?  
---Well, IAT always get called to deal with this type of thing, in my experience.

What type of thing?---Well, any type of incident within the centre, they get called to deal with, and that kind of is an overuse of the IAT, I don't think that's their, what they're there to do.

10 So were you concerned that Mr Walker was being overworked because he's involved in this incident?---It wasn't just that incident. There was a lot of IRMs across that Christmas period, they had a lot of trouble in 5.1 which is where the IVI, IP and the STG was. That was my area before I went to Oberon.

But you're the manager of security at Oberon?---I am now.

You're an experienced correctional officer?---Yes.

20 And you were in 2014?---Yes.

The fact that an inmate trips over and injures himself or might be trying to flush a small amount of drugs down the toilet, that's not a significant incident, is it?---No.

30 I'm not belittling an injury to an inmate but that's not something that would cause you concern for Mr Walker, is my point. Do you accept that?---Well, no I was concerned for Terry, that's what I said in that email, but it was more of a, a joke about the, what was in the IRM itself, that the fact that he, you know, what he, what he had written was that the inmate ran, fell over. So, an old story in gaols, you know? Slipped in the, in the shower, slipped there, so that was my concern for Terry.

So can I put it this way, it was obvious to you that this was a false report and you were concerned for Mr Walker in terms of what was going on?---No. I, I didn't think it was a false report, I was just concerned about Terry and the, that's why I sent the email, to get a response. I didn't get a response back so I thought he was okay.

40 And are you friends with Mr John O'Shea?---Yes, I am.

Did he tell you about this incident on the day?---No he did not.

Are you sure about that?---Positive.

How did you, you've got access obviously to the, the OIMS system, Offender Integrated Management System?---Yes.

Which is where you would've viewed an IRM.---Yes.

How did you come across it?---How did I come across it?

Yes.---As I said, that was my area, I'd been searching the IRMs for the months that I was at Oberon, or Lithgow, and just looking at them, seeing what was happening in that area. So all you had to do, anyone can do it across the state, you've just got to put in the location, which is Lithgow, and then the date, and up it comes.

10 THE COMMISSIONER: And any corrections' officer can get access to that, can they?---Yes.

Right.

MR DUGGAN: And why were you reviewing them on this particular day?  
---I was reviewing them all across that Christmas break as I've said, I was on secondment for three months, which got extended to six, and I was checking on that area because as I said, across that Christmas break, they had a lot, a lot of drama in that unit, to a point where the, the program broke  
20 down and they ended up shutting it down and sending all the inmates to HRM. So that's why I was checking.

To where, sorry?---HRM, HRM (not transcribable)

So you had a specific delegated responsibility to review IRMs at this time?  
---No. No. I didn't have a specific responsibility, I just took an interest in my work location which was Lithgow, I just, I happened to be working at Oberon at the time.

30 So you're not suggesting that you reviewed 20 other IRMs on this particular day?---I, out of memory I couldn't tell you how many IRMs were there on this day.

I'm trying to establish whether or not you were conducting some systematic review of IRMs in Lithgow in the cluster. Is that your evidence?---No, that's not my evidence. I was looking at what was happening at Lithgow, from Oberon.

40 So are you just suggesting that, to keep an eye on things, every now and again you'd do some random searches of IRMs?---Pretty much daily, yeah.

And did you have any responsibility in Lithgow at the moment or it was more just to find out what your mates were up to across the way?---No. It wasn't to find out what my mates were up to, it was to find out what was happening in my area of responsibility that I was returning to.

So you didn't have a current responsibility in Lithgow?---No. But it's good to keep your, your finger on the pulse on what's going on over there.



Can I take you to the timestamp on this, and now you see there that the time reported in the top right hand corner is 13.23. So you see that?---Yes.

And as I understand it, that's the time at which you commence the incident report?---Yes.

And if you go down to, "Summary," and it's got user, "Walker, Terrence," a date and a time, 13.38. Do you see that?---Ah hmm.

10

And that'd be the time that the summary is entered into the system, into the database?---Yes.

So that sort of block paragraph, so you accept that that would have been entered, or the entry would have been completed at 1.38pm?---Yes.

And so would I be stating correctly to say that that's the time that would then be accessible in that OIMS system?---Yes. As soon as it starts being entered, you can have a look at it, yeah.

20

Once it's entered. So from 1.38pm onward, I assume.---Yep. Once it's started, you can have a look at it. Yes.

I'm going to take you to your email.

THE COMMISSIONER: What page number's that, Mr Duggan?

MR DUGGAN: The IRM is at 95 and the email, I don't think I have tendered yet.

30

THE COMMISSIONER: No.

MR DUGGAN: My apologies. Have I got a, am I able to tender it? Oh, it was tendered, Exhibit 49, the Associate tells me. Thank you very much. Commissioner, do you – we're having a disagreement amongst ourselves. Do you have Exhibit 49? Do you have the email?

THE COMMISSIONER: I should have. Yes. There it is, thank you.

40

MR DUGGAN: Thank you, Commissioner. So, Mr Ashcroft, I've just taken you to 1.38pm, being the timestamp on Mr Walker's summary in the IRM. And if you go to your email, your email is timestamped 2.23pm, or 14.23pm using military time. You accept that's 45 minutes after that would have gone live on the OIMS system?---Yes.

Is your evidence that no one at all contacted you and told you about this incident?---No.

You've got a number of friends, I assume, in Lithgow?---Yes.

And I would suggest that it's somewhat of a coincidence that 45 minutes after this entry goes live, you stumble across it in Oberon. Do you accept that that's a coincidence?---No. I was looking at the IRMs, that's why I found it.

Did anybody email you about this incident?---No.

10 Did you have any discussions, did anyone reply, did Mr Walker reply when you sent him an email (not transcribable) Walker?---No. He didn't reply at all.

No. Not by telephone or some other way?---No.

Were you concerned that you received no reply from him?---Not really. I thought, Terry, if he wants to talk, he'll talk. If he doesn't, he won't. That's just the, the type of person that he is.

20 And did you have a chat with him the next time you caught up with him about it?---Well, when I returned, no, I'd forgotten about it by then.

Can I just take you to page 97, please, at Exhibit 45. If you look at the top left hand corner - - - ?---Yes.

- - - the report date and time, is that a time stamp of when an IRM is accessed or printed?---Printed.

Printed.---Yeah.

30 Now if you can assume for me that this is part of the use-of-force package that was submitted in relation to this incident.---Yes.

You know what I mean by that?---Yes.

And this document shows a time stamp which coincidentally is 2.23pm. ---Yes.

40 Being the same time, although the seconds aren't mentioned, of your quick email, "What, you're a thug Walker?" I suggest to you that that's a remarkable coincidence. Do you have any response?---No.

It certainly suggests or gives rise to at least the possibility that someone printed this out at Lithgow and gave you a call to let you know about it. That didn't happen?---That did not happen, no.

Just a database issue. If you can access the system, are you able to tell me whether you can change an entry once it's been entered?---No you can't.

You can't?---No.

Sorry, Mr Ashcroft. Just to make sure of that last answer, this paragraph, this summary that has been entered, Mr Walker or someone using his login enters it and that entry is complete at 13.38, and that summary can't be changed after that time by anyone?---Well, no, the reviewing officer at the centre can, can change it, yes. Not the summary part, but they can go in and put an appendage to it, to the summary section, but every time that you change or put an entry into the summary it will bring up your username and who actually did it and what time.

I understand. So you can add to it but you can't alter someone's previous entry?---No. You could years ago and they changed it, the duty officer used to be able to do it.

Mr Ashcroft, thank you for your time. I don't have any further questions.

THE COMMISSIONER: I've just got one matter. How long have you been at Corrective Services?---Twenty-three years.

And were you ever, in that 23 years, doing IAT duties?---Yes, I was.

For what period of time?---Wow. It would've been 2005. Yeah. Around about that time, 2000, 2005.

How long?---Probably two years.

All right. One thing that struck me as being a little bit curious, and I'll take you to this, can we just have that report at 97 put back on the screen? So it says, in describing the incident, "During an intel based centre search, IAT were detailed by the manager of security to search cell 208 in 5.1 Unit. The directions were to specifically look for buprenorphine. Inmates were spoken to at the cell door prior to entry and appeared compliant and reasonable. As officers entered the cell, offender [REDACTED] ran without warning towards the back of the cell in the direction of the toilet. During the action, the offender tripped over cell furniture and fell heavily into the toilet itself. IAT officers were unable to intervene in time to stop the offender disposing of an unidentified article in the toilet. The offender was handcuffed and did not resist. The cell was searched thoroughly with only nuisance items being found. Offender offered medical attention by Justice Health and Centre Clinic. Reported as a technical use of force on direction of the general manager." Do you see all that?---Yeah.

You read that and your email is, "You're a thug, Walker." Doesn't that suggest that you believed that something else happened in that cell apart from the prisoner tripping over the toilet?---No. What I meant by that email

is if you hadn't have gone into that cell the inmate wouldn't have ran, he wouldn't have fell and he wouldn't have landed on the toilet.

But that wouldn't make Mr Walker a thug, would it?---Well, that's what I'm saying, that's what was the joke part.

I can understand it may be a joke, but do you agree with me on one reading of that, "You're a thug," suggests that you understood that it was likely that this report was leaving something significantly out of the equation?---No.  
10 What I was trying to say, and I'll say it again, is that I believed that him entering the cell, and he didn't actually use force according to that, and he still injured the inmate, that's why I was saying, "You're a thug, Walker," as a joke.

But how does that make him a thug?---Because the inmate's got injured.

All right. Anything arising from that?

MR DUGGAN: No, thank you, Commissioner.  
20

THE COMMISSIONER: You're excused, Mr Ashcroft.

THE WITNESS: Thank you.

MR DUGGAN: And I assume that no one else wants to ask any questions?

THE COMMISSIONER: Oh, I'm sorry, I do apologise. I assumed it as well. You're not excused just yet.

30 MR GREENHILL: I've just got a couple of questions, Mr Commissioner.

THE COMMISSIONER: Certainly, Mr Greenhill. I do apologise.

GREENHILL: That's all right. Sir, you told the Commissioner about the troubles, if I can use that word, that were at Lithgow because the inmates to be transferred, I've got a hearing problem, did you say to Goulburn?---Yes.

Right. And that would have been Christmas of 2013?---Yes.

40 And did that trouble extend over a period of time - - -?---Yeah.

- - - leading to their removal?---Yeah, I think the removal was around 2014, I couldn't tell you specifically when, but there was a lot of drama in that unit over the Christmas break.

Were you keeping tabs on that drama?---Yes.

And would that drama have put extra pressure and stress on the members of the IAT teams?---Certainly, certainly it would have, yes. They were being called down there a fair bit. There was floodings, there was fires, there was a lot going on.

And to you your knowledge did your friend, Terry, was he subject to more stress?---Well, I didn't speak to him but yeah, it wouldn't have helped.

10 Yes, thank you.

THE COMMISSIONER: Anyone else? You're excused.

MR EKSTEIN: Might I also be excused, Commissioner?

THE COMMISSIONER: Of course you can, yes.

MR EKSTEIN: You thought I was asleep, didn't you?

20

**THE WITNESS EXCUSED**

**[3.23pm]**

MR HARRIS: Commissioner, if I may, just on another subject, Harris. In relation to Elliott Duncan who was excused today but not fully excused, I can indicate on behalf of Mr Taylor I won't require him to return.

THE COMMISSIONER: Thank you.

30 MR HARRIS: Thank you very much.

THE COMMISSIONER: So that just leaves you, Mr Taylor, I think, doesn't it?

MR TAYLOR: Possibly me, yes. And Mr Willis.

THE COMMISSIONER: I'm sorry, and Mr Willis.

40 MR DUGGAN: Commissioner, I'm in your hands. We could commence Mr Graf or I'm happy to start with a different witness tomorrow. I certainly wouldn't go anywhere near finishing Mr Graf in the time available, but I'm happy to start.

THE COMMISSIONER: What would you prefer?

MR DUGGAN: I have no preference, Commissioner.

MR GREENHILL: I'd prefer we start if - - -

THE COMMISSIONER: Certainly. All right.

MR DUGGAN: I'm happy with that, Commissioner.

THE COMMISSIONER: Okay.

MR DUGGAN: Just to make clear, we will have to interpose the witness at 10 o'clock tomorrow. It won't be Mr Graf.

10

THE COMMISSIONER: Do you understand that, Mr Greenhill?

MR GREENHILL: Yes, Your Honour.

THE COMMISSIONER: Come forward, Mr Graf. I take it, Mr Greenhill, that your client seeks a section 38 declaration?

MR GREENHILL: Yes, Your Honour, yes, Mr Commissioner.

20 THE COMMISSIONER: Mr Graf, do you take an oath or an affirmation?

MR GRAF: An oath, please.

MR GREENHILL: Can I approach, please?

THE COMMISSIONER: Of course you can. Mr Graf, I'm sure your very experienced counsel has explained to you your rights and obligations - - - ?  
---Yes.

10 - - - under, as a consequence of the fact that you're a witness before the Commission.---Yes.

Just so there's no misunderstanding I'll repeat probably what he's already told you. As a witness you must answer all questions truthfully and you must produce any item described in your summons or required by me to be produced. Now, it was no doubt explained to you that you have a right to object to the answering of a question but even though you object, you've still got to answer it.---Yes.

20 But the objection gives you some protection. The effect of the objection or the declaration I am about to make is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings, or subject to two exceptions in any criminal or disciplinary proceedings. Now are you currently a Corrective Services officer?---Yes.

You are. Thank you. The first exception to the section 38 declaration is this, that it doesn't prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, and most importantly, the  
30 offence of giving false or misleading evidence, and you might've heard me say to the previous witness that that's a very serious offence and it can lead to imprisonment for up to five years if you lie or give misleading evidence. Do you understand that?---Yes.

The second exception applies to you because as a corrections officer, you are a New South Wales public official. So the evidence given by you today may be used in disciplinary proceedings against you, but only if the Commission makes a finding that you're engaged in, or you have attempted to engage in, corrupt conduct. Do you understand that?---Yes.

40 All right. Pursuant to section 38 of the Independent Commission Against Corruption Act 1988, I declare that all answers given by this witness and all or documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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10

THE COMMISSIONER: Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Mr Graf, can you please state your full name for the Commission?---Simon Thomas Graf.

THE COMMISSIONER: You might just have to keep up your voice a little bit, I think that does it better.

20 MR DUGGAN: Thank you, sir.

MR GREENHILL: Speak up.

MR DUGGAN: What's your current rank, Mr Graf?---First class correctional officer.

All right. And are you still with the IAT?---No. I'm with the security operations group.

30 Are you with the Dog Unit, or - - - ?---Correct.

How long have you been with SOG?---I just became operational last Friday.

Right. And before that you were with the IAT?---No, I stood down from IAT last year.

Right, okay.---Yeah.

40 And when did you do the training for IAT? Do you remember?---Around 2007, 2008.

All right. And is being a member of the IAT a position that you have to win?---Back then it was, yes.

It's a sought after position.---Yes.



And as I understand it you can be IAT trained but not always rostered on for IAT. Was it pretty common for you to be rostered on in 2014 with the IAT?---Correct, yes.

Did you usually get teamed up with the same officers, Walker and Duncan, or did it differ?---There was a few extras in there as well, yes.

There was a pool of six or so, or - - - ?---It may be around that, yeah.

10 And was there usually one IAT team rostered on on a particular day, or might it be two, or - - -?---No, just one a day.

All right. Now I think you've been sitting here seeing some of the evidence.---Yes.

So I want to ask you about what happened on 19 February 2014, so you know what I'm talking about?---Yes.

20 You were on the A watch that day?---Correct.

And it started at 8.00 am?---Yes.

Did you get a briefing that morning about what was to unfold?---I don't recall whether we did or not.

Do you recall being up in 3 Unit doing some searches?---Yes.

30 And who were you up there with, do you recall?---The IAT team. Mr Walker, Mr Duncan, Mr Duffy was up there, SOG Handler Watson was up there and that's all I can remember.

And do you remember why you had to leave Unit 3?---Yes.

Why was that?---A radio call for us to attend 5 Unit.

So you had your issued radio on your vest?---Correct.

40 And do you remember what the call said?---For us to attend 5 Unit straight away.

And do you remember, was that it?---I think so.

Something to that effect?---I know, I know someone else has said, there was extra, "Bring extra people," but I don't recall that part of it. May have, may not have.

And do you remember who made the call?---Mr Taylor, Stephen Taylor.

And did he identify himself on the call?---No.

How did you know it was Mr Taylor?---I just knew his voice on the radio.

And you'd worked in the same centre as Mr Taylor for some time?

---Correct.

So, was there a call for IAT to get down to Unit 5?---Yes.

10 Because as I understand it, all officers, non-IAT and IAT would have the radios?---Correct. All the same channel.

All the same channel and everybody would have heard it?---Yes.

So, I assume that there was something specific in there about IAT at least?

---Correct.

And maybe something about other staff as well but you don't recall that either way?---I don't recall that, no.

20

So, you then recall heading down to Unit 5?---Yes.

You went through the compound and straight into the day room? Does that accord with your recollection?---I think so, yes. I remember going through the day room door, yeah.

And I think Mr Duffy gave some evidence, you might have heard, about being caught up closing one of the gates. Do you - - -?---I can't be sure of that.

30

So, do you recall going into the day room?---Yes.

And what did you see when you went into the day room, do you recall?---I recall that we went into the office and, or right near the office and Mr Walker went in and spoke to the staff in there.

So, Mr Walker went into the office but you didn't, is that your evidence?

---No, I didn't go in.

40

So, were you standing just outside the door?---I believe so.

Was the door open?---The office door?

Yes.---Oh, it would have, I, I don't know.

THE COMMISSIONER: There's a big glass window on it, isn't there?

---Yes.

Yes.

MR DUGGAN: You can certainly see through it?---Yes, yes. Yes, I could.

And it's also possible the door might have been open?---Maybe.

Did Mr Walker go right into the office or stand at the door?---I really don't remember that, if he went right in or not.

10

Do you remember, who was in the office?---I remember Mr Peebles, Mr O'Shea, Mr Taylor and I think there might have been some unit staff in there but I'm not sure.

So, unit staff on that day might have been Jane Lohse, would be right? ---May, I know I saw her later on. Yeah.

And did you hear anything that was said in the office?---No. No.

20

So, you recall that you didn't, well, you weren't able to hear or you just don't recall if there was anything said?---I don't know either way whether I couldn't or didn't.

So, I assume Mr Walker comes out of the office at some point?---Correct.

And did anyone else follow him out?---I think Mr Taylor, I think all three of the, Mr Taylor and Mr Peebles and Mr O'Shea.

30

Came into the day room?---I think so. I think we might have walked up ahead of them. We may well have walked up together anyway.

It's not a huge are, the day room is it?---No, no.

And did Mr Walker say anything to you about what was to happen or - - -?  
---Yes.

What did he say?---He said, "I have to get them out," or something very close, similar to that.

40

"We have you get them out," something like that?---"Get them out," yep.

Did you know why or for what purpose?---No.

And was there any noise coming from the cells at this point?---I don't recall that, no.

The radio call that you've given evidence about suggests that you had to go down to Unit 5 immediately.---Correct.

Which implies some urgency.---Yes.

Was there anything about what was happening in the day room at that time which suggested any urgency?---Not really, I can't recall whether that cell door was opened or closed but, so if it was closed, it wouldn't have, yeah.

10 Right. And I assume that's something that you would probably look for when you walk straight from the compound into the day room when you've got an immediate call, just make sure there's no one running around in the day room.---Yes.

All right. So Mr Walker approached the cell door, did he?---I, I, I don't remember who opened the door. Mr Walker was at the front there and I think maybe Mr O'Shea might've been at the front as well.

20 THE COMMISSIONER: You might've covered this, Mr Duggan, but did you have any understanding as to the purpose for being called?---No. I knew, I know Mr Walker told me we were going to get them out.

That's all you knew?---That's all he said.

All right, thank you. Sorry.

MR DUGGAN: The conversation that Mr Walker had in the office that you didn't hear - - - ?---Yeah.

30 - - - or the time which he was in the office, is it right to say that that was a very brief time?---Very brief, yes.

It wasn't as though there was an extensive discussion about - - - ?---No.

- - - something?---No.

All right. So, am I right to say that you recall the incident occurred in 208? ---Correct.

And cell 208 is not a cell that's close to the office.---No.

40 It's close to the door in which you came in.---Yes.

So, I assume from your evidence that the group was walking towards the cell.---Yes.

Is that right?---Yes.

And you said you weren't sure who opened the door, but were yourself, Mr Duncan and Mr Walker standing outside the door?---I don't think I was very

close to the door, I think I was a bit further back. I can't be 100 per cent sure.

All right. And Mr O'Shea, Mr Peebles and Mr Taylor, were they in the vicinity of the door?---I don't think Mr Peebles was, to the best of my recollection, Mr Walker and Mr O'Shea were closer to the door. I can't recall where Mr Taylor was.

10 Mr Walker and Mr O'Shea, did you say?---I believe so.

And you can't recall who opened the solid door?---No.

But it was opened, obviously?---I don't know. It was open, I don't know if it was open when we got there or closed, I don't know.

I understand.---Sorry, yeah.

20 So you don't recall whether the solid door was secured or unsecured when you went down to the cell door?---That's right.

But the grille door was certainly closed?---Yes.

Do you recall whether there was any conversation from anyone outside the cell to anyone inside the cell?---I think Mr O'Shea was talking to one of them, or into the cell.

Right. And was that polite conversation or was he excited, or - - - ?---No, no, it was raised voices.

30 All right. So you said raised voices, Mr O'Shea was shouting, was he, or - - - ?---Yeah, and the, and the inmates, or inmate, I'm not sure.

All right. Do you recall what the exchange was about?---No.

You've no doubt heard or read about possible abuse over the knock-up system and you weren't aware of that at this point?---Not at that time, no.

40 All right. So there's heated words being exchanged between Mr O'Shea and one or two inmates inside?---Yes.

And was that a short burst or did that go on, or - - - ?---Short, very short.

All right. And I think you said you don't recall the exact words.---No, not at all. No.

All right. Were you having discussions with anyone else at this point to work out what was required of you?---I don't think so, no.

You were just waiting and watching.---That's right.

And so then I assume that the grille door was opened at some point?---Yes.

Do you recall who opened the grille door?---No.

MALE SPEAKER: Sorry, was that yes?

MR DUGGAN: That was no.---No.

10

You certainly didn't understand at this point that you were there to search the cell?---No.

Or the inmates?---No.

Did you have a hand-held camera?

THE COMMISSIONER: Can you just keep your voice up a little bit?  
---Sorry.

20

I know it's a bit hard.

MR DUGGAN: Do you recall having a hand-held camera?---No, I don't recall.

You don't recall yourself having it. Do you recall using it in Unit 3 that day?---No, I don't recall using it in Unit 3.

Is it possible that you had the camera?---Possible, yes.

30

Do you recall thinking, "I'm not sure why we're going in. Do we need the camera or not?"---I thought, as far as I knew at that stage we were just moving them, so I'd like to think if I had the camera I would have grabbed it, but, but I don't know whether I had it or not.

But there was nothing to you to indicate that a camera might be necessary because you just thought it was a move?---Yes.

There was nothing to indicate that there was going to be a strip-search?  
---No.

40

Or a search of the cell?---No.

You certainly weren't told anything about possibly being a large amount of Suboxone or buprenorphine?---No.

Is Suboxone a term that is used by correctional staff?---Usually it's bupe.

But you understand when I say Suboxone I mean bupe?---Yes, yes.

So you didn't hear any instruction about what to do with the prisoners when  
- - -?---No.

You didn't hear anyone say sort them out or anything like that?---No, I did  
not.

10 So you went inside the cell. Sorry, I'll go back a step. Did you see who  
went in the cell first?---Yes, Mr Walker.

And what happened when Mr Walker went in the cell?---Mr Walker went in  
and Mr Duffy followed and I could see – not a scuffle but there was a lot of  
movement up the back. That's when I decided to take the second inmate out  
of the cell.

20 And what was it about the scuffle up the back that led you to the decision to  
take the inmate out?---Just the raised voices. I probably, I think regardless  
whether there was a scuffle or not I would have taken the second inmate out  
anyway.

Was there anything that you saw up the back of the cell which caused you  
concern?---No, I paid no attention. Once I saw there was movement up  
there, I just grabbed the, Mr [REDACTED]

30 And what did you do with Mr [REDACTED] Told him to jump off the top bunk  
and I held onto one of his wrists and then he said something along the lines,  
“I can't jump down while you're holding me,” so he jumped down. I told  
him to put his hands behind his back and I held them there. I walked him  
out and at that point I don't know whether he fell or was pushed, but he fell  
over out of the cell, out of the door. I think I went down with him. And I  
helped him up and then we, I put him up against the wall outside. Knelt him  
down and knelt him against the wall.

Now, you said you had his hands behind his back.---Yeah.

You didn't cuff him, did you? Or did you?---I don't believe I cuffed him,  
no.

40 THE COMMISSIONER: Was the dog around?---Yes, it was.

Was it barking?---Yes.

MR DUGGAN: And did it get close to Mr [REDACTED] when he fell out of the  
door?---Oh, I wouldn't say close. Like, I suppose a metre or two away. Just  
in the direction, that's all.

And was the dog on the right-hand side or do you recall - - -?---I don't recall.

Did you take Mr [REDACTED] out of the cell by yourself?---I thought I did, yes.

Did you take him off the bunk by yourself?---Yes.

And he was fairly compliant, was he?---Yes, he was.

10 All right. So what did you do with Mr [REDACTED] Once I knelt him down out the cell?

Once you were outside the cell, yes.---I knelt him down. I don't recall whether I cuffed him or told him to put his hands on his head, but, and I told him to stay where he was and then I went to walk back in the cell.

All right. So you knelt him down - - -?---Correct.

- - - against the wall?---Yes

20

So he was down on his knees and facing the wall I assume?---Correct.

And sorry, did you say you can't remember if you cuffed him?---I don't, I'm pretty sure I would have but I can't be 100 per cent sure.

All right. And were you familiar with inmates [REDACTED] and [REDACTED] ---I don't believe so at that time, no.

30 All right. You just said that you then turned back and went towards the cell. ---Correct.

Does that mean that [REDACTED] was there by himself?---No, the, Mr Watson was out there with him.

I understand. So is this Cameron or Michael or Mick?---I don't really remember Cameron being there, just Michael Watson, the dog - - -

So the SOG Dog Unit?---Correct.

40 So I assume he wasn't too close to [REDACTED] because he had the dog?---No, that's correct.

But he had his eye on him.---I think I said something along the lines of, "The officer's watching you out here," or something like that to him.

All right. And you had no great concern about [REDACTED] at that point? ---Absolutely not, or I wouldn't have left him.



All right. And so you went back towards the cell?---Correct.

What happened next?---I think as I walked in they were walking out with the other inmate.

All right. And how did he look?---I didn't pay any attention, to be honest with you. They were walking out as I went to walk in and I think then I got my inmate and put him back in the cell.

10 All right. And put him back in the same cell?---Correct.

Did you see Mr Walker composing himself in the cell by himself or - - -?  
---No.

Right. And do you remember whether Mr [REDACTED] was cuffed when he came out of the cell?---I don't recall.

Was he being carried out or do you remember if he was walking out?  
---Walking.

20 He was walking himself?---Walking, yes.

But you weren't paying particular attention to him?---No.

What was the purpose of going back to the cell, what did you go back to the cell after [REDACTED] was down on his knees? What was the purpose of going back to the cell?---I have no idea whether I was told to put him back in there or not but - - -

30 You thought that your inmate, as you described him, was - - -?---Not involved.

- - - being watched on the ground and - - -?---Yeah.

- - - you were just going to see what's happening?---Sorry, why did I walk back in the cell? Yeah, to see, 'cause I could hear yelling going on in there.

Oh, you could still hear yelling?---Oh, yeah, raised voices in there, yes.

40 Were you concerned that things might be kicking off in there?---No.

Did you hear what was being said?---No.

Where, when you came out of the cell with [REDACTED] - - -?---Yeah.

- - - was Mr O'Shea still there?---I don't believe so. I don't recall seeing him there.

All right. Mr Peebles?---No.

And Mr Taylor?---No.

Are you aware of what point they - - -?---No.

- - - left the day room?---No.

10 All right. So you put Mr ██████ back in the cell, cell 208, and did you see what happened with Mr ██████ I think he went to a cell on the other side, but I don't know whether it was diagonally opposite or close to diagonally opposite.

But a cell across the way?---Correct.

Across the day room.---Yeah.

20 And what happened after you secured ██████ did you lock him in?---I can't recall.

All right. Did you at any point see Mr ██████ in the phone cage?---No.

Throughout that day did you see Mr ██████ in the phone cage attempting to make a phone call?---Don't think so, no.

And how did you know that Mr ██████ was in a cell across the way, did you see that?---I think they were walking out as I was finishing up with ██████

30 And were you standing, I know you said that you informed Mr Watson of the SOG to, sorry, you informed Mr ██████ that Mr Watson was watching him. Did you ask Mr Watson to actually watch him?---No. I don't believe so.

But you just knew Mr Watson was out there and - - - ?---Yeah.

All right. After you got him down on his knees and he was facing the wall, were you standing next to him for any period of time?---I may have been, I can't be sure of that.

40 All right. Did you have any conversation with him, or were you - - - ?  
---With?

With Mr ██████ when he was on the ground.---I don't believe so.

While this is going on are you having conversations with anyone or are you just seeing what's happening and reacting?---I don't think I had a conversation with anybody.

All right. So eventually I assume Mr [REDACTED] has been secured in the cell, Mr [REDACTED] is secured in the cell, was there a discussion as to what should happen next?---I don't recall a discussion, I recall something about the staff were going to get the clinic over to see him but that was it.

All right. So you found out at that point that Mr [REDACTED] was either injured or needed to be assessed?---Well everyone has to be assessed after a use of force.

10 All right. So are you aware - - -

THE COMMISSIONER: Everyone has to be assessed, do they?---Yes. Yeah.

MR DUGGAN: Were you aware that he was injured?---Not injured, no.

If you didn't have a conversation with anyone and you didn't know why you were going into the cell, why would you put [REDACTED] back into the cell?---I have no idea.

20

Because the only instruction you have, as I understand it, is from Mr Walker saying, "We've got to get them out", or something to that effect.---Correct.

That's your evidence?---Yes.

So are you able to explain why you put [REDACTED] back?---No.

30 And you didn't, you didn't understand from Mr Walker's instruction that it was either one inmate or the other?---No, I suppose I made the assumption that it was the one that they had the, the day guys took out of the cell.

All right. There seems to be, on your evidence, a lack of communication going on about this event. Is that common?---Not really, no.

Is there a reason why there wasn't much talk about what's happening at this point?---No. No.

40 Did you feel that you needed some instruction about what to do?---No, I wouldn't say so. No. I suppose I was just a bit blasé about it at the time.

Were you curious as to why [REDACTED] had been put in the cell across the way?---I guess I would've been, yes.

Do you remember thinking "do we need to search him now or do we need to do something more"?---No, Mr Walker would've said we were leaving or something along those lines, and we would have just left.

All right. And so you left the day room. Did you leave through the office or the compound door?---I think we went through the compound door.

And back up to Unit 3?---Yes.

And did you find out at some point that Walker had struck the inmate?  
---Yes.

10 When did you find that out?---Not long after we left the 5 Unit.

All right. And who told you that?---Mr Duffy.

All right. And that's as you're walking back up to Unit 3?---Yes.

And what did he say, do you remember?---Prior to that is when Mr Walker said not to do reports to Wes.

All right. So - - - ?---And that's why I asked what happened.

20 Okay. Well we'll just take it back a step.---Yeah, sorry.

So, that's all right, no. So we're in the day room, [REDACTED] been secured and [REDACTED] been secured and my understanding of your evidence is there's been no conversation that you're involved in?---No.

So what happened next?---That's when I think we exited.

You exited?---The day room, yes.

30 And then there was a conversation after you walked out the door?---I, to the best of my knowledge I think Mr Duffy said something along the lines of, "Are we going to do the reports?" And that's when Mr Walker said to him, "You were never there", or something like that, "So you don't need to do one."

And did you take that to be a direction specifically to Mr Duffy that Mr Duffy was not to do a report, or did you take that to mean there wouldn't be any reports?---At the time, I think my impression was that it was Mr Duffy that wasn't to write one.

40

And did you have an understanding as to why that would be, that he wouldn't be writing one?---No. Because then I asked Mr Duffy what happened.

And was this within earshot of Mr Walker or - - -?---I, I don't recall where the other guys were.

But you asked Mr Duffy what happened and what did he say?---He said, "Texas punched him in the face."

And did you respond?---Yeah, I would have said, "What?" or something like that or, I don't recall what I said or what.

But you seem, when you recall that conversation, were you concerned at the time when you heard that information?---Absolutely.

10 And what was your concern?---That Tex had just punched an inmate.

And so was there any further discussion about that at the time with Mr Duffy?---I think I asked something along the lines of, "Why wouldn't you write one?" or something but I don't recall what his answer was.

And so was there then discussion with Mr Walker about what had happened, or - - -?---I said something to him along the lines of, "When are we doing the reports?"

20 Now, did you see Mr Walker punch the inmate?---No, I did not.

Were you concerned about how the reports might be written up at this point?---Only, only for the fact that he told him not to at that stage.

And did he direct you at any stage not to write a report?---I don't think so.

Commissioner, Mr Duncan needs to be recalled for some short questions as I understand it.

30 THE COMMISSIONER: Mr Graf, we're going to have to stand you down. ---That's okay.

You would have been coming back tomorrow anyway. Can I just ask you something before you do, I've seen one of the photographs of Cell 208 and you've got a grille.---Yes.

And it's got a gap in it.---Correct.

40 Would the normal procedure be, where you've got a prisoner – particularly if there's been a bit of shouting going on – to get them to put their hands through and cuff them - - -?---Some seniors will do it like that, some won't. It wasn't a normal procedure back then, no.

Right. So, they'd go in with a prisoner uncuffed?---Often kneeling down at the back of the cell, yes.

Was there any direction given?---No.

No. But wouldn't it be more likely, since you had two prisoners involved, that you'd want to get one in cuffs before you went in?---Correct.

And that didn't happen?---No.

Okay, yes. Thank you. You're free to go today but you'll have to come back tomorrow morning.---Oh course, yep.

Yes. Thank you.

10

**THE WITNESS STOOD DOWN**

**[3.58pm]**

THE COMMISSIONER: Mr Duncan, you're on your former oath.---Sorry, sir?

You are on your former oath to tell the truth.---Yep.

Thank you. Take a seat.

10

MR DUGGAN: Thank you, Commissioner. Now, I don't have any further questions for this witness but I understand Mr Taylor - - -

THE COMMISSIONER: I think Mr Taylor might have some, or Mr Willis.

MR DUGGAN: Mr Willis does.

MR WILLIS: I just wanted to indicate that I have no questions.

20 THE COMMISSIONER: I take it you have a couple, have you, Mr - - -

MR TAYLOR: Yes. I'll be very brief.

THE COMMISSIONER: That's okay. Do you want to come forward or are you happy to be down there?

MR TAYLOR: I'm happy to be down here.

30 THE COMMISSIONER: Okay.

MR TAYLOR: Mr Duncan, my name's Taylor, I appear on behalf of Mr Walker. You've been here each day this week hearing the evidence?---No.

When did you first come?---Today.

It's fair to say, in summary, your evidence to the commission is that in 2014, you were a good friend of Mr Walker?---Yes.

40 And forgive me if you've already answered that, this question already earlier today, do you still consider him a good friend?---Yes.

And it's the situation that you were asked questions about the IRM, and if you need to see it at any stage, please let us know and I'm sure it will be brought up, you were asked questions by Counsel Assisting did you have any – and I'm paraphrasing here – did you have any recollection or recall about the preparation of the IRM, and you said no.---Correct.

Is that right?---Yeah.

And you were asked whether you'd seen it in 2014 and you said you don't recall one way or the other?---Correct.

Does that leave the possibility that you did see it in 2014 at some stage?  
---Yes.

10 Okay. And you were then asked by Counsel Assisting about who usually fills in the document, that is the IRM?---Yeah.

And I think you said it was the senior officer involved. Correct?---Yeah, that's correct.

And that's standard operating procedure?---Oh, it's just a common practice, yeah.

20 And Counsel Assisting asked if you assisted Mr Walker in relation to the preparation of that document and I think you said you had no recollection. Is that right?---Yeah.

And it's usual for the IRM, for the IAT team to be prepared in their room. Is that correct?---The IRM to be done in the IAT office?

Yes.---Yeah.

If it's an IAT - - -?---Yeah, yeah, yeah.

30 - - - document. Thank you. So it would be unusual to do the IRM somewhere else?---Yeah.

And notwithstanding the difficulties you've told us about with your memory, you would remember an incident where it didn't happen in the IAT room?---Oh, no, no, I wouldn't remember, no.

No. Okay. Do you know of the office in the general office area near the, upstairs near the meal room?---The general office area of what office, sir?

That I'm afraid I can't tell you.

40 THE COMMISSIONER: Is it in the L Wing?

MR TAYLOR: I think it's the main administration part, I think it's been described as, but I don't know the correct title I'm afraid. Have you got any idea what I'm talking about?---Can you please repeat the question and I'll try and - - -

There is, Commissioner, there is a document that Mr Walker marked with the letter, the number 2 on it. I'm afraid I couldn't find the reference.



MR DUGGAN: It's Exhibit 56.

THE COMMISSIONER: Exhibit 56. Can we get that up on the screen?  
Thank you.

MR TAYLOR: Thank you, Commissioner.

10 MR DUGGAN: To assist my friend, it's also sometimes referred to as the  
gatehouse or M Block.

MR TAYLOR: thank you, I'm indebted. Will you have a look at the  
screen, Mr Duncan.---Yes.

And see where the number 2 is?---Yes, yep.

Do you know the office I'm talking about now?---Ah, well, the only – so  
your wording was a common are kind of office. Is that correct?

20 No, an office near the meal room upstairs in the general office building.  
---Yeah, yeah, I know it.

Yeah.---Yeah.

Okay. Have you been in there often?---Oh, not often, but I have been in  
there.

Were you on there on 19 February, 2014?---Not that I can recall.

30 Does that mean it's possible you were?---Yeah, it's possible I was.

Okay. I want to put to you that you were there with Mr Graf, Mr Walker  
and Mr Peebles, sometime after the incident occurred.---Okay. I don't  
recall either way.

You just have no memory at all.---No.

40 And I want to suggest to you that whilst you, Mr Graf and Mr Walker were  
in that office, a question was raised about doing the IRM and Mr Peebles  
said words to the effect of, "I'll do it." Do you remember that or not?---No,  
I don't.

And I want to suggest to you that thereafter Mr Peebles was seated at the  
computer in that office and he was the one that prepared the IRM and that  
you saw him do that.---I don't recall, sir, sorry.

Is it possible that it happened?---It's possible it happened.

It would be something you'd remember though, wouldn't it?---You would think so. I would have thought so.

But you simply have no recollection of that at all?---No.

Yes, thank you, Commissioner.

10 THE COMMISSIONER: Thank you, Mr Taylor.

MR DUGGAN: Nothing arising, Commissioner.

THE COMMISSIONER: I think somebody down the back may have something to ask.

MR EURELL: Just very briefly. How long were you a Corrective Services officer for?---12 years.

20 12 years. How long in IAT?---On and off from 2009 till I went to the security unit and then I resigned from there.

Over the life of your time in Corrective Services, on how many occasions would you say you've been directed to enter, enter a prisoner's cell and remove them?---I could not count.

Are we talking about 10, hundreds, thousands?---Oh hundreds or thousands.

30 On how many occasions did they become physical, can you estimate for us? ---Oh, it wasn't all that often, but I've been involved in a lot of uses of force.

Hundreds, thousands?---Oh - - -

Less?---I'd have to say it would be in the hundreds.

On how many occasions have you been involved in, either directly or indirectly the preparation of an IRM?---I was pretty lazy with all that stuff so I used to try and get out of it. Um, quite a lot.

40 And what about an incident report?---Oh, done heaps.

Can you be a bit more specific for us, please?---Oh, I really couldn't, sorry, Brett.

Hundreds or thousands?---Hundreds.

Thank you. I don't think there's any other questions if the, if Mr Duncan might be excused, Commissioner.

THE COMMISSIONER: He certainly can. You're excused from your summons.

THE WITNESS: Thank you.

**THE WITNESS EXCUSED**

**[4.06pm]**

10

MR WILLIS: Commissioner, can I just let you know that tomorrow afternoon I have a funeral to attend.

THE COMMISSIONER: Oh, I'm sorry.

MR WILLIS: From 2.00pm, so I'd ask you leave to be absent tomorrow afternoon. I will have my associate here, but she obviously will not be particularly familiar with the evidence that's been given.

20

THE COMMISSIONER: No, we'll endeavour to facilitate that of course. Who are we likely to have, Mr Duggan?

MR DUGGAN: Mr [REDACTED] in the morning and then Mr Graf will be back in the witness box. I'm not sure whether he will still be going at 2 o'clock but he may well be.

THE COMMISSIONER: If we get into difficulties we'll find some way of accommodating Mr Willis.

30

MR WILLIS: Thank you, Commissioner.

THE COMMISSIONER: I don't know one way or the other whether you'll have an interest in cross-examining Mr Graf. It may be that you will, and we'll do our best. I take it when you say from 2 o'clock you won't be here before 4.00?

MR WILLIS: No, it's out at Woronora, Commissioner.

40

THE COMMISSIONER: No, that's okay, of course, of course.

MR DUGGAN: And maybe also Michael Watson from SOG will be the witness after Mr Graf, I just for Mr Willis's benefit indicate that.

THE COMMISSIONER: You'll have access to the transcript overnight of any witnesses called that of course you won't have heard.

MR WILLIS: Yes, yes.

THE COMMISSIONER: So I think to the extent we've got to put any other witnesses over you'll have to go off the transcript.

MR WILLIS: Yes, I can do that, Commissioner. Thank you.

THE COMMISSIONER: Good on you. Now, Mr Brasch.

MR BRASCH: In the same vein, Commissioner, I can indicate that I expect that I'm required in another court at about 10 o'clock tomorrow morning but  
10 should be hopefully here by 10.30. Mr Musico, my instructor, will be here  
and as I understand it's Mr [REDACTED] I don't expect there to be any issues  
there.

THE COMMISSIONER: No. Okay.

MR TAYLOR: Commissioner, I'm also in that boat. I won't be here the  
whole time tomorrow. I'm trying to get some assistance so I'll have  
someone here, but it may well be, and I don't know at this stage whether I  
will need to cross-examine Mr Graf but I might not be in a position to do  
20 that tomorrow.

MR GREENHILL: Well, I may as well indicate my trouble, Your Honour.

THE COMMISSIONER: You've always got troubles, Mr Greenhill.

MR GREENHILL: Next Wednesday at 1.30 I've got an appointment with  
an eye specialist to get an injection in my eyeball.

THE COMMISSIONER: Oh, that's nice.  
30

MR GREENHILL: And I've had it many times and I'm not, I don't really  
want to come to court after, two hours after getting an injection, but I spoke  
to my instructing solicitor, she feels confident she can fill in for me.

THE COMMISSIONER: Okay. Well, I can say to all of you that my only  
concern is that I do not want this matter to go beyond two weeks.

MR GREENHILL: Nor do I.

THE COMMISSIONER: So that's the plan we're sticking to and if need  
40 be, subject to the convenience of Commission staff, if we start running into  
difficulties we may start early or finish late. Understood.

I'll adjourn.

**AT 4.09PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.09pm]**