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INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

Reference: Operation E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 4 JUNE, 2018

AT 2.00PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Mr O'Shea, will you take an oath or an affirmation?

MR O'SHEA: I'll take an oath, Commissioner.

THE COMMISSIONER: Thank you. And a section 38 declaration?

MR WILLIS: Yes, please, Commissioner.

10

<JOHN WILLIAM O'SHEA, sworn

[2.05pm]

THE COMMISSIONER: Mr O'Shea, what's your full name?---John William O'Shea.

And your current occupation?---Correctional, sorry, I work for the Department of Corrective Services.

20

Your solicitor's asked for a section 38 declaration and no doubt he's explained to you what that means, but I just wanted to reiterate some of the things in terms of your rights here and your obligations. As a witness, Mr O'Shea, you must answers all questions truthfully and you must produce any item described in your summons or required by me to be produced. As I said, your solicitor has sought a declaration pursuant to section 38 of the Act. That has the effect that any answer you give or any item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first exception is that the section 38 declaration does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, most importantly an offence of giving false or misleading evidence. To give false or misleading evidence to the Commission involves a very serious offence, for which the penalty can be imprisonment for up to five years. The second exception applies to you because you are a New South Wales public official. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. Do you understand that?---Yes.

30

40

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

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

10

THE COMMISSIONER: Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner.

Mr O'Shea, can you please state your full name for the Commission.---John William O'Shea.

20 And how many years have you been working for Corrective Services, Mr O'Shea?---Approximately 27.

All right. And in 2014 you were the governor of Lithgow Correctional Centre?---Correct.

How long had you been in the position of governor at that point?---Acting and permanent probably over a period of four years, acting prior to being, I think I was appointed permanently in late 2012.

30 All right. And have you had experience in lots of different correctional centres or just Lithgow?---Kirkconnell, Bathurst, Oberon, Yetta Dhinnakal, Brewarrina, sorry, young offenders' prison, Lithgow, Western Security and a number of regional centres.

All right. And you'd be familiar with policies and protocols surrounding use of force on inmates?---Yes.

And at a very high level, as I understand those protocols and policies, force is to be used on inmates as a last resort?---Yes.

40 And an officer is to use the minimum force necessary in the situation? ---Minimum force required, yes.

Minimum force required. And officers are also trained in de-escalation techniques. Is that your understanding?---All officers, yes.

All officers. And IAT - - -?---Sorry, yes.

- - - probably have specialist training as well?---True.

Now, I want to ask you about Unit 5 in Lithgow Correctional Centre. As I understand it there were some problems with Unit 5 in the summer of 2013/2014. Is that right?---Correct.

And there had been a number of incidents?---Numerous.

10 What sort of incidents were there?---Staff assaults, inmate, inmate-on-inmate assaults, burning of, you know, cell, cell destruction, riotous behaviour between up to about 12 to 18 inmates, varying. I had numerous staff, sorry, I, I had a number of staff on sick leave/stress leave through that period. Very, very difficult centre area to manage.

And would inmates often yell out and kick doors and that sort of thing?
---That was a daily occurrence.

20 And when that happened, did they feed off each other?---They did. As we've heard you know, they, they, to communicate from cell to cell or from opposite wing to opposite wing, they have to kick up and, yeah, but that's in all, yeah. It's what they did.

So, each of the cells in that unit has a solid door?---Correct.

And so, even to talk to each other, they'd probably have to yell if they were - - -?---Yeah. When we're not there, not so much. It's a very echo-y building. But yeah.

30 Was there any discussion amongst the management staff of what to do about these problems at that time?---Numerous with myself and people outside of Lithgow as well, yes.

Discussions with, I assume, with your manager of security?---Yes.

And would that have included Mr Peebles when he wasn't off on another project?---Yeah, yeah. If he was in the chair at the time, yes.

40 Do you recall having discussions with Mr Peebles about that sort of things?
---Numerous conversations we've had, you know, off, off the cuff conversations about what's best. We've put business cases in, et cetera, to upgrade that area.

Now, I want to ask you some questions about Mr Walker. In February 2014 how well did you know Mr Walker?---Fairly well. I've known Terry for a number of years.

And that included in a working capacity?---Pardon?

That included in a working capacity?---In a working, professional capacity, yes.

So, you were familiar with his operational style?---Yes.

If I can put it that way. Would you say that around February 2014 he'd become a bit volatile?---No.

10 You wouldn't say that?---I, I think it's a period of time for Mr Walker, that's his, you know, he wasn't volatile just then and there, it's, yeah.

So, are you hesitating because you don't think he became volatile in February? He'd been volatile from time to time leading up to that? Is that - -?---Terry had some health issues as we are well aware.

20 And in terms of February 2014 what issues with Mr Walker were you aware of?---Paranoia from other staff, sorry, regarding other staff. A pretty bad divorce, ugly divorce. I think it may have been bankruptcy around then, or it may have been later, I, I can't recall. There was, he was estranged from his son and daughter at some point as well, due to external issues.

So, you've indicated a number of key stressors. How did they manifest themselves at work?---Terry would get the shits, if you will, and sometimes throw his keys or you'd heard about it later on, "Terry walked out today." And usually walked away from staff or whatever was going on at that time in his life.

Or sometimes went home early from work?---That's what I meant.

30 Just walked out?---Like he's hung his keys and gone home, sorry, yeah.

So does that indicate that there was a temperament issue?---A [REDACTED] issue, yes.

Right. So it wasn't just a short fuse?---Oh, yeah, yeah, yeah, that's part of it.

40 Right. So he had some [REDACTED] issues and sometimes they manifested themselves in short fuse activity where he's had enough, couldn't - -? ---Couldn't cope.

His temperament couldn't deal with it so he just walked out. What about in those situations where he stayed, did you see it manifest itself in other ways, that stress?---I wasn't really on the ground there so I didn't see, I only heard about it after the event.

So what sort of things did you hear about?---Terry abused so-and-so or Terry cracked the shits today and that sort of stuff.

All right. You were aware that at this time he was on the IAT?---Yes.

And more often than not was the SCO on that team?---Yeah.

When he was at work.---Yeah.

10 Did you have any concerns about him performing that role as the senior officer?---No. Terry had a lot of experience dealing with segregated inmates, he was in 5.2 in that area, we had good staff in and around Terry, Mr Duncan and Mr Graf who had a good relationship with Terry, yeah.

Is it fair to say when he was the senior they would have deferred to him? ---They would have spoke with him, yes.

20 Did you have any concerns with Mr Walker's ability to de-escalate a situation?---He's someone that I wouldn't sent in to de-escalate, but on the flip side of that, he is very, has been very good with talking inmates down from self-harm or inciting others in the past as well. It can go both ways with Terry.

30 I'll ask you a question again. You just gave an answer there that was, "Terry wasn't someone I would send in to de-escalate a situation." Did that give you concerns that he was the senior officer of the IAT?---No, because I think we all had enough people around Terry, as in managers, whether it be through MOS, through a sector manager or through AS or just people in the wing, and the two people, the two, sorry, officers that were rostered with Terry on the day, Terry was good but he'd have a bad day every now and then.

All right. And so I gather from that, that you were aware of his temperament and [REDACTED] issues, but that the idea was that with other experienced officers there, that they would bring him into line from time to time. Is that - - -?---And I think that was the best way to manage Terry. We had him, we rotated him to other areas around the gaol after this event, to gate, reception, control room, et cetera, yeah.

40 Can I show you Exhibit 86, please. Now, this is an email chain that you're not a part of.---Yep.

And you can see from the top email there that it suggests Mr Peebles was the acting general manager.---Yeah.

Was that a day off or was there a period - - -?---For me?

Yes. Do you recall?---I may have been in Sydney, I may have been on annual leave, I, I could have been at meetings. I also have another gaol to run as well.

Right, as part of the cluster?---So, that's correct.

So, on this, in this particular email chain, Mr Walker is raising some issues. Now, I assume you didn't see this email?---No. Oh sorry, I did earlier, I've been here for the whole two weeks. Yeah.

Yes, of course. But at the time?---No. I, I can't recall this email.

10 Do you recall Mr Walker expressing a sentiment along the lines of, "I fear someone will be hurt and I do not want this to happen"?---No. I, no.

Do you remember having any meetings with Mr Walker or Mr Peebles about his operational style or whether people had lost faith in him?---I think, well, I've probably had several, not meetings as such, conversations with Mr Walker but that's just to calm him down, you know, to relax Terry, "No one's out to get you. Get on with business." It's not so much a meeting as such, it's a, trying to reassure him of his worth.

20 And that's part of the paranoia, I assume, you were referring to earlier?
---Sorry, yes. I was nodding, sorry,

That's all right. Now, you're obviously here to answer questions about 19 February, 2014 and there's been some evidence that you were down in Unit 5 on that day. Is that your recollection?---Yeah. From when Mr Grainger come and interviewed me in, I think it was mid-January this year, I, I did say I was down there. From being here the last two weeks, you know, there's things or statements or evidence been produced that had twigged my memory and in, in areas, yeah.

30 Do you have any recollection as to why you were in Unit 5?---It would have been a walkthrough. Every week or two weeks, you know, I would go, go and do a walkthrough of a centre. It may only be one particular area or if I need to see a teacher or something. It's just a walkthrough.

And do you recall anyone being with you on that day?---Only Mr Peebles when I, going down there. Yeah.

40 Do you have any recollection as to why Mr Peebles would have been with you on that day?---I probably grabbed him and said, "Come for a walk. Come and get out of the office," or, "I'm going into 5 Unit." We often did that together as, as a manager of security and a governor. Due to that link, we try not to see them separately because they use us against each other. Yeah.

And you're aware now, I assume, that Mr Peebles was not in the role as manager of security on that day?---Yes.

But do I assume from what you've said that you took him because he was usually the manager of security?---He, he was, I don't even know where I run into him. You know, it may have been up at the, the office or just walking down the stairs, going for a walk. I can't recall.

And do I assume from that that's something you often did together, the two of you, a walkthrough?---Yeah. Not every day or anything, no. Fortnightly, weekly.

10 Now, when you were down in Unit 5, do you recall being in the officers' station and hearing a knock-up call?---Yes.

And you obviously know what I'm talking about when I say knock-up call?---Yes.

And was there anyone else in the officers' station when the call came in?---I can only recall Brad and I in there at that stage.

20 And did you answer the call?---I tried to. The, the photo you showed the other day of the 5.1 Unit office, which was the intercom, little intercom machine thingamabob, that wasn't the same one that was there in 2014. It was obviously a lot older but very similar.

It's been suggested you're not particularly computer savvy or technology savvy. Is that a fair statement?---Fair statement.

30 I'll just take you to Exhibit 51 if I may so we can deal with this issue. And page 4 is open on the screen, and so on the right-hand of the desk is a grey knock-up system.---Correct.

And so your evidence is - - -?---It was, it was something similar to that, but I think from memory, and it may be completely wrong, there was a little silver box behind it where that or something similar sat on and the knock-up would come in and there would be a green light or something would flash up and the, I would have been trying to answer it on that little hand gadget, whatever.

So there was a console and intercom?---Yeah, if you will, yeah.

40 And was it in 2014 did it display a video image or was it just voice?---No, voice.

And did it tell you what cell, pardon me, I withdraw that. Did it tell you what cell the call was coming from?---From memory I think it did have like a, like cell 208 or 209 or - - -

All right.---I can't give you a hundred per cent but that's from best of my recollection.

Yeah.---I rarely used it.

And one would expect that because these were usually used for emergency calls?---Correct.

And if someone said, to use a silly example, I'm dying, you'd want to know what cell they were in.---Totally.

10 And so when the green light flashed, you answered, did you?---Yes.

And what do you recall being said to you?---Oh, it was just a normal, I didn't, they obviously didn't know who the, I was, you know, because you don't know who you're speaking to but they were just going off, abusing and saying, "Get us a fuckin' TV in here, what's going on, where's lock-in, why aren't we let go?" Just normal stuff like that.

All right. And you'd heard that sort of stuff before I assume?---Every day.

20 And you'd have a pretty thick skin about that sort of stuff I assume?---Yes, correct, sorry, yes.

And did you say back to the inmate, "Do you know who you're talking to, you're talking to the pippin," or something like that?---I would not have used those words.

Are you talking about the word pippin or you just - - ?---The word pippin.

30 Is it possible you said, "Do you know who you're talking to, you're talking to the governor?"---Possible. I don't think there's a need to.

But I think you just indicated that the inmate wouldn't have known who they were speaking to, you accept that?---Totally.

And usually when you hit the knock-up button, unless you're getting you or Mr Peebles on your weekly or fortnightly rounds, you're likely to get the wing officer or something like that?---You get a control room officer or the wing officers in that wing.

40 So it'll usually ring in the officers' station but if it's not answered within a particular time, it might go to the control room. Is that - - ?---I think, I think that, yes.

So you'd probably get the wing officer or maybe someone in control?
---Correct.

But this inmate wouldn't have known who had answered it?---No.

And so I suggest you were clarifying that by saying, "Do you know who you're talking to, you're talking to the governor?"---I can't recall. Possibly, yes.

Now, did the cell number come up, do you recall?---I think so. I'm not a hundred per cent sure but I think so and that, yeah.

Did you recognise the inmate's voice?---Negative.

10 Were you aware that, no, I withdraw that. Do you remember how the intercom conversation terminated?---Probably just on more abuse and me trying to fumble around and work the buttons to tell you the truth.

Right. Now, you went down to the cell door after this, didn't you?
---I believe so. I think I did. I think I did with Mr Taylor to identify the cell door.

THE COMMISSIONER: To do what, sorry?---Identify the -- sorry, the names on the cell door.

20

Why did you need to do that?---So I could work out what cell it was coming from.

But wouldn't that have shown up on the knock-up?---That's what I'm saying, I wanted to identify the names on the cell door, Commissioner, sorry.

MR DUGGAN: So, the intercom call comes in, doesn't identify the names but identifies the number of the cell?---Yeah. But I think on the board the names are written down alongside of their cell as well.

30

So the intercom doesn't tell you but you go down to the cell, and if we look at Exhibit 51, page 10, so it looks as though cell 208 is empty when this was taken but that little silver box under the cell number, that would usually contain the inmate's - - -?---Inmate's call cards.

And so you went down there and saw that, I assume, that there was a Mr [REDACTED] and a Mr [REDACTED] in the cell. Is that a fair assumption?---Correct.

40 And you mentioned Mr Taylor a moment ago. Do you have a recollection of Mr Taylor being there at that point?---I have, after hearing, you know, what I've heard in the last, I accept that I was in the, in the 5.1. I do recall speaking to Mr Taylor outside in that day room. So I think somewhere in that day room. I can't tell you where. Yeah.

But it's not an enormous room. You had a conversation with him in the day room somewhere.---No, it's as long as this. It's not big.

And was Mr Peebles in the officers' station when the call came in?---With me.

Yes.---Yes.

Do you have any recollection as to whether he then went into the day room after you or before you?---I, I would have walked in. I have heard evidence here that he walked in after me but I can't recall. I wasn't focussed on Mr Peebles.

10

Now, did you see Mr Turton and Ms Lohse walking through the day room at any point?---No.

You don't have a recollection of that?---I, I've tried to. I honestly cannot recall.

And you went down to the cell door, you said, to check the names?---To identify, yeah.

20

And then you had an exchange with one or both of the inmates inside of the cell?---Yeah, yeah. Who, I wouldn't even know which one it was, but yeah.

You gave some evidence a moment ago that the inmate who called up on the knock-up system was, I'm not sure the word you used, but was complaining at least?---Say it again, sorry?

Complaining at least?---I was complaining?

30

No, no, no. The inmate who called in on the intercom was complaining about a TV and other things?---Yeah, yeah.

And there was, they were getting fairly heated, is that a fair description? ---Very aggressive.

Aggressive.---Verbally, and kicking cell doors, et cetera.

And so you went down to the cell door and that continued?---Yes.

40

And do you remember what was being said from inside the cell?---Just being called, "You dog," and, "Give us a fuckin' TV or let us out." Not exact words.

But again, it was verbally aggressive things being said?---Yeah, yeah.

And you looked up and identified who was in the cell?---Possibly, yes.

THE COMMISSIONER: When you say possibly, I thought your evidence a little while ago was that was the very reason you went down there?---Yeah,

yeah. I, I knew who was in the cell. I didn't, I'm not looking at the cell names to work out which one's abusing me. I, I can't recall, I didn't even know until Mr Grainger interviewed me, I thought it was another [REDACTED] in that cell, not [REDACTED] [REDACTED]

MR DUGGAN: But I thought your evidence was you knew the cell from which the intercom call had come from.---Yes.

10 You didn't recognise the voice and you went down to the cell to check who was in it?---Yeah. I didn't open the cell. I'm looking at the cell cards.

The silver box that I took you to a moment ago.---The cards, yeah. The cell cards.

The cell card.

20 THE COMMISSIONER: Why was that necessary? I'm still having difficulty understanding why it would be necessary for you to do that. ---Because I was going to talk to Mr Taylor about bringing those guys out, seeing what their issues is and, and sort it out because - - -

Why did you have to know their names?---Just so I know inmate [REDACTED] or inmate [REDACTED] or inmate [REDACTED] I just, I didn't have to know their names, it was just something that I - - -

Well, it was pretty irrelevant, wasn't it, what their names were?---Oh, not necessarily.

30 Well, what was it relevant to?---Knowing who was there.

Very well.

MR DUGGAN: Did you have a high familiarity with the inmates such as you would know them from their name?---I actually got this [REDACTED] mixed up, I thought it was another one.

40 You thought it was another one.---As in the other young fellow [REDACTED] probably just his name, that's about it. Not those two particular inmates, a great knowledge of.

And was the cell door open at this point when you were hearing the kicking the door and - - -?---No.

No. So it was, I don't want to put words in your mouth but the door was closed and you said there was kicking at the door, so they were kicking the bottom of the door or something, were they, or someone was?---Yeah, it was, yeah, just kicking and yelling and screaming.

And you couldn't see which inmate?---Negative.

Did you look through the flap?---I, I, I don't think I did, no.

All right. And I want to suggest that when the inmate was saying some aggressive things that you responded.---I would have.

And the exchange between the two of you became heated.---It would have been me yelling.

10

Yes. And you said, "You're a smart cunt, [REDACTED] you won't be smart in a minute." Do you accept that?---I can't recall those words, no, not like that.

THE COMMISSIONER: Do you deny you said that?---No, I'm not denying I said that, I said I can't, I'm not exactly sure what the words I would have used.

MR DUGGAN: But you recall that there was yelling?---Yes.

20

And you weren't particularly happy at this point, can I suggest?---I didn't want it to incite other inmates and kick it off again, kick the wing off and incite inmates.

Because that had been a real problem obviously over the summer.---Oh, it, yes.

30

And I think you said a moment ago that you wanted the inmate to be taken out of the cell. Was that your evidence?---No. I said I wanted them to get them out to sort out what their problem was, whether it was a TV, whether it was whatever. I don't know, that's up to other people to sort out and talk to and find out what their issue is.

Well, for that purpose, was IAT summoned?---They were called.

40

And how did that come about?---I, I thought I may have but then in here, I may have said to Mr Taylor to get, or he may have called IAT. I can't actually recall now how they actually got called. When Paul come and interviewed me, sorry, Mr Grainger come and interviewed me, I thought it may have been me, but it was four and a, sorry, over four years ago and I've been to 3,000 cells since.

But someone radioed IAT. Do you accept that?---Yeah, I accept that.

Is it likely that you would have radioed IAT?---I have other people for that.

Right. So do you recall asking someone like Mr Taylor to radio for IAT? ---If he was there, yes, it would have been Mr Taylor.

All right. But you accept that IAT was radioed by somebody?---Totally.

Is the bit that you're not particularly clear on is exactly who made the call?
---I've heard everyone say Mr Taylor, Mr Taylor, and I'm trying to recreate it or put it in my mind and go back the best I can. The best of my recollection now is that I've said to Mr Taylor, "Find out what's going on, sort this out." And I presumed he would call the IAT from there.

10 Right. So you don't have a recollection one way or the other as to whether you said, "Call IAT?"---No, I can't answer that. I don't know if, I cannot say yes I did or no I didn't. I thought it may have been Mr Taylor now.

Yes. Okay. But you certainly don't deny giving a direction for IAT to be called?---It wasn't a direction. I think I said there's other staff here, see what's going on, if they're not busy get IAT down here, sorry, if they're busy, get IAT down here, like Ms Jane and her crew.

20 All right. I don't mean to be too formal in the language, so your recollection is you said, "Get IAT down here." You said something else before that but the bit I'm focussing on is you said, "Get IAT down here," ---?---Yeah.

--- to someone?---Yeah.

And IAT came down, I assume?---Yes. Yes, sorry. Yeah.

30 And you were present when they came in?---I, I cannot remember talking to anyone except for Steve Taylor, and I think Terry Walker I saw come in. The rest, I wouldn't even know who they were.

But I'm not suggesting you spoke to them all. You have a recollection of IAT being there in the day room?---Yes. Okay, yeah.

Well, particularly Mr Walker? You recall him being there?---Yeah, yeah, he's the only one.

40 And you told Mr Walker, or someone else told Mr Walker in your presence, to sort it out or sort them out.---My focus would have been on Mr Taylor. It would have been, "Steve, these blokes are kicking on. Don't want them to kick off the wing. Get them out and see what's going on. Sort it out. See what their problem is."

Now, Unit 5 holds some segregation inmates.---Yes.

Some violent offenders.---Yes.

But not everybody in Unit 5 is necessarily someone on the violent offenders' program?---That's correct.

So some inmates in Unit 5 might be on protection, for example?---Yes.

But some of them might be highly violent offenders.---Yeah. They may be just on protection in that area whilst they're in Lithgow Correctional Centre or that centre, as we've heard through other requirements, yeah.

10 So were you aware whether or not Mr [REDACTED] or Mr [REDACTED] would have been in their cell as highly violent offenders or on protection or some other reason?---I've seen the evidence come through that he was on an LA order, PRLA, I think, from memory. It was on the screen the other day, last week. So that's, that's young [REDACTED]. He was obviously on an LA, and then while he was at Lithgow pending his transfer back to Metro Centre.

So LA is limited association?---Limited association, yes.

20 And so that wouldn't suggest necessarily that he was a violent offender? Is that a fair statement?---It's a statement. But we've also had LAs that are violent offenders.

So sometimes you might put someone on an LA because they're violent or they might be the subject of violence?---That's a possibility.

It doesn't indicate either way, is the - - -?---(No Audible Reply)

No. But did you have any understanding of why [REDACTED] was in the cell simply by looking at his card or - - -?---No. Not that I can recall.

30 And so you had some recollection of Mr Walker being there of IAT. What about Mr Graf or Mr Duncan?---No, my focus would have been on Mr Taylor.

And are you saying that because he's your second-in-charge on the day? ---Yes. Yes.

40 And so your operational style was, in that sense, to work out what the issue was, and if anything needed to be done you'd communicate it through Mr Taylor?---He'd go, "Go and do that," and I'll, it was, at that stage it was, I believed, a "Sort that out and away you go." It was a nothing issue.

It was a nothing issue?---Sorry, then. I'm talking about then, when I was focused on Mr Taylor, yes.

So at that point it's a nothing issue and then you've got – you accept there were three IAT there who turned up?---There would have been. I accept that now, yes.

They work in teams, usually, of three?---That's correct, that's, yes.

Do you recall an SOG officer and a German shepherd attending it?---Mr Watson?

Yes.---No. I don't recall him being there. I accept it now after the evidence. At that time, no.

What about two IAT-trained officers, Mr Cameron Watson and Mr Wes Duffy?---At the time, no. I accept it now after evidence.

10

Is it fair to say that you were aware there were a number of people in the room but you just didn't really look around to clock everybody or - - -?
---Totally.

But you were aware that there was a certain group there?---My focus was on Mr Taylor.

Well, you weren't standing there staring at him the whole time, were you?
---No. It happens like that. Things, you know, I was talking to Mr Taylor and saying, "Listen, this is what's going on," blah, blah, blah, giving him my version and walked off.

20

And as I understand it, IAT were called in to, I think you said, to take one of the inmates out of the cell and sort it out or work it out, or - - -?---I didn't tell IAT to go and take the inmate out and sort it out.

You didn't - - -?---I said to Mr Taylor, "Find out what the issue is, get them out of the cell and sort it out."

30 What I'm suggesting to you is that's why IAT were called.---Yes.

They certainly weren't called to search for buprenorphine for example?
---Correct.

Now, you've described having an exchange with an inmate over the intercom which was heated.---Yes.

And also, can I suggest the exchange through the door, which was heated?
---Correct.

40

And can I suggest that it also would have been loud if the cell door was shut at that point?---Correct.

Because the sound is travelling through the grille above the door?---Correct. Sorry, sorry.

That's all right. Which is covered by a gutter or, if I can describe it that way?---Yes.

Which catches water if you try and throw it from inside the cell.---I think from memory, not, back in that wing back then, not all those cells, I think if you go back into one of your photos, and I, I, with a lot of, some of those cells down that side didn't have the catcher, if you will, on the outside of it until after that event, after the Christmas event. We put them in at a later date.

10 So, they may not have been there but you're yelling - - -?---You have to project up, yes.

You're yelling up into the grille, I assume?---Yes.

And I want to suggest that those two exchanges, the intercom exchange and the exchange through the grille, undermined your authority?---Yes.

Because you're the governor and he is an inmate yelling abuse at you, you accept that?---I accept that.

20 And that was a problem, wasn't it, because discipline was an issue in this unit. Do you accept that?---I accept discipline was an issue in that unit.

Yes. But someone abusing the governor, the boss of the centre, was a disciplinary issue if other inmates heard that. Do you accept that?---Oh, that happened daily, weekly in that particular area especially. That wasn't a, that's, that did not, no, that, the governor being abused, I was abused a fair bit.

30 Well, you say that you were only in this unit weekly or fortnightly.---That's correct. Other than Christmas, I was nearly in there every day.

Well, I'm not sure that was clear from your evidence a moment ago, but in any event I want to suggest that an inmate yelling abuse at the governor undermined not just your authority but general authority within the unit. Do you accept that?---Not necessarily of that unit.

Well, discipline had been a problem all summer, hadn't it?---Historically, discipline was a problem in there.

40 Yes. But from what I gather from your evidence, this particular summer was even worse, is that fair?---That's fair.

And here was someone again undermining the authority of correctional officers, in particular the highest correctional officer at the centre, yelling abuse at them.---I'm thick, thick-skinned.

And I'm not suggesting that you were taking personal offence, what I'm suggesting to you is that this undermined your authority in the centre. That

was the issue. Do you accept that?---No. I think we all, we all have abuse hurled at us or, no matter what rank we are, throughout the system. But does it sit well this you? It, it's up to the individual. It's, if it was a staff member doing it, different scenario. We're talking about inmates.

Make no mistake, I'm not suggesting that you were personally affronted, what I'm suggesting to you is that this exchange, these two exchanges, the first one over the intercom and the second one through the door, was a disciplinary issue because it undermined your authority.---No.

10

Do you reject that proposition?---I reject that. My, my side of that is I wanted it to stop escalating, so sorry, I wanted it to stop so it wouldn't escalate or kick off the, when I say kick off, I mean incite the other inmates in and around there to go on with abuse and kicking and start anything up again.

Precisely. It was a disciplinary issue, wasn't it? You didn't want it to start a fire, metaphorically.---Metaphorically. Ah, a disciplinary issue? It was an issue that needed to be sorted, to calm down.

20

And you wanted this inmate or both inmates out of the cell to put them on show, didn't you?---Not on show, no.

Do you know what I mean by the phrase, "on show?"---I, I, in front of other inmates or staff?

Yes. You wanted to give this inmate a dressing down so that others could hear it, to instil discipline in the unit, didn't you?---No, I did not do that. I left that area before the inmate was out of the cell.

30

But that was, we'll get to that in a moment, but that was the purpose of you calling IAT, wasn't it?---No, for them to deal with it or the managers to deal with it.

Well, I want to suggest to you that the purpose was to teach this inmate a lesson. Do you accept that?---No.

40

Well, it certainly wasn't a situation which required three IAT officers, two IAT-trained officers and one Security Operations Group personnel with their German Shepherd. It didn't require that, did it?---No.

And I want to suggest that that's using a hammer to crack a walnut, if I can use that analogy.---Say that again sorry?

The particular problem was an inmate shouting some abuse.---Yes.

And that that sort of heavy artillery is getting a hammer to crack a walnut. Have you heard that expression?---Yeah, I have heard that expression. Sorry, I didn't hear you first time, I didn't hear what you said, sorry.

Do you accept that?---There was no need for all those people there at all.

No.

10 THE COMMISSIONER: Well, how was it that they got there?---(No Audible Reply)

How was it that they got there?---From what I've heard, Commissioner, they were up at the, or on their way back down from the 3 Unit and just responded or followed IAT. I'm not real sure how they got there, I never asked anyone for all of that to come.

Very well.

20 MR DUGGAN: But you may have asked Mr Taylor to get them there?
---You mean the extras or IAT?

IAT.---IAT, yes. Not the extra staff, no.

But why were they even necessary at all if the door was shut and there was no suggestion of self-harm or the inmates harming each other?---Because they were inciting or starting to incite other inmates in that particular area.

30 Now, IAT turned up and some others turned up, presumably IAT needed to know what they were being called there for. Is that a fair statement?
---Yeah.

Do you recall having any discussions with Mr Walker?---No.

Were you present for any discussions in which Mr Walker was told what they were there for?---I may have been there. I can't recall if I was there when Mr Taylor said to Mr Walker what I told Mr Taylor. I presume I would have still been there when Mr Taylor spoke to Terry.

40 And it was communicated to Mr Walker that someone needed to go down to the cell and sort it out. Is that a fair - - -?---Yeah, sort out the issue, see what it is.

Right. Do you recall Mr Walker being given any other operational parameters?---Not that I recall.

And so he was told that - I withdraw that. Do you recall where he was told that?---The day room door there, near the officers' station or somewhere around there. I'm not real sure.

And so he received that instruction and, what, he turned on his heel and went down towards the cell, did he?---I wasn't focused on, I, I, sorry, I don't know where Mr Walker went. I was, I was talking to Mr Taylor. I was focused on Mr Taylor.

When IAT was down near the door I assume someone told the cell, the relevant cell. Do you have any recollection of that?---I don't know if Mr Taylor, I, I can't recall exactly what was said by Mr Taylor.

10

But can I - - -?---The cell would have been identified.

Presumably by Mr Taylor.---Presumably.

Either the number or second-last door on the right.---Yeah. Yeah. Pointing to the board or the number or pointing to the cell door.

But you don't recall exactly how?---No, I don't.

20

Now, do you have any recollection of IAT forming up outside the cell door?---No.

Can I suggest that when they were formed up and just about to go into the cell that you were down in a part of the day room just in front of the cell? Does that accord with your recollection?---It's a possibility. I can't recall exactly where I was.

Do you recall Mr Taylor standing next to you near the cell at any point? ---Before, while the door was shut, yes.

30

What about when the door was open? Do you have any recollection of that?---No. I, I don't think I was there when the door opened.

THE COMMISSIONER: Where were you?---Walking out the day room. Mr Peebles or, like, was in the officers' station and beckoned to me, like a wave, if you will. And I just, there was no need for me to be there.

40

MR DUGGAN: Mr Peebles beckoned to you? Was that - - -?---Something like that. He was, I think from memory he was in the officers' station and he, like, waved or said, "Come on," or whatever.

Well, that was because things started to go a little pear-shaped. Do you accept that?---No. I don't think the cell had been opened prior to my leaving.

If I can take you to Exhibit 78, please. Do you recognise that as a plan of Unit 5?---Yes. Ah hmm.

And you can see there cell 208 has been highlighted.---Ah hmm.

And do you see the red cross?---Yes.

I want to suggest to you that at some point after the door was opened you were standing where that red cross is. Do you accept that?---No, I don't recall standing right there.

10 Do you deny it?---Deny that I was there?

Do you deny that you were standing there at some point after the cell door had been opened and IAT had gone into the cell?---I don't recall being there while the cell was opened, no.

But are you denying that you were standing in that position after the door had been opened?---In that position, yes.

20 So it's not a case of not having any recollection. You deny it.---I was not present when the cell door was opened.

Well, I want to suggest you were and that Mr Taylor was standing next to you. I assume you'd deny that?---Right there where that cross is?

Yes.---I was not there when a cell door was opened.

THE COMMISSIONER: Mr Duggan, it might be useful if we get this witness to mark on either that plan or another plan where he says he was.

30 MR DUGGAN: Yes.

THE WITNESS: Commissioner, if it helps, yeah, I could possibly point or, yeah.

MR DUGGAN: Well, yes.

THE COMMISSIONER: Perhaps in a blue pen. Or a black. I've got a black here.

40 MR DUGGAN: What I'm going to do, this is actually a blank one. It's not ---

THE COMMISSIONER: That's okay.

MR DUGGAN: - - - it's not the one onscreen.

THE COMMISSIONER: That's okay.

MR DUGGAN: What I might do again, just for the transcript, is highlight cell 208 in green just so that it's obvious what we're talking about.

So are you able to mark on this map where you were when the cell door was open?---I've drawn the arrow there. It was in that vicinity. I cannot tell you exactly what cell I was outside. I was - - -

10 So, there's a double-headed arrow in that exhibit or document. And just to clarify, you're not suggesting that you were moving between those points, you're just suggesting that you were standing somewhere in that area?---In that area or on my way out.

I tender that document, Commissioner.

THE COMMISSIONER: Thank you. Can I just have a quick look? Thank you. That can be Exhibit 88.

20 **#EXH-088 – MAP OF 5 UNIT AT LITHGOW CORRECTIONAL CENTRE HIGHLIGHTED BY COUNSEL ASSISTING TO IDENTIFY ROOM 208 & MARKED WITH A DOUBLE-HEADED ARROW BY JOHN O'SHEA TO IDENTIFY HIS LOCATION**

MR DUGGAN: So, you were certainly in the day room when the cell door was opened?---On my way out, yes.

30 Well, how do you know the cell door was opened?---You could hear doors opened.

Well, you could also hear, I assume, the scuffle inside the cell?---No.

Why not?---Everything is loud and banging and I was on my way out. It takes me four seconds, five seconds to get into the officers' station and gone.

Well, I want to suggest to you that IAT went into the cell and Mr Walker struck Mr [REDACTED] Did you see that?---No.

40 What about Mr Walker having his hand on the throat of Mr [REDACTED] No.

Well, Mr Taylor says that he was standing next to you and he saw those things. Have you got any explanation for that?---No. I did not see Mr, I didn't even see Mr Walker enter the cell.

MR HARRIS: Commissioner, I object to that, just in relation to Mr Taylor. I don't think his evidence was he saw Mr Walker being, Mr [REDACTED] being

struck. His evidence was, I thought, that he saw him up against the wall at the back of the cell.

THE COMMISSIONER: You might be right, Mr Harris. I just can't precisely recall.

MR HARRIS: It might be an opportunity, Counsel Assisting, to put the question again? Thank you.

10 MR DUGGAN: Thank you. I didn't intend to conflate that piece of evidence. Mr Walker gives evidence that he struck the inmate. What Mr Taylor gives evidence about is looking into the cell and he would see Mr Walker had the inmate up behind the toilet and had his hand around the throat area.

THE COMMISSIONER: That's right.

MR HARRIS: Yes, Thank you.

20 MR DUGGAN: Now, on Exhibit 78, Mr Taylor's evidence is that, when he could see that, you were standing where the red cross is. And I want to suggest to you that you also would have seen, from that vantage point, Mr Walker with his hand on the throat area of the inmate. Do you deny that? ---No. I did not see that at all.

And I want to suggest that after IAT entered the cell, the physical use of force was almost immediate upon entry.---From evidence here that we've seen or heard, it happened within seconds after entering.

30 And even if you didn't see it, I want to suggest that you would have at least heard a scuffle inside the cell.---Not necessarily, no.

THE COMMISSIONER: What does that mean?---Sorry, to me?

Yes. "Not necessarily", what does that mean?---Well, I could, I, there could have been radio calls going on. There could have been the dog barking. There could have been people, you know, like, sorry, noise.

40 Or there could have been a scuffle that you heard in the cell.---Possibly. Not from down that end by the time you get to the officers' station, Commissioner, because you've got both sides of the wing coming at you there.

Very well.

MR DUGGAN: Now, Mr Elliott Duncan, he's a pretty big man, you'd accept that?---Yes.

With his vest on he's over 130 kilos?---Yes.

Well, he came into the cell and landed on top of Mr Wes Duffy and the inmate and Mr Walker. Did you hear that evidence?---Yes.

Or he at least landed on at least one of them. I want to suggest that you would have heard that.---No.

10 You would have heard shouting between Mr Walker and the inmate.---Not once I get down there, no. It's, you're, no. Not once you're down the hallway. You, you can't hear individual shouting or, or voices.

We might just get the most recent – can I ask Exhibit 88 to be on the screen, please. So you say you were there or thereabouts, where the double-headed arrow is?---Yeah, correct.

When the cell door was opened.---Best of my recollection, yes.

20 Can I get Exhibit 51 up, please, at page 8. So see there on the left-hand side of the picture you can see cell 209?---Yes.

So cell 208 is just out of shot.---Yes.

So it looks as though you've placed yourself somewhere around the end of the carpet. Is that - - -?---Probably from around, yeah, the, the last cell on the, as you're looking at the picture on the left-hand side there, and to the carpet, yeah, to the lino, sorry, yeah.

30 But before the phone cage.---Yeah.

It's not a particularly large room, the day room, is it?---Oh, the day room's probably, yeah, from yourself to the back wall.

And there's nothing usually in the day room apart from maybe a chair and a desk or - - -?---Chair and a desk and a fridge, maybe.

40 I want to suggest to you that if you didn't see anything going on inside the cell, you at least heard it, and that's why you left the day room. Do you accept that?---No.

When did you become aware that Mr [REDACTED] had suffered an injury?---It may have been, I'm trying to recall, later on that afternoon. Someone could have told me that a 24 had gone out.

Did you ever, did you go back to – sorry, I withdraw that. Did you stay in Unit 5 after you left the day room?---To the best of my recollection I walked straight down to 5.2 and out, out into the compound to the rest of the centre and back to my office, or around the gaol somewhere.

Did I understand your evidence earlier to convey the impression that you were concerned that this incident might spark the other inmates off?
---Yes.

Did it?---Did it spark the other inmates off?

Yes?---Not, not to my knowledge, I was never told of any incident after that.

10

Did you speak to anyone to see if there was any resolution to the problem about the television or what they really wanted?---I was, no, I didn't. I was preoccupied the numbers, excess numbers, talking to different unions, teachers' unions with, you know, in and out of Mr Peebles' area there in the conference room, no.

Did you ever, sorry, did you return to Unit 5 and speak to a nurse at any point?---Not that I can recall.

20

Did you ever express any reluctance to any nurse about, or anyone else about [REDACTED] going to hospital?---Reluctance? What, sorry?

Did you suggest to anyone that Mr [REDACTED] didn't really need to go to hospital or did you - - -?---No.

- - - express some reluctance - - -?---No.

- - - that he was going?---No.

30

Now, just getting back to the sort it out or sort them out, which was passed on by Mr Taylor. You recall that evidence a moment ago?---(No Audible Reply)

How would Mr Walker have known what that cryptic instruction meant?
---I don't know. I presume Mr Taylor would have, or someone would have said I'd been abused.

But weren't you present when, and I think you've said a number of times your focus was on Mr Taylor.---Yeah.

40

Weren't you present when Mr Taylor was communicating with Mr Walker?
---Yeah, I think, yeah, I was, yeah, I'm pretty sure I was.

So you have some recollection of Mr Walker being told about abuse over the knock-up. Is that - - -?---Yeah. I can't remember exactly what was said but I presume it would have been.

And that was the issue as far as you understood it to be sorted out?

---Well - - -

That was the issue to be sorted out?---Find out what the problem is, yes, sort it out.

10 You've just said that there would have been a communication about the abuse on the knock-up, and what I want to suggest is that that was the problem as you saw it, not as the inmate saw it, but as you saw it?---No, no, no, that, my issue was, as I've said, to stop inciting so there wouldn't be any kicking up of the rest of the wing.

You didn't take it personally but you just couldn't have an inmate doing that. Is that a fair position?---I didn't take it personally, it happens regularly, it happened regularly in that area.

But you wanted to knock it on the head in Unit 5 on that particular occasion. ---I didn't want anything to escalate on that particular occasion.

20 Did you have any concerns that Mr Walker's operational style might not quite fit this situation?---No, I didn't think it was a situation, it was a find out what the problem is and away you go.

Well, you had an inmate abusing you.---Yeah.

And IAT were all geared up, going into a cell.---When you say all geared up, that's their normal uniform. That's how they, they don that uniform daily.

30 I accept that. But it was not just a regular officer going into the cell, it was IAT.---In that particular area we, IAT were generally there.

For protection inmates?---Pardon?

To remove protection inmates from cells?---Remove protection inmates?

So non-violent - - -?---His classification is irrelevant.

So irrelevant to what?---His actions.

40 You mean the verbal abuse?---Inciting.

All right. Now, you came to learn at some point that there was a use of force. Do you accept - - -?---Yes.

And I want to suggest you knew about the use of force immediately because you either saw or heard it.---Not immediately. I didn't know. I got on with my day.

But on your version you would have at least become aware of some use of force when you saw a use-of-force package.---Yeah, I didn't see the package on that day but I was made aware there was a use-of-force package in progress.

And who made you aware of the use of force?---My best recollection would have been Mr Taylor.

10 And what did he communicate about the use of force?---That there'd been a use of force in that cell and they were doing a package up.

When Mr Peebles motioned to you to leave, I assume you left with Mr Peebles, is that right?---I think he was already walking down the corridor or walking off, and I just followed.

Did you have any discussion about what had just happened?---Not to my recollection, no.

20 And lastly can I suggest that – I withdraw that. You've never seen the CCTV footage, have you? Or have you?---Not that I recall, no.

Of the day room.---That's correct.

I want to suggest to you that that CCTV footage, and I'm not suggesting I've seen it - -?---Say again, sorry.

30 I'm not suggesting I've seen the footage but I want to suggest that someone who has seen the footage, Mr Duffy, says that you and Mr Peebles left the day room halfway through the incident that occurred in the cell. Do you accept that?---No.

Now, you were told, I think, by Mr Taylor that a use-of-force package was going to be necessary.---Best recollection.

And did you hear anything about any injuries at that point?---Possibly not at that point. I can't recall when I was informed of the injuries.

40 But ultimately you received the use-of-force package for review?---The next morning, yes.

On the 21st?---Yeah. No.

Sorry, the 20th?---Yeah, it may have been in my tray, my PA's tray, on the 19th. Mr Taylor may have put it in there. I generally cease duty around half 3.00 and he may have put that in there when he left and, and the PA put it in my tray or whatever, and I would have done it the next morning.

And your PA, was that Robin Pitcoe at the time?---Oh, God. Either Robin or Danielle Ball, yeah.

And the next day you reviewed the package. The use of - - -?---Next morning, yeah.

10 And after reviewing the package, you endorsed Mr Taylor's recommendation of no further action.---From memory. It's on page 2, my sign-off block of a use-of-force package. Counsel, I know I didn't read the package. I had a look at Mr, the MOS's recommendations, "No further action required." I ticked it so it was all no further action, stamped it, signed it, put it in the tray.

THE COMMISSIONER: Does that mean you weren't using your independent judgement to work out whether in fact further action was required?---Commissioner, I did not – no, I just, okay, took it as read that my MOS had done, and, and, and signed off on it. I, I - - -

20 But that's a total dereliction of duty, isn't it, for you just to tick off on the basis of what somebody else has said without reviewing it?---It was stupid of me, yes.

MR DUGGAN: Are you seriously suggesting you didn't review this at all? ---I'm, I'm telling you, I, I, I would not have, I, I, unfortunately I possibly did that, I deleted emails or, or moved emails and that's something, I just haven't got all the time in the day especially in and around that particular time of the year.

30 Sorry, what has deleting emails got to do with the UOF package?---Sorry, meaning, I was trying to say here that I didn't read everything that was put in front of me or that was sent to me.

Well, I assume it's your usual practice to review the whole of the UOF package and not just endorse whatever your MOS's recommendation was, do you accept that?---I suppose you could say I had a bit of a practice of I did endorse what my MOS had recommended.

40 So are you suggesting that your practice was not to review the documents in UOF package to give your general manager's determination? Is that your evidence?---No. My evidence is sometimes I did that. Yes, I did do it sometimes but not all the time.

THE COMMISSIONER: And this was in a situation where you must have known that the inmate had been to hospital, correct?---Yes, Commissioner.

Which made it - - -?---Sorry, I was briefed on that. It was an inmate ran or tried to secrete or shove something down a toilet and there was a trip and fall and Mr Walker and him had gone to the ground, over cell furniture,

toilet bowls, whatever, and, and that's how I thought the injury was sustained.

But wouldn't that make it even more important to review the material that had comprise the use-of-force package?---In hindsight, yes, but trip and falls and accidents happen every day and, and I didn't, I, I just was just clearing my in-tray and going, next, and I regret that.

10 MR DUGGAN: So, are you suggesting you have a positive recollection in relation to not reviewing this particular use-of-force package?---Yes. I didn't review it.

Is your evidence that you would occasionally review some?---Some, yeah. Depending on time. But yeah, some.

You would recall that on 11 January this year you were interviewed by two officers of this Commission?---Yes.

20 And when you were interviewed by them I assume you gave them honest and truthful evidence to the best of your recollection?---To the best of recollection, yes, at that time.

I'm going to show you some of the transcript of your record of interview. I assume you've seen that before?---Yes.

THE COMMISSIONER: What page was that?

30 MR DUGGAN: 22, Commissioner. So, you're being asked questions on this page about the incident in 5 Unit and you were asked, "Just tell me again," this is about line 3, "Just tell me again what you recall took place." And you say, "I recall that I was informed obviously by Squizzy," and that's Mr Taylor.---Sorry, that's Mr Taylor, yeah.

40 "That there was in incident up in 5 Unit and one of the inmates was hurt, yeah." "Okay." "And I said, 'Well that's a use of force virtually. Get me the package.'" Well, you wanted to see the documents in the package, didn't you?---That's correct. I think what that is around, a conversation, from memory, with Mr Taylor. I, I don't know what they were going to do, whether they weren't going to do a package, I don't know, but if there's a use of force, I want a package. That's something I'd say all the time.

What's the "use of force virtually"?---I've got no idea. I don't use that as wording. I've never used a "virtually".

Well, these are your words in the interview.---Yeah. Use of force, but there is no such thing as a virtual use of force.

Well, what does it mean? You're recalling words that you've said to Mr Taylor - - -?---Yeah.

- - - in February 2014. And your evidence or your record of interview records, "And I said," I, Mr O'Shea, said to Mr Taylor, "'Well, it's a use of force virtually. Get me the package.'" What did you mean by "use of force virtually"?---It's, it's a use of force. If, if there's an injury or, or Mr Walker's gone on top of him, it's a use of force. There's no virtually about it.

10

So you knew that Mr Walker had gone on top of him at that point, did you? ---Well, that's, obviously I was told that by then. And I think, I think from memory Mr Grainger showed me an email or sent me an email, sorry, an IRM where it says in there governor, I can't, it was on the last line. Governor O'Shea, whatever the wording was.

So when you spoke to - - -?---Virtually use of force, sorry, yeah.

20 So when you spoke to Mr Taylor, before you'd seen the package you said to him, "Get me the package," and at that point you knew that Mr Walker had landed on the inmate? Is that your evidence?---That's what I was told.

And that appears to be consistent with, at least in part, with lines 9 and following, "I was told that it was, from memory, it was from rib injuries or something like that, from the toilet. Like, not a toilet, yeah, like falling over or fighting in, in the cell with Mr Walker, I think it was, yeah." So you knew that before you saw the package, did you?---Knew that he'd fallen over or something, yeah, yeah.

30 No. No, that's not what I'm asking you. "Yeah, like falling over or fighting in, in the cell with Mr Walker." What gave you the idea that there was fighting? You were told that.---Well, there would have been a scuffle if they're going for it, there would have been a scuffle of some sort. He's not just going to hold him. They both would have been, I think from memory Mr Duffy came in as well from evidence.

40 THE COMMISSIONER: Whatever happened, it was serious enough for you to ask Mr Taylor to get you the package, correct?---That happened. Yeah, I would have said that, as a matter, make sure there's a package. Get the package.

No, I'm using your words. "Get me the package."---Yeah.

And can I suggest to you the reason you said, "Get me the package," is because you wanted to look at it.---No, sometimes people, Commissioner, shirk responsibility, well, sorry, reporting or they don't want to do a report. So I just said, "Get a package done."

No, "Get me the package."---Mmm. Which comes to me, to my office, yes.

And then you don't look at it.---Once I saw Mr, Mr Taylor's thing there and his sign-off, I didn't, I didn't, I, I got on with business, I'm sorry, yeah.

MR DUGGAN: "A use of force virtually". Is that like a technical use of force? Have you heard that term?---I don't know what a technical use of force is. You know, like, a use of force, there's controlled movement of an inmate where, you know, we may cuff them or they're cuffed and they're control-moved from one area to another. A use of force is, yeah, I think it was explained by a few different people here over the last few weeks and it's a bit of a grey area and it's, it's everyone's interpretation but - - -

Well, I don't want you to be confused by what you've heard from others. You're talking here in January of this year about "a use of force virtually" but then you refer to various things, including fighting and falling over. That's not virtual, is it?---No, it's - - -

No. Can I take you to page 40, please, of this record of interview. And it's about line 20, just to orientate you. You were asked, "You've indicated before that the MOS assembles the use-of-force package. Is that correct? Have I got that right?" And you then give an answer. It refers to what the MOS does and then you say at the end of that something like, "And then sign off on it and send it up to the governor, yeah. So that's someone else's role." And then you're asked at line 30, "And do they, what comes to you as the governor? What do you get as the governor in a use-of-force package?" And this is your answer, Mr O'Shea, "Just a, I get, generally get all the reports. If it's done correctly I get all the reports from all the officers and the recommendations and that completed by the MOS. If there's CCTV footage, sorry, hand-held or footage or anything like that you may get, you, you should get, sorry. Yeah, so that's generally the norm." "Oh, so part of your, and I assume your role is there as the person to quality-review what the MOS has done?" "Yes. Yes." "So you look at the material you're provided?" "Yeah." "Yep. So you read it and form your own opinion as to what should or should not be done?" "Yeah, yeah, generally, you know, usually going along with what your MOS does or you may not agree with him, which happens from time to time, him or her, and take your own action or pass on your actions that you think deems necessary." Nothing suggests there that you don't from time to time review all of the reports because you're too busy, does it?---Nothing to suggest there, no.

No. And in fact your procedure, the norm, was to review all of the reports in these packages and not to rubber stamp what your MOS had done. Do you accept that?---Well, my norm wasn't to do every package, no. I generally looked at the MOS's comments and, and if there was nothing in that I would say I stamped it and signed it.

THE COMMISSIONER: One of the concerns which the Commission has is that these UOF, use-of-force packages are reviewed internally. So for example an event occurs at Lithgow and ultimately it's reviewed by the governor. Correct?---Correct.

It makes an absolute mockery of that process, doesn't it, if the governor doesn't even bother reading what's being sent to them?---Well, what I did does, Commissioner, but - - -

10 It's an absolute mockery, isn't it?---Previously we had - - -

No, answer my question. It's an absolute mockery. If there's going to be a review, on one view it's bad enough that it happens within the gaol where the event happens, but if the governor doesn't review what's been put up to him or her it makes an absolute mockery of the review process. Do you agree?---I agree in this instance, yes.

MR DUGGAN: What I want to suggest to you, Mr O'Shea, is that your usual practice was to review all of the reports in a use-of-force package. Do
20 you accept that?---You want to suggest that - - -

That your usual practice was to review all of the reports in a use-of-force package.---No.

And you are suggesting that you didn't review this one in particular because it causes you significant problems. Do you accept that?---No.

Can I take you to page 45 of your record of interview, please.

30 THE COMMISSIONER: I think what Counsel's suggesting to you is that you're seeking to distance yourself from this package because you know that it creates problems in terms of what you understood had happened and what is actually recorded in it. What do you say about that, that you're seeking to distance yourself from it?---No, Commissioner, I simply just signed off on it, stamped it and signed off on it, next, that would have been my thought process at the time.

Sorry, Mr Duggan, I cut you off.

40 MR DUGGAN: Not a problem. This is the evidence you gave earlier this year, Mr O'Shea. At line 9, "Yeah um, honestly, I, I can't recall, I would have, I'm sure I would have read them but I would have, I generally take note of what the MOS says, I'll, I'll go to that particular area and, and find out what the MOS has said and recommend, because they're the experts on the ground running that centre." "But your role is to independent review what took place?" "That's right, yeah, to review it all and, and to have a look at it all." "Okay. So you know for example the MOS and the staff were colluding in," sorry, "So you know if for example the MOS and the

staff were colluding into covering, trying to cover something up - - -"
"Yeah." "- - - your role is to independently look at that and come to - - -"
"Yeah." "- - - your own conclusions as to the senior - - -" "Yeah." "- - -
officer in the prison has the sign-off." "Yeah." When you refer at the start
of that answer, "I would have read them," you're talking about the reports,
aren't you?---Possibly, yes.

THE COMMISSIONER: Well, is there any other possibility?---No, no,
there's not, I would have, yeah.

10

MR DUGGAN: So in fairness to you I'll take you to the previous page. I
started too late in the exchange. So about line 25, the ICAC officer has said,
"You indicated that in the use-of-force package, and that's made up of a
number of documents - - -" "Yeah, yeah, correct, yeah." "- - - and that type
of thing." "Yeah, yeah." "And you've indicated, you review them as part of
that process." "Yeah. That the MOS will do." "So, in this matter when you
reviewed them, did you pay particular interest in what the officers said had
occurred?" "I can't remember reading them to tell you the truth, and, and,
no, I don't even know if it would, it wouldn't have been completed that day I
don't think." "No, no. I was talking about after the fact." "Yeah, um,
honestly, I, I can't recall. I would have. I'm sure I would have read them."
20 So, your answer there suggests that you can't recall whether you read them
but you're sure you would have. Do you accept that was your evidence
earlier this year?---That was, that's a bit confusing, yes.

Well, you're suggesting there, "I can't remember them," at line 5 and then
you say at line 9, "I'm sure I would have read them." That's not confusing
is it?---Well, I can't remember reading them at all.

30 But you gave evidence there that you are sure you would have read them.
Do you see that?---I do see that, yes.

And what I'm suggesting to you is now you are saying you didn't read them,
which is a positive recollecting of not reading them. Do you accept that's
your evidence here today?---Correct.

And I'm suggesting that had changed from, "I don't remember," to, "I know
I didn't," because the use-of-force package creates serious problems for
you. Do you accept that?---My lack of signing it, that I, sorry, not reading
it, yes, creates problems for me and, and I regret that.

40

Yes. And it creates problems if you read it at the time. Do you accept
that?---Not necessarily.

What's the qualification?---At the time I was told that this particular
incident happened and I was not present in that cell and left, so yeah.

But the issue I'm driving at, Mr O'Shea, is that in January of this year, not that long ago, you had no specific recollection of reading these documents but say you're sure you would have. Now, you're saying you have a positive recollection of not reading them. I'm suggesting that change has come about because you've realised how big a problem the use-of-force package is for you.---No. That change is simply because I generally didn't read a lot of the packages, Counsellor.

10 Is that right? All right.---I've said that, yes

Well, page 46 we'll go to next. So, you're being asked about Mr Walker's report, which was part of the use-of-force package, at about line 8. "So, in this instance, did you pay particular attention to what Mr Walker put in the report?" Answer, "I probably would have. I can't even remember his report but I would have looked at it, yes." That suggests your practice was to look at these reports, doesn't it?---It does suggest that. I, I can't remember looking at this report. I obviously didn't look at his report.

20 THE COMMISSIONER: Why do you say - - -?---Until, I'm sorry, Commissioner.

Why do say you obviously wouldn't have looked at his report?---Say that again?

Why do you say that you obviously wouldn't have looked at his report? ---Because I've already said earlier that I, I signed the package off. I didn't see, can't recall Mr Walker's report until it was put up on the screen here the other day.

30 But at this page the counsellor's drawing your attention to, you said, "I would have looked at it, yes," and now you say, "I wouldn't have looked at it." Why wouldn't you have looked at it?---I didn't look at the, I didn't look at the, I didn't read the package. His report would have been in the package.

40 MR DUGGAN: A moment ago you said that you didn't always look at these packages, but this evidence here suggests that you clearly did look at these packages as a matter of course. Do you accept that?---Some I did, some I didn't.

But this says, this doesn't say, "I might have looked at it because sometimes I did and sometimes I didn't," does it?---No.

Can I take you to page 47, please. Now, the IRM is usually part of the UOF package, do you accept that?---I accept that.

And you would invariably look at an IRM as part of a UOF package when you reviewed it, do you accept that?---If, if I reviewed it, yes.

So even if you didn't read the reports, you'd look at the IRM in the package. Do you accept that?---No, no, if, if I, if I saw it in the package and I did go through that package, I would have seen it.

So do you not accept that at the very least, when reviewing a UOF package, you would have looked at the IRM?---Not on every package, no. Not the IRM as such.

10 Bottom of this page, page 47, at about line 29. "So just to clarify, you have no recollection of seeing this at the time, this entry in the IRM that's," and your answer is, "I wouldn't have looked, I wouldn't have looked at the IRM until it was in a package, whenever it comes to me." "Okay." And then over the page. "If, if it was in the package." And you're asked, "So that's the first time you would have seen this particular document if it was in the use-of-force package?" And that's the IRM. And your answer is, "Yes." Do you see that?---Yes.

Doesn't say, "I was too busy," does it?---No.

20

Doesn't say, "I wouldn't have looked at it because I had a bit to do that day," does it?---No.

It doesn't say, "I wouldn't have looked at it because I didn't always look at key documents like an IRM when reviewing a UOF package," does it? ---No.

And that's because I want to suggest you did look at it. You reject that?---I reject that.

30

And your recollection about the review of this package has come about because you've realised that it creates a serious conflict between what you saw and heard and understood happened on the day and what is in the package. Do you accept that?---No.

Now, you would accept, I assume, that as part of any UOF package you would need all relevant witness reports in there?---Yes.

40 Anyone who witnessed a use-of-force or the surrounding circumstances, you accept that?---Yes.

And you were a participant in the knock-up phone call or intercom communication?---Yes.

And you were a participant in a heated exchange with the inmate before IAT arrived?---Yes.

And then there's some communication between you and Mr Taylor when IAT arrive, do you accept that?---Yes. Sorry, yes.

Well, where's your witness report in this UOF package?---I don't do a report, a witness report, every time I speak to an inmate or, or a staff member. I do that daily. I speak to staff and inmates every day.

10 No, but his led to a use of force, so where's your witness report?---I didn't feel as though I needed to put one in. There is no witness report from me.

Well, at the very least you had a conflict of interest reviewing this package, didn't you?---I didn't see it like that. I left the area and, no.

Do you accept now that you've had a conflict of interest in reviewing this package?---In hindsight, after going through it all, yeah, I wish I, yes.

20 But obviously wishing you'd done something differently is, I assume you wish you'd never been involved in, or been at work on this day. But do you accept now that you shouldn't have reviewed this particular package because you had a conflict of interest?---I wish we had another process to send it down, but - - -

Well, no, that's not my question.

THE COMMISSIONER: The trigger to the use of force was your altercation with this inmate, correct?---No, I didn't go and ask anyone to use force on an inmate, Commissioner.

30 I know. I'm not suggesting that. But it was, it followed an altercation between you and an inmate who was being abusive towards you.---Correct.

Why wouldn't you have put in a report indicating just that?---Because I get abused and yelled at and everything daily. It was just a normal - - -

Well, that might be but it doesn't always lead to a use of force, does it? ---Not all the time, no, no.

40 MR DUGGAN: Thank you, Commissioner. Can I take you to the use-of-force package, please, which starts at page 84. Would you have received this in hard copy, the use-of-force package?---Yes, yes.

So presumably as a single document or bundle?---Just as a, a bundle would have been in my in-tray.

And does this look like it might have been the first page of the bundle in relation to this use-of-force?---Of a package, yes.

They usually take a particular format, is that correct?---Say that again, sorry.

The use-of-force packages usually follow a particular format.---Correct.

So if I can take you to page 86, please. This is the review form. That's your signature at the bottom of the page?---Yes.

And so you would have read at least the large box at the top, which is the MOS's assessment and recommendation?---Yes.

- 10 See there it says, "Reviewed use of force, 20 February, 2014, by acting MOS and Intel manager." Do you see that?---Yes.

Why would the Intel manager have any involvement?---He may have been helping the MOS. I'm not sure.

Well, does that strike you as unusual, having the Intelligence manager participating in this process?---He may have been talking to Mr Taylor about it. I don't know. I didn't, didn't even notice it.

- 20 But you say, if I understand your evidence, you say you rubber-stamped this one. You'd want to know whether you were rubber-stamping Mr Taylor's work or - - -?---I, I doubt that - - -

- - - Mr McMurtrie's work or what had happened with the review.---I'm concentrating on Mr Taylor because he was the MOS there and his signature, and down there it's got "I recommend NFA," no further action, (not transcribable) consistent with a use of force. That's what I would have seen.

- 30 But as I understand your evidence, you're suggesting that all you read is this page. All you recall reading is this page.---All I recall reading is this page.

Well, surely at the very least, no matter how busy you are, you'd read the fact that it's reviewed by the acting MOS and the Intel manager. It's the first line. You'd read that, surely.---Yes.

- 40 Well, didn't that raise a question mark? What's going on with this double review?---No, I thought it was up to the MOS. That's his part of it and that's, if he's called someone in to assist him or talk to him about it and he's put it in writing there, I - - -

But you're reviewing his work, aren't you?---Yes. I'm reviewing Mr Taylor's work, yes.

Yes. So it's not just his job. It's his job you're reviewing. That's the whole point, isn't it?---Yes.

So you want to understand the process.---Yes.

And usually an Intel manager doesn't review together with the MOS the use-of-force packages, do they?---Sometimes they might sit in the office together and talk over reports or scenarios or something. That does happen. It may be other managers that the MOS seeks clarification or advice from.

The next sentence, "All staff reports consistent with IRM." Do you see that?---Yes.

- 10 How do you review Mr Taylor's opinion if you don't look at the reports?
---As I said to you, I've gone off his last line there, recommendation, and I didn't review, I can't remember reviewing any of those reports.

Are you suggesting you didn't even read what's in this box?---No, no, I said
- - -

Apart from the NFA?---No, I said that's what I've gone off, "I recommend NFA as all reports consistent with the use of force."

- 20 All right. If you can focus on my question. It says there in the box, "All staff reports consistent with IRM." How do you review that if you don't look at the reports?---I, I didn't review that, I've gone off what Mr Taylor has said.

"UOF within policy and appropriate to level of resistance of inmate." Do you see that?---Yes.

What's the use of force?---Pardon?

- 30 What's the use of force?---(No Audible Reply)

"Use of force within policy." What's the use of force?---The use of force was when Mr Walker and the inmate ended up on the ground.

Where does it say that on this page?---It doesn't say that.

So to know that I assume you read the reports?---On, sorry, Counsel, I'm going off what Steve has put there, sorry, Mr Taylor has put there. I didn't read the reports.

40

But Mr Taylor doesn't say anything about, I don't even think he, he doesn't even mention Mr Walker on this page. How did you know it had anything to do with Mr Walker?---Because that's where it was at, that's what we were told.

It doesn't say it on here though, does it?---No, it doesn't.

So how do you know whether the use of force was within policy and appropriate to the level of resistance of the inmate?---I can't answer that. I don't know.

What was the resistance of the inmate, to your understanding?---To my understanding that he was trying to get away or to flush items.

Now, part of this review process I want to suggest to you is to ensure that policies and protocols are followed. Do you accept that?---Yes.

10

And there's often an after-review process. Do you accept that?---Yes.

Often referred to as an after-action review?---Correct.

And so part of your job is getting to the bottom of what happened to work out whether for example there's a training issue that arises. Do you accept that?---Yes.

20

Whether there's something that needs to be referred to Professional Standards. Do you accept that?---Yes.

So where it says, "Spontaneous reaction resolved before camera could be turned on," what did you understand that related to?---It was an instantaneous incident in the cell with Mr Walker and the inmate.

30

But how do you know whether that's just plucking a form of words out of the air or whether there's a serious protocol breach?---I don't know what Mr Taylor – it's, it's, it's there, as I said, I went off, off his recommendation there.

So you're suggesting that you didn't review that at all, you didn't inquire into whether that was correct or completely false?---I didn't inquire into that. I just saw his signature and his recommendations there and, or his bottom recommendation and signed off. I would have just put it in the tray.

You're reviewing his recommendation, "I recommend NFA as all reports consistent with the UOF." Do you see that?---(No Audible Reply)

40

That's the ultimate recommendation?---Yes, yes, yeah, yeah.

And if you go two-thirds of the way down the page you've given no further action a very large tick. Do you see that?---Yeah.

I want to suggest that's because you read the reports?---No.

And not only did you read the reports, you knew from your own observations that they were incorrect?---No.

THE COMMISSIONER: In the middle of the page there it's actually, you're required to make a determination, aren't you? It says, "General manager's determination"?---Correct, Commissioner.

And then there's, "Agree A/MOS," which I'm assuming means Acting - - - ?---Yeah, I agree with the MOS's comments.

And who wrote the word, "Agree"?---Say it again?

10 Is that your writing?---"Agree MOS," and, "No further action," yes.

Well, what you're agreeing with was his review of the use of force.---Yeah. I agree with his no further actions or reports consistent with a use of force.

Counsel mentioned to you a moment ago whether matters would or wouldn't be referred to the Professional Standards Branch. Am I correct in assuming that whether a matter such as this goes to the Professional Standards Branch depends upon the decision of the governor?---Yes.

20 And is that a practice that's adopted, as you understand it, in all correction - - -?---Yes.

So, you'd have a use of force, it's reviewed by somebody and then the general manager or governor looks at it and, if he or she thinks it's appropriate to do so, it's referred to the Professional Standards Branch?---Or we may sometimes choose to, say, call someone like from S&I, from Security and Investigations, and ask for their opinion or I may sometimes go to a director, our directors in the region, or, and ask for some guidance on it, if you will.

30 But ultimately it's a matter for you, whether it goes or doesn't go?---Which way it goes, yes.

Yes. Can one of these directors that you've referred to, can they say to you, "We don't want to send this to the Professional Service Branch"?---Can they say that?

Yes.---Yes.

40 And if they say that, are you bound by that?---I, I would, unless there's glaringly stuff there that is corrupt, I would, I would go along with my director and say, "Okay then." But we also have a, like, I think you mentioned it, an after-actions register.

MR DUGGAN: Review?---Review, sorry.

THE COMMISSIONER: Yes, yes.---And that's what I'm talking about through S&I or we used to have attached to the regions, like, a regional

superintendent or a tactician, if you will, and, and they would come in and, say, grab half a dozen packages from the centre and review them independently and/or if there was a serious incident where staff may have been injured and, et cetera, they would come in and interview staff, but with the governor generally present sometimes, if we weren't off doing other duties or at that centre at the time.

Thank you.

10 MR DUGGAN: Just in terms of the summer of 2013-2014, how many use-of-force packages could you have received as the governor to review?---Oh, Counsellor, I, through those months, I, I couldn't tell you the number.

Well, are you talking three, 50, what's the ballpark figure?---Oh, it, it, possibly anywhere between 10 to 30 in that four or five months, or 20. I, I don't know, I'd be guessing. It'd be a total guess. A few.

20 And this - - -?---During that time, a lot of the use-of-force packages weren't just use of force, it was an incident that would have been, reports you know, when it went for days and days on end where we were using chemical munitions, et cetera, in that area. So, I cannot recall of the reports in all that, no.

This one is only 20 pages.---That particular package?

This particular package. Do you accept that?---Yeah. I accept that.

And some of those pages are just checklists. Do you accept that?---Correct.

30 What would it take you to fully review this package and read the reports? Half an hour? An hour?---Probably me an hour.

By the time you reviewed the use-of-force package you would have understood that Mr [REDACTED] had gone to hospital.---No, I, I, I would have been made aware of it that day or evening some time.

Yes, but before signed off on this package you would have been aware that he'd gone to hospital?---Possibly.

40 Are you suggesting you signed this off without knowing he'd gone to hospital?---I'm not suggesting that. I cannot recall whether I did, did know that evening or the next day. I, I cannot recall.

But it's likely?---It's likely. I, I, I could have heard it on the radio. My PA could have mentioned it. The gate could have mentioned it. Mr Taylor could have mentioned it. There could have been a thousand different reasons.

But it would be remarkable if you were reviewing a use-of-force package in relation to an inmate who'd gone to hospital and you didn't know they'd gone to hospital.---Not necessarily. I don't, we may have up to 40 or 50 movements or less, you know. Like, not so much out of Lithgow. About 30 a month. I may only know about two or three that are extreme high-risk inmates. I, I don't run that side of it.

No, you run the side of the review of the use-of-force packages, don't you?
---Yes.

10

Commissioner, is that a convenient time?

THE COMMISSIONER: Yes. Mr Madden, do you have any better idea of your position tomorrow?

MR MADDEN: No, I'm told that it might still be going at 1 o'clock, so I'll just have to - - -

20 THE COMMISSIONER: Well, what I propose to do is to continue. I think Mr Duggan's got a way to go. Then I'll have others go first, and then if you could just let us know how you're going.

MR MADDEN: Rightio.

THE COMMISSIONER: I mean, I really want to try and resolve it all tomorrow if we can.

30 MR MADDEN: I understand that. I understand that. I'll get here as quickly as I can, and if something happens that concerns my client, well, then I'll try and get here quicker.

THE COMMISSIONER: Yes.

MR DUGGAN: Commissioner, can I indicate that often the morning transcript is typed up very quickly and it may be - - -

THE COMMISSIONER: Oh, that's true.

40 MR DUGGAN: - - - may be possible to get Mr Madden a copy of that. I don't want to make any promises that we can't meet - - -

THE COMMISSIONER: No, no. Of course not.

MR DUGGAN: - - - but that may be an option, if maybe Mr Madden could inquire when he gets here.

MR MADDEN: I'll work it out.

THE COMMISSIONER: Are you starting at 10.00?

MR MADDEN: 9.30.

THE COMMISSIONER: All right. Well, if you just keep in touch with us and let us know how you're going. And as I said, I'll make sure that everyone else asks whatever questions they want to first.

MR MADDEN: Thanks, Commissioner.

10

THE COMMISSIONER: Thank you.

MR DUGGAN: Commissioner, just before we adjourn, can I indicate that there's another statement going up on the restricted website. I don't anticipate it will cause any great difficulty for anyone. It's not particularly long but it's a statement from a nurse who assessed Mr [REDACTED] in the clinic.

THE COMMISSIONER: Right.

20

MR DUGGAN: But that will go up on the website tonight and people can see that and see what it says.

THE COMMISSIONER: Right. I'll adjourn. Thank you.

THE WITNESS STOOD DOWN

[4.04pm]

AT 4.04PM THE MATTER WAS ADJOURNED ACCORDINGLY

30

[4.04pm]