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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 TUESDAY 5 JUNE, 2018

AT 10.00AM

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

THE COMMISSIONER: I think we'll have the witness sworn in again, if that's okay.

<JOHN WILLIAM O'SHEA, sworn

[10.10am]

THE COMMISSIONER: Mr Duggan.

10 MR DUGGAN: Commissioner, before I continue asking questions, can I tender a couple of documents, please.

THE COMMISSIONER: Certainly.

MR DUGGAN: The first one is Mr O'Shea's record of interview from 11 January, 2018.

THE COMMISSIONER: Yes. Sorry, what date was that?

20 MR DUGGAN: 11 January, 2018.

THE COMMISSIONER: Yes, thanks. That will be Exhibit 89.

#EXH-089 – RECORD OF INTERVIEW BETWEEN PAUL GRAINGER AND JOHN O'SHEA HELD ON 11 JANUARY 2018

30 MR DUGGAN: And the next one, Commissioner, is a record of interview of Ms Toni Muir. This has been up on the restricted website as I understand it. It's a record of interview dated 31 January, 2018.

THE COMMISSIONER: All right. That's Exhibit 90.

#EXH-090 – RECORD OF INTERVIEW BETWEEN PAUL GRAINGER AND TONI MUIR HELD ON 31 JANUARY 2018

40 MR DUGGAN: And, Commissioner, can I indicate that it's not intended that Ms Muir be called but can I just take you to some of the relevant portions of her record of interview.

THE COMMISSIONER: Yes. Do you have a spare copy of that by any chance? Maybe on the screen.

MR DUGGAN: Sorry, I don't have a spare hard copy.

THE COMMISSIONER: That's okay.

MR DUGGAN: But we can get it up on the screen if that assists.

THE COMMISSIONER: Thank you.

MR DUGGAN: So page 1 is the preamble. If I can go to page 2, that refers to the fact that the witness was previously a registered nurse with Justice Health and then at about line 18 Ms Muir gives some evidence about going to 5 Unit on 19 February and she says this, "All I can remember is that I was called over to I think it was 5 Unit to assess a patient that they," something, "Force on, and when I got there I assessed him and I wasn't happy with some of the things that I found on him, well, not that I can really remember a lot about him now, but I've told the officers that he needed to go into the hospital to see a doctor. Management weren't happy with that, they didn't really want to send him in and I just asked them to, you know, put it in writing why they didn't want him to go in, and if they ended up agreeing for him to go, him, but I do remember that he ah, a foot, a boot mark on his face and he had a, and he had sore ribs and a couple of red marks around his rib area, and yeah, I just said, told them that he needed to be, go in and be assessed by a doctor." And then she goes, she gives further evidence at page 4. At about line 10 she gives evidence, or she's asked about what the patient said or the inmate said. "Do you remember what he told you?" "No, 'cause he didn't talk much at all. I can remember that. I did ask him if he was all right and he said, 'I'm fine,' but he, there was no eye contact when he, he spoke." "Ah hmm." "And he was too busy looking at the officers." "Okay. And just tell me what you recall the injuries to the inmate being." "He had trouble breathing, he said he had trouble breathing. He was sore around the rib area which had red marks on them. I can't remember if it was both sides or just one side and when I listened to his chest it just didn't sound right so he had a dirt, an imprint of a boot on his face so I thought, oh, it might have, might have been a head injury too, so he needed to be assessed." And then the next relevant portion, Commissioner, is at the bottom of page 5 at about line 23. The witness is asked about the officers who'd indicated they didn't want him to go to hospital and the witness says, "Yeah. They didn't say why they didn't want him to go." "What exactly did they say to you?" "They just said, 'Oh, we don't really want him to go. Does he have to go?' And I said, 'Yes,' and they just said, 'Oh, we don't really want him to go.'" So, Commissioner, they are the relevant portions of this witness's evidence.

THE COMMISSIONER: Thank you. Thank you. Now, just keep in mind, Mr O'Shea, that the section 38 order that I made yesterday continues to apply, but it is subject to those limitations that I mentioned, and most importantly that you don't give false or misleading evidence. If you do, it's a serious offence and the penalty can be imprisonment for up to five years. Do you understand that?---Yes, Commissioner.

Thank you.

MR DUGGAN: Mr O'Shea, you gave some evidence yesterday and I want to try and summarise some of it. You said that you were involved in a knock-up conversation with an inmate and there was a cell door conversation where you spoke through the grille.---Yes.

And you gave some evidence about being in the day room, obviously. ---Yes.

10

And you looked at the cell card on the door at one point.---Yes, sorry.

And you also marked on an exhibit, or a plan of the unit, where you think you were in the day room. Do you recall that evidence?---Correct.

20

And when you gave your interview, or when you had your interview with ICAC officers earlier this year, you didn't indicate to them that you were in the day room, did you?---No. As I said, I just gleaned that from being in this room for the last two weeks and, you know, evidence and memories and it's just – it was too long ago. Trying to recall to the best of my ability.

Well, you say that you've reconstructed that evidence on the basis of what others have said here, do you?---I'm trying to, trying to put it all together and pull it all together. To the best of my recollection, yeah.

Well, part of that reconstruction might have you in the day room when the cell door was opened. Do you accept that?---I do accept that scenario but, no, I wasn't.

30

I just want to take you to some of that record of interview if I may. I might take you to page 9 if I can. So at the bottom of page 9, at about line 30, you say, and I accept that I'm taking this midway through a description of what's going on, "And I can't tell you the other inmate's name at this stage that was, he was in with but I've had him in my centre since then. But, like, I can't anyway. They were mucking up, kicking the doors, yelling and screaming and hitting the intercom. And, and it was, I just said to IAT or the wing senior, I said, 'Get in there and see what their problem is and we'll get the IAT when youse are finished to get in there.'" And then it's the next bit that I'm interested in. "I think then, from memory, myself and Mr

40

Peebles walked straight out. We didn't even go into the unit, and that was that on that particular time." Now, that suggests a positive recollection that you didn't enter the day room.---No, see, I think, I, I think myself and Mr Peebles walked straight out.

Yes, but it's the next sentence I'm interested in. "We didn't even go into the unit." You're referring to the day room there, aren't you?---That's correct, yeah.

Well, that suggests a positive recollection that you didn't go into the unit.
---At that time of that interview that was my best recollection of that particular day.

THE COMMISSIONER: Let me put another scenario to you. Can I suggest that you may have been seeking to distance yourself from the use of force at the time you had that interview, but it's become very difficult to maintain that position having regards to the evidence of others, such as Mr Taylor, Mr Duffy, Mr Duncan and Mr Graf. What do you say to that?
10 ---Commissioner, no, I'm not trying to distance myself. I'm trying to recall the event on the day.

No, I'm not suggesting you're trying to distance yourself now, but what I'm suggesting to you is at the time of this interview that was what you were trying to do.---It was four and a half years prior, nearly, to that when I was interviewed and, Commissioner, I've been to a thousand cells. You know, I cannot recall one hundred per cent. On that, on that day that's my, was my best recollection.

20 Very well.

MR DUGGAN: I want to take you to page 16 on this record of interview, please. So it starts at the bottom, "So do you recall speaking to the inmate at all?" And then over the page, "That inmate?" "Yeah, Mr [REDACTED]" "As I said, if it was over the PA, over the knock-up system, I may have said, 'Be quiet' or 'Shut up. I'll be there soon. It's a lock-in,' something like that. That's if I worked it properly. I don't even know. I can't remember if I've done that because I was always, okay, slapped and said, 'Get away. You can't use it.'" And then at about line 13 you say, "I knew the cell." And
30 then you were asked, "You, so, so, you, it's possible that you may have spoken to the inmates of that cell through the system, though you're not certain?" So you're obviously being asked about the knock-up system.
---Yeah.

And you say, "That's correct." "Okay. Yeah. So at any time did you go to the cell itself to talk to the inmates?" And you say, "Not to my knowledge, no." Do you see that?---Yes.

Well, again you were trying to minimise your involvement in the incident that followed, aren't you?---No, that was my best recollection at that time of
40 that interview of that day.

And I want to also suggest to you that in the same way that you've sought to minimise in that record of interview your involvement in the incident, you've also sought to minimise your exposure by giving evidence that you didn't review the UOF package. Do you accept that?---No, I don't accept that. I, I suggested I didn't read all the package.

THE COMMISSIONER: So you went further yesterday. You not only said – for the first time, as I understand it – that you went into the day area and walked up to the cell, but you gave a reason as to why you did it, and that was so you could see the inmates' names on the cards. When did that first occur to you?---Commissioner, I'm guessing here it probably would have been straight after the knock-up, and I, I've probably walked down there – I don't even know if it was with Mr Taylor or myself – and had a look at the knock-up, sorry, the cell cards. I can't tell you exactly.

10 No, but what I'm saying is that you suggested to us that the evidence you've now given – that you were in the day room – went a bit further, and you said yesterday that the very reason you went in there was to find out the inmate's name on their cell card. When did you first recollect that?---Last week in here when, you know, they were talking about and the days were going on and evidence was - - -

I stand to be corrected, but I don't think anyone suggested that that was the reason you went down there.---No, that's what I'm saying I went down there for.

20

Right. Yes, Mr Duggan.

MR DUGGAN: Thank you. Mr O'Shea, you're not afraid to get involved in the operational aspects of management of the centre, are you?---That's correct.

And you were quite happy to answer the intercom when you were walking through the officers' station. You didn't think that was above you.---Not at all. Helping out.

30

No. And you weren't concerned about going down to the cell door and speaking to an inmate, were you?---No.

And you were taking a particular interest in what was happening in Unit 5 at this time, weren't you?---With the whole centre but especially Unit 5, yes.

Because it had been such a problem.---True.

40 And you weren't floating so high above it that you were just getting reports in the governor's office outside of the unit. You were down there in the unit, weren't you?---Not every day, no. I have to let my managers manage. I don't micromanage. But I'd get briefings from time to time.

No, but I'm talking about this particular occasion. You were down there in the unit.---Just doing a walk around, yes.

And you'd answered the intercom and you were down at the cell door talking to the inmate. You accept that?---Yes.

And you've called IAT or you've arranged for them to be called because you had an interest in preventing some sort of incitement of other inmates.
---Correct.

And I want to suggest to you that there was no reason for you to leave before you saw what happened.---Not true. There could have been a thousand reasons for me to leave, you know, I have other meetings, I have to get around the centre, I was called away.

10

But you had time to answer the intercom.---Yeah.

You had time to go down and have an exchange with the inmate.---Yeah. There's other people there to do that job from then on in.

Sure. But you had an interest in this particular incident.---Not an, not an interest, it was just get that sorted, quieten them down, see what they want, move on.

20

Well, what I want to suggest is you had no reason to leave and you would have hung around to see what happened.---I had a thousand reasons to leave.

Well, the reason you left is because things went pear-shaped, isn't it?---No.

Can I take you back to the use-of-force package, please, at page 89. Now, I appreciate your evidence of yesterday, but do you say you didn't review this document?---That's correct, it would have been in the package probably.

30

But the question is, do you say you didn't review this document in February 2014?---I can't recall reviewing this document, no.

Do you deny reviewing this document?---I can't recall reviewing the document. If it was part of the package I would have signed it, not that particular part, sorry.

40

I just want to see if I can refresh your memory then. If you can go to the first paragraph in the box, "During an intel-based search IAT were detailed by the MOS to search cell 208 in 5.1 Unit with directions to specifically look for buprenorphine." Do you see that?---Yes.

And that was completely inconsistent with your understanding of what had happened?---True.

And if you had have read it at the time you would have immediately realised that?---Well, yes, if I read it I would have, correct.

There's a curious sentence at the end, "Reported as a technical use of force on direction of the general manager." Do you see that?---Yes.

You're obviously the general manager?---Yes.

What direction did you give?---I cannot recall giving any direction and a, I've never used the term, technical use of force, I don't know what that is.

10 In fairness to you, the sentence is ambiguous. It may mean a direction by the general manager to report this incident as a technical use of force, that's one meaning, possibly, this may be a strain of the language, but possibly it's technical use of force but that the general manager has directed the use of force. Does that make sense?---I know what you're trying to say, I think I know what you're trying to say but no, I didn't direct anyone to use force.

All right. But is it possible that you provided a direction to the effect that the inmate be sorted out and that that's what that is reference to?---Sort it out means find out what the problem is, sort the issue, move on, manage the issue, not use of force or direction for use of force.

20

All right.---That's someone else's wording.

Do you know whose?---I presume Mr Walker.

30 THE COMMISSIONER: Yesterday at page 909 of the transcript, Counsel Assisting was asking you questions about the discussion that you had with one of the cellmates, one of the inmates in the cell, and this question was put to you, "And the exchange between the two of you became heated?" And you said, "It would have been me yelling." And then Counsel Assisting put this to you, "Yes. And you said, 'You're a smart cunt, [REDACTED] you won't be smart in a minute.' Do you accept that?" And you said, "I can't recall those words, no, not like that." And I asked you this question, "Do you deny you said that?" And you said, "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." Do you accept that if those words were used by you, "You're a smart cunt, [REDACTED] and you won't be smart in a minute," that very much suggests that you knew that IAT were going to go in there and give this fellow a beating. ---Not at all, Commissioner, no.

40 Yes, Mr Duggan.

MR DUGGAN: Thank you. What is also apparent from this summary, I want to suggest, is what is not said. And what is not said is that IAT were called down because of the knock-up abuse and the exchange with the inmate. You accept that?---Yes.

And that reason for attending the cell has been substituted with the first sentence of this summary. Do you accept that?---Yes.

And so it's not just what is being said in the first sentence that would have piqued your interest if you read it, it's what is not there. Do you accept that?---I accept that if I read it, yes.

There's no reference to you being involved in any knock-up conversation. ---No.

There's no reference to any shouting down at the cell.---No.

10

And do you accept that if you had have provided a witness statement detailing those matters, then the officer in charge or the officer preparing this document would have included those details in the summary?---Yes.

And if you read it at the time and that information was missing, there would be alarm bells in your mind about the accuracy of this report.---Yes.

20

And so then when you look at the third paragraph, where it suggested the inmate tripped over the cell furniture and fell heavily onto the toilet, you would have wanted to find out whether that was a bogus reason, wouldn't you?---If I'd furnished a witness statement, yes.

Well, not even that. I mean, the witness statement would be your recollection of the events. So you would have had that recollection, and if you had have read this document you would see that there were things there that didn't accord with your recollection. Do you accept that?---I accept that.

30

And there were things that weren't there that should have been that were part of your recollection. So the real reason for attending the cell, for example, was not there.---That's correct.

And the knock-up abuse was not there.---Correct.

You attending the cell and having exchange, heated exchange with a prisoner was not there.---Correct.

40

And even if you didn't see how the inmate injured himself, with all those things in mind you would have read this – if you had have read it at the time – and thought, “That paragraph 3, tripping over cell furniture, that may be a bogus reason. I'd better check that out.” Do you accept that?---That paragraph is what I was, you know, virtually led to believe happened. I do accept it but I didn't, excuse me, have no recollection of reading this document, this IRM.

I want to take you to page 90, just the next page in the package. So this is an information report of Mr McMurtrie's, and the date at the bottom, 13

January, 2014, I want to suggest can't be correct because the first line refers to 19 February, 2014. You understand that?---Yeah, I agree with that.

And it's addressed to "sir". Who would this report have been addressed to?
---Sir. It could have been anyone from SAS and above. MOS, SAS, myself.

These sorts of reports are usually formally at least addressed to you?
---Formally, yeah.

10

Does that mean you would receive a hard copy of all reports addressed to you?---Not necessarily.

Would you have received a copy of this outside the use-of-force package?
---It may have been emailed to me, I can't recall, or it may have been put in a tray to my PA's office, I can't recall.

20

And if you received it you would have read it, I assume?---We get hundreds of reports from Intel, various, various times. I can't recall reading this one, no.

You'd had some problems ion 5 Unit over the summer obviously?
---Correct.

And so you would have taken an interest in what was going on in the unit?
---Yes.

30

Particularly because it's got some very violent offenders?---Also had other competing factors at that stage with the department and where we were heading with the beds et cetera, the increase of numbers, sorry.

Are you able to explain why this document – sorry, I'll go back a step. If you need a chance to read the document in full, please do, but it doesn't refer to a use of force, does it?---No.

So why would it be in a use-of-force package?---Information on the day, I have no idea. I can't recall this document.

40

Well, it provides a basis I want to suggest for the fabricated reason for attending the cell. Do you accept that?---I accept that.

And that's why it was put in this package. Do you accept that?---Okay, yeah.

And not just, it didn't just provide the reason for attending the cell, it was a substitute for the real reason. Do you accept that?---Not from me, from other people.

I'm not suggesting that.---Right, okay.

But what I'm suggesting is that this reason was put there in place of the real reason.---I have heard evidence saying that, yes.

No, but do you accept that proposition?---Yeah, I accept that, yes.

And the real reason was the knock-up abuse - - -?---Knock-up.

10 - - - and to prevent incitement and - - -?---Correct.

- - - that chain of events. Now, I want to suggest to you in 2014 Mr McMurtrie was very loyal to you as the governor. Do you accept that?
---Yes.

And I want to suggest the possibility that Mr McMurtrie was not covering up for Mr Walker in providing this bogus reason, he was in fact protecting you as the governor. Do you accept that proposition?---No.

20 Why not?---I've never said to Mr McMurtrie cover me or anything. He has looked after governors and MOSs in that centre for years. I've never - - -

And he was very loyal to you, wasn't he?---Correct.

So why wouldn't he have fabricated this to protect you as opposed to protecting someone else like Mr Walker?---I don't know.

Did he tell you that's what he was doing?---No, not to my knowledge.

30 I just want to take you to page 51, please, of your record of interview. So at about line 18 you're asked, "How would you describe your relationship with Mr McMurtrie?" And I won't read out the first part of your answer, but then you say, "I, I think he's very loyal. He was very loyal. He's no longer with us." And I assume you mean at Lithgow.---The department, I meant, sorry.

The department. All right.---Yeah.

40 "I don't know if you know but he's been stood down or sacked, or whatever you want to call it, in the last six or seven weeks, but he was very loyal to any governor and MOS that was there." So would that include Mr Peebles?---Yes.

So to your observation he was very loyal to him?---He was loyal to the rank and Corrective Services, yeah, I believe, yeah.

And then he goes on, sorry, you go on to say in the next paragraph, "His relationship with me was he was loyal to me as in, yeah, I look after the

governor. I've, but I've seen him do that to the three or four governors, next, next, next, and he'll just drop you or wipe you but just move on. He's very adaptable," this is over the page, sorry. And you go on there with that answer, but that's consistent with your evidence that he's very loyal to the rank.---Correct.

And that includes, in February 2014, you as governor and Mr Peebles as the substantive manager of security.---Correct.

10 Can I take you to page 93 of the use-of-force package, please. So this is an assessment by the nurse unit manager at Lithgow on the 19th. Do you see there the injuries noted, "Contusion to the left eye, cheek, lip. Bruising to the right-side torso over the ribs"? Do you see that?---Yes.

You would have been aware that those were his injuries on the – you would have been aware on 19 February those were his injuries?---I would have been aware some time during that day, afternoon, yes.

20 Well - - -?---I thought it was just, from my recollection I thought it was a rib injury.

And if you had have read the use-of-force package and seen that, you'd think bruising to one side of the face, eye, cheek, lip, and then bruising to the right side of the body around the rib area, you would be very suspicious about any story that talked about tripping over and falling on a toilet, wouldn't you?---Counsel, not necessarily in my experience over the years. You know, sometimes things happen in a cell where an inmate does try and avert or, sorry, discard evidence or whatever it may be. And if they're trying to stop and you're, you haven't got a lot of room in there and they're tripping and falling. And as you said, you know, you've got three, you know, three hundred kilos in and around there, you know, there is ledges and shower lips and toilet bowls, et cetera, boxes everywhere. There could be injuries, which there is some injuries to staff as well.

30 There's nothing about three hundred kilos landing on the inmate in the use-of-force package, is there?---I think you're, it's, the evidence has been here over, like meaning the weight of the gentlemen, the three gentlemen that were in the cell.

40 Exactly. That's what actually happened. But there's nothing in the use-of-force package about that, is there?---No.

So if you saw the use-of-force package and all you saw was "Tripped over cell furniture and fell heavily onto the toilet itself," and then you looked at the injuries, you'd think bruising to one side of the face, the eye, the lip, the cheek, and then bruising to the ribs, you'd have your suspicions, surely.---If I read the incident.

Do you know a Mr Dale Ashcroft?---Yes.

Are you friends with him?---Yes.

You worked at Lithgow together?---Yes.

And then I think in 2014 he was on secondment in Oberon. Does that sound about right?---To Oberon Correctional Centre which was another one of my centres.

10

So it was part of the cluster.---Correct.

And were you the governor of Oberon at the time?---Yes.

And in February 2014 he was the senior assistant superintendent?---Yes.

Does that sound about right?---Yes.

And now I think he's the manager of security?---Correct.

20

Can I take you to page 95, please. This is part of the use-of-force package and it's the IRM relating to the incident on 19 February. Do you accept that?---Yes.

And can you see underneath the summary and the entry that's attributed to Mr Walker, after review there will be a review entry from the reviewing officer, in this case Mr Taylor? Do you accept that?---Yes.

30

And so this one, it's not there, so being part of the use-of-force package that review hasn't been entered yet when this is printed. Do you accept that? ---Yes.

Yes. So I'm just orientating you to the document. Now, you would have read that IRM on or about 19 or 20 February, wouldn't you?---Maybe. I can't recall reading it.

Well, even if you didn't review the whole use-of-force package, you would have looked at what the IRM said?---Not necessarily, I, not necessarily, I didn't go in and look at IRMs a great deal of the time.

40

Well, do you see that Mr Walker, on the face of this document, has entered this summary at 1.38pm. Do you see that?---Ah, sorry, oh, yeah, sorry, thank you. Yep.

Now, Mr Ashcroft reviewed this summary from Oberon within the hour. ---Yes.

Did you tell him?---No, not to my recollection. Oberon is a lot quieter centre than Lithgow and Mr Ashcroft is very au fait with OIMS and everything else and it's his area, he likes to keep an eye on it.

Well, he would have had conversations with you about it, you're friends I assume?---Not necessarily about an incident like this, or he may have had conversations with other people, I can't recall having a conversation with him that day.

10 But this matter was certainly being discussed at the time at Lithgow I assume?---It would have been amongst the troops.

And you were visiting Oberon from time to time as the governor?
---Correct.

And so I want to suggest that, or no, I withdraw that. Just in relation to this IRM, you don't suggest, do you, that you can't access OIMS and have a look at an IRM?---No, I can access OIMS.

20 Your computer limitations don't prevent you from that?---Correct.

And I'm not being facetious.---Correct.

And so if someone said you something about the incident it's very easy to go online and have a look at a document like this?---Yeah, you can, you can go onto OIMS and scroll through and find it, yeah.

30 But you probably didn't need to because you had the hard copy as part of the package, and so even if you're not reviewing the whole thing you could just flick to the meat and have a look at it?---Yeah. I wouldn't have had the package that time of day.

No, but on the 20th you - - -?---I'm sorry, sorry, I thought you meant the 19th, sorry.

40 If you wanted to save time, you didn't have the full hour to review the use-of-force package, you could have looked at Mr Taylor's high level review and the next document you would go to I suggest is the IRM to find out what happened. Do you accept that?---I accept that.

That shortcuts the need to read the reports because it's effectively a summary of the reports. Do you accept that?---Correct.

And I want to suggest that you would have at least done that on 20 February.---No, I can't remember reading that.

Now, just in terms of that document, it refers to "no force anticipated". Do you see that? So - - -?---Oh, sorry, yeah.

“No force anticipated. Offender fell without any physical contact from officers.”---Ah hmm.

And that’s an excuse as to why it was not fully recorded. I want to suggest that force was clearly anticipated. Do you accept that?---I don’t accept that it was clearly anticipated, no.

You had a heated exchange with an inmate.---Yeah.

10

He was clearly angry or they both were.---Yeah. Yeah.

And IAT are going in there. You’d anticipate the potential of a use of force, surely.---No, that happens daily. Their presence prevents 99 per cent of use of force.

Now, I think your evidence yesterday was that this use-of-force package would have been placed in your in-tray, perhaps by your admin assistant, Robin Pytko, or - - -?---Or Mr Taylor. I'm not real sure who, yeah.

20

And so your practice, I assume, is to see what is in your in-tray and to review it or do what you need to do with it.---Generally get to work around 7.00, 7.15 for an 8 o'clock start. I have a look, a quick look at my in-tray, sign, and move on and get ready to talk to staff or meetings.

Now, with use-of-force packages, you would be aware that they’re not just paper packages. Do you accept that?---Yes.

And in fact they’re required to have colour photos of the inmate.---Yes.

30

And there also needs to be a DVD copy of any CCTV footage provided by Intel or IAT.---Correct.

And the hand-held camera footage from the little Sony hand-held, that would come in a DVD form, would it, in 2014?---It was either a disc or a thumb drive. I think it was mixed up. Depends where it came from, whether it was IAT or Mr – I can't recall exactly what it was. Possibly a disc.

40

So do I assume that all those things were in your in-tray with the 20-page use-of-force package?---They possibly could have been in the envelope, yes.

So there was the CCTV footage, was there?---I've got no idea. I didn't view the footage.

What about the hand-held camera?---There was no hand-held camera.

How do you know that?---Because there was an internal investigation in 2015 and the three IAT officers were fined.

Well, you've also heard suggestions, no doubt, that the CCTV footage was deleted. Have you heard that?---I have heard suggestions of that.

So how do you know whether the CCTV was there?---Pardon?

10 How do you know that the CCTV DVD was part of the package?---I don't know it was part of the package.

And have you ever seen or heard about any still photos?---No.

20 Well, even if you didn't review the document itself, the package itself, when you picked it up, if those things were missing you'd know without thinking that there'd been a breach of the requirements.---I would have purely taken the package out, the paperwork out, stamped it. It mightn't even have been an envelope. I can't recall. Stamped it, as I said, signed it, had a look at Mr Taylor's comments and signed it, and put it back in the tray or in the envelope or whatever, into the out-tray.

Now can you answer my question? When you picked up the bundle of documents, you would ordinarily expect as a policy requirement DVDs or thumb drives with the photos, the handheld - - -?---If they were there, yes.

30 Yes. And if they weren't there, when you picked up the package you'd know that immediately?---I don't know if I'd know that immediately. I, I, I generally didn't look at a, of, unless it was a major incident as I said yesterday.

Can I take you to page 1 of Exhibit 45, please. Now, this is an email from your manager of security to various officers at Lithgow, including yourself?---Yes, yes.

Now, is this an email you would have read or not read?---I, I possibly could have seen it. Brad and I spoke about various things when he first came there but I, I, would have seen it.

40 Now, it says, "Hi everyone. Recent UOF reports have not been completed to the standard required." Can you see that?---Yes.

So, compliance was an issue in September, 2013, was it?---Reporting, some reporting, yes.

Yes. Well, you would have been aware, receiving this email, that it was an issue. And then underlined, "All UOF packages must be completed and forwarded to the MOS within 24 hours of the incident and must include,"

and there's a number of bullet points, including towards the bottom of the list, "A4 colour photos of each involved inmate." Can you see that?---Yes.

And that's to protect the officers as well as record the injuries?---Yes.

And last dot point, "A completed registered DVD copy of any CCTV footage. Intel and IAT will provide this."---Yes.

10 And then over the page is an earlier email from the month before, in August, "Use of force and other reportable incidents, quality control," a reference to being on the wrong end of some Ombudsman's recommendations. Well, that would have been a concern to you as the governor?---Correct.

And underlined towards the bottom, "Please note the requirement for photos," and a reference to reporting to police. Do you see that?---Yes.

20 And then over the page, at page 3, you've got a checklist, "All incident reports, photos attached," towards the bottom, "IAT discs, CCTV footage." ---Yes.

So those requirements were no doubt in your mind in late 2013?---Yes. I think this was a package Mr Peebles brought over from his previous centre or something. I, that he, oh, you know, implemented.

Yes. And it makes it quite easy, I want to suggest, to check what's there and what's not here for a use-of-force package. Do you accept that?---Yes.

30 It has checklists and requirements clearly set out. Do you accept that?---I accept that.

And so when you picked up a paper package that had no thumb drive, no CCTV, no hand-held camera footage, you wouldn't have known immediately that something was missing without having to review the package. Do you accept that?---I didn't, I possibly would have known if there was nothing there but it didn't dawn on me at that time.

40 Well, I want to suggest to you, knowing the requirements and having had them underlined less than six months earlier, you would pick that up and your immediate reaction would be, either A) find out why or B) refer it to Professional Standards because there's a problem. Do you accept that?---If I recalled it, yes.

Is the reason that you didn't do either of those things – investigate further or refer to Professional Standards – because you knew the reason why there wasn't a complete package?---No.

Can I take you to page 99, please. This is part of the package, it's a report addressed to you. Do you see that?---Yes.

And do you see there there's a reference to "Minor use of Force, Inmate
[REDACTED] No Audible Reply)

As the subject?---Oh, yes, yes, sorry, sorry, yeah.

You don't consider this incident to be minor in any way, do you?---Not now.

10 No. And the next, the first main paragraph - - -

THE COMMISSIONER: Sorry, does that mean that you, as of 19 February, 2014, thought that the incident was minor?---The information I had then on the 19th, Commissioner, I thought it was minor.

Thank you.

MR DUGGAN: Do you keep records of the number of section 24 hospital admissions that result from a use of force from officers?---I don't think I did
20 personally but I think there was some ability to capture that information and I can't recall where or by whom.

And you're an experienced governor, how many hospital admissions would you get from use of force at Lithgow within a given month?---Hospital admissions or, or, or visits? Like admitting into hospital overnight, do you mean, or do you mean visiting the hospital?

Well, you understand that there was a section 24 so that this inmate could be assessed at Lithgow Hospital?---Correct.
30

And he went into Emergency Department and he was released that day?
---Right.

So I don't mean overnight stays.---Okay, so - - -

How many section 24s would there be so that someone, an inmate could go to hospital because of a use of force by an officer?---Oh, just on pure use of force.

40 How many a month?---If it was a large incident in the 5 Unit area, possibly once a fortnight during that summer period, but whether it be breathing difficulties or something, I don't know, but not a great deal.

No. So the first thing I want to suggest, it's not minor when that happens.
---When, when they go to Emergency?

Yeah.---It can be. The Justice Health system, they have no doctors attached to them or anything like that, they're only, you know, they're there doing

their best, nurses and that and they generally send them out as a precautionary measure for any minor incidences really.

Well, you knew he'd gone to hospital?---I was informed or heard later on that afternoon, yes.

And you were there at least for the build-up or the inception of the incident?
---I was there, yes.

10 I'm not trying to trick you, I mean the knock-up call and the - - -?---Yes, yes.

- - - attending the cell.---Yes.

And given the fact that in the Summer of 2013/14 there would have only been one hospital visit a fortnight, you would have - - -?---Possibly.

- - - taken a particular interest in this.---Not necessarily, no. I, I don't, it's not my area. Other people run that.

20

But you run the centre, don't you?---Correct.

And hospital transfers for inmates, based on a use of force involving officers, that's something you need to look at and take responsibility for. Do you accept that?---Yes.

And your explanation for not taking responsibility as I understand it is you were just too busy.---That's, yeah, I was very busy.

30 Do you accept that that puts inmates in a vulnerable situation?---No.

You don't accept that?---No.

So if there's a problem down the chain, as there was here clearly. You accept there was a problem down the chain here?---I accept that there was a problem with this incident.

Yes, Mr McMurtrie fabricating intel. You accept that's a problem?---Yes.

40 Mr Walker striking an inmate. You accept that's a problem?---Yes.

And when you're not taking responsibility and reviewing these matters, that makes inmates in your centre vulnerable, doesn't it?---Yes.

Because it exposes them to assaults which are covered up. That's the reason.---That's your reason, yeah.

Yes. Do you accept it?---I accept that scenario.

Just going to page 99, please. So the first paragraph there, that inserts or substitutes the reason for attending the cell. Do you accept that?---Yeah.

And if you reviewed that document in February 2014, that would have been inconsistent with your understanding?---Correct.

There's no reference in that document to anyone landing on top of the inmate, is there?---No.

10

So you would have been concerned that there was a curious explanation for the injuries that had been suffered?---I would have been concerned, did you ask? Sorry.

Yes. Yes.---Yes.

And if we go over the page, to page 100, this is Mr Duncan's report.---Yes.

20

And someone reviewing the use-of-force package and seeing this wouldn't be comforted, I assume, because there's no reference to any use of force in this document.---Correct.

And at page 101, there's a reference to a movement towards the toilet and the sink, about line 4, but then curiously no evidence of witnessing the event, which would simply raise a question rather than answering one. You accept that?---Yeah, I think here he's saying he, he was looking at, focusing on inmate [REDACTED] from the top bunk. Is that where you're at, sorry?

30

Yes. But it doesn't provide any further information about how the use of force occurred - - -?---No, no, no.

- - - save to say that he moved towards the toilet and the sink. Do you see that?---Correct.

And in fact I want to suggest to you that, in cell 208, if you get off the bunk you can either move forward or backwards. There's not exactly enough room to move sideways, is there?---It's very limited.

40

Yes. And so IAT officer coming in the door, the inmate would either move forward towards the officer or move backwards towards the toilet and the sink. Do you accept that?---Yes.

So this really tells you nothing.---No.

Now, your report, your witness report, I assume you never prepared a witness report.---Correct. I, no. I can't recall doing one.

Well, it's certainly not in the use-of-force package.---Yeah.

Is that correct?---Correct.

There's another report missing from the package, isn't there?---From what I've seen, yes.

Yes. Now, I'm not suggesting it was prepared at the time the use-of-force package was signed off, but you would have seen at some stage Mr Duffy's report?---Yes.

10

And you would have seen that on or about 21 February, 2014?---Until I saw it in here the other day – last week or the first week, I can't recall which day it was – but until I saw, then I got a vague recollection of seeing that report, yeah.

In 2014?---After the 19th.

20

So on the 21st?---I've got no idea what date but it was, yeah, I, I don't know the date when I saw it but I have a vague recollection of seeing that report that you had onscreen the other day.

If I can go to page 48, please.

So you say you saw this report in February 2014? Is that your evidence?---I have a vague recollection I did, yes.

So when you read that report, I assume you read it in isolation.---Correct.

30

You would think to yourself, "Why am I receiving this incident report in isolation and not part of the use-of-force package that I signed the day before?"---Correct. I don't know if it was the day before but – it could have been three or four days later whenever I saw this report. I, I don't know.

Well, I want to suggest to you that this was registered with the deputy's clerk on 21 February, 2014.---Yes. Yeah.

40

Does that accord with your recollection of reading this document?---No, I wouldn't have known when it was registered or anything like that, I don't think.

So you would have rung Mr Taylor immediately and said, "Hold the report."---Hold the - - -

"We've got some new information."---Not necessarily, because the, I can't, I have a vague recollection of writing something on this and sending it to either Mr Hovey's area of S&I, Investigations, or to PSB or to S&I or to my director or someone. I have a vague recollection of writing something on the bottom of it and asking them to have a look at - - -

All right. Well, then - - -?---I possibly wouldn't have sent it to Mr Taylor at that stage. But also I was trying to weigh up possibly whether the Mr Duffy versus Mr Duncan and Mr Walker – I didn't know Mr Duffy was there at the time.

10 THE COMMISSIONER: What do you think you wrote on the bottom of the document?---Oh, God. I think, “Can you have a look at this when you get a moment?” From memory I think it was just something along those lines, you know, “Can you have a look at this when youse get. I don't know if there's anything in it.”

As I understand it, there was a departmental investigation but it didn't happen until 2015.---Correct.

20 But you've got a vague recollection - - -?---I've, I've got a vague recollection, Commissioner, of sending this to either Mr Hovey or Mr Matt Horan or someone in that branch, or to Mr Stevie Davis of S&I, who was another branch of security as well, or to my director or to PSB. I, I would lean towards Mr Hovey's area.

MR DUGGAN: Commissioner, can I indicate, in fairness to the witness, there were some investigations made I think in about April 2014, some inquiries made.

THE COMMISSIONER: Thank you. Thank you.

30 MR DUGGAN: So Mr Horan, Mr Hovey or Stevie Davis?---Or my director. I, I can't recall - - -

Or your director.--- - - - Counsellor, exactly who it was.

And your director is in Sydney?---Negative.

Where would they have been based at the time?---They were probably based at Goulburn.

And Messrs Hovey and Horan, they'd be based in Sydney?---Yes.

40 And what about Mr Davis?---Also Sydney, Windsor.

Sorry, Windsor?---Windsor area.

But based in the city?---Yeah, their office you mean? I, I think they were based at Windsor at John Morony Complex.

And so, I assume you didn't get in the car and drive it over?---I, no, I don't think I would have done that.

You'd probably remember if you did, I assume?---Possibly. I could have been going for meetings and, I, I don't know. I possibly could have faxed it away. I could have given it to my PA to send away.

So, they'd have a record of that, no doubt, receiving that?---I've got no idea. I presume so. Whoever I've sent it to.

There'd be no reason - - -?---Or give it to.

10

There'd be no reason you could think of why Investigations Branch or your director wouldn't have kept a record of receiving that document?---Not to my knowledge.

And why were you sending it to them?---To have a look at, like, get someone else to have a look at it. As I said, I didn't know, there was a lot of friction in that centre. I didn't know if it was, you know, something between Mr Duffy and Mr Duncan or Mr Walker. The, it was just toxic.

20

Well, just the fact that you have received this report outside of the use-of-force package and after the use-of-force package, that's an alarm bell?
---Yes.

So is that why you sent it to Investigations Branch or for some other reason?---No. I, I would have sent, I don't want, you wouldn't want those particular people, I don't think I would have even told Mr Taylor that I sent it. I may have told the Intel, I may have sent it to them because he's an Intel manager and they deal with Mr Hovey's area all the time. I don't think I would have spoken to Mr Duffy about it because I wouldn't have wanted it to go anywhere. Let them do what they've got to do with the report.

30

So, given the level of seriousness with which you treated it, you wanted it to be a confidential process?---I believe so, yeah. I, I can't recall where and what I did with it. I don't remember giving it to Mr Taylor.

Well, you sent it either up the line or to Investigations Branch?---Yes.

And that was because you had concerns about it lying outside of the use-of-force package?---I had concerns about lying?

40

It being you had concerns that it had arrived after the use-of-force package?
---Oh, sorry, the, the report. Yes. Sorry, yes.

So, you would have gone to check whether it was in the use-of-force package?---No, I didn't check to see if it was in the use-of-force package.

But that's the first thing you'd do. You'd look at this and think, "Why am I getting this?" You'd look at the package.---I didn't realise Mr Duffy was there until I had this.

And that's why you would have looked at the package to see what it said. ---The package would have been gone back to Intel, to wherever it went to. I, I could have gone down there and checked, yes, Counsellor, but I didn't. Not to my knowledge, no.

10 Ms Pytko was a good administrative assistant, wasn't she?---She was, she was a wonderful person.

Yes. And she could have dropped this use-of-force package for you very quickly.---True.

There's a reason that she didn't need to, isn't there?---I don't know what you mean.

20 You knew what was in the use-of-force package and you knew that Mr Duffy's report wasn't there, didn't you?---No.

THE COMMISSIONER: If you did send a copy of this document to one of the people you've mentioned, they really wouldn't have a full understanding of its implications without having access to the use-of-force package themselves, would they?---Correct.

30 But you didn't send a use-of-force package to them, did you?---I don't know. I, I don't think so but I would presume they would do that and glean that information for themselves through an investigation or whatever, inquiry.

MR DUGGAN: So to send it on to Investigations Branch or up the line you would have read the document?---This incident report, yes.

And you would have seen the bit in the second paragraph, "Officer Walker retaliated with a strike to the side of [REDACTED] head." Do you see that? ---Yes.

40 And Mr Duffy says, "I then reached low and applied figure 4 leg-lock to [REDACTED] leg in an attempt to take him to the ground." Do you see that? ---Yes.

Now, not only is that consistent with the use-of-force package you say you didn't review, it's also inconsistent with what you'd been told.---Correct.

So why didn't you do something about that?---Because if I've sent it up the line or for someone to get advice back to or whatever, I would have let them

do what they need to do and start an investigation. If I'm going in and telling people, you know, whatever, I'm jeopardising and, the investigation.

But as the Commissioner says, you wouldn't sent this in a vacuum, you would send a covering email or a covering note saying, this clashes with what I've been told.---That's what I said, I can't remember what I've written there or whether I've put it in an email or, or faxed it. I may have just wrote on the bottom of it and sent it off to wherever I've sent it to.

10 But this is a serious issue. You have some understanding, according to your evidence, at this point when you read this document, that there's been a trip and fall on a toilet. Is that right?---I have an understanding that what, before I read this report, yes.

Your evidence is you were told that, by someone that - - -?---Yep.

- - - this inmate had tripped and fallen on the toilet.---Yep.

Is that your evidence?---Yep.

20

And some evidence possibly that someone fell onto the inmate. Do you accept that?---Yes.

And your understanding as I grasp it from your evidence is that you thought the use of force might have been some restraint or prevention of this inmate trying to flush something down the toilet.---Yeah, Mr Walker trying to grab him and, yeah.

30

Not a strike to the side of his head.---No, no.

And so you wouldn't just jot down a note on the bottom of this cryptically and sent it off to Investigations Branch, you would write a formal report saying, I've been told trip over on the toilet, may have landed on him, Mr Duffy has given me a report which lies outside the use-of-force package which says this inmate was struck to the side of the head.

And I could have had that phone conversation with the investigators or whoever I've sent it to.

40

Did you say you could have?---Yeah, I may have, yeah.

Are you suggesting you did?---That I had, that I had a conversation?

Yes, to that effect?---To that effect, no. I would have sent this off, had an email or a phone conversation with Mr whoever, you know, down in that area and said that um, this is different, it wasn't in, you know, like it wasn't what I was told, and I know there is differences between Mr Duffy and Mr

Duncan and Mr Walker and I didn't know where it all sat at that time, so I wanted someone else to have a look at it.

You would have had a conversation with Mr whoever. Is that your serious evidence?---Well, Mr – I'm trying to, sorry, Counsel, I'm trying to think of the names as I'm going here.

10 Well, are you saying that you would have had, as in you can't remember having any conversation, but you're trying to explain the situation or do you have a positive recollection of speaking to - - -?---I don't have a positive recollection, no.

You didn't call anyone, did you?---Quite possibly I do, I don't, I have a large network of people I've known for years in all areas and I'm often on the phone. We work very closely with that area, weekly with various investigations and stuff within the centre.

20 Well, there's no reason why Investigations Branch wouldn't have a note of that conversation, is there?---I've got no idea. I don't know how they keep their - - -

But there's no reason you can think of why they wouldn't have a note of that conversation?---Not a telephone conversation.

30 And now you're having a chance to think about it, and you might be able to think about it over the morning break in a minute, you initially referred to your director but it sounds as though it's more likely Investigations Branch. Is that your evidence?---Possibly, yeah. I'm not a hundred per cent sure who it was.

THE COMMISSIONER: And Investigation Branch includes Mr Hovey? ---He's the director of the, and Matt Horan was one of his investigators.

And so was Mr Glasheen?---I think they were, I think they're private. I think they, the department - - -

And you made a statement on 4 March, 2015, didn't you?---Yes.

40 And do you accept from me that there is not one word in that statement about Mr Duffy's statement?---Correct.

There should have been, shouldn't there?---I, I probably would have forgot all about it, Commissioner, or possibly thought that was part of that report that I sent away while the investigation was taking place.

Were you given a copy of your statement after you signed it?---Was I?

Yes.---I believe so, yes.

MR DUGGAN: Well, your evidence, as I've understood it so far, is that you didn't think this was a particularly big incident, is that right?---Correct.

At the time.---Correct.

But reading Mr Duffy's report there was clearly a more serious issue at play. Do you accept that?---I accept that.

10 And that serious issue didn't find its way into your statement in 2015 to Investigations Branch.---I wasn't asked that. I can't, I don't think I was asked that at all.

No, but you said you had conversations with them about it.---I, I, about, not with, not with Mr Glasheen. He's the investigator that the department hires, I presume. I think so. I don't think he works for us.

20 THE COMMISSIONER: Surely it's an investigation into this incident. Surely this letter or this report from Mr Duffy was highly relevant to that investigation.---Agreed.

And you've made no mention of it at all in your statement.---As I said, I thought that, by sending that letter as to that incident report off, that's where the investigation came from.

30 We'll adjourn in a moment but can I just take you back to what happened in the day room. I think you said the conversation between you and the inmate in cell 208 was heated and you were yelling at him and he was yelling at you.---Yes.

And he was being verbally abusive towards you, is that right?---Yes.

And I'm not being critical but it'd be correct to say, wouldn't it, that you were being verbally abusive towards him?---Yes.

Thank you. Is that a convenient time?

MR DUGGAN: Yes. Thank you, Commissioner.

40 THE COMMISSIONER: I'll adjourn.

SHORT ADJOURNMENT

[11.28am]

THE COMMISSIONER: Mr Brasch, you can assume that a notice will be issued today to pick up any of the communications referred to in relation - -
-

MR BRASCH: I understand. Will that be forwarded directly to the Commissioner or will it, I can start to make arrangements for it forthwith, if we can.

THE COMMISSIONER: Would you prefer it to be directed to the Commissioner?

MR BRASCH: Yes. I think so.

10

THE COMMISSIONER: Well, just let him know it's on its way so people can start looking because I'd be keen to know whether - - -

MR BRASCH: If I can have the terms of it, I can get that maybe, start to, not publicly, the terms of it, but in some form then I can maybe start to have some steps taken immediately, put that in action.

THE COMMISSIONER: Well, are we in a position to do that now? You say generally it concerns - - -

20

MR DUGGAN: Yes. I don't think we can set it out in chapter and verse, but it would certainly relate to any record of having received Mr Duffy's report or any conversations with the individuals identified.

MR BRASCH: I understand. I - - -

THE COMMISSIONER: So the notice that requires both the information and production of documents, the information will be something to provide a statement saying that they've searched for these records and they've either found them or haven't found them.

30

MR BRASCH: I'll do so. Yes. Thank you.

THE COMMISSIONER: Mr O'Shea, you're on your former oath.---Yes, sir.

And I want to ask you some questions about the statement you made during the course of the Corrective Services investigation. I think you said you had a copy?---Yes.

40

Had you read anyone else's statements before you gave yours?---I don't think I would have, no.

Did you have discussions with other officers about the investigation before you provided your statement?---I'm unclear on that, Commissioner. I, I, I can't recall. I, I did speak to Mr Walker prior to his, he come into my office, he was a but upset and I, I did speak to Mr Walker but not about, it was just

mainly about, just telling him to relax and be calm and that, that the interview shouldn't take long, really.

Did you raise with him at that point in time what you read in Mr Duffy's statement?---No, not at all.

Was there a reason for that?---Because there would have been investigation going on. It wasn't my place.

- 10 Can we get that statement on, so this is your statement of 4 March, 2015, and in paragraph 7 you note that on 9 February the centre had been in lockdown due to searched being conducted by staff of the inmate's cells. This search had been conducted by IAT staff and officers from SOG. "I do remember that day. I did attend the officers' station at 5.1 Unit, where I could hear inmates being verbally abusive to staff on duty." Then if we go over the page, you say this in paragraph 8, "I am unable to recall if I had a conversation in person with inmate [REDACTED] [REDACTED] by attending the cell flap or whether it was conducted over the centre's knock-up system. However, I did instruct the inmates to settle down as the staff were busy and would attend their needs as soon as possible." Now, you had a copy of that statement, didn't you, at the time that you were interviewed by the ICAC?---I have, yes, I think I, I would have, yes.

And no doubt you read it?---Yes.

How could it be, then, that time after time in this interview you deny having gone to the cell?---The whole thing's a blur, Commissioner.

- 30 Well, it wasn't a blur when you gave your statement in March of 2015. All you said, you were unable to recall whether it was in person or whether it was conducted over the knock-up system.---That would only have been about 12 months after the event.

Yes, but you had your statement. You had a copy of your statement before you gave the interview.---With ICAC?

Yes.---I, I don't know if Paul gave it to me or not. I can't, he may have. I don't know.

- 40 I'm not suggesting Paul gave it to you, but your evidence before we took the adjournment was that you were given a copy of that statement by presumably Mr Glasheen or - - -?---Yes.

Yes. You made comments during the interview with Mr Grainger, "We didn't even go into the unit," and that was that on that particular time. ---Yeah.

You say you don't know if it was you or Mr Peebles who called IAT. "I wouldn't even be able to tell you who the senior of the day was, to tell you the truth, Paul." "That's okay." "And then virtually we went out." Again, not acknowledging that you'd gone anywhere near the cell, do you agree?
---Yes.

10 And at page 17 of your interview you were asked, "So at any time did you go to the cell itself to talk to the inmates?" "Not to my knowledge, no. We just walked out. We walked out." And then you were asked questions also about whether you'd seen IAT in the day room, and the evidence you gave at various points during this interview with ICAC was that you might have seen them on the way out. There was no mention of the fact that they were in the day room at any time that you saw them, was there?---No, not at that time when Mr Grainger interviewed me, yeah. I couldn't recall them. I thought I passed them in the hallway or in a doorway.

Yes, but your evidence now is that you did see them in the day room.---I remember Mr Walker being I the day room, yes, that's correct.

20 Well, he's IAT, isn't he?---Yes, sir.

And in fact he was a senior on that day.---Correct.

Are you suggesting that you didn't refer to IAT being in the day room when you were interviewed by Mr Grainger because you only saw Mr Walker in there? Is that what you're suggesting?---No.

30 And in your statement you don't make any reference to IAT, do you? I withdraw that.---Sorry.

I withdraw that. Do you remember just before we adjourned you agreed with me that the exchanges between you and the inmate were abusive on both sides?---Correct.

Why did you, and I'll use your words, "categorically deny" being verbally abusive towards inmate [REDACTED] as he has claimed in the telephone recording, and instructing any officer to physically abuse or assault inmate [REDACTED] Well, abusive - - -

40 To categorically deny being verbally abusive was just false, wasn't it?---At that time I couldn't really remember. It's, it's, everything was past and past and, you know, I'm hearing different information or different evidence, and some things are gelling, some things aren't.

Well, one thing that did happen before you made your statement, can I suggest, is that Mr Glasheen gave you either a transcript or the verbal recording of the telephone conversation which had taken place with the inmate's father on 20 February, 2014.---I think so, yes.

Yes. So you'd listened to that.---Yes.

And you'd listened to the suggestion made by the inmate that you had come up to the door and spoken with him, and the next thing that happened was he got flogged. You'd listened to that before you made your statement.
---Yes.

10 And as I pointed out to you before we adjourned, there's no mention in your statement of Mr Duffy's statement, is there?---In the, this statement, no.

20 No. If you look at paragraph 11, what you say is, "I've been shown a use-of-force form reviewed by Acting Manager of Security, Stephen Taylor, on 19 February, 2014 and I see that my signature appears on that form as the general manager. This form is dated by me on 20 February, 2014. As per CSNSW policy and procedures I must oversee the use of force and in this case I marked the form no further action as Acting Manager of Security Taylor had reviewed the use of force looking at the staff reports and other information he had gathered." And what do you say to the suggestion that's really been put to you already by Counsel Assisting that you expressed yourself in that way so that you could distance yourself from the contents of the package which you in fact had read?---No, Commissioner, I didn't try and distance myself from it, I purely didn't read it.

Why didn't you point out in paragraph 11 that the statement that you had received from Mr Duffy was inconsistent with your understanding of the contents of the use-of-force package?---I can't remember being asked about Mr Duffy or the report at all during this interview.

30 Are you saying because you weren't asked you didn't tell them?---No, no, I was just answering questions that was put to me.

It was highly-relevant information, wasn't it?---Yes.

Yes, Mr Duggan.

MR DUGGAN: Thank you, Commissioner.

40 Just on that statement, if I can go to the first page of the statement at the very top, please. Do you see where it refers to "The matter," "In the matter of," do you see that?---Yes.

Do you see that it says, "Alleged use of force on inmate [REDACTED] do you see that?---Yes.

Well, you knew didn't you that there was an investigation into the allegation that a use of force had been used on Mr [REDACTED] (No Audible Reply)

You're nodding.---There was, there was a grey area there that they were investigating, yes.

Yes. And if you'd read Mr Duffy's report there wasn't much grey area about him describing the inmate being struck by Mr Walker.---At that stage it was a report that needed to be investigated by CS, Corrective Services, sorry, and I didn't weigh into that. That's got to be done by the investigators.

10 You understood what they were investigating in broad terms?---Yes.

And you chose not to assist them by providing relevant information such as evidence that the inmate had been struck by an officer.---Not true. I assumed they had that Mr Duffy's report.

Well, why wouldn't they have asked you about it?---I can't answer that, Counsellor.

20 The other relevant information you had, assuming they had Mr Duffy's report, were accounts which conflicted with Mr Duffy's report that you'd been told by other officers. Do you accept that?---I'm not real sure what you mean there, sorry.

So you had been told that things had happened inside this cell which were not consistent with Mr Duffy's report. Do you accept that?---I was told, yeah, to the contrary, yeah, sorry, to Mr Duffy's report, yeah.

30 So you didn't say for example, as part of your statement or when you were interviewed, I've been told that he tripped over and fell on a toilet, and I've read Mr Duffy's report which says he was struck, and they're inconsistent. You didn't say that in your statement?---I didn't, I forgot all about Mr Duffy's report until I saw it here on the TV, on the monitor, sorry.

But that's the very thing that they're investigating, whether or not there's been a use of force. How could you forget about Mr Duffy's report?---I presumed they had it. Are you talking about the internal investigation?

I'm talking about the 2015 - - -?---'15 one.

40 - - - statement - - -?---Yeah.

- - - that you signed, witnessed by Mr Glasheen.---Yeah.

Have you got any explanation for why - - -?---He didn't ask me, no, it wasn't raised.

But doesn't that indicate he may not have known about it?---No, I presumed they had it and that's where it started from.

THE COMMISSIONER: But you had it too.---Pardon?

You had it too.---Yeah.

And you'll see in paragraph 11, "I have been shown a use-of-force form reviewed by Acting Manager of Security, Stephen Taylor." Do we take it that when you were shown those forms during the course of your interview that you read them then?---Possibly, yes.

10

Well, it must have jumped out to you, surely, sir, that what was contained in them was not only inconsistent with Mr Duffy's statement but inconsistent with what you understood had occurred?---Commissioner, I don't even know if Mr Duffy's statement was there um, um, presented to me by the investigator.

Well, there's no suggestion that there is. What you were presented with was the use-of-force form that had been reviewed by Mr Taylor.---Yes, true.

20

And you would have read them, no doubt.---Well, he showed me where I'd, I'd, I'd signed on page 2. I can hardly recall the interview, to tell you the truth.

Yes, Mr Duggan.

MR DUGGAN: I want to take you to an email exchange with a Mr Joshua Bindley. Are you familiar with Mr Bindley?---Yes, unfortunately.

30

He's a friend of yours, is he?---No.

Why do you say unfortunately?---Oh, well, Mr Bindley was a very difficult person to manage.

I want to take you to an email chain on 11 March, 2015. Did you email Mr Bindley regularly?---Oh, from time to time he'd email and stir things up or whatever, but from time to time he'd send me an email or - - -

Right. And you'd respond?---Sometimes.

40

I just want to start from the bottom up, and there is previous correspondence two days earlier in this email chain but it's not relevant. Now, on 11 March Mr Bindley has contacted you and he wants to arrange a swap in relation to Oberon. Is that how you understood the bottom email?---I thought it was to go into Bathurst, he was trying to get a swap.

All right. And so you replied to him at 9.50 and then Mr Bindley says he's all heart and he wants to know about getting on the same shifts until he gets

his licence back. Do you recall anything about that?---Yeah, there was times that Mr Bindley lost, lost his licence or something, yeah.

All right. And then you reply, "Firstly so-and-so will not let you go."
---Yep.

"And, no, Elliott didn't do it on my desk."---Yes.

10 Who's the Elliott you're referring to there?---Elliott Duncan.

And then the next exchange, Mr Bindley to you, "Why won't he let me go," et cetera, and "Don't worry about Elliott, it's your manager of security sniffing about that UOF incident." Do you see that?---Yes, yes, yes.

You'd had discussions with Mr Bindley about that, had you?---Mr Bindley has discussions, or sorry, I can't recall personally having a conversation but he always puts in and stirs people up and, you know, says stuff and incites other officers in the centre and drives wedges, yeah.

20 You replied, "Which one? I've got three of the buggers." Can you see that?---Yeah, yes.

So you had three uses of force that were problematic?---Negative.

Well, what are you saying?---There's three MOSs, like Mr Turton, Mr Taylor, Mr Child. Could have been, yeah, all those. I had quite a few rotate through there.

30 So, "Which manager of security? I've got three of the buggers." Is that what you're saying there?---Possibly. Or SASs, yeah, possibly.

And one of those managers of security was Mr Sim?---No. Yeah, he acted up, sorry, yes, yes.

And so Mr Bindley replied, "Sim has been worded up and knows about Duffy's report." Do you see that?---Yeah.

40 He's referring to Mr Duffy's report on 21 February, 2014, isn't he?
---Possibly, yes.

Yes. And what he's suggesting there is that Mr Sim has found out about this otherwise unknown report. Do you accept that?---Yes. That's what Josh was saying.

And the reason he was saying that or the explanation or the inference from that email is that up until that point no-one else knew about it within the centre. Do you accept that?---No. I, I think Mr Duffy had told a few people, and from what he said the other day it's always, they were always

talking and allegations going about different things around the centre all the time in that centre.

I'm not asking you about what you've heard in the last two weeks. This suggests that no-one within the centre knew about Duffy's report, doesn't it?---No. Not to me.

10 Well, I want to suggest that the reason Mr Bindley is sending this to you is because you've buried the report and told no-one about it except possibly Mr Bindley, and that Mr Sim had found out about it.---No.

Why else would Mr Bindley be sending this email to you saying, "Sim has been worded up and knows about Duffy's report"?---As I said, Mr Bindley likes to stir things up and people up. It was very difficult to manage with all managers. And he saw, if he saw a split between whatever rank of staff, he would, he was quite witty and would stir problems up.

20 Well, this would have stirred you up, I'd suggest.---It's, I tried to ignore Mr Bindley as much as possible.

THE COMMISSIONER: He was telling you that he has intelligence and the intelligence seems to have been that Sim has been worded up and knows about Duffy's report.---Which I had no issue with, I, I don't believe. I deemed as, as it was said here, Mr Duffy spoke to numerous people and, about, or a few people about his report and Josh may have got it from there. I don't know.

30 MR DUGGAN: But the inference here isn't that Mr Sim is carrying out proper investigations as a manager of security and he's come across Mr Duffy's report. It's suggesting that the fact he knows about this report is problematic. Do you accept that inference in this email?---There's an inference there that I, yeah, it's - - -

And it was problematic because it wasn't consistent with the cover-up story of events in the use-of-force package. That's why it was a problem, I want to suggest.---No.

Do you reject that?---I reject that.

40 And the reason that you wanted to keep Mr Duffy's report confidential was not any concern that you had about staff not being cohesive with each other or a toxic environment, it was because Mr Duffy's report was inconsistent with the cover-up version.---No. There's rumours and innuendo run around that centre left, right and centre. It was just yeah, it was just best not to talk about it. It's been put into the, wherever I sent it.

In addition to having discussions with Investigations Branch, given the seriousness of the inconsistency between Mr Duffy's report and what's in

the use-of-force package, you would want to speak to your director I would suggest?---Possibly I could have. I, I can't recall. I had, I don't know at that time if it was Mr Creighton or Mr, oh god, right now I can't think of his name but I think we had a couple around that time.

There's usually an after-action review in relation to a use of force.---Is there usually one?

10 There is usually one, I suggest.---Not all the time.

Well, there needed to be one here, didn't there?---Needed to be now, yes.

Yes. So was there one?---I, I can't recall one.

Can you explain why there wouldn't have been one?---No.

I tender that email page, Commissioner.

20 THE COMMISSIONER: Mark that as Exhibit 91.

#EXH-091 – EMAIL CHAIN FROM JOSHUA BINDLEY TO JOHN O'SHEA RE: SWAPSIES DATED 11 MARCH 2015

THE COMMISSIONER: Could we just have that on the screen again, if you don't mind? You made your statement on 4 March, 2015. This series of emails occurs a week later, do you agree?---Yes, Commissioner.

30 And one of the concerns that Mr Bindley raised is that one of your managers of security is "sniffing about" that UOF incident. Do you see that?---Yes, Commissioner.

And then he later says that "Sim is being worded up and knows about Duffy's report." Can I put to you that the reason, I'll put it again, that you didn't refer to Duffy's report in your statement was because you knew it was inconsistent with both what you knew and what was in the use-of-force package?---No, Commissioner.

40 Are you going to tender this witness's statement?

MR DUGGAN: Yes. Yes, I've just been reminded of that. I tender the statement to Corrective Services dated 4 March, 2015.

THE COMMISSIONER: That'll be Exhibit 92.

#EXH-092 – STATEMENT OF JOHN O’SHEA DATED 4 MARCH 2015

THE COMMISSIONER: And might we have that on the screen again? In paragraph 7, as I've already noted, you talk about the lockdown on 19 February, 2014, and there were searches being conducted by staff of the inmate cells. The search was being conducted by IAT staff and officers from the Special Operations Group. And then you go on to deal with what happened in Unit 5.1, don't you?---Yes.

Staff were being verbally abused. And then you go on, as I've pointed out previously, to say you're unable to recall whether you spoke with [REDACTED] personally or whether it was conducted over the knock-up system. That's in paragraph 8. And then, as I've pointed out, in paragraph 9 you categorically deny being abusive towards him. And then in paragraph 10 you say, "I'm aware that searches of the cells were taking place that day by IAT officers and Special Operations Group officers. However, this is common practice at Lithgow Correctional Centre and does take place on a regular basis." And then you say this, "As the general manager, we do receive information and intelligence from sources that contraband, including illicit drugs, is being hidden in inmates' cells. We do take this seriously and endeavour to take the appropriate action." You were suggesting by that, were you not, that the reason why Mr [REDACTED] cell was searched because there had been intelligence received that there were illicit drugs in his cell.---No, Commissioner. I was referring to the lockdown of the centre – I think it was 3 Unit – on that day while they were there, and SOG were assisting IAT in targeted searches. I wasn't referring to Mr [REDACTED] at all.

What do you say to the suggestion that what you were endeavouring to do was to create consistency between your statement and the documents within the use-of-force package?---No, that's not true.

All right. Thank you. Mr Duggan.

MR DUGGAN: Thank you. Can I have page 48 on the screen, please. And this is Mr Duffy's report. And do you see there at the end of the first main paragraph it says, "Mr O'Shea directed us to cell 208 and asked us to remove inmate [REDACTED] from the cell." Do you see that?---Mr O'Shea and Mr Peebles directed us to, yeah.

Does that accord with your recollection?---I didn't direct Mr Duffy anywhere. I spoke to Mr Taylor and I presume Mr Taylor spoke to the IAT.

Well, what do you say to the suggestion that you did ask for the inmate to be removed and the purpose of that was to give him a dressing down?---I possibly could have said to Mr Taylor, get the inmates out of there. I

wouldn't have given him a dressing down, there's no need me to give him a dressing down.

Have you ever given an inmate a dressing down?---Oh, yes.

You did it on a fairly regular basis, didn't you?---No, not a regular basis, no, that's - - -

10 How often would you do it?---It depends when a situation arose.

And you - - -?---And if it was required. Like, in that scenario, this situation here there was people there doing their, sort it out, see what the issue is.

But it wasn't unknown for an inmate to be taken out of a cell so that you could shout at them?---No, not, no, not take them out so I can shout at them.

20 You never did that?---I've taken them out and spoke to them and we've had disagreements, yes, of course we have, that happens in every centre and every day.

And what I'm suggesting to you is that was the purpose of getting the inmate out of the cell so you could have a talking to them.---No, I, no, not then because I didn't want incitement for the rest of that wing. I removed myself from there.

You keep saying that you removed yourself from there and I think you've suggested at some point that's because you were busy.---Correct.

30 And I assume you weren't just busy that day, you were busy at the time, were you, is that your evidence?---At the time, yeah.

During that week for example?---Oh, totally.

40 So were you still busy the following day?---Yeah. It doesn't let up. At that time we've had mobile phone jamming trial we were trying, we had the non-smoking, we were the first centre in the state, I was trying to drive that for a trial period so we could roll it out in 2015 for the rest of the state, so there was a lot of meetings and consultations with unions and education and industries. It was constant. And another gaol as well.

So you wouldn't have had time to listen to any inmate phone calls I assume? ---Occasionally I did, especially on Fridays afternoons, occasionally I did, yeah.

So you had time to review - - -?---No.

- - - inmate phone calls but not - - -?---No.

- - - use-of-force packages?---No, you could play the screens, you could put the phone calls up and just play and then continue on with your work, have it going in the background.

So in February 2014 did you often listen to inmate phone calls?---Probably not a great deal. I had other people doing it but I do recall listening to Mr [REDACTED] as was shown the other day.

10 You wouldn't listen to them randomly, you'd - - -?---Yeah, randomly, yeah. I picked inmates out, but just go through their, go through the alphabet sometimes. Not all the time.

Why would a very busy governor not delegate that task to say for example an Intelligence manager or a junior officer?---They already do that role, there's phones officer in the control room, there's a raft of people that do monitor it. I just try to pick up something randomly or listen. I'm not sitting there listening the whole time, I'm working while I'm doing it.

20 I want to suggest that's completely inconsistent with any suggestion that you were too busy during this period to look at a use-of-force package. ---No.

But you had time to randomly listen in to inmates' phone calls?---It wasn't random all the time. It was just there sometimes if, if, okay, let's go put it on, and keep working.

30 You're not suggesting that when you listened in to Mr [REDACTED] phone call, you came across him randomly?---No. I, I think I was informed of a phone call.

If I can take you to page 193, please, of Exhibit 45. Who's Warwick Milligan?---I'm just trying to think. I think he may have been with CIG or Mr Hovey's area.

40 And you say there in this email to Mr Milligan, "I have tried a number of times to have my password changed for inmate phone, but to date I have had no luck. The number I have been told to ring is," 1300 number. "No one gives a shit, Warwick. Please help, and I need to listen to certain calls. Help." Firstly that suggests that you weren't able to listen to calls, at least on 20 February.---Yeah. Warwick is the CIG, because I think that's who we had to go through to get that number, I mean, to get, looked after the, the Star system. I forget the exact name of it, but the inmate mobile phone monitoring system. And, yeah, I was trying to get on there to listen to a call.

Yes. Can you answer my question? You weren't able to listen to calls at that point at 20 February, 2014. Do you accept that?---Not at that particular time. I don't know if I had success later.

And you didn't usually listen to calls in this period, did you?---Which period?

In February 2014?---Occasionally.

This email seems to suggest some urgency in wanting to listen to the call. Do you accept that interpretation?---Yes.

10 Do you recall who might have suggested to you to listen to this particular call if you didn't come across it randomly?---It, it may have been Mr McMurtrie or Mr Taylor or Ms Lohse. I, I can't recall.

Can I take you to page 140, please. Three minutes later you've emailed Laura Best, forwarding the previous request. Again, that timing demonstrates urgency. Do you accept that?---Yes.

And the urgency was that you wanted to listen to the call as soon as possible?---Possibly, yes.

20

And I want to suggest that's because the call mentions you.---Well, it mentions all inmates, not all inmates, sorry, I, a lot of inmates mention me but I think it as in relation to stabbing one of us or something. That would be my best recollection, yeah.

Are you suggesting that no one mentioned the fact that you needed to listen to this call because the inmate said you were down by the cell door?---I wouldn't have been concerned about that, no.

30 This is after you've signed off on the use-of-force package. That would be a cause for concern, wouldn't it, if you'd read the package?---Yeah.

Because you're not mentioned in the package, are you?---Correct.

Now, if I can take you to page 111. This is a call log which demonstrates or indicates who has listened to a call at a particular time. Do you understand that?---Yes.

40 And there appear to have been three people who listened to Mr [REDACTED] 20 February phone call before you. Do you see that?---Yes.

Mr Watson, Mr Heterick and Ms Lohse.---Yes.

Now, if you weren't randomly reviewing inmates' phone calls, does that give you any better understanding of who might have told you about this particular one?---It could have been any one of the four. If Mr Heterick was in the control room as the phones monitor, or Ms Lohse or Mr Watson or Mr McMurtrie.

Can I take you to page 104, please. And just before I ask you about that, were you aware in February 2014 that if you were verbally abusive to an inmate that was a contravention of the Crimes (Administration of Sentences) regulation? Were you aware of that?---No.

You didn't know that it was a difficulty being verbally abusive to inmates?
---No, I was, no.

10 You were the governor of the centre, obviously.---Yes.

Did you familiarise yourself with the Crimes (Administration of Sentences) Act and the regulations?---Not all of them, no, Counsellor.

That is the legislation, as I understand it, that governs what you do. Is that a fair statement?---Yes.

It would be important for a governor to understand what their powers are? You'd accept that?---True.

20

What their responsibilities are?---True.

And that would necessitate a review of the legislation, including the regulations, to find out what they were.---Yeah. I - - -

You didn't do it.---I didn't, I didn't know all regulations, rules and policies and procedures, no. They change so often. We would sit on a computer.

30 THE COMMISSIONER: Were there refresher courses given by Corrective Services in relation to changes?---Negative.

40 MR DUGGAN: Isn't it part of your role, as the governor, to make sure that those refresher courses take place and your officers are up to speed?---Yes. If there was changes to some legislation or policy, we would get an email or an update or a draft copy from the various Assistant Commissioner or Commissioner, and then generally I would, either on parade every now and then, if it was relevant to, say, the reception room, if there was a change in that area, I would give that to the reception room officers, "Make sure you know about this, guys." Plus through the board of management on a monthly basis there was documents tendered for the different heads of area of their respective areas if there was any need to change in their area, yeah.

And being the governor, you'd lead by example and go along to obtain this information?---Well, yeah, essentially. So I'd pass that information on.

So you'd read it to understand it, I assume, as part of your - - -?---Well, my PA generally printed them out and gave me a thing for that particular morning. Said, okay, here's, here's 15 or whatever amendments or memos

that have come out this month. And I'd generally pick three or four and highlight them at the meeting, "Okay, have a look at this, guys. This affects your area, industries, or teachers or either unions." And, yeah, push it out that way.

10 So there's one regulation up on the screen at the moment, which if you can assume from me was in force in February 2014. 258, this is the regulation number, Insulting or Abusive Language. "A correctional officer, departmental officer, medical officer or a nursing officer must not use
10 insulting or abusive language to any other officer, to any inmate or to any person visiting a correctional centre." Do you see that?---Yes.

You would have been aware of that in 2014?---I would never have been able to tell you what legislation number it was or anything like that.

I'm not suggesting that. You would have been aware of the general sentiment that as a correctional officer you would not use insulting or abusive language to an officer, an inmate or a visitor to the centre.
20 ---Oh, it's not professional, it'd come under code of conduct, it's not correct, yes.

And this is effectively your code of conduct, the regulations?---Yeah.

If we can go back to page 104, please. So this is a transcript of Mr [REDACTED] first call to his father on 20 February, 2014, which I think you listened to a hundred per cent of.---Possibly, yes.

30 So there's a reference, a pig Latin reference to being "ogflayed" by the squad, about two-thirds of the way down the page.---Yeah.

Would you have understood that reference?---No. I know it's pig Latin but I can't pick it.

Right. Did you understand who "the squad" was?---Meaning IAT.

40 And then there's a bit at the bottom of the page, "No, fuck, me celly's buzzes up with, been, he's going, 'I've been in here for fucking 20 days, we've, we've been nice, we haven't done nothing, everyone's carrying on, we can, we can go on with this too, mmm.'" Now, you would have understood that to be a reference to the call that you received in the officers' station when you heard that?---Correct.

Mr [REDACTED] says, "And I've said, 'Don't say that,' and I was half-asleep. He said it to the governor." So that confirmed your understanding?---Yes.

"The governor's come up to the fuckin' door, 'You were talking to me, cunt [REDACTED] Do you see that?---Yes.

That would have been also consistent with your understanding at the time of what was said?---I don't think I would have said cunt [REDACTED] I said, "You've been talking to me, boofhead." Or something like that, or "Inmate [REDACTED]"

You didn't use that sort of language?---Did I?

10 Yeah. Are you suggesting you didn't use that sort of language at the time? ---I can't recall that particular word, no, but I did use language, yes, I'm sure I did.

Yeah, you use words like fuck and cunt to inmates from time to time, didn't you?---From time to time.

Yeah. Well, why do you say you used the word boofhead on this occasion? ---Boofhead, or pull your head in. I don't exactly know what I said, that's what I'm trying to get to you.

20 And I want to suggest that the reason you want to substitute the word boofhead is because the language you did use is problematic for you. ---No, I just can't recall the exact wording.

So why do you suggest that it was boofhead then?---Well, I don't know. He suggested it was cunt, I didn't.

And you have no reason to doubt that's what was said?---No reason to doubt that that's what he said. I heard him, what he said.

30 No, but sorry, I may have asked that question badly. You have no reason to doubt that that's what you said to him the previous day?---No.

Then he goes on, "I go, 'It wasn't me,' fuck, boom, the squad comes in and flog the fuck out of me." Do you see that?---Yes.

That suggests that things happened pretty quickly, doesn't it?---Yes.

40 That would also have been consistent with your recollection, I suggest? ---No, it didn't happen like that and that quick. They elaborate and they exaggerate and they fib to their people on their phone and they, you know, say, oh, the flog, the flog, the squad flogged me or IAT bashed me and, and nine times out of 10 it never happened.

THE COMMISSIONER: And can I suggest that if there's not a proper review of a use-of-force package, then it's a bit hard to work out whether it did or didn't happen. Do you agree?---Agreed, Commissioner.

MR DUGGAN: So, if you'd reviewed the use-of-force package, you would have noticed that in the next bit of the transcript he says, "The squad

flogged the fuck out of me. Black eye, fucking big busted lip.” “You're kidding?” “Yeah. I'm all right. Like, I went to hospital. Fucking thought I had a fractured rib.” Can you see that?---Yes.

So this call was made on the morning of 20 February. You don't listen to it until the afternoon. By this stage you've signed off on the package. But if you go to page 93, please, of the package, which is Exhibit 45. So he referred in the phone call to a black eye, well, you'd see there, “Contusion left eye,” tick. He's not lying about that, is he?---No.

10

“Big busted lip.” There's a reference to a lip there, do you see that?---Yes.

Tick. And then, “Went to hospital. Thought I fractured a rib.” “Bruising to right-side torso over ribs,” tick. He's not lying about that, is he?---No.

And he's not lying about the intercom call, is he?---No.

And so why would he be lying about the squad flogging him?---I don't know. Probably to say to his father that he was, you know, flogged by the squad. I don't know. At that stage I didn't know.

20

No. But when you got Mr Duffy's report and you see that Mr Duffy is saying that the inmate was struck, so it matches up with Mr [REDACTED] phone call to his father, doesn't it?---Yes.

So at that point you would want to enquire into, being a prudent governor, whether or not an officer under your command has entered a cell and assaulted an inmate?--- At that, at the time, I received Mr Duffy's report?

30

Yes. All of this information is adding up at that point, isn't it?---That's why I passed Mr Duffy's report on.

Did you indicate in your communication with Professional Standards that Mr [REDACTED] had made an allegation about being assaulted by officers?---Did I talk to PSB about it?

Yes, at the time?---I can't recall, no. I don't think I did, no.

40

Why not?---It had gone to where it had gone to and I was, excuse me, letting them do their, to, to, to find out what was going on. I can't even remember if anyone had come back to me or when they came back to me.

Did you tell them about the call?---I don't think whether Intel gave them the call. I don't know if there was, I don't know. I, I don't know if I told them about the call.

But this jigsaw puzzle is coming together for you, piece by piece. So you hear the call, you hear the allegation of an assault and that's inconsistent with what you've been told, a trip and fall on a toilet, isn't it?---Yes.

So, question mark. Then you see Mr Duffy's report. It appears after the use-of-force package has been signed off. Question mark. You read Mr Duffy's report. It refers to Mr Walker striking the inmate. Alarm bells. So, why would you just send Mr Duffy's report with some cryptic note at the bottom of it to PSB? Why wouldn't you give them all of that information?
10 ---I don't know if I sent it to PSB. I, I'm not real sure who I sent it to.

So are you backtracking from your evidence earlier that you - - -?---No. I said it was either PSB – are you talking about Mr Duffy's report?

Yes.---It was either PSB or it was either Mr Hovey's area or Mr Steve Davis or one of the directors.

And what was the purpose of that communication?---To have a look at this or to get advice. I can't recall. It was, if, if it was to get them to have a look
20 at it.

And if you did that, you wouldn't just send them Mr Duffy's report bobbing like a cork on the ocean. You'd provide them with all of the relevant information, including this transcript or including evidence of the phone call.---Which may have been passed on through Intel. I don't know. Mr Hovey's area worked with Intel all the time, not directly with me.

But you would have concerns about the whole event by this stage, by the time you saw Mr Duffy's report.---That's why it was sent off. I did not do
30 enquiry into it locally.

Well, that's because it was obvious that it had been covered up.---No.

If I can go to page 108, please. So this is a continuation of the phone call. At the top of the page, second line, "Didn't even know he was going to hit me. He just comes in, 'Fucking stop resisting.' I go, 'What? I'm not doing nothing.' Bang, king hit, boom." And then he says, "Big cunts, like 120 kilo." Would that have triggered any recognition of any of your officers at that point?---As I said, you know, they're all around the hundred kg mark,
40 Mr Walker and Mr Duncan and - - -

Just go to page 109, please. About halfway down the page there's something that was inaudible and then he says, "Time the governor," he said, "Went off at the governor, like the gov. You don't go off at him. He's pissed off. He's probably out of his chair." Do you see that?---Yes.

I want to suggest that a reason you wouldn't forward this phone call or a record of it to PSB was that it introduces you into the narrative. Do you accept that?---No.

And in fact that would have been a problem for you because you weren't part of the use-of-force package. You accept that? You're not – apart from the technical use of force - - -?---Sign off.

10 - - - on direction of the governor and you signing off, there's no suggestion that you've been a participant in any of these events in the use-of-force package, is there?---No. I, no.

And the fact that Mr [REDACTED] is telling his father that you were involved in the events, that was of concern to you, wasn't it?---No.

That's why you wanted to get access to your password to listen to this phone call, wasn't it?---No. I wanted to listen to the phone call, obviously, but not because of that statement.

20 You wanted to listen because of the shiv reference or the reference to a weapon. Is that - - -?---Yeah.

You were such a busy man. That's an Intelligence manager issue or a manager of security issue, isn't it?---Yeah.

So why did you need to listen to the call?---I, also, you know, have duty of care to staff and inmates and all concerned.

30 Not the first time an inmate has suggested they've got a weapon or had a weapon in their cell, is it?---No, not at all.

You have experienced officers under your command that deal with those sorts of issues on a semi-regular basis.---Correct.

And you were aware of the intelligence that he'd told his father on the phone that he had a gaol-made weapon or suggested that he might use it on staff.---Yes.

40 You were aware of that.---Yes.

You didn't need to listen to the call to find that out, did you?---I would have been briefed by someone.

Yes. Briefed about the fact that he had mentioned you in relation to the incident the day before, I suggest.---Possibly.

And that's why you were asking Mr Milligan to help you urgently to get access to listen to the call.---No, because I was always stuffing up my, sorry,

my password with that particular OTS system. Sorry, I forget the name of the Star brand system. And, yeah, wanted to listen to calls but I was always missing that up.

Did you understand from listening to that call that Mr [REDACTED] the injured inmate, wasn't the one who made the intercom call?---Yeah, he suggested that, yes.

10 Yes. Were you concerned that the wrong inmate might have been struck by an officer?---I didn't want any inmate to be struck by an officer.

And that's why you would have wanted to investigate.---To listen, are you saying?

20 No, you don't want any inmate to be struck by an officer so if you hear a suggestion that an inmate has been struck, a suggestion made by the inmate and confirmed by one of your officers in a report, you'd conduct a pretty serious investigation into that, wouldn't you?---Or have someone do that, yeah.

You had a good relationship with Mr Peebles?---Yes.

I want to suggest that once you read Mr Duffy's report you had enough concerns to forward it on to Investigations Branch or up the line in some way?---Yes, sorry.

And I want to suggest you would have confided those concerns in your manager of security, Mr Peebles.---Possibly, I can't recall.

30 Well, is he a pretty good operator as a manager of security?---Very, very good operator.

And he would have had familiarity with the officers in terms of their operational style and things like that?---Yeah, to a, to a degree. He hadn't been there a long time, but yeah.

Or he would have been a good resource to access to discuss this problem, wouldn't he?---Yes.

40 So what recollection do you have of discussions with him about this incident at the time?---I don't recall having a lot or any conversations with Mr Peebles. I think I would have kept it possibly to a minimum, either passing that Mr Duffy's report up to the people and Intel, possibly Mr McMurtrie only, just to keep it in there, to keep everyone else away from it because - - -

Well, you didn't think - - -?--- - - -Because rumours and innuendos run around, as I said, all over the place with that centre.

You're not suggesting that Mr Peebles as a manager of security was such a person that couldn't be trusted to be discreet?---Not for one second, not for one second.

No. So there was no issue about Mr Peebles generating prison gossip, was there?---No. I cannot recall if I spoke to Mr Peebles or sent it on to him at all.

10 Why would you not have raised those concerns, can you – I'll withdraw that. Can you think of any explanation as to why you wouldn't raise your concerns at the time with Mr Peebles?---No, it was probably, I don't know how long he was on that project for, after that he may have been back, I know he was in and out of my chair as well, he may have been still on a project and it could have been simply I just kept it in with the people I sent it off to. Yeah.

His office was up near yours in the centre, wasn't it?---Negative. His MOS office is in L Block where the Intel office is.

20 Just inside the gate.---No. The gate, and the upstairs is the admin section, up there as well there is a conference room where Mr Peebles was working out of on that day of the 19th.

All right. But you saw him regularly during the period in the centre?---Yes.

And you spoke to him about other things I suggest - - -?---All the time.

- - - including his bed project.---Pardon?

30 Including his bed project.---Correct.

And in fact when you walked past him if you wanted to do a regular round you'd say, Mr Peebles, or Brad, come join me, I'm going to do a lap around the prison?---Occasionally, yes.

40 So there wouldn't have been any difficulty in the context of discussions about other matters to say to him, you know how we were down in the, in Unit 5 the other day, well, you'll never believe it but someone's written a report saying Walker struck an inmate. It would be perfectly natural for you to raise that in that fashion.---Yes.

And in fact you could have expressed or would have expressed some concerns to him that that didn't accord with your understanding given to you by other officers. You accept that?---I accept that.

And you likely would have told him that it had been sent up the line? ---Possibly not.

Why not?---We would have been talking about other things. I, I can't recall. I could have chosen not to speak to him about it.

But you don't send things off to Investigations Branch or to your director every day of the week raising concerns?---Not every day of the week but it happens quite regularly there. I had an operation go there for nine months without my MOS knowing what was going on with staff corruption. So, it, it was not necessarily that I had to inform the MOS if I've set something up.

10

Commissioner, is that a convenient time?

THE COMMISSIONER: Yes. It is. Can I just ask you one matter. Is it likely we're going to finish today?

MR DUGGAN: I anticipate I will be another hour.---Happy to stay back.

20 THE COMMISSIONER: So, if you've got another hour, it's to 3 o'clock and then it's the questions. Can anyone indicate to me whether they're going to be a long time? And by a long time, let's say over 30 minutes or so.

MR TAYLOR: I'll be less than 30 minutes, Commissioner.

MR GREENHILL: Me too, I think.

THE COMMISSIONER: All right. Let's see how we go. I'll adjourn.

30 **LUNCHEON ADJOURNMENT**

[1.02pm]