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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 MONDAY 4 JUNE, 2018

AT 10.20AM

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THE COMMISSIONER: We might have Mr Peebles re-sworn.

MR DUGGAN: Thank you, Commissioner.

<BRAD JAMES PEEBLES, affirmed

[10.20am]

THE COMMISSIONER: Yes, Mr Duggan.

10

MR DUGGAN: Thank you.

Mr Peebles, I was asking you some questions last Thursday about 19 February and you gave some evidence about being offline because you were working on a 90-bed project I think?---Yeah, it was 123 beds, but yeah.

20

I'm sorry. I just want to take you to some emails of your from 19 February and just ask you what they relate to. There's a bundle of emails that Mr Madden has but we might bring them up on screen if that's all right. I won't ask you about the first one, I'll go to page 3 if I may. Now, do you see there that there's an email from you to various people, "Thanks again for all the help and support with this." And then it refers to preferences, and as I understand it, this is some roster preferencing. Is that right?---I'm not exactly sure what it is. One of, one of the people is the roster clerk. Preferences is something that we, our rostering system allows for in terms of where people are rostered, so it, yeah, I think it might be about the rosters.

30

Right. And would that have anything to do with the bed project?---Yeah, quite possibly so, because it was a complete staff restructure that was involved with it as well.

40

All right. I might just, if I go to page 4, this seems to be a request from someone wanting to be considered for a position in the clinic, an AVL. Does that assist in determining whether or not it relates to the bed project? ---Well, again we were doing a complete staff restructure that included adding, I think it might have been 10 positions to the, to the establishment and the rearrangement of all the posts, so it could well have been. I think at this stage of the game we were getting very close to actually rolling over to the new, new management model.

And if I can take you to page 39. Now, this is a PDF document which is annexed to an email of yours. I'm just trying to orientate you with some of these emails, being some time ago. So that is a document which obviously refers to a new routine. Does that jog your memory in terms of the roster emails?---Look, not specifically. The roster emails, as I said, the project included a complete new routine, new roster, the whole works.

All right. If I can go to page 7, please. This is an email which appears to relate to a credit card and no longer requiring access. I assume that that didn't have anything to do with the bed project?---No, I wouldn't think so. I think at the time I had a corporate credit card and they were rolling over to a different system and it was just an incidental email.

10 And page 13, if I may. This is an email to Mr Heterick in relation to the installation of cameras. Did the installation of cameras have anything to do with the restructure of beds?---Yeah. It was one of the capital expenditure projects that was related to the, to the beds, particularly in the industries area.

And is that the same for radios? Did you need more radios for some reason?---Yeah. Well, we were taking on I think 10 more staff, uniformed staff plus a number of non-uniformed program staff.

Can I go to page 16, please? Now, the recipient of that email is a nurse, is that right?---Yes.

20 And you're asking her at 11.45 on the 19<sup>th</sup>, "Can we have a poster off you to put up in the units advising the inmates of the requirement to submit a medical request form?" That doesn't relate to the bed project, does it?---No. Not from memory.

30 No. And page 27, which is sent at 2.22 on the 19<sup>th</sup> of February, from you to a distribution list and it says, "Please note the attached intel alert. This is especially relevant for OS&P staff. And you need to go to page 29 for the alert notice and this has been an alert generated by information received from Family and Community Services, and if you scan down this intel alert it appears to be an issue with inmates ringing up the department hotline and wanting to be put through to a bogus person and then providing a mobile so that they can speak to their family members and bypass the Correctives process. That doesn't relate to the bed project?---No, I wouldn't think that one would.

40 No. So do you accept that whilst you were formally offline there were emails that you were considering and responding to that didn't relate to the bed project on the 19<sup>th</sup>?---Yeah. Well, those couple that you showed didn't but, you know, the emails didn't stop the whole time I was there, so - - -

No, of course. Can I take you to Exhibit 45 at page 81, please? Oh, before I do that, I tender that bundle of emails.

THE COMMISSIONER: Thank you, Mr Duggan. That will be marked as Exhibit 85.

**#EXH-085 – BUNDLE OF EMAILS SENT OR RECEIVED BY BRAD PEEBLES ON 19 FEBRUARY 2014**

MR DUGGAN: And they're emails to or from Mr Peebles on 19 February, 2014. So this is a document – or sorry, I might just go to page 80 first, my apologies, so that you know what we're talking about. So this is a document I took you to on Thursday and it's from 19 February, a report from SOG, and on page 81 I asked you some questions about the entry, "Liaise with MOS B Peebles regarding operation parameters." Do you recall that?---Yes, I do, Counsel.

And I think you suggested that you were offline and your explanation for why your name would be here I think was, or possible explanation, was that it was a template. Do you recall that evidence?---Yeah, well, that, those particular letters came in every day basically.

All right. And do you see there, I want to draw your attention to the headings in bold, "Contraband, Duties, Incidents, Reports, Recommendations." Do you see that?---Yes.

And then there's various information obviously filled in, in relation to most of those. Now, can I take you to Exhibit 45, page 151, please. This is another SOG report in a similar format, and you see there that it's addressed to you and this relates to 20 February, 2014. And just to orientate you, it relates to the contraband find on Mr [REDACTED]. And then over the page you can see there that the headings in bold, "Duties, Incidents, Reports, Recommendations," which are the same headings in the 19 February report, under Duties there's no reference to you there, is there?---No, I don't see one.

No. And I want to suggest to you that whilst this may have been a template in terms of the headings, the bullet point duties were not a template. Do you accept that?---Yeah, that's fair enough.

And that suggests that you weren't offline, completely offline on 19 February and that you liaised with SOG in relation to matters on the 19<sup>th</sup>. ---I think I said to you on Thursday that I actually was offline. Quite possibly Robbie said hello or dropped in and saw me, but I was definitely offline.

Is it fair to say you weren't rostered on that day as the substantive MOS, but because you were the usual MOS there were tasks that you were doing that might otherwise relate to the MOS?---Yeah, well, a few things obviously came my way, but as I said, I was very focussed on the, on the project job. There was a lot of time pressure on the day, so apart from, you know, attending to things incidentally I really was focussed on that project job.

Can I take you to page 157 of this exhibit, please. Now, this is a more detailed intelligence report, and if you need an unredacted copy, please let me know, as this one is fairly heavily redacted.

THE COMMISSIONER: What page is that?

MR DUGGAN: 157.

THE COMMISSIONER: Thank you.

10

MR DUGGAN: Now again just to orientate you with the document, if I can take you to page 164, please. And I realise I'm asking you questions out of the blue about this document, so if you need to see the whole thing, that can be arranged. Well, I think you might need to. So, you can see there that this intelligence report is to be disseminated to various people, including yourself.---Yes.

20

And it refers there to automatic notification on the submission/finalisation. Does that mean you get an automatic email when it's disseminated?---I think Central Intelligence Group generate these ones and they just go out to whoever's on the, on the list for whatever given centre.

And so, over the page at 165 you see that there are two reviewers and the reviewing date's 10 March and 11 March, 2014. Do you see that?---Yes.

Does that mean that the disseminating would have been on 11 March, 2014?---Look, to be honest, I'm not quite sure how that works.

30

Is that a fair assumption, though, that that would roughly be the period that you received notification of?---Yeah, I think each, each of these IRs get disseminated several times from memory. They come out when they're first generated if it's a centre that you're attached to and then I think after CIG do their analysis and finish it, it probably goes out again. So - - -

Yes. So, if you go to page 161, there's a date there, 21 February, 2014. The report is initially authored and submitted by Mr McMurtrie. So, I assume it would have disseminated at that point.---I think that's how it works, yeah. I think once it - - -

40

And then over the page at 162, you then have your CI assessment, and then once that assessment's done it will be disseminated again. Is that understanding correct?---Yes. I think that's correct.

So, by mid-March or 10 March, 2014, you were back in the chair as the substantive manager of security?---I think so. I know I was on project duties for quite a while. I'm not sure what time they actually finished but - - -

Well, you would have seen this intelligence report, I suggest?---It would have been disseminated to me.

10 And if you go to page 158, please, this sets out, down the bottom, the information where it says on Wednesday, 19 February, 2014, the local IAT and SOG Western conducted a gaol contraband search on specified targets. And then it refers to the fact that during the searches, an unknown human source stated there was a quantity of Suboxone in cell 208, Unit 5.1.1, occupied by [REDACTED] [REDACTED] and then it says the IAT attended the cell and a subsequent search resulted in [REDACTED] jumping up from the lower bunk, et cetera. Do you see that?---Yes.

Now, that suggests, doesn't it, that [REDACTED] cell was attended on that day to conduct a search?---Yes.

But based on the intelligence this referred to?---Yes.

20 And that's inconsistent with your understanding of what happened on that morning?---Yes.

And you would have known that when you read that report?---If I read the report, Counsellor. I honestly don't remember reading it. These IRs come through at a furious rate. I probably deleted 50 or so, of them during the course of these ICAC hearings to be honest, without reading them. I would be more - - -

30 THE COMMISSIONER: Why wouldn't you have read them?---Well, basically, the Intelligence manager, it's their role to go through them very thoroughly and to highlight anything of any, any note. I would be more, more focused on intel alerts, which are a different matter of thing, but, of course, but most of these IRs deal with, oh, phone calls where someone may be planning to introduce drugs, or where there's a bank account number. Most of them don't make a lot of sense, but in all truth I would read very few of them.

40 But this is one where there's a suggestion that staff might be assaulted outside the gaol.---Yeah, I understand that, Commissioner, but I, I wasn't on duty on the day that the first one would have come through so I certainly wouldn't have read it then, and you know, as far as any other further disseminations, it wouldn't be typical of me to actually read.

Very well.

MR DUGGAN: It's not just a casual email. You accept that?---Well, no, to be quite honest, the dissemination of these sort of IRs are very casual. As I said, I've probably had 50 of them since I've been sitting here for the last couple of weeks.

But you accept that there's a process where the Intelligence manager has sent something off to CI for assessment?---Yes.

And it's come back?---Yes.

That's a fairly formal process, it's been formally considered. Do you accept that?---Yes.

And you're the second-in-charge of the correctional centre?---Yes.

10

And when a threat is made to officers in a correctional centre, that would be something that would pique your interest, I suggest?---Yes.

And not only that, I also want to suggest that there would have been some chatter in the centre about what had happened on the 19<sup>th</sup> and 20<sup>th</sup> by this stage. Do you accept that, by 10 March or 11 March?---By 10 March I don't remember too much about it. I mean shortly after I returned to work I think I, I, I was advised that the guys were bikies and that there were threats made, but by that time I think the inmate had left the centre and I had no further need to be concerned about it.

20

Mr Peebles, this wasn't the only time you'd seen this information, you saw the information at page 73 and 74 of this exhibit. We'll just pull up page 74 if we can. So you've received that attached to an email which you then forwarded on to Mr Taylor, and you would have opened that email because there was nothing in the covering email that said what it was about. Do you accept that?---Yeah, I think we went through that in detail.

And I think your evidence was you might have scanned the document?

30

---Yeah, I don't remember reading it but - - -

But then again you've received, at page 76, Mr Walker's report. Now, again you would have at least scanned that document and seen inconsistent information with your understanding. Do you accept that?---As I've said, I don't remember even reading that document.

But you were opening your emails on that day?---Yes.

There's no reason you can think of why you wouldn't have opened this document?---Only the fact that, you know, use-of-force matter was being dealt with by others so - - -

40

Well, you gave some evidence about Mr McMurtrie's note being forwarded to Taylor because it was relevant to the use-of-force package. What was it about that document that suggested - - -?---Well, again I - - -

- - - it had anything to do with the use of force?--- - - - don't recall specifically looking at that document closely, I think I hypothesised on

Thursday that if I did scan it, it was a very cursory thing and I just assumed that it was something that would be part of the day's events.

Even if it was cursory, you've got McMurtrie's document, you've got Mr Walker's report, and then some weeks later, presumably after some considerable gossip within the gaol, you've got a detailed intelligence report, and each of those documents are saying something inconsistent with your understanding of the events. That would have come to your attention, surely?---Yes, I can only tell you that I don't remember reading any of them, certainly not at any, at any length or with any focus.

Well, have you got any explanation as to why you didn't take any steps to inquire or report the fact that these documents were inconsistent with your understanding?---Well, as I said with the earlier documents, they certainly didn't register with me at the time as they should have, with the later IRM I really don't, information report I really don't believe I read it.

Another explanation is you knew they were inconsistent and you knew why they were inconsistent. Do you accept that?---No, I don't.

Do you say that you would have had an understanding of who Mr [REDACTED] was on the 19<sup>th</sup> and the 20<sup>th</sup> of February?---Not at the time of the incident. I have a, a memory that I was told he was a bikie some, at some stage that day.

After the incident on 19 February, did you pay any particular interest in Mr [REDACTED] Or were you focused on other things?---Counsellor, I gave Mr [REDACTED] and this entire incident no more thought after the 19<sup>th</sup>.

Can I go to page 189, please, of Exhibit 45. This is an email, from the bottom up, from Investigations Branch to you, inquiring about paperwork regarding the incident – and there's an IRM number – on [REDACTED] [REDACTED] Do you see that?---Yes.

And your reply, and this is on 16 April, 2014, was "That was a Lithgow matter, wasn't it?" You were at Wellington at that time. Well, if you really didn't pay much attention to Mr [REDACTED] how did you know a couple of months later that that related to a Lithgow matter?

MR MADDEN: Well, in fairness I think Counsel Assisting should point out that there is a question mark after "This was a Lithgow matter, wasn't it?" It's not an assertion. It's a question. So indicate that perhaps there was some doubt in the client's mind about - - -

MR DUGGAN: Yes, I'm happy to put it in a fairer way. You see there, Mr Peebles, your email, "That was a Lithgow matter, wasn't it?" Question mark. Do you see that?---Yes.



What made you think it might have been a Lithgow matter?---I don't remember the email. I could possibly have checked to see the MIN number or the inmate that he was looking for. I was actually only filling in at Wellington for I think a matter of, I can't remember exactly. It, it was for someone's holidays, so it might have only been two to four weeks. And, yeah, to be honest, I, I don't even remember this email.

10 But I want to suggest to you that you thought it might have been a Lithgow matter because the name [REDACTED] was identified in two emails to you and an intelligence report which you'd read.---Well, either that or I could have simply looked his MIN number up to see what it was about.

Well, then you would have known exactly that it was a Lithgow matter. You wouldn't have any doubt.---Yeah, look, I, I honestly don't recall but I would have made some very quick inquiries or I would have just assumed it was about Lithgow because that's where I was stationed.

20 Can I go over the page to 190, please. So you received the earlier email – sorry, replied to the earlier email at 12.33 on 16 April, and then a minute or two later you forwarded the email from investigations branch to Mr O'Shea. Do you see that?---Yes.

With "please note". Why are you sending it to Mr O'Shea?---Well, I think I was just passing on a request for information from Investigations Branch.

Did you have anything further to do with it after that or was that it?---No, not as far as I'm aware.

30 Do you recall having any discussions with Mr O'Shea about Mr [REDACTED] at this point?---I don't recall having any discussions with him. As I said, it wasn't even a blip on a, on the radar, to my mind, to be quite honest.

So, would you have had anything that you could have been speaking to Mr O'Shea about if it was a blip on the radar? Do you - - -?---I honestly don't recall single conversations, daily conversations from four years ago, I'm sorry, Counsellor.

40 Can we go to page 191, please? Now, this email at the top of the page, not the very top but the one from you to Mr O'Shea. It's at 12.47 on 16 April. So, the initial email, please note, was at 12.34. So, this is not long after and your email says, "As discussed, John, Mick has indicated he needs the documents ASAP." So, do you have any recollection of your discussion with Mr O'Shea?---No, I don't, I'm sorry.

Did you talk to him about any of the inconsistencies in the documents you've seen and your understanding?---No, absolutely not.

I know it's not your email and you weren't party to it, but do you see there that there's an email at the top from Mr O'Shea to Mr McMurtrie?---Yes.

Do you have any understanding as to why Mr O'Shea might have forwarded that, your email chain to Mr McMurtrie?---Well, I think the information packages were held by the Intel manager at that stage. It would have just been a regular event for when a package of any sort's requested, to ask the Intel manager to get it together.

- 10 You said a moment ago that you might have checked the MIN of the inmate. Do you recall that evidence?---Yes.

The email didn't have a date of the incident. How would a MIN number have assisted?---Yeah, look I'm not, to be honest, I'm not sure what my processes were at that stage regarding that inmate or the, the actual email. It was just a very simple forwarding it on to John. As I said, I was working at Lithgow at the time. By that time I, I may well have been aware you know, that there was a use of force involving this guy. I really don't remember.

- 20 You don't have any recollection of checking the MIN?---Not really, no.

Do you have any recollection of, no, I'll withdraw that. I've asked you about a specific period and conversations with Mr O'Shea. Have you had any conversations with Mr O'Shea since this incident about the incident with Mr [REDACTED] Yeah. I had, I have had a couple with him. I rang him up, I believe, or spoke to him and I was advised I was to be interviewed by the ICAC to try and get my bearings. I really - - -

- 30 So this was last year?---It was this year, I think in, in January. At that stage I was told (not transcribable) you know, was, there was nothing to it. So, again, you know, that didn't really alert me to a whole lot. I had heard that the matter had been under investigation because I knew a few people have been interviewed over it. And, you know, I may have had a conversation, you know, with John around about that time if it was mentioned. I know that he was to be interviewed himself by the ICAC. So, yeah, I think I might have asked him, "What was that about?" And again I was told that it was, you know, really nothing, nothing to it.

- 40 Did you ever have a discussion about the IAT being called down to Unit 5 that day because of knock-up abuse?---No.

Did you have any discussions around 2015 when Investigations Branch were looking into this?---Not with Mr O'Shea. I believe Mr Taylor was interviewed at that time so he may have said something to me, but again I don't remember anything particularly stand-outish about it at the time.

What about Mr McMurtrie, have you ever had any conversations with him about - - ?---Not as far as I can recall, no.

THE COMMISSIONER: Were you interviewed by Investigations Branch back in 2015?---No, Commissioner, I wasn't.

So you didn't provide them with a statement?---No.

Thank you.

10 MR DUGGAN: Can I take you to Exhibit 84, please. This is an information memorandum in relation to a change of policy for discovery and disposal of suspected prohibited substances. Do you see that?---Yes, I do.

And over the page, if you need to see it, it's signed by an Assistant Commissioner and dated 21 February, 2013.---Yes.

20 And there's a discussion about how the policy has changed and what the protocols are to be, and in particular, the last two paragraphs, "If the police do not take custody of the substance the Assistant Commissioner Security and Intelligence has ordered the confiscated material to be destroyed." Do you see that?---Yes.

And then, "The policy requires the general manager to decide on the method of destruction. No matter what method is chosen, the substance must be permanently destroyed, in addition the destruction must take place as soon as possible, if not immediately." Do you see that?---Yes.

30 Was there an accepted method of destruction at Lithgow?---I don't believe there was any actual method of destruction prescribed at all, and that was part of the problem with this one. This went back to problems that were, were widespread across the state with police not wishing to involve themselves with small drug finds, which were very numerous, particularly in the big centres and particularly for the Security Operations Group. At the time I believe there was talk of Corrective Services purchasing incinerators, which didn't go ahead for various reasons, I believe there were EPA-related reasons for that. So each centre was basically left on their own to work things out and I think there wouldn't have been a centre that really complied with the letter of that direction because it was a bit confusing, but I think at  
40 Lithgow we spoke to Justice Health to get some advice on how they destroy their excess medication and, and what have you because predominantly this stuff generally is prescription medication, and I think from memory that the, the advice we were given was just to basically put it into the sink with hot water and flush it down the sink.

If I can just get the first page of that exhibit up on the screen again, please. Just the last sentence there, the protocol that, "Destruction must take place as soon as possible, if not immediately." That's pretty clear?---Yes, it is, Counsellor.

And going over the page is the policy basis for that, and you see there the policy sets out other controls to reduce the risk of a substance being lost, stolen or misplaced until the police taken it or it is destroyed. And so I want to suggest the protocol for destroying the drug immediately was to avoid it being lost, stolen or misplaced. Do you accept that?---Yeah, that's fair enough.

10 Can I take you to Exhibit 45, page 134, please. This is the exhibit book entry for the Mr [REDACTED] contraband find. Do you see that?---Yes.

And you have witnessed Mr McMurtrie apparently flushing it. Can you see that?---Yeah, I've signed for that, yeah.

On 3 May, 2014.---Yes.

For a contraband find on 20 February, 2014.---Yes.

20 Are you able to explain why that particular find was not destroyed as soon as possible or immediately?---To be quite honest, Counsellor, I very much doubt any of our finds for a good six-month period were destroyed as quickly as that direction from the Assistant Commissioner would have dictated. Over this time, as I said, we were spinning over that new routine. I think by May everything had settled down fairly well and, you know, there was probably a bit more focus on routine jobs or a little bit more time available to focus on routine jobs.

30 But just in terms of the protocol I took you to a moment ago, and its policy underpinning, it's to avoid drugs being lost, stolen or misplaced.---Yes, look, I, I don't dispute that Lithgow wasn't completely compliant with that policy, but I'd also say no-one else was either, to be quite honest.

And if it wasn't compliant in relation to Mr [REDACTED] can I assume that it wasn't compliant in relation to other contraband finds?---Yeah, I'd say that's the case.

And you understand that part of this inquiry is relating to the plant of the drug, or alleged plant of a drug, on Mr [REDACTED] Yes, I understand that.

40 And when drugs aren't destroyed immediately that at least makes it, or increases the possibility that drugs which are found on other inmates might be planted on people like Mr [REDACTED] Yes, the optimal thing would be for the finds to be destroyed as soon as it was deemed there were no police interest in them.

Is there any videoing of destruction of contraband finds?---I myself didn't video them. I heard Mr Kennedy's evidence but I don't think that was a prescribed part of the procedure so I don't remember ever doing it, no.

But it would provide further protection to officers who were destroying contraband finds?---Yeah, it would.

I've just mentioned the allegation of the plant. Do you have any knowledge of any drug being planted on Mr [REDACTED] Absolutely not.

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

10 THE COMMISSIONER: Thank you, Mr Duggan. Mr Willis? Mr Willis?

MR WILLIS: Yes, Commissioner, I just have a few. Mr Peebles, you've given evidence about this particular day and going to Unit 5, and I think you went there with Mr O'Shea, is that right?---Yes, I believe so.

And it was a situation that I think you may not be able to recall now, but you recall whether you were just going for a walk through the unit with him or whether there was any more specific purpose about it than that?---As I've already said, I don't remember the actual specifics. It could have been  
20 something as simply as, you know, Mr O'Shea asking me come for a walk to clear my head or I could have been down there on project business. I really don't recall.

And you talked about the knock-up system in the officers' station.---Yes.

Do you know whether the knock-up system that was in the officers' station at that time, back in February 2014, is the same as it is now or has it changed?---I don't know, I'm sorry.

30 That's all right. And you said that Mr O'Shea, I think you said he fumbled a bit with the knock-up system.---Yes.

And I think you made a comment that technology was not his forte. Is that right?---Yes, I said that.

And do you know from your own knowledge whether that extended to his use and knowledge of computers at all?---Yeah. He wasn't the sharpest tool in the shed with anything electronic.

40 Including computers?---He had a basic - - -

Basics, yeah.---You know, knowledge of computers, yeah.

Do you recall, when you went to Unit 5, that there was a lot of noise there? ---Yeah. I do have a, a recollection that it was very noisy, yep.

And apart from the yelling of inmates was there also a lot of noise from inmates apparently kicking cells doors, that type of thing?---Yeah. I have a

recollection there was some door kicking going on. The, that unit is generally very noisy because inmates yell at each other to, to converse even in the normal course of things.

Yes. But when there's kicking of cell doors and that type of thing going on together with yelling, does that have a tendency to stir up other prisoners, other inmates in that unit?---Yeah, well in the context of our experience over the summer, that's exactly what had happened multiple times. So, it could get, could well have been a concern.

10

Yes. In terms of Mr O'Shea's paperwork, did you make any observations about him in terms of his efficiency with his paperwork at all?---He again, for want of a better term, wasn't the sharpest tool in the shed, you know, with documentation and things like that.

I think you said from your observations that Mr O'Shea in the gaol, that he had a, I think you said a pretty good relationship with the inmates?---Yes, he did.

20

And that included him being fairly vocal with them from time to time? ---Yeah. Look, his general approach to inmates was good natured and humorous, which, you know, in a centre like Lithgow really had to be the case because you've got some very serious inmates in those areas. But yeah, John was very, generally had a very good way with the inmates.

And I think, is it your best recollection that in terms of leaving that unit, 5.1, that you left at about the same time as Mr O'Shea?---I don't have a great recollection of it. I had the impression that I left first.

30

Did you see him leave at all?---I don't really recall to be honest.

But I think you say that you, I think the way you put it was that you stuck around until the IAT were at the cell door. Is that right?---Yeah, that's right. I have a memory impression of the officers being down in front of the door.

And the situation I think was, it appeared to you as under control?---Yes.

And you couldn't see any need for yourself to stay in that area any longer than that?---No, that's correct.

40

Yes, I have nothing further. Thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Willis. Mr Dunne? No questions?

MR DUNNE: No questions.

THE COMMISSIONER: Ms Fishburn?

MS FISHBURN: No questions.

THE COMMISSIONER: Mr Taylor?

MR TAYLOR: Thank you, Commissioner. Mr Peebles, I appear on behalf of Mr Walker. You know that, don't you?---Yes, I understand.

10 Now, did I understand you correctly to say last week that as at February 2014 you'd only been at Lithgow about six months?---Yeah, approximately. As I said, I think I did about 10 or 11 months there all up. I left in wintertime, so that'd be roughly correct.

Thank you. Now, prior to that you'd been at Bathurst?---Prior to that I was at Wellington but, yes, several placements before that, Bathurst.

And whilst you were at Bathurst, Mr Walker was there as well, wasn't he? ---Yeah, I believe he was, yeah.

20 All up about six or seven years?---Yeah, I can't really be sure, to be quite honest.

And your evidence on Thursday was you may have bumped him but you couldn't be sure. Is that correct?---Yeah, I didn't have a close relationship with Mr Walker, no.

You were the acting MOS at Bathurst for a substantial period of time whilst you were there?---No, not, not, not prior to this incident, no.

30 What were your duties at Bathurst?---I was a commissioned officer. I believe I was an assistant superintendent. I acted into a senior assistant superintendent role for quite some time while I was there.

You didn't place Mr Walker as the SCO whilst he was at Bathurst?---He quite possibly could have been, yeah. I didn't have a close relationship with him at Bathurst. I, I certainly knew him.

40 And did you place him in that position?---Did I place him into the SCO position?

Yes.---I don't recall. By way of promotion, do you mean?

Yes.---Oh, okay. I don't recall.

Possible you did?---I did quite a few promotional interviews at that point, I think, yes.

And do you recall Mr Walker being involved in a number of court prosecutions for the introduction of contraband into the Bathurst Correctional Centre?---No. Are you suggesting Mr Walker had been charged with introducing contraband?

No, he was charging people with introducing contraband.---Oh, okay.

He was the officer in charge of prosecution.---Yeah, well, I don't specifically recall that, no.

10

Don't remember 27 court convictions for contraband?---No, not specifically.

Possible that that happened?---Depending on what his role was. Yeah, regular thing if he was working IAT at Bathurst. The role at Bathurst was quite different to Lithgow, so with the IAT at Bathurst they would actively involve themselves in the searching of visitors. You know, in assisting SOG generally, but they were much more active on the visit side of things.

20

So is it your evidence that you had little or no knowledge of Mr Walker's activities whilst he was at Bathurst?---Nothing specific that I'd, I'd put to memory, you know, other than if he was an SCO there, yeah, I would have dealt with him as an SCO.

And once again correct me if I'm wrong, to paraphrase your evidence, you didn't have much knowledge of Mr Walker, you say, until you got to Lithgow.---Yeah, I'd say that's correct.

30

Now, you said you had some concerns regarding Mr Walker's ability to converse with inmates.---Yes, at Lithgow, certainly.

Was that before February 2014?---I can't recall specifics but most probably.

And after February 2014 did you have those concerns still?---I would imagine so, but again I don't remember any specifics.

In your record of interview with ICAC investigators, do you recall saying that you intervened - - -

40

MR MADDEN: Can we have a page and a number, please?

MR TAYLOR: I'll get to that. You intervened in relation to a [REDACTED] and this is on page 15 of 40, at the top of the page. Do you remember that?---Yes, I remember intervening during a [REDACTED].

When did that occur?---I can't remember the date, I'm sorry.

I suggest to you it was April 2014. Would you agree with that or not?



---I really don't remember the date at all but I've got no reason to disagree.

Do you recall that Mr Walker returned to work at Lithgow after that [REDACTED]

[REDACTED] --Yes, he did.

And you were the manager of security at that time?---I believe so.

In effect his supervisor, as head of the IAT?---Yes.

10 Did he return to duties as the head of the IAT after that [REDACTED]

---I don't recall. I do believe he continued to work with IAT for a while.

So you didn't replace him, did you, when he returned from the [REDACTED]

[REDACTED] ---I didn't, no.

Didn't think that that would be a good idea, given the concerns you had prior to February 2014 and concerns you had after February 2014 and after the [REDACTED] ---I think it would have been a good idea, yes.

20 But you didn't do it, did you?---No, I didn't.

Any reason why not?---I believe I actually did suggest it.

You have a recollection of that now?---Yeah, I do.

Who did you recommend it to?---I think I discussed it with Mr O'Shea as to whether we should or shouldn't do something about it, and I believe at the time the incident with the [REDACTED] was a bit of a watershed for Mr Walker and he had accepted some [REDACTED] and his friends at the centre strongly advocated for him. His identity I guess was tied up a little bit in working IAT so it was as much a welfare thing for him I think.

30

Are you saying it was as much a welfare thing that you kept him in the IAT, despite all these problems?

MR MADDEN: Well, Commissioner, I object to his because my friend hasn't read the rest of the questions and answers on page 15 and he really should. If my friend won't then I'd seek to take my client to - - -

40 THE COMMISSIONER: That's okay, he can do that.

MR MADDEN: I mean my friend should really read on after, should read from page 5 down to, sorry, line 5 down to page, line 20, where it makes it quite clear that Walker was taken off IAT duties.

THE COMMISSIONER: What do you say, Mr Taylor?

MR TAYLOR: I'm entitled to test his recollection of what occurred.

THE COMMISSIONER: I think you are too.

MR TAYLOR: Thank you, Commissioner.

If we can just go to what Mr Madden has just raised, when did Mr Walker cease acting on the IAT?---I'm sorry, I don't recall. I don't have specifics on that.

10 If I suggested to you it was 2016, would you agree or disagree with that?  
---I wouldn't be able to comment. I think I left Lithgow round about winter 2014.

And if I suggested to you at that time Mr Walker was still with the IAT, would you agree with that or not?---I have no reason to agree or disagree. As I said, I wasn't associated with the centre anymore at that stage.

Did you have some concerns for Mr Walker about his welfare after the  
---Well, obviously after intervening in a  
20 yeah, absolutely, but the fact of the matter was he was released from hospital very quickly, I believe that Mr O'Shea had made inquiries with staff health services, whoever needed to be inquired with and you know, the decision was made I think. You know, I can't really remember whether he was left in IAT as the head or whether he was, worked in the area, you know, under supervision, I honestly don't remember.

Do you remember signing a commendation certificate for Mr Walker after February 2014?---No, I don't.

30 Do you remember the ceremony where Mr O'Shea presented a commendation certificate to Mr Walker, signed by you prior to you leaving the Lithgow Correctional Centre?---I remember there was a commendation ceremony, we were having about two a year at that point, but yeah, I don't remember specifics I'm sorry.

So, you have simply no recollection of Mr Walker receiving any such certificate?---I don't actually, no.

40 So, you have no recollection of any particular incident where he would have received, or did receive a commendation certificate for his duties as head of the IAT?---No but I'm not quite sure where you're going with this but I mean, let me point out, Terry Walker was never the personification of Satan. He, he did a lot of good work too, you know? There were probably times where he did do his job very effectively and, yeah, so I'm not quite sure what you're asking me.

THE COMMISSIONER: Ask it again.

MR TAYLOR: You have no recollection of an incident involving Mr Walker which subsequently led to him to receive a commendation certificate signed by you, presented by Mr O'Shea prior to you leaving Lithgow Correctional Centre?---I don't have a recollection here and now but perhaps if you explain to me what the incident is you're talking about, I may remember.

10 Well, do you recall an incident, possibly around Christmas 2013, where there was, for want of a better term, a bit of a riot going on and inmates, well, one inmate in fact ended up on the roof of the Lithgow Correctional Centre?---I, there was an incident where an inmate ended up on the awning of the centre and then I remember there was another incident where I believe a segregation inmate got onto the actual roof proper, but I wasn't actually at the centre at the time that happened.

20 Do you mean by that, that you weren't on duty or it happened after you left Lithgow?---There was one I think that happened after I had left Lithgow and another where a guy basically just got up on to the, the awning area and he was successfully negotiated down by myself and others. So, I'm not sure if Terry was involved in that one or not.

Do you remember an incident whereby there were fires within Unit 5.1?  
---Yeah, there was a lot of trouble over summer.

And that was around Christmastime 2013, was it?---Yes, it was through the summer period.

30 And do you recall Mr Walker having any involvement in defusing that situation?---Not specifically. There was a, a large number of people involved including SOG operators at that time.

And these ceremonies, you said there was possibly two a year for presentation of commendations certificates?---Yeah, that was generally the case back then.

Do you recall any ceremony where members of the SOG received commendation certificates in relation to the incident regarding the fires?  
---Not specifically, no.

40 Now, last week you were taken to some evidence in your interview with ICAC investigators – and for Mr Madden's benefit, this is page 37 of 40 – and you told the investigators that McMurtrie hated Walker.---Yes.

Do you remember that?---Yes.

And on Thursday, and this is transcript 849, you made reference to backing away, effectively, from that assertion. Do you recall that evidence?---Yeah, I do.

And during the course of that evidence you said, having sat here, and you've been here every day, haven't you, since this public inquiry started?---Yes.

10 Having heard the evidence, you changed your view?---I think that what I actually said on Thursday was in 2014 I had an impression, sense that there was not a lot of love between Mr McMurtrie and Mr Walker but that, yes, after hearing the evidence throughout the course of the last two weeks, I wouldn't have been able to sustain that recollection. They obviously got on quite well.

What evidence do you rely upon to make that statement?---Well, basically they both said they worked together on this matter.

Working together doesn't necessarily equate to they got on very well together, does it?---Not necessarily but it, you know, the opposite could also be true.

20 So, can you recall any specific evidence that you've heard which would indicate to you that you should change your view about the antipathy, as you described it, between McMurtrie and Walker?---No, I don't recall anything without reading every transcript.

But you had something in mind last Thursday when you gave that evidence, didn't you?---Yes. Which I've just relayed to you.

And that's it? Sum total of what you recall?---At this point, yeah, without delving into it in depth.

30 As at February 2014, how often did you work out of the officer that you working on, working out of, on 19 February, 2014?---I'm afraid I couldn't give you exact numbers. I know I was up there quite a bit. Part of the requirements for a, a project of this magnitude revolves around an award that's called the Safe Staffing Award, which basically obliges the employer to conduct a hell of a lot of consultation. So I had based myself up there for a while, just to have all the documents out for the people that wanted to come up and, you know, challenge a direction that we were going in or raise a concern or review a risk assessment, that type of thing. So it was, it was quite a bit, I believe, but I couldn't give you the exact details, I'm sorry.

40 Do you have any recollection of Mr Walker visiting you in that office, in the general administration area?---No, I don't.

Sorry, did you not hear the question?---Yeah, I replied.

Oh, sorry. I didn't hear your answer.---Yeah, I said, no, I don't.

Is it possible that Mr Walker visited you in that particular office on or about 19 February, 2014?---Well, I can't say whether it's possible or not but the open invitation was certainly there for all staff to come up and go through the documents and talk to me.

Did you ever – sorry, finished? Sorry, finished? Sorry, have you finished your answer, sorry?---Yes.

10

I cut across you. I apologise. Do you have any recollection whatsoever of having any discussion with Terry Walker regarding rosters or those administrative things that you say you were doing in that office, away from your normal office as manager of security?---No, to be honest, the only people I really specifically talking to were the, the union reps, who were giving me quite a hammering over it at the time.

And that's not something Mr Walker involved himself in at all, is it?---I couldn't recall, to be honest, whether he was union-oriented or not.

20

Yes, thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Taylor. Mr Greenhill.

MR GREENHILL: Sir, you have been a Corrective Services officer for approximately 30 years?---Yes, that's correct.

And you have a degree in psychology, don't you?---Yes, that's correct.

30 Can I ask you this? Dealing with the question of fear, if fear is caused by a mentally affected person on another person, that can be created by express or implied threats, can't it?---Yes, I think that would be fair to say.

And the threat could be aggravated in the mind of the person being threatened by reason of the fact the person that's causing the threat is in fact mentally ill or appears to be.---Well, depending, depending on who the subject is that, in question, yes, I guess so. People misunderstand mental health issues quite regularly and believe incorrectly that mentally ill people present more of a threat in terms of violence than members of the general public, which is not the case.

40

Now, you said something in your record of interview at page 37, line 24 – I don't think you have it before you. And I'll read it, "Walker was a very gutless guy. Walker would stand behind a fence and do these at the inmates, and then they all ..... be out of there." Do you remember what that was about?---Yeah, well, I, I guess at the time I was asked, you know, what type of things Mr Walker would do that were inappropriate in terms of the inmates or I'd been told that he'd physically assaulted an inmate. I'd never

actually taken him to be one that would do that. All my dealings with him that were problematic, where it would be where he – by virtue of a lack of interpersonal skills, I suppose, or a misreading of cues coming from people – would say and do the wrong thing when, you know, in situations where things were being de-escalated. And a couple of experiences that I had with him were exactly that. They were with larger groups of inmates where we were behind a fence attempting to de-escalate and, you know, stupid things were said that didn't help the situation.

10 Said by Corrective Service officers?---By Mr Walker.

By Mr Walker in particular. All right. Now, by the way, there was various Corrective Services officers at Lithgow whose first name was Simon, correct?---(No Audible Reply)

Do you recall? Simon Graf?---Oh, I remember Simon Graf.

Simon Raper?---No, Simon Raper wasn't working at Lithgow at any time I was there.

20

Oh, wasn't he? All right. Any other Simons?---I can't be sure I'm sorry.

All right. Now, will I continue on?

THE COMMISSIONER: Thank you, Mr Greenhill, yes, please.

MR GREENHILL: To run a gaol properly and efficiently, would you agree with me, it needs all levels of staff to work and to work with each other professionally and diligently?---Yes, I think that would be true of any enterprise.

30

True, but I suggest that's particularly necessary when you're working in a Corrective Services environment in order to ensure the safety of the staff and officers. Correct?---Yes.

And also the wellbeing of inmates?---Yes.

Now, would you agree with me that however the work atmosphere and environment at Lithgow was clouded and affected by certain factors?

40

---I don't really have an impression of that, can you clarify the question a bit?

All right. Well, there was distrust amongst certain officers, wasn't there?

---Yeah, I guess there were - - -

I'm talking about when you were there.---Yeah, oh, I didn't think so, I thought it was a fairly cohesive group. I know things were a bit clouded at the time because of the proposed changes that I was implementing, you

know, the staff were split down those lines fairly distinctly as to those that supported the ideas and agreed that we needed to take more inmates, versus those that were vehemently opposed to it.

Well, all right. Let me recede, was there hatred to your knowledge amongst certain officers there?---No, not to my knowledge, not hatred.

There was certainly antipathy though, correct?---Well, no more than I would expect you'd get in any big organisation.

10

All right. Well, look, with respect to one officer you said of him that he was very dangerous, a very vindictive individual. Correct?---If you're referring to Mr McMurtrie?

Yes.---Yes, he certainly, he was a very, very complex person. He, on one side of things he was a really excellent Intel officer, particularly in matters that involved the more serious inmates, those involved in criminal networks, but yeah, he had his pet dislikes for other staff and it was, you know, quite a challenge I suppose in some ways to keep that in check while I was there.

20

And to your knowledge there was the creation of fear in fellow officers by some of their workmates, if I can call that, use that term, wasn't there?  
---Again could you contextualise your question a little bit?

Well, what about Mr O'Shea and Mr Turton, did you know about that?  
---The relationship between Mr O'Shea and Mr Turton?

Yes, yes.---I didn't think that it was problematic.

30

And what I want to suggest to you is that the, a number of the officers just didn't get on with other officers up there at Lithgow. Correct?---Look, it's correct that various staff members didn't have a lot of love for each other, but everyone, you know, was reasonably professional and got the job done, the same as any large workplace.

Yes. I have no further questions. Thank you.

THE COMMISSIONER: Thank you, Mr Greenhill. Mr Brasch?

40

MR BRASCH: No questions.

THE COMMISSIONER: Mr Madden, how long do you think you'll be?

MR MADDEN: Oh, I've got no questions.

THE COMMISSIONER: All right. Mr Duggan?

MR DUGGAN: Commissioner, I have a couple of short questions and they arise out of something that Mr Taylor asked, and we've found a couple of documents, and Mr Taylor may have further questions but I'm not sure whether he's had a chance to consider the documents but I'm happy to go ahead and start asking questions if you - - -

THE COMMISSIONER: Well, why don't we adjourn now and come back but I'm keen for this witness to get away, though, obviously.

10

MR DUGGAN: Indeed. And I should indicate that it will only be a couple of minutes from me.

MR MADDEN: Can I show my client those documents at the morning tea adjournment?

MR DUGGAN: Yeah. I don't have any difficulty with that.

THE COMMISSIONER: All right, we'll adjourn.

20

#### **SHORT ADJOURNMENT**

**[11.36am]**

THE COMMISSIONER: Now, Mr Duggan, how do we proceed? Does Mr Taylor have any question based on this document?

MR DUGGAN: He may have arising out my questions I think, yes.

30 MR TAYLOR: It depends on what Counsel Assisting does as far as his questions I think.

MR DUGGAN: Thank you. Mr Peebles, I just want to show you some documents that arose out of some questions Mr Taylor was asking. The first one is an email of 14 February, 2014. This appears to be, or is a chain of emails involving yourself. You see there the bottom email at 12.41, Mr Walker's emailed you and Messrs Taylor and Turton?---Yes.

40 And the email is addressed, "Sir. It is apparent that some of the centre management AS have no faith in my ability." Now, I assume that AS is assistant superintendent. It's not your email, but that would be your understanding?---Yeah, I can't think of any other meaning for that.

Right.---I'd assume assistant superintendent.

So, "Some of the centre management AS have no faith in my ability. I therefor offer to stand down if this is in the best interests of the centre. I would greatly regret to leave this position as I believe I have the best



interests of the centre at heart and I strive to do my best, but the constant undermining of my position as the team leader of IAT when called to assist cannot continue.” Do you have any recollection of that email?---I honestly have no recollection of it.

You’ve replied and said, “Come up to GM office and bring Elliott with you.” Elliott would be Elliott Duncan?---Yeah, I assume so.

10 And he was the senior correctional officer of IAT from time to time?  
---Yeah, I think he acted in the role a bit.

Right. And what Mr Walker seems to be suggesting in this email is that someone has lost faith in his abilities. Do you accept that?---Yeah, it seems to be, seems to be pointed in that direction.

And he’s referring to an AS. Now, in terms of the candidates, Mr McMurtrie would have been an assistant superintendent at the time?  
---Yes.

20 So that’s a person who may have lost faith in Mr Walker’s abilities to perform his role?---It could have been. I honestly have really no recollection of it. It seems to be a bit of a dummy spit.

THE COMMISSIONER: Who are the other possibilities if it’s not - - -?  
---I think there are, at that time, and correct me if I’m wrong, there were either eight or 10 ASs at the centre.

30 MR DUGGAN: So I’ll just name a few that I can think of or that may have been there at the time. Mr Wright, Henderson, Baumann or Baumann, McAndrew, Malone. Did any of those have a close working relationship with Mr Walker or might have undermined him?---I honestly can’t put my finger on any one of those individuals. With this I just don’t have a recollection of what it was about.

The last sentence of Mr Walker’s email is prescient. He says, “I fear someone will be hurt and I do not want this to happen.” Do you recall him expressing that sentiment, either in this email or in a subsequent meeting?  
---I don’t, sorry, Counsellor, I really have no recollection of what it’s all about. It appears to be a bit of a dummy spit on his part.

40 Were you aware as at 14 February, 2014, that Mr Walker had mental health issues?---I am not sure. I could well have been.

Is the GM office a reference to your office or is that Mr O’Shea’s office?  
---I just notice I’ve replied as acting GM - - -

Oh, I see.--- - - - so I may have been looking after Mr O’Shea’s job on that day, I assume.

And if I can just go to what appears to be an appointment entry or a meeting entry of Mr Taylor's, and it's not clear whether you received this but it appears to be setting up a meeting for 1 o'clock – 12.30, rather, on 14 February in the GM office, and your name is listed there with Mr Walker, Mr Duncan and Mr Taylor, and then Mr Taylor appears to have cut and pasted Mr Walker's email. Does that jog your memory about any meeting about this issue?---It really doesn't, sorry, Counsellor. To be honest refereeing staff over dummy spit type issues was a fairly regular feature of the job, so - - -

But I want to suggest this is more than a dummy spit. He's saying in the last sentence, "I fear someone will be hurt." That's a bit more than a dummy spit, isn't it?---Yeah. I mean, it's a, an interesting play of words but I just honestly have no recollection of this event at all.

You refer to the fact that IAT was overused at this time.---Yeah. Well, it was overused both in terms of the, the frequency of responses that we had over, over the Christmas period, but also I think I explained that there was a tendency amongst the, the general duties staff to call the IAT over for every little incident, every raised voice, every minor thing that they really shouldn't have been involved in. So, yes, that was a, an issue at that stage.

Well, did you have any concerns at this stage that Mr Walker didn't have the skillset or the temperament to de-escalate incidents?---Yeah. I think I had a few general concerns that were, were discussed, you know, probably with Mr O'Shea but, you know, I guess at the end of the day the decision was to leave him as he was.

On that note, can I take you to an email of 7 April, 2014? This is an email from you to others, including Mr O'Shea and Mr Walker, and it says, "Terry Walker is okay to return to his normal IAT SCO role when he's back from days off this Saturday." Do you see that?---Yes, I do.

Are they rostered days off or was there some leave that he was given?---I, I'm not sure. Is this immediately after the [REDACTED] that we discussed or, or - - -

I don't know the timing.---Look, I, I don't recall. I know there was quite a discussion after the, the [REDACTED] as to whether it would be okay to put him back in his role. I think even Mr O'Shea or others probably spoke to staff health services about, you know, to determine whether there was an issue from a, you know, a staff health services point of view with it. So, obviously there would have been some sort of background discussion to this but, yeah, I just don't recall specifics. If it was, you know, around that [REDACTED] time.

Just going back to the middle of February. So, I've taken to you to the email chain and a possible meeting on 14 February, 2014, and five days later he's involved in this incident with Mr [REDACTED] where he goes in and he strikes him. Given the meeting on Friday, 14 February, you'd expect there to be some discussion about that incident.---Yeah, look, I don't recall if there was. But what, you know, the actual meeting was about, whether it was just a interpersonal conflict with the ASs, I just, I don't recall.

10 Do you recall there being any concerns in this period about Mr Walker's, and I think I ask you this a moment ago, temperament and skillset to deal with use-of-force incidents?---Nothing specific but yeah, in general I had worries about him for a while, I guess.

Should he have been at work on 19 February leading the IAT?---I don't recall any information to suggest that there was any sound advice to the opposite, to the contrary.

20 Commissioner, can I tender those emails and that appointment note, perhaps as the one exhibit if that assists.

THE COMMISSIONER: You're happy with one exhibit?

MR DUGGAN: Yes.

THE COMMISSIONER: That will be marked as Exhibit 86.

30 **#EXH-086 – EMAIL CHAIN FROM BRAD PEEBLES TO  
TERRENCE WALKER RE: IAT DATED 14 FEBRUARY 2014;  
CALENDAR ENTRY BY STEPHEN TAYLOR RE: SCO WALKER  
DATED 14 FEBRUARY 2014; EMAIL FROM BRAD PEEBLES TO  
SHEENA JAMES & OTHERS RE: TERRY WALKER DATED 7  
APRIL 2014**

MR DUGGAN: Thank you. Just one last question in relation to Exhibit 85, page 6. Now, just from the bottom up, Mr Walker sent you an email about rotation on 18 February. Do you see that?---Yep.

40 “Hi, Brad. Is it possible to have the top four that won the positions originally to be rotated monthly so they are all ever?” Is that a reference to the IAT?---Yeah, it looks like it probably is.

And you email back, “I'm not sure, Tex. The OSU are using a new method to assign the preferences. This one should actually work. Can we revisit this in a couple of weeks?” Do you see that?---Yes.

That's at 10.03 on 19 February, which I want to suggest would be just after you attended Unit 5.---Yes, it seems to be the case.

When you replied to that email does that jog your memory as to whether you had anything in mind about what you'd just seen Mr Walker do?  
---It doesn't, I'm sorry, it just looks like a very routine question. I know we were constructing a new roster at the time, he just seems to be concerned about how the preferential system on the roster system's going to work.

10

All right. So is what you're saying this had nothing to do with the meeting on the Friday before or the concerns that Mr Walker was raising about people undermining his position and the like?---Yeah, I, I can't be sure. It just seems to be a, seems to be a standalone thing.

Commissioner, I have no further questions.

THE COMMISSIONER: Do you want to tender that email or - - -

20 MR DUGGAN: It's part of an exhibit already.

THE COMMISSIONER: It is, is it, right. Okay. Mr Taylor, did anything arise for you out of that?

MR TAYLOR: Just briefly if I may, Commissioner.

Mr Peebles, I just want to take you to that email from Mr Walker dated 14 February, addressed to you. And you've answered some questions from Counsel Assisting and you described it as a "dummy spit," on more than  
30 one occasion. You obviously took the email seriously, didn't you?  
---Yeah, well, seriously enough to say come up and have a talk about it.

Yes. And that was almost immediate, wasn't it?---Yeah, it seems to be.

And did you, I appreciate you say you have no recollection of that meeting, is that something you normally did when you got an email raising an issue, you'd deal with it straightaway, or was it - - -?---Oh, look, staff interpersonal conflicts, you know, were a very common thing and my approach as a manager was always just to get to it as quickly as possible and  
40 have a chat about it and usually you could sort things out.

I thought your evidence was that you didn't want to have to referee those sorts of interpersonal disputes?---I'm sorry?

I thought your evidence was that you didn't want to have to referee those sorts of interpersonal disputes?---I don't remember saying that, but no, it's never pleasant to have to referee an interpersonal dispute, nevertheless that's part of the job of any person managing staff.

And I want to suggest to you that that very last sentence of that email, that is Mr Walker's fear that someone would be hurt, would have given you cause for concern?---Yeah, unless I just considered it to be a bit of an exaggeration, I just don't recall it at all.

And rather than a dummy spit, given your – I'll withdraw that. You said you had concerns about Mr Walker's operational manner prior to February 2014?---Yes.

10

You didn't discount the fact that you could have been aware that he had mental health issues prior to 14 February, 2014, that's right isn't it?---Yeah.

20

And can I suggest to you that, rather than a dummy spit, that last sentence may be interpreted as a cry for help?---Yeah, you could interpret it in any one of a number of ways, I'd imagine. I must admit, I find it a bit curious that the fact that someone has mental health issues is constantly being translated into therefore that person will behave in a certain way. So I, you know, certainly don't prejudge people just on the basis that they have an illness, whether it's diabetes or depression. So, yeah, I, that's the first I recollect that email, so anything I do say about it is really supposition. I just have no recall of it.

30

And is that a similar attitude to the email that you sent on 7 April, 2014 saying he's, that is, "Mr Walker's okay to return to his normal IAT SCO role," even though it may well have been after the [REDACTED] that you knew of?---Well, look, I believe that behind that decision there would have been some discussion with staff health services. I believe he would have had to have had a clearance certificate from his treating medical practitioner to do that. I don't know if all of those things have been checked but I imagine that there was certainly some professional assessment.

Who's Sheena, please?---Sheena was one of the roster clerks at the centre at that stage.

And Graham Dixon?---He was the second roster clerk.

40

And that email that I've just taken you to of 7 April, that's a direction from you, put him back where he belongs, that is as the SCO or the IAT.---Yeah, I take it that that's what it was.

That's your decision, wasn't it?---I can't recall whether it was my decision or whether it was passed on to me, but one thing I, I can quite confidently say is there would have been some professional advice behind it from both his treating doctor and our own staff health services division.

Do you have any recollection of obtaining that evidence prior to making this decision?---I don't have a recollection of it but I'm sure a search of the file would, would turn it up.

Thank you, Commissioner.

THE COMMISSIONER: Thank you.

10 MR MADDEN: Commissioner, I do have something now.

THE COMMISSIONER: Yeah, that's okay. Off you go.

MR MADDEN: Mr Peebles, I think Mr Taylor just asked you about this email of 14 February, 2014 and the last sentence by Mr Walker where he says, "I fear someone will be hurt and I do not want this to happen," and essentially you were asked to read Walker's mind and interpret what you thought that meant. You remember that?---Yes, I do.

20 And you agreed that it could be a cry for help but I think you said it could mean a number of things.---Yeah, that's correct.

Would you agree that one thing it could mean is that it's Walker, so to speak, throwing down the gauntlet and saying, "Well, if I'm moved off IAT duties and the IAT doesn't have my expertise, someone's going to be hurt and I don't want this to happen"?---Yeah, that would be equally as a valid interpretation, I imagine.

Thank you, Commissioner.

30

THE COMMISSIONER: Thank you, Mr Madden. You mentioned you had a psychology qualification. Where did you obtain that?---Through Charles Sturt University, Commissioner.

And is that a degree?---Yes, it was a degree with a criminology sub-major.

All right, thank you. Mr Duggan, is there any reason why this witness shouldn't be excused?

40 MR DUGGAN: There's no reason why he should not be excused.

THE COMMISSIONER: No. You're excused from your summons and free to go, Mr Peebles. Thank you very much.---Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[12.19pm]**

MR DUGGAN: Commissioner, there's obviously been some evidence about Mr Walker's mental health and I'm just checking the suppression order that was made in relation to it.

10 THE COMMISSIONER: The suppression order which was made concerned a description of, a fairly graphic description of what happened, but in terms of the fact that there were [REDACTED] that wasn't suppressed because ultimately Mr Walker gave that evidence himself, but the actual details were suppressed but I don't think we've learnt anything further today from this witness. So, it was the evidence of Mr Duncan, I was reminded by my associate that it was the evidence of Mr Duncan that was suppressed when he gave, you know, quite full details of what had happened so I don't think there's any need to do anything further. Obviously that suppression order still applies but the fact that there were [REDACTED] is already out there, I think, from Mr Walker. Is that your recollection, Mr Taylor?

20 MR TAYLOR: Yes, it is, Commissioner. As far as Mr Walker's concerned, the suppression order in relation to the details of the incident itself – where Mr Duncan attended, not Mr Peebles – is the only protection that he seeks in relation to that.

THE COMMISSIONER: Thank you very much.

MR DUGGAN: The next witness is Jane Lohse.

THE COMMISSIONER: Ms Lohse, come forward, please. Ms Lohse, will you take an oath or an affirmation?

30 MS LOHSE: Take an oath, thank you.

THE COMMISSIONER: Do you mind giving us your full name?---Jane Margaret Lohse.

And your current occupation?---I'm a senior correctional officer at Lithgow Correctional Centre.

10 And I think you're unrepresented.---I am.

All right. Well, as an unrepresented witness, there are certain things I'll explain to you concerning your obligations as a witness and your rights as a witness. As a witness you must answer all questions truthfully.---Yes.

You must produce any item described in your summons, and I assume there were none.---No.

20 And you must produce anything required by me in the course of your evidence. You may object to answering a question or producing an item. The effect of any 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.

30 The first exception is that this protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, most notably an offence of giving false or misleading evidence. If you give false or misleading evidence, it's a very serious offence for which the penalty can be imprisonment for up to five years. So I cannot stress enough that it's important to give truthful evidence.

The second exception applies to you because you are a New South Wales public official, being a senior Corrections officer. Evidence given by a New South Wales public official may be used in disciplinary proceedings against that public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct.

40 So they're the two exceptions. If you fib, you won't be protected, and if there was to be a finding of corrupt conduct or you had attempted to engage in it, you won't be protected from disciplinary proceedings. Now, rather than objecting to each question as it's asked to get that protection, I can make a declaration that all answers given by you and all items produced by you will be regarded as having been given or produced on objection. So you get a blanket coverage subject to the exceptions I've mentioned, and that means you don't have to object with respect to each answer every time a question is asked. Would you like me to make such a declaration?---If it's -  
- -



It's for your own protection.---Yes, Commissioner, thank you.

That will save you objecting to questions as you go along. 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 her during the course of this 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 HER DURING THE COURSE OF THIS 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.**

THE COMMISSIONER: Thank you. Mr Duggan.

MR DUGGAN: Thank you, Commissioner. Can you state your full name for the Commission, please.---Jane Margaret Lohse.

Thank you. And you said you're a senior correctional officer, is that right?  
---I am.

And you held that position in February 2014?---Yes.

What were your day-to-day duties in that position in February?---Well, being the wing senior I coordinated the events for the day, implemented the structured day for the inmates on the Individual Violent Offender Program, supervised staff and supervised the welfare of the staff, make sure they were working safely and that the day went as smoothly as it possibly could in what was generally a fairly stressful and volatile area.

Did you have an office in the unit?---Yes.

Was that upstairs or - - -?---No, it was down in between the two ends of the wing.

Right. Is that referred to as the officers' station?---Yes.

And so you were based there, were you?---On that particular day I think it was a lockdown and that would have been where I'd worked, but possibly I might have had to go to other duties as well because on a lockdown day the routine was quite different to a normal day.

All right. Just in terms of your role, who was your immediate report, if you had one?---It would be the assistant superintendent or the sector manager of the day.

10 All right. And so from time to time that would have been Mr Turton?  
---Yes.

And do you recall who it was on 19 February?---Ah, it wasn't off the top of my head but now I do know that to have been Mr Turton.

Yes. And in terms of your duties, did you have, as a senior correctional officer, intelligence-gathering duties or is that done by others?---Yes. You were pretty much, sometimes you were the first person to receive information so obviously you pass that on.

20

All right. But you didn't have any active role in terms of seeking out intelligence or anything like that?---No, no.

What about observing CCTV footage, did you have a responsibility to regularly review CCTV footage in relation to incidents?---No.

30 What about listening to inmates' phone calls for example?---That did happen on occasional, on the odd occasion if you were asked to monitor a phone call or check a phone call, if someone had heard something from the control room for instance they might have rung you up and said, you probably need to listen to this.

Right.---Because quite often there were statements made on the phone system.

But that would be at the response of some direction or suggestion rather than you trawling through phone calls and - - -?---Oh, absolutely, yes.

40 Now, in terms of 19 February, do you recall any incident involving Mr [REDACTED] I'm not familiar with the inmate's name but there was an incident in 5.1.1 end.

All right. And do you recall at any point being in the day room or seeing into the day room and seeing IAT attending a cell?---Yes, I do recall that.

And what do you first recall about that incident or those events?---Not very much because I didn't witness it. I have a recollection of either being asked to leave or choosing to leave that area with Mr Turton.

All right. So do you recall entering the day room at some point?---Yes, I think I did. Well, I must have because I left that day room with Mr Turton, but I can't remember which access point we used.

10 All right. And you're talking about whether you came through the officers' station or from the compound into the day room?---Well, generally, it probably wasn't from the compound because the accepted practice was to enter that, not to use that compound door, you entered through the middle and then into the day room from the day room office.

And IAT might from time to time take a shortcut but usually - - -?---Oh, they were, they were allowed to use that access.

But usually officers would come through the officers' station?---That's correct.

20 And so what did you see when you were in the day room?---I just remember seeing people at the cell door discussing with an inmate, I think he was talking out through the top of the grille above the door.

And was the IAT there at that point?---To my knowledge they were, well, there were people there, I'm assuming it was them.

I don't want to put words in your mouth but it sounds as though you don't have a particularly strong recollection of who was there?---No, I don't, no.

30 So possibly IAT?---Possibly. I remember Mr O'Shea being in the vicinity, but whether he was actually at the door or in the office, I don't know.

So by vicinity you mean - - -?---In the unit.

In the unit day room, possibly officers' station, that area.---Mmm. Mmm.

Do you recall a German shepherd and a dog handler from SOG?---No, I don't.

40 And I think you said a moment ago that it was either suggested to you or you might have suggested that it was about time you left. Were they the words you used?---Yes, I remember Mr Turton and I went out through the side door of the wing into the hallway. Where he went to, I don't know.

And did you stay in the area or did you - - -?---Well, I could have. I don't remember where I went. I could have gone into the officer or I might have left and gone down to the other unit to help them. Yes, it's not terribly clear, I'm afraid.

THE COMMISSIONER: Did he make any suggestion to you as to why you should both leave?---I think there were enough people there. I, I think it was because there were people at the door. They're trained to handle these situations. And generally, unless you're directly involved with a situation, you didn't stay there.

Was there any suggestion, for want of a better expression, that trouble might be brewing?---Well, obviously there was a bit of yelling going on but not directly. Not, not trouble as, as a dangerous situation.

10

No.

MR DUGGAN: Sorry, Commissioner. You wear a radio as part of your uniform, I assume?---Yes, I do.

Do you have any recollection of IAT being asked to attend Unit 5 over the radio that morning?---No, I don't.

20

Do you recall whether Mr Peebles was in the day room at all?---No.

You have no recollection?---I don't, no, I don't.

Did you know Mr Tex Walker very well?---Reasonably well. On a professional basis.

Do you recall him being in the day room?---Not as such. I now know he was there but at the time, no, I couldn't recall.

30

You said you entered the day room and then you left. Were you in the day room for a short period of time?---I don't think we were there very long at all.

Do you know whether anyone opened the cell door at any point to Mr [REDACTED] cell?---I don't remember seeing that.

Is it possible that it was you?---I can't remember.

40

But you've, you - - ?---I don't know why I would have because the people there have their own keys.

Did you see Mr Taylor in either the day room or the officers' station about this time?---I do not recall seeing Mr Taylor.

Do you have any recollection of telling him – and I know you've just said that you didn't see him there – but do you have any recollection of telling him that Mr O'Shea had abused an inmate and IAT was called?---No. No. No, I don't have a recollection of that.

Did anyone tell you on the day that there'd been an intercom or a knock-up communication between an inmate and the governor, Mr O'Shea?---There may have been. There was definitely an intercom knock-up system access point in the office. But not directly, no. We could receive knock-ups in the office and also the control room. If you're in the office, you answered them.

Do you have any recollection of Mr O'Shea and Mr Peebles coming down to the unit and having a look around at all?---No.

10 So you wouldn't have any understanding as to why they were there in the unit on the day?---I remember Mr O'Shea being there but not Mr Peebles.

And do you have any understanding as to why Mr O'Shea was there?---I think he was the subject of the abuse coming from that cell.

Oh, I see. But you don't know the reason why he was in there in the first place?---No. No.

20 I just want to show you a document, please. A document will come up on the screen. If you need a hard copy, please let me know. And this is page 2 of 3, so it's taken out of a larger document, but are you familiar with this format?---The case notes, yes.

Yes. And it's entitled at the top, "A case note report," and it has an offender name. Here the report's in relation to Mr [REDACTED] and you have his MIN number there.---Yep.

30 And various entries are made. So, for example, the first entry is made by Joy Breen. Do you see that?---Yes.

And the second was made by you. Do you see that?---Yes.

So, what systems are these entries made on?---On the OIMS.

40 And so would you make entries on OIMS from a computer in the officers' station?---Yes. There was also another computer in a side room down the hallway, which if, if you wanted to have some quiet time to do your case notes you could use that as well, so I don't know which one this was made on.

And when would you enter case notes?---Sometimes during your lunch break, sometimes at the end of the day and sometimes during the day. Just depended when you had five minutes to do it.

And what things needed to be recorded in a case note?---Well, things there like an inmate had a visit this morning. He was probably in the visiting section when his cell was searched. Obviously I put down that his cell was untidy, which is a normal thing to do because they are supposed to keep

their cells in a tidy manner. Anything that's of note, if you've spoken to that inmate, you put down what the topic of the discussion was, whether they'd been seen by the clinic. Just general day-to-day notations.

And I see there that there's an entry on 9 February. You say that Mr [REDACTED] cell was searched and it was untidy. Do you see that?---Yeah.

10 Did you search the cell on that day?---I could have or the wing staff might have done it. I generally didn't do the searches but sometimes I did.  
Depends how we were pushed for staff and time.

Would you ever search just yourself or was there always - - -?---Oh, no.  
No.

There was at least two people for a search?---Generally, yes.

20 And what are you searching for when you search a cell?---You're searching for weapons, contraband, property, making sure that the property or the cell contents belong to them, and whether it's hygienic, and that was just a pet thing for me.

And I assume that from that case note, because there's no reference to any find that nothing was found on that day?---No. Well, it would have been logged if it had have been.

And so I can assume that no contraband or buprenorphine, for example, was found on that day?---No.

30 And does it accord with your recollection that that was, that search was 10 days before 19 February, which was when the incident was?---Yes.

Now, do you have an understanding that Mr [REDACTED] was injured on 19 February?---No. I didn't at the time.

Did you later take him to the clinic?---I don't recall doing so.

40 Excuse me one moment. Who usually enters information into the case note reports?---Anybody can. Any of the wing staff. Anyone that has that interaction with an inmate can do a case note.

So, if someone was to take an inmate to the clinic, they would make an entry into the case notes?---I would expect so.

Do you have any recollection of hearing an allegation by Mr [REDACTED] that he'd been assaulted by staff or flogged by the squad?---No.

You've never heard that suggestion?---Not to, not to me.

But although he hasn't made that allegation directly to you, have you ever heard that suggestion?---I have since.

Did you hear it around February 2014?---I can't recall when I heard it. I, I think probably a couple of days later perhaps. I can't be a hundred per cent sure.

10 I just want to take you to a transcript of a telephone, inmate telephone call at page 114, sorry, 104. Now, this is a transcript which has been typed up of a phone call between Mr [REDACTED] and his father, and it wasn't, I'm not suggesting you've ever seen this document.---No, I haven't.

It's been typed up since, but if you need to listen to the actual phone call it could be played for you.---No.

But you can see two-thirds of the way down the page there's, [REDACTED] is saying in the larger paragraph, "Yeah, I fuckin' got, got fuckin' ogflayed by the squad." Do you see that?---Yes.

20 "And they fuckin' put me in this cage." Do you see that?---Yes.

Do you have any memory of Mr [REDACTED] being put in a cage in the day room - - -?---No.

- - - on this day?---No, I don't.

Just pausing there, did you see him taken out of the cell at all on the 19<sup>th</sup>? ---I don't believe so, no.

30 And page 105, or sorry, at the bottom of 104 he says, "Me celly's buzzes up," so assume there that he's talking about the knock-up system.---Mmm.

And he goes on to tell his father, "And I've said, 'Don't say that,' and I was half-asleep. He said it to the governor. The governor's come up to the fuckin' door, 'You were talking to me, cunt, [REDACTED] I go, 'It wasn't me.' Fuck, boom, the squad comes in a flog the fuck out of me." Have you ever heard Mr [REDACTED] say that in a telephone call to his father?---If I monitored a call I probably would have heard it, but it's, it's not familiar to me.

40 All right. I just want to take you to page 111, and if you can assume from me that the document you're about to see is a call log which identifies when someone is listening to an inmate's phone call?---Yep.

And you understand you need to log in to listen to an inmate's phone call? ---You do.

And so that's the call log.---Yeah.

And the left-hand side is the MIN and the next column is the date and time an officer has listened to the call, and the next column is the officer's serial number. There's a description of how much of the call is listened to, and then the last two columns are the date of the actual call and the staff member who's listened. Do you see that?---Yep, I do.

Now, if you can assume from me that the date of the original call, which is 20 February, 2014 at 10.44am, that that's the transcript I've just taken you to or at least part of?---Yes.

10

And entry 4 indicates that 20 February, 2014 at 3.49pm, no, sorry, the entry above it, line 3, 2.19pm it suggests that you've listened to 53 per cent of the phone call. Do you see that?---Yes, I can see that.

20

Do you have any recollection of who would have directed or suggested you listen to that phone call?---I can make an assumption that I was probably asked to listen to it, possibly by the control room officer. He may have heard something in it that he thought I might need to listen to, so I would have logged in. It was something that a lot of people had access to, and we did it on a needs basis. It wasn't just done for entertainment or just to listen to a call. It was done for a reason.

And is Mr Heterick, would he have been in the control room?---He could have been. I don't know.

Mr Michael Watson wasn't, I assume. He's with SOG. Is that your recollection, the first person to listen to the call?---Oh, right. Michael Watson. The name's familiar but I can't picture his face, sorry.

30 If I suggested he was the SOG dog handler, does that ring a bell?---Oh, right. Yes, I know who you're talking about.

So he's not likely to be in the control room?---No.

Mr Heterick is - - ?---Possibly could have been.

- - - is the only other person to listen to the call before you?---Well, he was probably, he probably was in the control room, then.

40 And why would Mr Heterick be suggesting you listen to a call which talks about the squad flogging Mr [REDACTED] Well, if he was a control room officer, he probably listened to it in real time, which they can do, and then he's probably called me up and mentioned that simply because it's, it's a fairly serious conversation.

That transcript also mentions the governor. That would be a serious matter as well?---Of course.



Was there some discussion about that amongst staff on the day?---Not that I recall. I don't remember a lot of discussion at all.

Is it possible that Mr Heterick mentioned the comment by – sorry, I'll go back a step. There's a part of the transcript that I haven't taken you to, in fairness to you, that, that mentions a blade.---Right.

10 I might take you to it, if I may. It's at page 109. Now, I'm taking you to bits of a conversation in isolation, and you may not have listened to this because the call log says you only listened to 53 per cent of the call, and this is towards the end, on page 6 of 7. But it says that "If they come in again, I don't give a fuck. I'm going to go on with it. I have a blade ready and all, fuck 'em." Do you see that?---Yes.

Do you recall Mr Heterick saying that was why you needed to listen to the call?---No, I don't.

Do you have any recollection of that being an issue at the time?---No, no.

20 And over the page at 110, about line 10, Mr [REDACTED] father says, "Yeah, we'll wait outside the, I'll wait outside the gate." As an officer in a correctional centre, you'd be a bit concerned about that sort of thing.---Of course you would be.

Were you aware of that on the 19<sup>th</sup>?---No.

You don't recall any discussion about that since?---No. No, I don't.

30 How well do you know Mr O'Shea?---Reasonably well. On a professional basis.

You've worked together for a number of years?---On and off, yes.

Did you have any discussions with him about this phone conversation, do you recall?---I don't recall discussing anything with him.

40 Can I take you to another phone call, please, which is on the following day, 21 February? Just to ask you a question before I take you to this. Do you have any recollection of some contraband being found in Mr [REDACTED] puffer?---In his puffer?

Yes.---Oh, the, was that the search on the 20<sup>th</sup>?

That was the search on the 20<sup>th</sup>, yes.---Yes. I do recall being informed by somebody that they'd found something in the cell. I can't remember if they told me what it was.

Can I just take you to your – Commissioner, before I ask her a question about this, I might tender the case note, the report if I may, as Exhibit 87.

THE COMMISSIONER: Yes. Certainly. That will be marked Exhibit 87.

**#EXH-087 – OIMS CASE NOTE REPORT FOR INMATE A FROM 7 FEBRUARY 2014 TO 2 MARCH 2014**

10

MR DUGGAN: And just bring that document back up on the screen. So, there's an entry on 21 February, 2014 made by you and the entry is this, "[REDACTED] going back into 5.1.2 as a segregated inmate following contraband found in his cell yesterday." Do you see that?---Yes.

20

"He's been issued his property and I explained the daily seg routine to him. He was polite and appropriate." So, can I assume from that that he was in Unit 5 as a protected inmate, but because of the contraband he was then placed in segregation?---Following that incident that day, he must have been taken to segregation and then obviously I've received him back in the wing on the 21<sup>st</sup>. Yeah.

30

And so just going to the call on 21 February, which is the same day you made the case note entry although the time doesn't appear in the case note entry. So, this is a phone call made by the inmate at 10.41am and there's some various preamble on the first page and then over on the second page, midway down the page, Mr [REDACTED] says to his father, "They raided the cell and found the fuckin' bupe in something." You would understand bupe to be buprenorphine?---That's correct, yes. I do.

40

"It wasn't mine. It was in an asthma puffer so 14 days' segro." Any recollection of listening to that phone call?---No, I don't but if there was contentious issues surrounding that inmate, I may well have elected to listen to a phone call just to keep on top of, of things that might be happening.

And would someone have suggested you listen to that phone call?---There's every chance that that could have been the case. However, I don't recall being asked to listen to it but generally I, I wouldn't have listened to a phone call unless I had a reason to or had been asked to.

All right. Can I take you to page 184 of the bundle, please. This is another call log, the same thing but for the second call. And you can see there from the top entry that you have listened to this call at 12.53pm. Do you see that?---On the 21<sup>st</sup>, yes.

Yes. So a couple of hours after, roughly after the call was made.---Right, yes.

The call being made at 10.41.---Right.

Why would you be listening to that phone call?---I can only assume I was asked to listen to it or maybe I elected to listen to it just to make sure that you know, we were okay, that there was nothing further added in relation to the incident, it was just possibly to keep on top of things.

10 Did you see him make the phone call?---Yes, at that stage we probably would have. He would have been put into the telephone cage in that part of the unit.

All right. And you can see the telephone cage from the officers' station?  
---Yes, you can.

And Mr ██████ in that phone call has denied that the contraband was his?  
---Was that on that last - - -

Yes. So I took you to it and I can take you to it again.---Yes.

20 On page 177 where he says - - -?---Oh, right, yes, I see that, yeah.

- - - "They raided my cell. It wasn't mine." Did you discuss that denial with anyone?---I don't remember talking about it to anybody. I may have mentioned it to Mr McMurtrie as the Intelligence officer, but I don't recall doing so. I can only assume I might have done that.

30 All right. And the fact that he is the second person to listen to that call according to the call log, that suggests that or confirms your suggestion that you might have mentioned it to him.---It's possibly right then, yes.

And then two other people have listened to it on the 21<sup>st</sup>, at least two other people, Mr Michael Watson, so he's the SOG man?---Yes, yep.

Is there any likelihood you would be speaking to him about this?---No, no.

What about Mr O'Shea?---No.

40 Was there any discussion, gossip, innuendo about whether or not a drug had been planted on Mr ██████ at this point?---I don't ever recall hearing anything to that effect.

If you heard – I'll go back a step. If you were aware that contraband was found on an inmate - - -?---Yes.

- - - and then the next day you heard them ringing up saying, "It wasn't mine" - - -?---That's not unusual.

But do you report that, do you tell someone about that denial?---If you listened to it and heard it, yes, you would.

And so who would you have told in relation to this?---Possibly Mr McMurtrie.

Would you record that event anywhere or it would just be an oral conversation?---No, it just, probably a phone call or if he was in the, he may have been in the area, I don't know, but it wasn't unusual to let him know.

10

Do you recall the drug search or sorry, I'll withdraw that. Do you recall a search taking place on 20 February?---Vaguely. I remember the IAT coming down to the cell and doing a search, which in itself wasn't unusual.

Could you see the search taking place from - - -?---No.

- - - the officers' station?---Not from the, you, you could tell someone was in there but not from the office, you can't see inside the cell.

20

Do you have any recollection of anyone going into the cell and bringing items out and putting them in the day room?---No, no. I could have seen that but I don't recall it.

Do you recall seeing any bin bags being placed against the wall?---No, but it wasn't unusual for bin bags to be in the day room. They were collected at various times during the day by the sweeper.

30

All right.---But sometimes inmates don't put their garbage out and if you're doing a search in a cell and it has garbage bags you'll put them outside the cell.

And inmates also sometimes keep their belongings in garbage bags or plastic bags?---Oh, they do but you can tell the difference.

Do you have any recollection of whether the - no, I'll withdraw that. I've got no further questions for this witness, Commissioner.

40

THE COMMISSIONER: One matter, Mr Lohse. We've heard some evidence that the abuse that happened over the knock-up with Mr O'Shea may have been over the fact that there was no television in cell 208. We've heard some evidence to that effect.---Right.

And we've also heard evidence that Mr [REDACTED] was taken to hospital on 19 February, but by the time he got back and returned to his cell later that day there was a television in the room, in the cell. Now, as a wing senior, can you explain how the telly may have got there?---No, Commissioner, I can't because I'm not aware of that.

All right. Would there be any record of the delivery of the TV to cell 208?  
---Not necessarily.

How is property managed within the gaol?---In that particular area we had our own televisions. It was to reduce the risk of contraband coming in and out of the wing, which was, you know, was foremost in our minds. We did have our own TVs.

10 Was there a property log which said, you know, if a television was moved into a particular cell?---Yes, yes. Generally it would be kept on a board. You'd say, "Inmate so-and-so, wing, TV," and so we could keep a track of who had what.

But it wasn't logged formally, say on a computer or anything like that?  
---Oh, no. No.

No. Does anyone have any questions of this witness?

20 MALE SPEAKER: Not me.

MALE SPEAKER: No, Commissioner.

THE COMMISSIONER: No. No. No. Is there any reason why this witness can't be excused?

MR DUGGAN: No, Commissioner.

30 THE COMMISSIONER: Thanks for coming today, Ms Lohse.---Thank you, Commissioner.

You're excused from your summons and you can go.---Thank you, Commissioner. Thank you.

**THE WITNESS EXCUSED** **[1.02pm]**

40 THE COMMISSIONER: So I propose to adjourn now and we then have Mr O'Shea, is that correct?

MR DUGGAN: Yes.

**LUNCHEON ADJOURNMENT** **[1.02pm]**