

ESTRYPUB00989  
05/06/2018

ESTRY  
pp 00989-01041

PUBLIC  
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

STEPHEN RUSHTON SC  
COMMISSIONER

PUBLIC HEARING

OPERATION ESTRY

Reference: Operation E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 5 JUNE, 2018

AT 2.00PM

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

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

<JOHN WILLIAM O'SHEA, on former oath

[2.11pm]

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

---Yes, Commissioner.

Mr Duggan.

10 MR DUGGAN: Thank you, Commissioner. Can I take you to Exhibit 57, please. I'm just taking you to a page, Mr O'Shea, from the deputy clerk's officer report form register.---Yes.

And it's a bit redacted.---Yes, yeah.

And if you need to see the broader document, let me know, but you can see here that there's an entry for 21 February, 2014, which is highlighted in green. Do you see that?---Yes.

20 And it refers to the officer's name as Duffy, the subject on the report is [REDACTED] with his MIN number, and to whom, the GM. Do you see that?  
---Yes.

Do you accept that you would have read Mr Duffy's report on either the 21<sup>st</sup> or perhaps the 22<sup>nd</sup> February, 2014?---Probably not the 21<sup>st</sup>. Could you tell me what day of the week that was? I think the Wednesday was the 19<sup>th</sup> so Thursday, Friday, and I think he said from memory put it in on the C watch.

Right.---Which is the afternoon shift.

30 All right.---So I possibly wouldn't have seen it until around the 24<sup>th</sup> and after.

Okay. And so you read the report obviously?---Correct.

And then you said you have some recollection of giving it to someone in Investigations Branch or to your director?---Yeah. I don't know if it was my PA to send it on or if I've faxed it straight to them, yes.

40 All right. And that would be about 24 February, 2014 that that happened?  
---Possibly, yes.

Well - - -?---Well, I wouldn't have worked the weekend, sorry, so yes.

All right. But at least it would have been a couple of days either before or after 24 February that that happened?---After, yes.

All right. So it could have been the 25<sup>th</sup>, the 26<sup>th</sup> maybe or the 27<sup>th</sup> of February.---Correct.

Right. Can I take you now to Exhibit 45 at page 150. This is an email from Mr Watson of SOG.---Yes.

Do you see that? And it's copied to you. Do you see that?---Yes.

And it's 20 February at 3.30. Do you see that?---Yes.

10 And then it just attaches a document without any commentary, and if we can go over the page to the document. You see you're an addressee on the document and you've received it by email?---Yes.

And there's a reference to, at the bottom of the page, a contraband find of point two grams. Do you see that?---Yes.

And over the page it refers to the phone call that's been intercepted in relation to [REDACTED] various discussions and a search and then there's a contraband find in relation to Mr [REDACTED] Correct.

20 Now, can I assume from that that you were aware of that contraband find at around the time that this email is sent?---Possibly not. We get them daily from the SOG. And, yeah, I, I can't recall reading it but, but just would have went into the email.

Do you recall being told about the contraband find by anyone?---At some stage, but I have no recollection of who told me or how I was informed.

30 Do you have any recollection of how you first learned that there'd been a contraband find?---No, I, I don't. It could have been a call from Mr Kennedy or Mr McMurtrie or – I can't recall.

Well, you said you were aware of the phone call reference to the weapon and a threat being made to staff.---Correct.

Did you know there was then a search operation in relation to - - -?---Oh, I knew there would have been a search take place for that weapon.

40 Yes. But do you recall being told that that's what was going to happen?---I, I'm just guessing but I presume Mr McMurtrie or Kennedy would have said, well, we'll do a search of the cell.

And given you were interested enough to listen to this phone call, would you have been briefed about the search parameters and how it was going to take place?---No. Probably could have been a phone call or, from Mr Kennedy, just saying going to conduct a search, or the Intel manager or – I can't recall how I was informed or if I actually spoke to anyone in person.

Now, I want to take you to the next day. Sorry, before I do that, can I assume that you would have been made aware of the contraband find on the day of the search?---Possibly, yes.

Can I go to page 174, please. This is the next day, so Friday, 21 February. And there's an email from Justin Warne. Do you see that?---Yes.

10 And it's copied to you and there's a section 23 request. And the body of this email says, "General Manager O'Shea has requested that the inmate be placed on the next available truck." Do you see that?---Yes.

Were you – I'll withdraw that. There's an attachment. I'll go over the page to the attachment, please, at 175. You see there at the top of the page, "Date of escort, urgent/ASAP." Do you see that?---Yes.

And the details obviously relating to Mr [REDACTED] and the transfer reason, "Requested by GM O'Shea, 21 February, 2014." Do you see that?---Yes.

20 And then there's also an active alert in relation to his asthma. Do you see that?---Correct.

Now, what was the great urgency in relation to Mr [REDACTED] being removed? ---It purely would have, this, this particular form and these requests happen regularly if there's been a use of force within any centre. But at this particular time it was very difficult getting inmates in and out of Lithgow or to any gaol because we were just full everywhere and we'd have to swap inmate for inmate sometimes. But on this particular it'd be purely to, because there was the use of force the day prior and it's – he shouldn't have been there anyway, from memory, because of his OMG affiliations.

30 No, but he'd been there for some weeks before he was urgently - - -?  
---Yeah, and then we request these every two or three days, a list of inmates to go on trucks, et cetera. Not me personally. It's usually the, terminology, it's usually the classification coordinator.

No, but this one was requested by you, wasn't it?---Pardon?

40 This one was requested by you, wasn't it?---I possibly could have asked the, the, that person, Mr Warne, Justin Warne, who was my admin manager, I think, or programs manager at the time.

Well, this email states at 174, "General Manager O'Shea has requested that the inmate be placed on the next available truck."---Well, that, yeah, everyone uses the governor's name or the governor's or the general manager's for different reasons to say the governor wants him out or the governor said you can't have that phone call, but it's just the way the system is sometimes, but there is no, I'm not denying that I may not, I haven't said to Mr Warne, get him on the truck and get him out.

So why would you proffer an explanation about someone else possibly namedropping you into this - - -?---Because that happens regularly and my name gets put into – it’s not only me, it’s, it’s governors and MOSs of all centres.

You’re just trying to explain away your involvement in this urgent transfer, aren’t you?---No, not at all.

10 THE COMMISSIONER: I don’t quite follow that. You’re saying, are you, that where Mr Warne, the Manager of Offender Services and Programs, says, “GM O’Shea has requested that the inmate be placed on the next available truck.”---Yes.

He probably made that up?---No, no, I’m not saying in this case, but I said sometimes it does happen, they use the governor’s name, whether the inmates do or the staff do, but I’m, in this particular case I probably more than likely would have asked Mr Warne to get him on the next truck.

20 And attached to it is a, it’s described as a section 23 urgent doc.---Yeah, I don’t fill that out, they fill that out.

Why was it urgent?---Ah, ah, Commissioner, because it was a use of force the day before and, and the inmate I think was requested a few times to go, but we just, you have to wait until inmate transfers have a bed available for an inmate to go into.

You go on.

30 MR DUGGAN: Mr O’Shea, you hadn’t read Mr Duffy’s report at the time of the email at page 174, had you?---Mr Warne’s email?

That’s right.---No.

No. So at that stage your understanding was that this inmate had tripped over onto a toilet. Am I correct in that?---Ah hmm.

40 And so are you suggesting that he needed to be urgently transferred out of maximum security Lithgow because he tripped over on a toilet?---No, because there was a use of force and he tripped over on the toilet and um, he, he shouldn’t have been in that centre because of his allegations, we needed him out of the centre, not his, sorry, my mistake, because of his OMG affiliations and right next door I had, from memory I had [REDACTED] and [REDACTED] and [REDACTED] and it was full.

Are you suggesting that this urgent transfer was – sorry, I withdraw that. I thought you gave evidence a moment ago that every prisoner gets moved

after a use of force. Is that your evidence?---We try and get rid of the inmates after a use of force, if it's, yeah, yeah.

THE COMMISSIONER: Why?---Just so there's no allegations come back on either parties, you know, if there needs to be anything done.

MR DUGGAN: Well, is this the reason, you knew what had happened in that cell, you knew there was an assault and that's why you transferred him out of there urgently?---I didn't know there was an assault, no.

10

You were well aware of his OMCG affiliations?---Not well aware, I was, I was, had something in the background, yes, I wasn't well aware.

Well, there were discussions for around three weeks before his urgent transfer about him being moved.---Possibly.

And in fact that's why he was in Unit 5 in the first place.---As pointed out, yeah, he was on a LA or whatever because he couldn't be in the main gaol of Lithgow.

20

Well, it wasn't, he didn't need to be urgently transferred on the morning of 19 February I suggest.---I think the trucks only run every three days or whatever, every third or, I can't remember what Lithgow was but every third - - -

Well, 18 February, 2014, he didn't need to be urgently transferred on the 18<sup>th</sup>, did he?---I think - I don't request them, I ask or they suggest these inmates go on the list, like their classification managers and they just keep putting them up to inmate transfers, and when they get on a truck, they get on a truck. We do ask for urgent ones and can you help us get this one down to his solicitor or whatever it may be sometimes.

30

THE COMMISSIONER: What page is that report?

MR DUGGAN: 174 and 175.

THE COMMISSIONER: 174. Thanks.

MR DUGGAN: I want to suggest to you that you did ask for this particular one, and that's apparent on the face of the email at 174.---As I said to you, I possibly, I didn't deny, I haven't. I possibly did say to Mr Warne, "Can you get rid of, get rid of this. Your mate will put him on the next truck."

40

But what other explanation is there for the sudden urgency when he'd been a limited association inmate in Unit 5 for at least three weeks?---I've got no idea. There is no other, except he's on the list, get rid of him. He's taking up a cell, a segregation cell.

Well, there is no other explanation, I want to suggest, other than you were aware that there'd been a use of force involving officers in which he was assaulted on the 19<sup>th</sup> and you wanted him out of there.---There was, I was aware of the use of force on the 19<sup>th</sup>, yes.

And you were also aware of Mr [REDACTED] his phone call by this stage.---Yes. Oh, sorry.

Which was on 20 February.---Yeah. Yeah.

10

So you knew that he'd referred to you in that phone call, obviously.---Yeah.

Well, you wanted him gone because he was a problem.---No.

Is there a policy or a protocol about moving prisoners after a use of force?  
---No, I don't think there's a – not that I'm aware of. There may be. I don't know. I don't know all policies.

20

Do you have any understanding that before Mr [REDACTED] was put on the next available truck his visits were withdrawn?---I heard that in evidence from Mr McMurtrie, from the whatsaname the other day.

Were you aware of that at the time?---I can't recall.

Do you usually play an active involvement in the timing of an inmate's transfer to another prison?---If required, yeah, yeah.

Can I take you to - - -

30

THE COMMISSIONER: Just before you move on. Just remind me of the evidence as to when this witness received Mr Duffy's report.

MR DUGGAN: So it was registered with the deputy's clerk on 21 February, but Mr O'Shea has just given evidence that he may not have read it until 24 February possibly.---Around the 24<sup>th</sup> or on, yeah.

So he wouldn't have read Mr Duffy's report, as I understand his evidence, at the time the discussion is had about moving this prisoner.

40

THE COMMISSIONER: All right. Thank you.

MR DUGGAN: Is that summary correct? That's as I understand your evidence.---What you've just said to the Commissioner?

Yes.---Yes.

So the chronology of - - -?---Yes.

You found out about, you read Mr Duffy's report - - -?---Mr Duffy's report after the inmate had left the centre.

Just before I move to a different topic, can I go to page 173, please. So this is not long before Mr Warne's email about the transfer. This is from Mr Child to you. He was a senior assistant superintendent at the time?---That's correct.

10 "John, the visit on the weekend for [REDACTED] as per the conversation upstairs, I was to recontact you today. Is the visit still cancelled and do you want me to ring his visitors to advise them on the cancelled visit." Do you see that?  
---Yes.

So that sounds as though you've had a conversation with Mr Child before 21 February. Do you accept that?---Or on that morning of, yeah.

Oh, I see, yes. That's possible.---I don't know.

20 No, that is possible. In any event, you've had a conversation with Mr Child, and do you accept that the proper reading of this email is that you suggested to him the inmate's visits were to be cancelled? Is that how we're to read this?---Well, someone has suggested that and I, I, I don't know who was – Mr McMurtrie may have suggested that in a conversation with us. I can't recall.

Why would Mr Child be asking you whether his visits were still cancelled?  
---Because I'm the governor.

30 And so you would have made the decision about whether or not this particular inmate had his visits cancelled?---Oh, no, they, they also make, or the MOS will make a decision, sometimes the Intel officer will make a decision, depending on the circumstances, but he's directly asked me there. I can't recall, tell you the truth.

But if you read this email it suggests you said to him, "Contact me either later today or on 21 February."---Yes.

40 And the subject matter is cancellation of Mr [REDACTED] visits.---Cancellation, yeah.

So he's following up on that and he's saying, "Are the visits still cancelled, Mr O'Shea?" You accept that?---Yes.

And so can I assume from that that you had originally told him that the visits of inmate [REDACTED] were to be cancelled?---Someone could have told him that the visits were cancelled, the governor has cancelled his visits or something, or, or I may, I cannot, excuse me, cannot recall exactly who told him what.



Is it a possible explanation for the cancellation of the visits that you didn't want anyone to see his injuries?---No.

I see from page 175 that Mr Child was the acting manager of security on 21 February, 2014. Does that accord with your recollection?---Possibly I haven't got it right. I think, I thought, okay, no, Mr, Mr Taylor was on the 20<sup>th</sup>, on the Friday. It could have been Mr Child, I don't know.

10 So if we go to the second of Mr ██████████ phone calls, this one was on 21 February, 2014, at 10.41. So this is five minutes, the phone call was five minutes after Mr Warne's email, so there's obviously discussion, trying to get him on the next truck, and at that time he's calling his father. And at page – it starts at page 176 and he refers to speaking to a solicitor or trying to. And then the second page, halfway down, "They raided the cell and found the fucking bupe in something. It wasn't mine. It was in an asthma puffer." Do you see that?---Yes.

20 And the rest of the transcript contains conversations about motorcycle gangs and the rest of it.---Yes.

Now, do you have a recollection of listening to that phone call?---I'm pretty sure I did, yeah.

And why?---Um, I think someone said listen to his call. I can't recall why.

I think you gave some evidence earlier that from time to time you might have randomly listened to some phone calls?---On Fridays sometimes I did if I had an opportunity to.

30 And occasionally you were provided intel or told to listen to a particular call?---Yeah, by numerous people, yes.

And so the first telephone call of Mr ██████████ that wasn't a random thing, you - - -?---No, I believe I was, someone informed me, yeah.

And this wasn't a random thing either, was it?---On that particular day?

40 The second, listening to the second phone call.---Probably not.

Well, it would be a remarkable coincidence if you randomly - - -?---Yeah, true.

And before you listened to the phone call you would have been aware that the contraband was found on Mr ██████████ Or sorry, I withdraw that.---Was that on the 21<sup>st</sup>, that phone call, sorry?

The phone call was on the 21<sup>st</sup>, yes.---Yeah, I would have been aware, yeah.

Yes. That there was a contraband find in his puffer.---Yes.

Is that why you listened to the call?---It could have been, I can't recall.

10 So why is the governor, who's very busy and has a lot of things to do, why would you be listening to a phone call from an inmate about a contraband find of point two grams of buprenorphine?---Because it's the same person that said it was going to, you know, stab a staff member probably days before.

But you would have been told to listen to this phone call by someone else who'd listened to it.---Possibly, yes.

And there's no suggestion of any further carrying out of that threat in this phone call, is there?---No.

20 So can I assume that you were told to listen to the phone call because of the drug find?---Possibly.

And what I want to know is, why would a governor be interested in listening to a phone call in which an inmate is talking about such a miniscule find in the scheme of things of point two grams of buprenorphine?---Oh, well, that inmate, as I said, has been mentioned two or three days prior to that and also his dad threatening to take staff out after work or whatever it was or meet them in the driveway.

30 But you weren't told to listen to the call because there was further discussion about that, were you?---No, I don't think so. I can't remember who told me or how, but yeah.

All right. Well, let's go to the call log at page 184, please. So the original call was made 21 February at 10.41. The first person to listen to it was Ms Lohse. Do you see that?---Yes.

And then the next person to listen to it was Mr McMurtrie. Do you see that?---Yes.

40 And he listened to 14 per cent of the phone call. Do you see that?---Yes.

And if you can assume from me at 14 per cent of this phone call takes you to the part just after he says, "They raided the cell and found the fucking bupe in something. It wasn't mine." Can you accept that from me?---I'll accept that, yeah.

And Mr Watson then listens to it and then you then listen to it. And the four of you listen to that phone call within 16 minutes of each other.---Yeah.

So you're talking about it, aren't you?---Well, someone has, yeah, yeah, someone has rung and said listen to the call or he's been on the phone again or something like that .

Was it Mr McMurtrie?---I, I've got no idea. I couldn't, it could have been possibly.

And you've only listened to 35 per cent of the phone call. Do you see that?  
---Yes.

10

And if you can assume from me at 35 per cent of the phone call takes the reference to about halfway through three pages of the eight pages of transcript.---Okay.

And it covers, importantly, the denial of the contraband find. You accept that?---I accept that.

That's what you were listening for, wasn't it?---Possibly, yeah. I, I can't say yes or no. I, I was just listening.

20

And the burning question, and I'll ask it again, what possible interest would a busy governor have in a small contraband find on Mr [REDACTED] Staff have rung me. It was prevalent. As I said, you know, it was day two or three of it and there was staff issues in and around it, i.e. threats to staff. So naturally, you know, like, 35, 35 per cent, I think you said, you know, it's probably three minutes, if that, two minutes, I don't know, of the call.

It is about two minutes of the six-minute call.---Yeah.

30 You just said, "It was prevalent." Are you talking about contraband?---The contraband was prevalent.

You just said as part of that answer, "It was prevalent." What were you referring to?---As in listening to the call. It was part of what was, you know, that inmate had a call, so I want to know if there's any, listening to any more things about his dad or the contraband was there, yeah. It was mentioned.

40 Do you have any suspicions about whether the – sorry, I'll withdraw that. Do you recall hearing, when you listened to the phone call, that he denied the drug was his?---Yes.

You would have been concerned at that point.---No, I wasn't because they say that all the time. "It's my celly's" or "It's not mine." It's just, no, that's just a normal conversation they have.

Well, he'd said a few things in the call the day before which turned out to be right.---True.

And this contraband find didn't come out of the blue. It was part of a series of events over a couple of days.---Yeah, it's a quite common thing, contraband finds, sorry.

So you didn't have any suspicions that this drug might have been planted on this inmate?---No, not at all.

10 Do you have any knowledge or understanding as to whether that in fact happened?---No, not at all.

Why are you all talking about this phone call within 16 minutes of each other?---I don't know. It would have been someone from down in that area, obviously, Ms Lohse or Mr McMurtrie or Watson, whoever saw it or come across it first and then just rang us and, I don't know, that's just the way it was. That was it. I've got no, I can't give you any explanation on timing.

20 Can I go to page 157, please. This is an intelligence report in relation to Mr [REDACTED] do you accept that?---Yes.

Now, if we go over to the second page, I just want to direct your attention to the paragraph under Information. Do you see that?---Yes.

It refers to some intel of an unknown human source, stating "There was a quantity of Suboxone in Mr [REDACTED] cell." Do you see that?---Yes.

And then "The IAT attended," over the page, "the cell and a subsequent search resulted in [REDACTED] jumping up," et cetera. Do you see that?---Yes.

30 Now, that suggests there that the reason for attending the cell was to conduct a targeted search.---Yes.

And your understanding is and always was that that wasn't the reason for attending the cell.---Correct.

Can I take you to page - - -?---Did you say "wasn't"? Sorry, can I just go back there?

40 It is now and always was not the reason the cell was attended.---No, not that, no.

The reason was - - -?---Because I was in there and we had that exchange and I asked Mr Taylor, sorry, or someone to get the IAT.

Yes.---Nothing to do with that.

So if we go to page 164, please. They're the dissemination details.---Yes.

Automatic notification?---Yes.

And you're one of the recipients?---Correct.

So you would have received this intelligence report?---Yeah, yeah.

And you would have reviewed it?---At some stage.

10 Yes. And so, over the page at 165. You would have likely received this document on the 10<sup>th</sup> or 11<sup>th</sup> of March?---Correct. It would have been an automatic back, yeah.

Yes. And you probably also received, can I suggest, the intelligence report, but without the CI assessment when it was initially submitted by Mr McMurtrie?---I think that, that, like, if he sends it off, it still goes to the disseminated people or, or the authorised people. Yeah, I think, yes.

20 So, on the way out, if I can put it that way, when Mr McMurtrie was sending it that would have contained the information on page 158 that I've just taken you to?---Yes.

And that would still be in the fuller intelligence report when it comes back after the CI assessment?---I would presume so unless CIG have taken it out, but I, I, yeah, I, I don't read all Brian's reports, believe me. He does thousands of them.

30 Well, you would have reviewed it, I want to suggest, when it comes back with the CI assessment?---Not necessarily. Sometimes I'll just get weekly briefings off Intel, a verbal briefing. No. We get these regularly, Counsellor, sometimes from that area numbers of them weekly.

This isn't an informal email, is it?---No.

It's not a hastily prepared information report from the Intelligence officer, is it?---No.

It's a considered formal intelligence report, I suggest.---Agreed.

40 Why would you be included on a dissemination list if you weren't going to review it?---I think they include half a dozen people there that probably don't, well, half a dozen, sorry, that's unfair, a, a few people on, I think there was a senior there that was on there that hadn't acted into the role for a while and other people. I generally don't review all of the IRs. We, we get so many of them and that's why I prefer, personally I prefer a briefing with my managers weekly or, yeah, when required.

Mr O'Shea, this is another document which refers to the substituted reason for the attendance upon the cell. Do you understand that?---Yes. I do understand that.

And can I suggest that you are trying to explain away, in relation to a further document, why you wouldn't have received an inconsistency in your recollection and the substituted reason?---No. I'm giving you what I, I would have done.

10 Well, this was another document that caused a problem for you, didn't it?  
---I didn't see it to be a problem. I didn't read it. I didn't read the package.  
The whole thing is a problem now obviously but - - -

So, you haven't read the IRM, is that your evidence?---I've said that, yes.

You haven't read the UOF package?---I've read Mr Taylor's comments, that was it.

20 Haven't read all of the witness reports apart from Mr Duffy's?---Correct.

And you haven't read the intelligence report when it - - -?---Oh, intelligence reports - - -

Hang on a minute, hang on a minute.---Sorry.

30 You haven't read the intelligence report when it's submitted by Mr  
McMurtrie and you haven't read it when it come back after its CI  
assessment. Is that your serious evidence?---Correct. I would delete the IRs  
regularly and, you know, put them into the intel file and, and leave them  
there if I needed it at a later date one day.

Mr O'Shea, if you didn't feel the need to read any documents in February 2014 which related to this incident, can I assume that you didn't read particularly many documents at all in February of 2014?---Oh, probably, whether it's documents or reports, meetings, I, I would have read a lot or a quick read of a lot of things maybe. I, I can't recall.

40 Mr O'Shea, you don't seem to be reading anything, why were you so busy  
in February?---It wasn't just February, it's busy all the time, as I said.  
We're under enormous pressure for beds, for mobile phone jamming  
technology for, for non-smoking in public, in public buildings and you're  
going from meeting to meeting to meeting to phone call after phone call all  
the time. Very busy.

And you're reading reports all of the time.---Not all of the time, no. As I  
said, I'm out talking to people or they're in talking to me, but I am reading  
reports, yes, there's certain reports I didn't read.

And this is not on 20 February or 21 February, this is three weeks later, 10<sup>th</sup> or 11<sup>th</sup> of March, another opportunity to read this version of events.---Yeah.

And you say that you just didn't read this - - -?---The work wouldn't have stopped, Counsellor, no, and I didn't I'm sorry.

THE COMMISSIONER: Before you move off that intelligence report, could we just have page 162 on the screen, thanks. And that's a CI assessment of information and you'll see that it's noted that prior to the report [REDACTED] was only known with intelligent holdings for identifying with a certain OMCG. See that?---Yes, Commissioner.

And then just above the matters that are italicised it says, "The following alert has been annotated locally on the OIMS system as per this report." And it says, "Intelligent report that recommends inmate [REDACTED] be managed as an affiliate of a certain OMCG."---Yeah.

"As such inmate [REDACTED] will need to be housed PRNA."---Yeah.

20 "At the MRRC." What's PRNA?---That's non-association. LA is limited association where they can have a cellmate or one or two people.

Yes.---The non-association is, is by themselves with no other inmate.

And it goes on to say that, "A further review of external holdings does not identify any link between [REDACTED] and the particular OMCG. As such the abovementioned alert will be expired." What does that mean?---Maybe they've put a timeline on it like on that alert that it drops off after a 12-month or three-month or a timeline that that alert may drop off his OIMS, off the OIMS system.

30 So this report's created in March 2014.---Yes.

It might have been in April, May, June 2014 it would drop off the system? ---Possibly, depending if they've put a date or an end date to the – sometimes on the alerts they put like a no end date and sometimes they'll put a, like a three-months or a 12-month, it depends on the person entering the information on how long they put a deadline on that.

40 But certainly at the date this report was written it seems as though he did need to be housed PRNA.---He did?

Need to be housed PRNA.---Yes.

At the MRRC?---At the MRRC, yes.

And you'll see after there's a reference to the alert will be expired but local Intelligence may wish to interview [REDACTED] for more details - - -?---Yes.

- - - on his alleged association.---Yeah.

And then in the second-last paragraph it notes that "[REDACTED] has now been moved from Lithgow to the MRRC with an alert placed on OIMS to indicate he is not to be housed at Lithgow."---Yeah.

10 Do you know why that notation was made?---That happens, they put that notation all the time if there's, sometimes if there's an inmate allegation against officers or staff against inmates or there's AVOs at a certain area or affiliations on other inmates that they can't be there, due to his OMCG affiliations, Lithgow didn't house those particular inmates and they, a bit of an unwritten law there amongst all the OMCGs that that particular centre housed [REDACTED] and [REDACTED]

And other centres housed them as well, didn't they?---Housed?

20 [REDACTED] and [REDACTED] Correct. Certain ones did, yes, I think from memory, yeah.

Well, then, can I take you back to page 175 and you'll see that in the final column it's "Escort to any other A2 RBP." What does that mean?  
---Remand bed placement. The inmate was remand, so we had options either at MRRC, Parklea, I'm not real sure of the metro gaols, Commissioner, right now what other ones, or back then had remand bed placements.

30 And you'll also see on the status, "SEG", which I assume is segregation.  
---Segregation, yeah.

40 "Will be revoked prior to escort." Why would it have been revoked in circumstances where this prisoner will have been out at risk if he was - - -?  
---Because it could have been separate of the centre. Sometimes the governors or the, the centre haven't got segregation beds, or because he's going into a PRNA, that's not a segregated area. He'll be housed as an NA, which means he'll be by himself anyway. So, there was possibly no need for it. Sometimes we lift the segregation orders from centres to centres prior to the inmate leaving, so it's, it's easier for the receiving centre to manage that particular inmate depending on their bed situation.

But you'll see that there's also a heading, "Special instructions alerts," and the only special instruction alert was that he was an asthmatic.---Yes.

Why wasn't any notation put on there that he was a prisoner at risk?---I don't know, Commissioner. I didn't do this.

Well, can we assume that had you done that, you would have put instructions in there that reflected the fact that he was - - -?---Well, there



was, you know, that it will be revoked, but the segregation, but, yeah, there's, should have been other special instructions or alerts, yes.

Yes. In relation to his alleged associations?---Alleged association with OMCG, yes.

Thank you. Thank you.

10 MR DUGGAN: Thank you, Commissioner. You'll see from this document at page 160, when the contraband find is discussed and the last line of this page states, "[REDACTED] admitted ownership of the puffer and its contents." Do you see that?---Yes.

So, why wasn't he charged with an internal offence?---I've got no idea. I don't know. I don't think I would have seen the package to tell you the, or, or the charge form. It doesn't come to me.

20 THE COMMISSIONER: I suppose one possibility is that some arrangement was struck, you don't go after us and we won't go after you. ---I certainly did not have that conversation with him, Commissioner.

30 Were you aware that he made the offer to undergo a urinalysis?---I heard that here in evidence during the week but, the previous, but, and I, I may be wrong, Commissioner, but during this time, I think the Commissioner of Corrections had an agreement with the POVB, through IRC, that all urinalysis weren't to be, weren't to be done during this time because we were, the state POVB had fears of, a lot of your, a lot of, what do you call it, where we're getting urine thrown on us or they're being, the urinalyses are being lost or whatever it may be, the paperwork was all skew-whiff. They  
40 wanted a safe working toilet, if you will, to be installed in every centre across the state before they would lift the ban on doing urinalysis. And I think it may have been during this period, Commissioner. I can't be 100 per cent sure, but - - -

Just bear with me for a second. When you were interviewed by Mr Grainger you were asked what the normal procedure was where contraband had been found.---Yeah.

40 And for the record it's page 55 of the interview and Mr Grainger said, "Well, what's the normal procedure that takes place?" And you said, "Oh, it should be photographed in situ and bagged and tagged in an evidence bag and sent to the area manager MOS, charges to sort, charges to it sort of thing. The inmate's admitted it. Yeah, okay. Urine him at a later, they may recommend the MOS or the sector manager get this inmate urine. Do it for a urine analysis test, sorry, and go from there. He'll go through the MOS. The charges will be done by the sector manager." Are you saying it's your best recollection now that a urine analysis couldn't have been conducted in respect of Mr [REDACTED] because what you've just said?---I'm not real sure of

the dates but as I said I do remember all the stuff being spoken about in the last few weeks but I do have a recollection of there was over a 12-month period there where we couldn't take, sorry, where we couldn't do urines because the staff wouldn't do them through POVB and IRC and the Commissioner's agreement I think from memory, so it may, it may be in that period. I can't remember.

10 We know that a misconduct report was prepared and as I understand what you said in your interview you were asked this question at page 56, "Okay. Is it something that's kept at a prison or is it something that follows the prisoner?" Actually I'll go back a step. Question, "Do inmates have a disciplinary history or something like that." And you said, "Yeah. There's an inmate, what's it called, each inmate, so there's an inmate disciplinary action sheet on the back of every inmate's profile document. And then you go on to give some examples and the question is then asked, "So it's something that's just like a live document, it's updated all the time is it?" You said, "It gets updated through the people, your administration staff or the desk clerk or whoever does the, each centre is different. Whoever does the administration role on IMS." Question, "Okay. Is it, is it something that's kept at a prison or is it something that follows the prisoner?" And you said, "It can follow the prisoner around yet it's done electronically." And then Mr Grainger asked, "Oh, just trying to get, it's not a physical file?" And you said, "No, it's electronically but there should be a copy in your hard file, like in your case notes, sorry, in your case file. Every inmate that has a case file it follows them from centre to centre." Do you have an explanation as to why this didn't happen with Mr [REDACTED] No. The package may not have been done up at that stage or completed at that stage. I think someone said the other day that he left on the 22<sup>nd</sup> from, from Lithgow Gaol.

30 What does that matter if it's done electronically?---Well, I don't know. That's what I, I don't know if it is done electronically. I know that there's like a package the same as a use of force package, like a hard copy and I think, I think they can put it on TRIM or, you know, the desk clerk or my PA could. I didn't really see them at all, Commissioner, and if the inmate has gone generally the desk clerk or whoever will send it down to the gaol where the inmate is housed and that centre will proceed with the charge whenever they're ready, yeah.

40 Well, you were asked further questions on it at page 57. Question, "So is the possession of bupe by inmates something that would go on their record?" And you answered, "Yes." Question, "It's fair in that it does say absolutely, yes, or it must or - - -?" And you said, "Well, if the inmate's been charged for it, and in this case here he's admitted ownership of the time, sure, he would have, it would have been dealt with. It should be on there, yes." Mr Grainger, "All right. So and from a - - -" And then you said, "Sometimes the inmate might rarely, but I can't, yeah, it would have to go on there electronically somewhere." And Mr Grainger said this, "Okay.

And would I be correct in assuming that would be not only for the benefit of this prison but if the inmate were to be transferred they would?" And you said, "Your colleagues somewhere else may like to know." So you said, "They would." Mr Grainger has said, "Your colleagues somewhere else may like to know." And then you said, "Well, we know it's case noted, you know. There's case notes in there as well. What we know, you know, of course, we know this inmate's got a history or a drug history or is a self-harm or whatever it may be. Yeah, that's all there." This find of bupe on 20 February suggested as one possibility that Mr [REDACTED] was a drug user.  
10 ---Correct.

Surely that's something that the prison to which he was being sent really needed to know.---I presume so, yes.

But you've got no explanation as to why that didn't happen?---No, Commissioner, I don't know why that didn't go on. Whether it did or didn't, I don't know.

Yes, thank you.  
20

MR DUGGAN: I just want to show you a document on the screen. And while that's being brought up, you've been sitting here listening to some of the evidence. You would have heard about a Mr [REDACTED]. There was a contraband find in relation to Mr [REDACTED]. The day before there was a contraband find - - -?---Oh sorry, yes, yes.

Do you know who I'm talking about?---Yes, I do now, yes.

So the find in relation to Mr [REDACTED] was in the targeted searches of Unit 3 on 19 February?---Yes.  
30

Just looking at this document which is addressed to you on 11 February, 2014, the subject is target urine tests. Do you see that?---Yes.

"Sir, I recommend the following inmates be target urine tested."---Yep.

The top one is Mr [REDACTED]. Do you see that?---Yes.

So can I suggest to you that whatever the period was that you didn't have urine tests, it wasn't February 2014?---I've got no idea. It may be, it may be not. It's a suggestion, yes, but when an inmate needs to be urined they ask their manager for permission to urinate. Like, "We believe he's smoking or whatever. Can we get a urine sample?" Or the manager or security or sector manager will send a report, email, "Urine this inmate."  
40

THE COMMISSIONER: One of the reports suggested that Mr [REDACTED] had admitted to smoking bupe. I suppose you wouldn't be aware of that because you didn't read that?---That's correct.

Mr Duggan, Mr [REDACTED] referred to there, the same person who managed or just happened to have 0.2 grams of bupe on him - - -

MR DUGGAN: I must say Commissioner, I had made that assumption without checking but that could be easily done. I assume that's a MIN number on the left.

THE WITNESS: I assumed the same thing.

10

MR DUGGAN: So you could cross-reference with the IRM and then you would be able to confirm that.

THE COMMISSIONER: I suppose the date doesn't quite match up, does it?

MR DUGGAN: No, but it may be that Mr [REDACTED] was urine tested, which is why he was included in target searches on the 19<sup>th</sup>.

20

THE COMMISSIONER: Thank you.

MR DUGGAN: Mr O'Shea, you would accept that in terms of what you know now there was some fabricated intelligence in relation to a rumour there was Suboxone in Mr [REDACTED] cell.---Correct.

Intelligence fabricated by Mr McMurtrie?---Correct.

And the purpose of fabricating that intelligence was to support the substituted reason for attending the cell on the 19<sup>th</sup>. Do you accept that?

30

---To substitute the reason for attending?

So the real reason was the knock-up call - - -?---Correct.

- - - and your conversation.---Correct.

The substituted reason was based on fabricated intel.---From, yes.

And so you had the fabricated intel to support the substituted reason for attending the cell, the false reason. Do you accept that?---Yes.

40

And then you have the contraband find on the 20<sup>th</sup>. Do you understand the chronology?---Yes.

And then just taking you to page 160 of the intelligence report which talks about the contraband find and the intelligence, the fabricated intelligence, it says halfway down the page, "The information indicating that [REDACTED] had possession of Suboxone," so that's the fabricated intelligence - - -?---Yeah.

- - - Is confirmed.” Do you see that?---Yes.

But that information obviously was false. Do you accept that?---(No Audible Reply)

The information, sorry, the intelligence that he had possession of Suboxone was fabricated, so the intelligence at least was false?---The intelligence part?

10 Yes.---Yes.

It was false, wasn't it?---Yes.

Mr McMurtrie's admitted that.---Yes.

Now, what I want to suggest is that it was possible the drug was planted to support the fabricated intelligence. Do you have any response to that?  
---No. I definitely did not plant or ask anyone to plant or to do anything like that.

20

That's not my question though. You can see in this intelligence report there's a reference to fabricated information. It says the information, but we now know that that was fabricated information.---Yes.

“Indicating that [REDACTED] had possession of Suboxone is confirmed.”---Yes.

It's confirmed by the contraband find.---Correct.

30

But the intelligence was fabricated.---Yes.

So that leaves open the distinct possibility that the drug was planted to firm up the fabricated intelligence. Do you understand that?---Yeah, I do understand that, yes.

And do you accept that that's the most likely explanation of what happened?  
---No, no, I don't accept that that's the most likely, it could have been coincidental, yeah.

40

Well - - -

THE COMMISSIONER: It's a pretty big coincidence though, isn't it?  
---Commissioner, I don't mean to be cheeky or anything, please understand that.

No, that's okay.---But buprenorphine is like having – mobile phones used to be rare, but every second inmate has one and you're not a real crim.

Ah hmm.---A cuff key in the 90s was the go-to.

Ah hmm.---The mobile phone. Buprenorphine is like having a telephone call, it's everywhere unfortunately, it's a, it's everywhere.

Well, it might be, but you've used the word yourself that it might be a coincidence that there's this intelligence which we now know is false, and on 20 February, 2014, bupe is found in this prisoner's cell, which seems to confirm that intelligence.---I'd be horrified to believe that Mr McMurtrie was involved in that. I hear a lot of things but I doubt that.

10

And indeed I think the report – can we just go on a little bit further – no, just stay there. If you look under the heading Local Analysis you'll see in the last sentence, "The information indicating that [REDACTED] had possession of Suboxone is confirmed."---Yes.

So whoever wrote that was confirming that the intelligence, which was false intelligence, was correct.---Yes.

20 Doesn't that suggest to you it's a distinct possibility that this drug was planted on Mr [REDACTED] There's a possibility there but it was also coincidental because of the amount of buprenorphine that is in the system.

MR DUGGAN: It just makes it easy to plant it, doesn't it?---From anyone.

And were you aware or are you aware that Mr [REDACTED] did not have any internal charges for any other contraband finds?---Not until he said that here in the court the other week.

30 So it wasn't as though you'd found anything on him before?---No, I never found, no, I don't know.

Can I tender, Commissioner, the memorandum from Mr Walker to Mr O'Shea of 11 February, 2014, about the urine testing? And I can confirm that that is the same [REDACTED]

THE COMMISSIONER: That is?

MR DUGGAN: Yes.

40 THE COMMISSIONER: Yes. That's Exhibit 93.

**#EXH-093 – MEMORANDUM FROM TERRY WALKER TO JOHN O'SHEA RE: TARGET URINE TESTS DATED 11 FEBRUARY 2014**

MR DUGGAN: And just quickly can I take you to page 175. The second-last column, Meth/Bupe. Do you see that?---Sorry, whereabouts, sorry, did you say?

The second-last column of the box.---Oh, yeah, yeah.

It says Meth/Bupe.---No.

10 No. So does that indicate that he wasn't a drug addict or - - -?---It, no, it indicates that he's not on methadone or buprenorphine.

All right. Okay.---Yeah.

Now, Mr O'Shea, you've given evidence that you had a heated exchange on the 19<sup>th</sup> with one inmate on the intercom and - - -?---Yes.

- - - perhaps a different inmate at the door. You accept that?---Yes.

20 And you arranged, perhaps through Mr Taylor, for IAT to attend 5 Unit. ---Correct.

And IAT – Mr Walker, at least – was asked to sort it out or sort the matter out. You accept that?---And Mr Taylor, yes.

And a false reason has been given in formal documents for attending the cell and the unit.---Yes.

30 And that false reason, I want to suggest, has the effect of editing your involvement out of the picture. Do you accept that?---No.

You don't accept that?---I did not ask anyone to fabricate - - -

It's not, sorry, that's not what I'm suggesting. The substitution of the false reason for attending the cell has the effect of editing you out of the story. ---Possibly, yes.

Well - - -?---There is - - -

40 In the formal documents there's no reference to you on the knock-up, is there?---Correct. Correct.

And there's no reference to you at the cell having a heated exchange.---No.

And the possibility of you verbally abusing the inmate, there's nothing in there about that.---No.

So what I'm suggesting to you is the effect of the substitution of the real reason with the false reason for attending the cell has the effect of editing you out of the story. Do you accept that?---I accept that.

And it was the loyal Mr McMurtrie who fabricated the reason for attending the cell. You accept that?---Between him and Mr Walker, yes. Oh, sorry, yes. Sorry, yeah, yeah.

10 And I want to suggest that you knew that you had been edited out of the story because you read the documents in the UOF package. Do you accept that?---No.

And you reviewed the IRM and knew you'd been edited out of that.---No.

And you would have been aware from the intelligence report that you were edited out of the story.---No.

20 And even if you didn't see the UOF package or the IRM or the statements or the intelligence report, even if you didn't read any of those documents, there was an inconsistency between what you'd been told by your officers about what happened in this cell - - -?---Yes.

- - - and the understanding you gleaned from Mr Duffy's report on 24 February.---Correct.

And by that point you had recommended no further action in relation to this use of force?---Prior to Mr Duffy's report, yes.

30 And if you kept that knowledge, the knowledge of what Mr Duffy says, under your hat because you'd recommended no further action, you would have been part of the cover-up. Do you accept that?---Or I could have just disregarded Mr Duffy's report, yes.

But if you, having received Mr Duffy's report, told no one about it, you'd be part of the cover-up, wouldn't you, because it's inconsistent with your understanding of what happened?---If I told no one about it, yeah, or, or just put it down to Mr Duffy trying to have a go at Mr Walker.

40 You had no reason to doubt what Mr Duffy said in his report, did you?  
---Always, I was always looking at those people to see who was having a go at someone behind the scene or trying to set, set someone up. That's the wrong word but - - -

Mr O'Shea, you sent it on, on your evidence, because you had concerns about what Mr Duffy had said in his report.---Yes.

And Mr Duffy, in his report, says that he saw Mr Walker strike the inmate. ---Correct.



And if you told no one about that, I want to suggest that you would have been participating actively in a cover-up. Do you reject that?---I reject that. I, I, I would not participate in a cover-up. I can see, see what you're saying and see what people, no.

As I understand your evidence, Mr O'Shea, you say you did forward this on.---Correct.

10 What I'm suggesting to you is that if you hadn't have forwarded it on, you would have participated in the cover-up. Do you reject that?---it may have looked like that, yes.

No, I'm not talking about appearances. I'm talking about propositions. If you hadn't have forwarded on Mr Duffy's report to PSB or to your director, you would have been participating in the cover-up? Do you reject that? ---Yeah, I, I didn't know there was a cover-up, Counsellor, at that stage.

20 Well, you would say, I assume, that you weren't part of any cover-up because you forwarded Mr Duffy's report on.---Correct.

But if you didn't forward it on, you'd be part of the cover-up, wouldn't you? ---I, I thought I just, sorry, no, I did not cover anything up.

You understand that's not my question, though. Because on your version of events, you have forwarded the document on.---Yes.

30 All I'm asking you is whether you accept, if you hadn't have forwarded it on, you would have been part of a cover-up?---I accept your version as a version, yeah.

You accept it?---That it's your version, yeah.

Do you disagree with it?---Yeah. I, I, I wouldn't, 27 years in this job, I'm not corrupt.

Commissioner, I have no further questions.

40 THE COMMISSIONER: I've just got one matter. Well, two probably. Same topic, though. In your interview of 11 January, 2018 at the Commission, you didn't tell those who were interviewing you about the existence of Mr Duffy's report, did you?---No. I, I, virtually forgot about it until we were here to tell you the truth.

Well, you were asked some questions and I'll just direct your attention to them. Can we have page 62 of that interview on the screen? There are two references I want to take you to. You'll see, at about line 23, Mr Grainger asked you this question, "Did you receive any information indicating that

Mr [REDACTED] was alleging that he had been bashed?" And you said, "No, no. Only, only, the only time that I knew he was, got hurt. It never said, I was never told he was bashed or it never, sorry, I never heard anything from Mr [REDACTED] to say that he was bashed except for when he was, they said to me on the phone he was going off at his dad, the squad flogged him or something like that, yeah." And then can we go to page 64. Your being asked questions about the telephone call, where there was an allegation of a flogging. And about line 9, Mr Grainger says, "Okay, so just going back there. If you, when you, you come to this or whatever, it means you found, you've been told by somebody the inmate's been, this, this prisoner's alleging this as opposed to what you've been aware of has happened the day before." And you're asked, "Did you do anything?" and you said, "I can't remember. I don't know. It would have, it may have been in conversations with Mr Taylor or something. Was there any, was there anything here as in, you know, was he bashed or have you seen, he said, you know. I, I can't remember any of those conversations going on and I don't even know if it was anything written to say that he'd said he'd been assaulted or anything like that by Mr, by IAT, so I, I can't remember now." Now, that would have been a perfect opportunity, would it not, for you to have disclosed to the ICAC that there was this report from Duffy which was utterly inconsistent with what you had been told had occurred on that day.

---True, Commissioner. But I, I cannot, did not recall at this time of the interview about Mr Duffy's report until I saw it onscreen week 1. That's the, that's the first recollection I had of it. I forgot all about it.

Just as you forgot about the fact that you were actually up at the cell door of cell 208.---I'm just trying to recollect from, or rebuild that day from all the evidence that was heard, yes, I'm - - -

30 Can I suggest to you that it's inconceivable that you would not have remembered the terms of Mr Duffy's report when you were interviewed by ICAC in January of 2018. What do you say to that?---I can, I could not remember then at that time, Commissioner, that report.

Thank you.

MR DUGGAN: Commissioner, my apologies. I do want to put one more thing to Mr O'Shea. Can I go to page 295, please. So this is an email exchange in 2015. At the bottom of the page, Mr Glasheen, an investigator with Corrective Services has emailed you and he says, "As you are aware, inmate [REDACTED] made a phone call to his father and complained of being flogged," et cetera. (not transcribable) the phone call, inmate [REDACTED] tells his father the governor came up to his cell door and said to him, 'Are you talking to me, cunt [REDACTED] It then alleges the squad then came into his cell and flogged him.'" And then over the page, "I have attached a copy of the phone call that was made by [REDACTED] where he mentions the governor." And then he asks you, "I appreciate this matter is over 12 months old. However, when inmate [REDACTED] mentions the governor, was he referring to

you or another officer, perhaps the acting MOS or officer in that unit?" And then for some reason ██████ McClelland becomes involved and drafts in response. But at 297 you respond to Mr Glasheen, presumably in answer to his email, and you say, "Hi, John. I refer to your email correspondence in relation to the allegation made by ██████. And then you say you can't recall the exact specifics but "what I can confirm is", you categorically deny at four being verbally abusive towards inmate ██████ as he has claimed in the phone recording. Do you see that?---Yes.

10 Well, that's false, isn't it?---Yeah, yeah. Yeah.

And there's nothing in there about Mr Duffy's report or any inconsistencies in what you've heard and what you've read is there?---No.

It was a perfect opportunity to tell the Corrective Services investigator that? ---Once again, yes, if I remembered.

And so you send this to Mr Glasheen on 27 February, 2015?---Yes.

20 And then you forward it via your phone to Mr McMurtrie?---Ah hmm.

Why?---He is my Intel officer. I would have been telling him there's an investigation going on and, yeah. He gets a lot of my, not gets a lot of my emails, I would forward a lot of documents over to him.

THE COMMISSIONER: Mr O'Shea, you would have been aware at that time wouldn't you that Mr McMurtrie himself would be part of the investigation?---Possibly, yes.

30 What do you mean possibly? It was an absolute certainty wasn't it?---Well, yeah, on day 2 he was involved, yes.

Sorry, Mr Duggan, I've cut you off.

MR DUGGAN: That's all right. Well, the other explanation, Mr O'Shea, is that you and he were part of a cover up and you forwarded it to him to make sure your stories were straight.---Not true.

Thank you, Commissioner, that was the only matter.

40

THE COMMISSIONER: Mr Madden has joined us again. Welcome back.

MR MADDEN: Oh, it's great to be here.

THE COMMISSIONER: Are you in a position to ask questions?

MR MADDEN: Could I go last?

THE COMMISSIONER: You can go second-last I think.

MR MADDEN: Okay then. Yes, second-last, yes.

THE COMMISSIONER: All right.

MR MADDEN: If at all.

10 THE COMMISSIONER: Well, let's start up the back. What about you, Mr Taylor?

MR TAYLOR: Yes, I'm in a position to proceed. Mr O'Shea, as you know I appear on behalf of Mr Walker.---Yes, Mr Taylor.

When did you first meet Mr Walker?---Oh God. Possibly around early 2000, end of 2000, early in the 2000s. I can't recall the year.

20 It could have been 1999 when you were both at Bathurst?---Possibly, yes.

Both of you spent a considerable number of years at Bathurst. Is that correct?---I spend three, two years there originally then moved on to other areas, yeah.

And Mr Walker was there the whole time you were there?---I presume so, yes.

30 Do you not have a recollection of that?---I do. I know Mr Walker was around either Bathurst or Lithgow or Kirkconnell. I think he come up to Kempsey at one particular stage as well.

So you knew him quite well as at February, 2014?---Correct.

That's correct isn't it?---Correct.

Now, you've given some evidence about the summer of 2013/14 being a particularly troublesome time.---Yes.

40 Is that particularly in Unit 5?---Across the centre but Unit 5, Unit 5 predominantly.

And you were here the entire time the evidence has been given over the last two weeks and few days?---Correct.

And is it the situation that you were aware of Mr Walker's personal difficulties, if I can use that term?---Yes.

Well before February, 2014?---Yes.

They'd been going on for some considerable time prior to February, 2014?  
---Yes.

I think your evidence is, and I can take you to it if you want me to, that you were keeping a particularly close eye on Mr Walker because you knew of his difficulties?---Yes.

10 Now, in your record of interview with ICAC investigators, and this is at page 43.

THE COMMISSIONER: Will we put that on the screen, Mr Taylor?

MR TAYLOR: If you could. Thank you. Here you're being asked, are you not, about the reports and possibly the IRM relating to the events of 19 February concerning the inmate [REDACTED] Where are we at, sorry, Mr Taylor?

20 On page 43.---Yeah.

I can show you the earlier pages if you have any doubt about that but does that accord with your recollection?---Does what accord with my recollection?

That you were being asked about the use of force package, the IRM, the reports in relation to the incident on 19 February.---Yes. Sorry, yes.

30 And you said, this is at about line 8, "No, it peaked my interest because of the people involved."---Yeah.

Mr Grainger says, "So what?" And you then say, "So I'll clarify because that's a scattergun statement. Mr Walker sometimes he can be hot-headed, not heavy-handed," and so on.---Yep.

And you then were asked by Mr Grainger, "So you indicated it sort of interested you because of your familiarity with Mr Walker?"---Yep.

40 Do you still say that you didn't review the IRM, the reports and the use-of-force package?---Yes.

That was notwithstanding your concern about Mr Walker?---My concern about Mr Walker was whether he'd walk out of the gaol and not, not assault anyone.

Well, I think you said later in that interview that you couldn't believe he'd go in and bash someone - - -?---Correct.

- - - without any reason.---True.

Is that correct?---True.

But if you were keeping a close eye on Mr Walker, you knew he was involved in this incident?---Yes.

And you'd be interested to see what reports there were in relation to the incident, wouldn't you?---I've been through that, but no, I looked at Mr Taylor's and signed that off.

10

Right. Now, you recollect an incident around Christmas 2013 which involved prisoners lighting fires in their cells?---Yes.

Mr Walker was involved in diffusing that circumstance - - -?---Yes.

- - - or dealing with that?---Yes.

And he did that satisfactorily?---Totally.

20

And similarly you may recall I asked Mr Peebles about an inmate being on a roof. He said it might have been an awning - - -?---Yes.

- - - during this time.---Yes.

Do you recollect that was in this particularly difficult time of summer of 2013?---Yes, it possibly would have been around that time, yes.

30

Okay. It wasn't later as Mr Peebles said may have occurred?---There was two or three awning incidences, Mr Taylor, but yeah, there was that time as well in - - -

And you do have a recollection of Mr Walker being involved in that and diffusing that situation - - -?---Yes.

- - - successfully?---Yes.

And do you have a recollection of presenting Mr Walker with a commendation sometime in mid-2014 in relation to that incident?

40

---I, I, I presented quite a few to various staff and Mr Walker was one of them, yes.

Okay. Now, have you previously heard the term, cell therapy?---No, not cell therapy. I've heard the term therapy, it's used across the department, outside the department and everywhere.

And in relation to Mr Walker's duties and the senior in the IAT, did you direct him prior to February 2014 to participate in any therapy for inmates?

---No, I've never said anyone go and do, I can do my own talking if I need to talk to an inmate or – I don't dance to that beat.

So is that something you say doesn't occur in Corrective Services?

---No, I'm not saying that at all, I said I don't.

10 So is it your evidence that you've never directed the IAT and Mr Walker in particular to sort someone out, as it were?---Sort someone out doesn't mean go and assault someone. Sort it out, see what the problem is, manage the issue.

And therapy doesn't just mean assault, does it, it means - - -?---That's correct.

- - - dressing them down?---It could mean a number of things.

Well, you've heard the evidence about it?---Yes.

20 It includes dressing down, you'd agree with that?---Yeah.

You've heard evidence that it includes basically trashing an inmate's cell?  
---Yeah, I, I don't agree.

Did you understand that?---I understand that and I know some staff do do that.

But you have no knowledge of that. Is that what you're saying?---I don't do that.

30 Have you ever directed any - - -?---No.

- - - any Corrective Services officer to do that?---I've directed staff numerous times to search cells, not to trash cells.

40 Now, in your record of interview with Commission staff, and this is at pages 37 and 38, see at the top of page 37 where you first speak you say that, "No, unless they've come up for a debrief later. Sometimes we do a debrief or most times we do a debrief, if you know, but the MOS generally does all that in his office, you know, when they're doing the package, if it's a serious incident I'll ask for a debrief for everyone and go and address people."  
---Yep.

Do you recall giving that evidence?---I remember saying that, yes.

And do I take it from that, that in your experience it's the MOS who gets everyone into their office for purposes of preparing the IRM or similar document?---No.

So what's the debrief about, then?---Debrief's just checking on people's welfare. It may not be, it may be, say, the SOG senior and they generally go around the room. Okay, we possibly could have done that better or we, no, it's just a debrief, check on welfare, making sure. That's it, virtually. It doesn't have to be an MOS driving that.

Did you participate in any debrief in relation to the incident on 19 February, 2014?---No, not to my recollection, no.

10 Are you aware of Mr Peebles participating in any debrief in relation to the incident on 19 February?---No, no.

Now, at some stage you removed Mr Walker from the IAT, is that correct? ---Yes.

Do you remember when that was?---I think I removed him two or three times and I, I rotated, well, through other managers and that, that he probably had about four or five different moves.

20 After February, 2014, do you remember when you then removed him from the IAT next?---No. I can't off the top of my head, no. Sorry.

Now, I suggest you didn't do that for many months, would you agree with that or not?---I think not long after that, I think as it's been said here, I think Mr Walker had, had an alleged [REDACTED] attempt, so I, I think that wasn't long after that event. I, I can't recall dates at that - - -

If I suggested to you that Mr Walker had a [REDACTED] attempt in April, 2014, does that accord with your recollection?---Possibly.  
30

And you have a recollections of Mr Walker returning to work at Lithgow after that particular incident?---Yes, yes.

He was put straight back into the IAT, wasn't he?---I think that's what, Mr Peebles said, yes.

Did you play any part in that?---I, I, I would have had discussions, yeah.

40 Would have had discussions with who?---Oh, I think possibly Terry, I, I think. I, a doctor rang me, I don't know if it was that time or another time when he was admitted to Orange Hospital. I think it may have been another time but I, I had a conversation with a doctor or his [REDACTED] team in Bathurst. He was attached to Bathurst Base Hospital and he had a [REDACTED] team under a [REDACTED] plan, sorry.

But you have a specific recollection of Mr Walker being under a [REDACTED] plan when he came back to work in April, 2014?---Oh, I was led to believe he was cleared for duties, yes.



Well, you made some enquiries, didn't you?---I did, or someone rang, I can't recall.

And I don't know if you need to see this, but you recollect part of Exhibit 86, which was shown to Mr Peebles yesterday, was an email, pardon me, from him to Sheen and Dicko saying, "Terry Walker's okay to return"?  
---Yep, yep.

10 You were aware of that?---Yeah. I saw that.

You had no concerns about putting Mr Walker back into the IAT despite the problems he had prior to February, 2014 and despite the [REDACTED] [REDACTED] in April, 2014?---Oh, I think, you know, I think we all thought, or Mr, Mr Walker, it was the best place for Mr Walker to be managed because of the, the officers that he had with him were quite stable young men and he respected them, and if they, you know, were to tell him to pull his head in or he's being a goose, he would.

20 And at that stage you knew about Mr Duffy's report regarding the incident on 19 February, 2014?---Yes.

You knew that there was some problem associated with Mr Walker's behaviour on that day in April, 2014?---Possibly.

Well, not possibly, you knew - - -?---I, I knew that but I didn't know about what, at that stage, that was just a report, yes.

30 It was sufficiently playing on your mind that you say you sent it off to a director or someone from the Professional Standard Branch or someone else?---Someone, yep.

So, you knew at that stage that there were concerns about Mr Walker's behaviour on 19 February?--- Yes.

And yet you still put him back into the IAT?---Yes.

Correct?---Well, one of us, some of us did, yeah, someone did.

40 Well, you're the governor.---Oh, okay, yeah me.

It's either you or Mr Peebles put him back in?---Yes.

And in charge of the IAT as the SCO, correct?---Correct.

You didn't pause in doing that? You had no difficulty in doing that, did you?---No.

Now, when you did remove him from the IAT, you put him in charge of the tower area, didn't you?---No. He, he was in, in control room which was underneath the tower.

Sorry, the gatehouse?---There was the gate. He was rotated to the gate, to the control room and I think reception room.

But as far as the gatehouse is concerned, part of his duties there would be looking after the armoury?---Yes.

10

He had no concerns about doing that?---No.

You didn't consider him a loose cannon at that stage?---His tendencies were to spit the dummy and go home, not do anything, and you'd find out later, yeah.

And it was the situation that you had confidence in him to do his job, is that right?---Yes.

20

Notwithstanding all the difficulties you've outlined?---Yes. Just trying to help the guy through.

Now, in your evidence to the Commission over the last day or so, you made mention of Mr Walker's alleged paranoia in relation to other staff members.---Yeah.

You made no mention of that to the ICAC investigators in January of this year, when you were interviewed by them, did you?---Possibly not, no.

30

Well, do you have any doubt about that?---No, I don't have any doubt about it.

Any reason why you didn't raise that with the ICAC investigators?---No reason.

I suggest it to you that that's something of recent invention. Would you agree with that or not?---No, I may have forgot it on that day, but it was -- Terry has been paranoid ever since I've known him.

40

And that gave you no cause for concern in putting him in charge of the IAT, even after a [REDACTED] attempt?---No.

You've directed Mr Walker on a number of occasions to go and sort things out with inmates, haven't you?---I've told Mr Walker to go and talk to inmates, see inmates, yeah, interview inmates, yes. It's part of his role.

And you did that prior to February 2014?---Yes.

And post-February 2014?---Yes.

That was notwithstanding the concerns that you had about his operational technique in talking to inmates, correct?---As I said, sometimes Mr Walker was very, very good at communications and negotiations with difficult inmates, especially around self-harm issues.

10 Pardon me a moment. Now, you've had a number of discussions with Mr Walker regarding the events of 19 February, 2014, after the event, haven't you?---I've had a couple, I think, yeah.

Well, more than a couple, haven't you?---Well, I've had a few conversations with Mr Walker, yeah.

And you had a number of conversations with him in 2015, when the internal investigation was under way, correct?---I know I had one with him in my office, yes.

20 And he expressed to you some concern about that investigation, didn't he? ---Yes, about being interviewed, yes.

Do you remember what he said?---No, he just, I think he just come into my office or was downstairs and asked if he could see me, and he was about to be interviewed by Mr Glasheen's team, or Mr Glasheen, sorry, and he was just all worried about the interview and what's it about and what to do, and I just said, "Just relax, mate. Tell it how it is. Tell what happened." Just trying to calm him down because he gets wound up.

30 You told him to stick to his story, didn't you?---Yeah, to his reports.

Yes. And you knew at that stage about the Duffy report, didn't you?---Yes.

Didn't think to say to Mr Walker - - -?---No, I'm not going to, I'm not going to suggest - - -

Hang on. Let me finish the question.---Sorry, mate, sorry.

40 Something along the lines, "Be careful. There's a problem here for you"? ---No.

Any reason why not?---I'm not going to jeopardise an investigation that's going on. That's up to the investigators to talk to them about that.

You told him he'd get through the internal investigation without any trouble, didn't you?---I, I can't remember saying that.

You'll get through it or words to that effect?---"It'll be okay. We'll, we'll get through it." Yeah, possibly. I can't recall the words.

You were misleading Mr Walker at that stage, knowing about the Duffy report, weren't you?---I don't believe I was misleading Mr Walker. I was trying to calm Mr Walker down.

You heard the evidence that Mr Walker gave in relation to him being told by you words to this effect, and I'm just paraphrasing, "The boss wanted me to go down and teach him a lesson," referring to the inmates in 208. You recall that evidence?---Oh, yeah, yeah, something like that.

10

Do you have any response to that?---No, Mr Walker would be saying that all the time, I'm sure.

Well, prior to him giving evidence on his oath here, you had no idea that Mr Walker was going to admit to having dealt inappropriately with [REDACTED] [REDACTED] did you?---Not at all. Not at all.

And you certainly didn't know in 2015 that Mr Walker was not going to stick to his story, as you say.---Yes.

20

I want to suggest to you that Mr Walker did what he did on 19 February, 2015 as a result of the direction from you. Would you agree with that or not?---Totally disagree.

And I want to suggest to you that that wasn't the first time Mr Walker had undertaken such a task at your direction. Would you agree with that or not?---Totally disagree.

Yes, thank you, Commissioner.

30

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

MR HARRIS: Thank you, Commissioner. Mr O'Shea, Andrew Harris for Stephen Taylor.---Yes.

Could I take you to something that was discussed with you through Counsel Assisting just after morning tea today. It was in relation to the incident report of Wes Duffy, and that's Exhibit 45, page 48. And there's a portion of that which reads, "In the office was general manager, Mr John O'Shea, and manager of security, Mr Brad Peebles." And if it assists you, that's referring to the office in 5.1 on the 19<sup>th</sup> of February.---Yeah, yeah. Yeah, yeah.

40

Thank you. The incident report of Mr Duffy goes on to say, "Mr O'Shea directed us to cell 208 and asked us to remove the inmate." Your answer was to the effect of "I possibly could have said to Mr Taylor," I presume, I don't have the transcript, "something along the lines of 'What was to be

done?" They were your words today, "I possibly could have said to Mr Taylor."---Yeah, I would, I possibly could have said to Mr Taylor.

Thank you. Yes. Sorry. Well, my proposition to you is that in fact you didn't say anything to Mr Taylor at all prior to the entry of the IAT team into the cell. That's - - -?---That's not correct.

All right.---To my recollection.

10 I appreciate it's a long time ago, but my suggestion is that – well, I'll withdraw that. I've looked at Mr Duffy's incident report, as have we all. It doesn't mention Mr Taylor being there. You agree with that?---Yes, sorry.

Yes, thank you. And my suggestion to you is that, looking back, Mr Taylor wasn't there until after the team had gone into the cell 208.---I disagree.

The entry – I'll withdraw that. Prior to the entry of IAT into the cell, you would agree there was a ruckus, a noisy commotion occurring?---Yes.

20 Yes. There was yelling at the door and I'm suggesting that even the entry of IAT into the cell itself was accompanied by more noise. It was noisy when they went in, wasn't it?---Yes, it always is noisy in there.

And my suggestion is, if I'd ask you to look back, and would you agree with this? Mr Taylor arrived after that ruckus had been going on for some short time?---No, I wouldn't agree with that.

30 Well, just finally, and again on this point, the interview you did at ICAC, or with ICAC, I'm sorry, in January this year, at page 21. Around line 10 you say, this is in relation to the 19<sup>th</sup>, "Okay, well, I thought, well, me and Brad went for a walk." Brad must have been, was he on detached duty or something, I think? I just read you that to orientate you. And about line 20, Mr O'Shea, you say, "Squizzy or Steve Taylor was the manager of security. I'm 95 per cent sure Steve Taylor wasn't. It was Brad. And I went up there. It wasn't Steve that day." The point of reading that to you is to suggest, of course, that at that point in time you and Mr Peebles had gone to 5.1, correct?---Correct.

40 You hadn't notified Mr Taylor in advance that you were coming, had you?  
---No.

And in your interview, again with ICAC in January this year, at page 31 this time, talking still about 19 February, and specifically there you were being asked about the report that was completed by Terry Walker and you said, it's line 20, Mr O'Shea, "I never said, I've never said go in there and search for buprenorphine. I would search – the MOS, which was Mr Taylor on the day, I can't even remember Squizzy, sorry, Mr Taylor being there. Well, he wasn't with Mr Peebles, me and Mr Peebles, I don't think. He may have

been walking behind us, but I didn't see him. Yeah." Now, my question arising from that is does that not cause you to reflect on your memories and to agree that in fact Mr Taylor was not there at all when the directions were being given to go into the cell?---No. I gave the directions to Mr Taylor. What I meant there, Mr Taylor could have followed us down the corridor. He wasn't with Mr Peebles and I when I first went in there. He could have come from anywhere.

10 Yes. And I put to you that he came from upstairs after the team have gone into the cell?---No.

Thank you, Mr O'Shea. Thank you, Commissioner.

THE COMMISSIONER: Thank you. Ms Fishburn?

MS FISHBURN: No questions, Commissioner.

THE COMMISSIONER: Thank you. Mr Dunne?

20 MR DUNNE: No. No questions, Commissioner.

THE COMMISSIONER: Thank you. Mr Brasch?

MR BRASCH: Just a few questions. Thank you, Commissioner. Mr O'Shea you've given some evidence about sending Mr Duffy's report on after you became aware of it. Is this right? You say you read it on or about 24 February, 2014, is that right?---In or around that time.

30 And you forwarded on that report to wherever very soon thereafter?---I can't, I couldn't tell you. I can't remember the dates. I don't know.

I'm not asking for the specific date, but is it right to say that it happened within the days that followed?---After the 24<sup>th</sup>, possibly, yes.

So, it would be fair to assume, it was probably sometime in that week of the 24<sup>th</sup>?---Possibly.

40 Well, as best you can?---It's fair to say, I, I don't know. I, I, I could have given it to my director or sent it to Mr, faxed it to Mr - - -

I'm not concerned about who at the moment just the date, just try to nail down the time frame. If it's the 24<sup>th</sup> that you read it, that's a Monday we've established. Do you think you, you sent it off to someone by the end of that week, by the 28<sup>th</sup>, the Friday?---Possibly.

If not, by the end of that week, early the following week?---Yeah. Possibly, yes.

Well, is your recollection that it occurred in the days soon after you read it, that is that you forwarded it within a matter of days?---Yes, it could have been that as well.

THE COMMISSIONER: Well, is there any reason - - -?---After the - oh, sorry, Commissioner.

10 Is there any reason why you wouldn't have sent it on, having regard to its contents either at the time you read it or shortly thereafter?---It could have been sitting in my in-tray for two or three days, Commissioner. I, I, I can't recall. It could have, if, if they've slid it under my office door in an envelope, it could have sat in the in-tray for days. I, I cannot remember when I addressed it.

MR BRASCH: It's fair to assume that, so you sent it off by the end of February or early March, would that be right?---Yes, yes.

20 No, insofar as who you sent it to, you say you don't know who you sent it to. Is that right?---No. I, I've got a recollection it was into Mr - - -

Mr Hovey?---Mr Hovey's area somewhere. To one of his investigators or something, or himself or, I can't recall. Or, or the director.

But he was the director of the Investigations Branch, that's correct?---That's correct, yes. I think he was superintendent there or director. I'm not real sure of the title.

30 And your best recollection is you say you sent it to Mr Hovey.---Mr Hovey or my director.

Yes, no, I'm just, okay, just - - -?---Okay, well, Mr Hovey possibly.

THE COMMISSIONER: Who was your director?---I think it was Mr Creighton or Mr Gary McCarn. He was the other name I couldn't think of earlier, Counsel.

40 MR BRASCH: Just if you can focus in terms of your director. That is the superior officer to yourself, correct?---That's correct.

And there is a director that covers a particular region, is that right?---That's correct. He had the western region.

And he reports to the Assistant Commissioner.---The Assistant Commissioner, correct.

As of February 2014, who was your director?---I think it was Mr Creighton at the time. We had a few changes.

And Mr Creighton was based where? In Kempsey?---Negative. At Goulburn.

At Goulburn.---Yeah.

So Mr Creighton is another possibility of who you sent it to?---Yes.

10 Did you say that you may have sent it to the Professional Standards Branch?---I can't recall. I did say that, yes.

Yes.---It was, I'm trying to work out where it landed. Yeah.

Well, I think you indicated that you probably had a telephone conversation with someone about it, that's right?---Yeah, it would have been out of Mr Hovey's area. I, I speak to them regularly. Well, yeah.

So as best you can in relation to this, focus in your mind.---Yeah.

20 Who do you recall having that telephone conversation with?---Either Mr Horan or, I'm trying to think. There's, there's another gentleman there that was there that went back to CIG as well. Matthew someone, like a hyphenated name. Matthew/Colbert or something like that. There's also one of the police investigators we dealt with a lot that was doing stuff at our gaol.

Well, I'm just trying to get - - -?---I'm trying to think of his name that worked in that area as well.

30 In your mind, rather than mention a whole lot of names, actually focus in on whether you can, who you can recall having that particular or specific telephone conversation with.---It was, I cannot give you an exact name but it was someone under Mr, Mr Hovey/Mr Horan's area.

So someone in the Investigations Branch?---Yes.

40 And was it your practice at the time to communicate by way of – well, I'll start again. You sent on Mr Duffy's report. That is, physically, that's right?---I, I think I faxed it or got Robin to send it on or I may have given it to my director. I cannot recall, Counsel, I'm sorry, sir, what was, exactly how I delivered it.

Would it be possible that you sent it by email?---Possible.

Or fax?---I wouldn't have scanned it and emailed it because I couldn't do that. I would have got Robin to do that possibly or I possibly faxed it.



But you certainly would have sent some sort of covering letter or email to explain the situation with the document.---Yeah, I, I would have had a phone call with them prior.

Yeah, but let's just, but when you sent it, you would have sent it with some sort of covering letter explaining the situation.---Yeah, could have.

10 Yes. And that may have been an email.---Email or a fax cover sheet, yes.

And you believe it was someone in Mr Hovey's branch?---Yes.

And that would have been sent some time in late February or early March?  
---Correct.

Thank you, Commissioner.

20 THE COMMISSIONER: Thanks, Mr Brasch. Mr Greenhill. I'm proposing to sit on because I really do want to finish today if we can.

MR GREENHILL: Sir, you would have heard me cross-examining Mr Peebles the other day about the environment that existed at Lithgow gaol, and you'd agree with me that what I said was reasonably accurate, wouldn't you? That the work atmosphere and environment at Lithgow was clouded or affected by distrust amongst officers?---Yes.

And staff?---Officers and staff, yes.

30 And also disrespect amongst themselves?---That's, yes.

And also hatred existed between certain officers, in your opinion?---Totally.

And there was a creation of fear in fellow officers by their work, installed by their workmates? Do you agree with that?---Yeah, I remember you saying that, yeah.

40 And the situation is that a number of the officers you've told the interviewers during your record of interview, Exhibit 89, were verbally aggressive towards each other.---Staff?

Yes.---Yes.

For example, Mr Turton and Mr McMurtrie were verbally aggressive with each other?---Yes.

And for example, there was no love lost between Mr Taylor and Mr Turton?---Yeah, I think, that wasn't the same relationship as Mr McMurtrie and Mr Turton.

No, I'm not saying, I'm saying they were jealous of each other.---Yes.

That's what you told the interviewers.---Yes.

And in fact fellow officers would shout and threaten other officers?---Yeah, you'd hear some of that, yeah.

You did that didn't you?---What do you mean?

10

You yelled and shouted at an officer at Lithgow Gaol and threatened him didn't you?---I was yelling and shouting but I don't believe threatening.

Did you hear Mr Turton give evidence?---Yes.

That you threatened him, yelled at him, shouted at him, frightened him?  
---Yeah, I can imagine Mr Turton saying that. He doesn't like me. That's, that's fine. I gave him bad reports on promotions so I understand that.

20

All right. And you told the Commissioner at about 3.15 today that you were always having to look behind the scene to see who was having a go at each other.---Correct.

What did you mean by that?---Well, meaning people putting or saying allegations against another staff member, whether it's they're getting an extra shift or they've done too much or they don't like them, just make whatever opportunity where there was a split they would go.

30

Now, Mr Taylor on behalf of Mr Walker took you to part of your record of interview Exhibit 89 at page 43, Mr Commissioner and Counsel Assisting. He took you to about line 10 and then he asked you a question about where you said, "So I'll", can we put it on the - - -?---Yeah, I've got it on the screen, sir.

40

So I'll clarify that because that's a scattergun statement. Mr Walker, "And, yeah, sometimes he can be hot-headed and not heavy-handed". Now, I'll stop there. That's where Mr Taylor stopped, and I'm not being critical of him, but then it goes on doesn't it, "but just does not think and acts rather than, you know, thinks and puts, you know, other people like Simon and what's his name, Elliott in jeopardy sometimes." That's what you said?  
---Yeah.

That was true?---True.

And the Simon there you're referring to is Simon Graf isn't it?---On that particular incident, yeah.

How did he put him in jeopardy?---Because as Mr Peebles explained, you know, we'd be in a yard or the inner yard. Mr Walker would lose the plot and incite, not lose the plot, that's probably a bit - - -

He what? What did you say?---I said, "Not lose the plot." That was a bit unkind. I mean he would not negotiate properly and put other staff at jeopardy when the, the situation could have been controlled better.

10 Do you mean in a situation of danger?---A possibility, yes. Mr Peebles said, yeah.

Probably?---Yeah.

Probably a situation of danger?---Probably, yeah.

And he also did that in relation to Elliott. Correct?---Too.

Yes.---So what, sorry? I didn't hear what you said.

20 Also to Elliott?---Elliott? Yeah, Elliott Duncan, yeah.

And I read on, "And so I, I did at that stage try and keep a leash or close eye on Tex, yeah."---Yeah.

And that's what you've said today in your evidence, you were keeping a close eye on Walker.---Correct.

Correct?---Correct.

30 He was a loose cannon wasn't he?---At times he could be a loose cannon, Mr Greenhill, yes.

Is that right. And in fact later on, on the same page in your record of interview it says, "And you had some concerns", line 24.---Yeah.

"You had some concerns about Mr Walker's operational techniques?" Answer, "Well, trying to train him in, in a, to be more professional in his dealings with staff and inmates."---Yes.

40 How were you training him?---We're trying to - - -

No, you. Not we.---Well, I try and train him, talk to him, tell him just talk to people properly, be professional. You know, forget spitting the dummy and throwing your keys down and going.

All right. And was he your biggest headache at the gaol?---Oh, no.

One of them?---One of them.

And Mr O'Shea, if I can just deal with another matter. Excuse me, Commissioner. The environment that existed at Lithgow at this point of time with Mr Walker being the way he was created a dangerous situation, didn't it?---No matter where we put Mr Walker sometimes it would create a situation, yeah.

10 And if you were the one who caused him to go into the cell on this particular day, that was a dangerous manoeuvre, wasn't it?---No, I didn't think, I didn't send him in there or anyone else in there to assault - - -

All right. You sent the IAT - - -?--- - - - any inmate.

No, but you sent the IAT team in there to quieten the relevant prisoner down, didn't you?---Correct, yeah, to sort it out, sort the issue out, see what their problem is.

20 And at this point of time you knew Mr Walker was a loose cannon. Correct?---Correct.

No more questions, thank you.

THE COMMISSIONER: Thanks, Mr Greenhill. Mr Madden?

MR MADDEN: I have no questions, thank you.

THE COMMISSIONER: Thank you. Mr Willis?

30 MR WILLIS: I've got a couple.

Mr O'Shea, just the situation that existed on that day, on 19 February. ---Yes.

As we understand it you've told the Commission that there was a lot of ruckus going on, you've agreed with that proposition just recently?---Yes.

So you have prisoners or inmates I should say, kicking cell doors and screaming out and generally making a noise, right?---Yeah.

40 Your concern as I understand it was that that might encourage others, other inmates to do the same thing. Is that right?---Yes.

Right. Was that a situation that was unusual in 5 Unit?---No. If someone had started, one of the inmates or one of the cells had start you'd try and quell it so it wouldn't incite the rest of the wing, and it happened regularly.

It happened regularly. Right. And on occasion did you do, where that was happening did you do exactly what you did on this day, that is, call in the

IAT to sort the situation out?---Yeah, or myself or Mr Peebles or whoever was around, yeah, get that sorted, pull them out of their, separate them.

Right.---Yeah.

And on occasions did you use the IAT to do that?---Yes, yes.

Okay. And in your mind on that day, 19 February, when you called in the IAT to sort out that problem, was that a valid reason for the use of the IAT?  
10 ---I believe so because in that wing we generally used the IAT to do that because of the hostilities and the assaults on staff, they can be provoked and they're looking for a cell to be open. The IAT weren't assaulted, it was a general wing staff like Ms Lohse's team et cetera, and myself, urined and everything, it's just the IAT were used for that and the inmates knew that the IAT moved them around the centre, including visits.

Right. Well, my question was simply did you regard that as being a valid reason to use the IAT?---Yes, a valid reason, yes, yes.

20 Okay. Did you need a fabricated reason to use the IAT?---No, no.

Or to justify that the IAT went into that cell?---No.

Did you see Mr [REDACTED] after the cell entry and before he went to the hospital?---No.

Do you recall a nurse attached to the clinic named Toni Muir?---I know her, yes.

30 Do you recall seeing Mr [REDACTED] together with Nurse Muir before he went to hospital?---No.

So far as you were concerned, Mr O'Shea, did you feel that there was a need for you to be edited out of the story as it's been put to you?---No.

Was there any problem about you being in Unit 5 in the dayroom area in the circumstances you've told the Commission about?---No.

40 It was put to you that there was a reason for you to leave and that was because of what you saw or heard in terms of what was going on in cell 208. You recall being asked that?---Yes.

Rather than a reason to leave was there any reason for you to stay there?  
---No. There was mangers there. There was an IAT staff and they can manage that situation.

All right. You said in answer to a question just a little while ago that it was always noisy in there.---Correct.

And by “in there” do I take it that you mean 5 Unit?---5.1 and 5.2.

Right. And so far as you can recall, were the inmates in cell 208 the only inmates who were making any noise on that day?---No. No.

Is there always a general sort of noise level that goes on in that area?---It’s a very high noise area.

10 The Commission has seen video of the search that occurred on the 20<sup>th</sup> of February, the next day.---Yes.

You saw that played in court.---Yes.

And you heard the general noise that was going on while that operation was underway.---Yes.

20 Is that indicative of the general sort of noise level that’s going on in that area?---Yeah. That was, that was quite quiet, actually, that particular one, yeah, but that’s generally there and above, yeah.

So it wasn’t like the place suddenly went quiet when the IAT entered the cell?---No.

30 In terms of the use of force, if inmates are handcuffed in the course of a cell entry such as occurred in cell 208 on this day, would you regard that as a use of force?---After they’ve entered if the inmate has fallen and the, sorry, tripped over and the officer has gone to grab him and then they’ve cuffed him after that, yes, I would, yes.

All right. In terms of inmates being charged with breaches of discipline, including contraband, do you have any role in relation to that?---In charge, in the charging process, no.

Do you have any role in what happens after the charging process?---No. It’s left to other areas to manage.

Who?---Sorry, to the MOS or the sector manager, desk clerk, et cetera.

40 Does it come to you at any stage?---The only time it would have come to me if it’s a mobile phone find and the inmate pleads not guilty or now I think all mobile phones finds have to be done by the governor of the centre.

All right. And just finally, Mr O’Shea, how would you describe your relationship with Simon Graf?---I think Simon’s very professional but I think he’s a wonderful young man and, yeah, he’s a nice young man. I don’t know him outside of work or anything and I haven’t seen him for two years except in the court the other day.

Do you consider that as at least February, 2014 you had a good working relationship with him?---Yes, yes.

Yes. I have nothing further, thank you.

THE COMMISSIONER: Thank you, Mr Willis.

MR DUGGAN: Just very quickly, Commissioner, if I may.

10

THE COMMISSIONER: I think somebody up the back.

MR TAYLOR: Commissioner, can I just raise one issue. Mr Willis asked Mr O'Shea about information contained in the statement of Tony Muir, which was tendered earlier this morning, and I appreciate Counsel Assisting directed the Commission to only certain references within that interview, but given that the whole statement's tendered, there's a suggestion by Mr Muir that she assessed the inmate [REDACTED] either in the presence of Mr O'Shea or Mr Walker and certain things were said. Now, Mr Willis has had the opportunity of putting to his client that he wasn't there with Ms Muir when that was done. I have not had that opportunity because this information wasn't available when Mr Walker gave evidence. I just place on the record that, as I understand it, no submission is going to be made one way or the other as to whether Ms Muir's recollection is accurate in respect of what occurred when she was doing the assessment of the inmate.

20

MR DUGGAN: Commissioner, can I indicate the position. Ms Muir was not called for cross-examination. I didn't put it to Mr Walker that he was the one, or I didn't ask him whether he was the one that said these things to Ms Muir. It's been put to this witness and he's denied that it was him. I don't intend to make any submission as to who it was. I expect there will be a submission that it was an officer but I certainly won't be putting it as highly as it was Mr Walker. So, in those circumstances I don't think he needs to be called to deny it.

30

THE COMMISSIONER: No.

MR TAYLOR: No. I'm indebted to my friend. Thank you.

THE COMMISSIONER: All right. Did you have any documents to tender before we - - -

40

MR DUGGAN: I do, but I've just got two quick questions for the witness arising out of what has just occurred. Can I take you to page 164, please. Now, why that's come up, you were asked some questions by Mr Brasch about who your director was in late February, early March 2014 and this document may assist. It's the intelligence report that was disseminated on the 10<sup>th</sup> or 11<sup>th</sup> of March, 2014 and you can see from the dissemination list

that Mr Creighton is the director and then there are various people at Lithgow. Does that mean that it would have been Mr Creighton who was your director at the relevant time?---Yeah. But to be fair to the document and to CIG, it, it could, Mr Creighton would have, could have been put in the metro area or another area and, and Mr McCarn could have come in. There could have been others there at that time as well because they're not, this automatic notification sometimes isn't updated all correctly when people move on. So - - -

10 Well, I assume there are other documents which can demonstrate that, so I won't labour the point. Now, just finally, you were asked some questions by Mr Taylor, Mr Walker's representative, and he was asking you about a conversation with Mr Walker in 2015 before he spoke to Corrective Services investigators. You recall that?---Ah hmm.

And as I heard your evidence you said to him, "Stick to your story, stick to your reports." Do you recall giving that evidence?---Something like that. Yeah, I said, I would have said something like that to Terry, "Stick to your, stick to your story, mate. Stick to your story, you'll be right."

20 Yes. It's the latter bit I'm focussing on. You then said, and this was half an hour ago, "Stick to your story, stick to your reports." Do you recall giving that evidence?---Yes, I did say that I think, yeah.

What report are you talking about?---His, what he was being interviewed for.

30 Yes, but what report of Mr Walker's were you talking about?---Mr Walker's, his report that he would have put into the package, to the, for the incident, sorry.

Well, how did you know to say, "Stick to your report," unless you'd seen the report?---I, I, I didn't say I'd seen the report. I just told him to stick to, to his report, that's if what he's, in his report he's got no issue with it, stick to that report. I'm not going to tell him, "Mr Duffy's got another report and that's why you're being interviewed." I, that's - - -

40 I'm not asking you about Mr Duffy's report. I'm focusing on Mr Walker's. ---Okay, sorry.

No further questions, Commissioner.

THE COMMISSIONER: Thank you. Were there some documents you wanted to tender?

MR DUGGAN: Oh, yes. This witness can be released if that's convenient, Commissioner.



THE COMMISSIONER: Mr O'Shea you're excused from your summons and you're free to go.---Thank you, Commissioner.

**THE WITNESS EXCUSED**

**[4.25pm]**

10 THE COMMISSIONER: I should also say at this point that I haven't released two witnesses. Just for the record, I'll release them now and that was Alan Michael Watson and Brian McMurtrie. So, they are now released from their summonses as well. You're free to go.

**WITNESSES EXCUSED**

**[4.25pm]**

20 MR DUGGAN: Commissioner, there are two other witnesses that may need to be released, one is Amanda Williams who hasn't been released from her summons, I don't know whether that needs to be formally done now or whether she can be notified.

THE COMMISSIONER: Well, Amanda, she's released from her summons.

**THE WITNESS EXCUSED**

**[4.25pm]**

30 THE COMMISSIONER: And was there another one?

MR DUGGAN: Mr Hovey hasn't been released from his summons.

THE COMMISSIONER: I think we'll keep that on for the moment.

MR DUGGAN: Yes, that was, yes. So can I tender some documents, please. The first document is the call log of Mr [REDACTED] calls on 20 February, 2014.

40 THE COMMISSIONER: Right. That's Exhibit 94.

**#EXH-094 – CALL LOG OF INMATE A'S CALLS & CSNSW OFFICERS WHO ACCESSED THEM FROM 20 FEBRUARY 2014 TO 20 MARCH 2014**

MR DUGGAN: A letter from Assessments at ICAC to Commissioner Severin dated 8 April, 2014.

THE COMMISSIONER: I'll mark that Exhibit 95.

**#EXH-095 – LETTER FROM ICAC ASSESSMENT MANAGER TO COMMISSIONER SEVERIN RE: ALLEGATION DATED 8 APRIL 2014**

10 MR DUGGAN: A letter from Assessments ICAC to Commissioner Severin dated 7 July, 2014.

THE COMMISSIONER: I'll mark that Exhibit 96.

**#EXH-096 – LETTER FROM ICAC ASSESSMENT MANAGER TO COMMISSIONER SEVERIN RE: ALLEGATIONS DATED 7 JULY 2014**

20 MR DUGGAN: A letter from Governor Mick Dudley to Mr Greaves, G-r-e-a-v-e-s, of Professional Standards Branch dated 14 May, 2018.

THE COMMISSIONER: That will be marked Exhibit 97.

**#EXH-097 – LETTER FROM GOVERNOR DUDLEY TO PROFESSIONAL STANDARDS BRANCH DATED 14 MAY 2018**

30 MR DUGGAN: And there are some corruption prevention statements and documents which will be tendered on a USB. I'm happy for the USB to be marked as a single exhibit, but I can indicate that there's a statement of a

[REDACTED]

THE COMMISSIONER: I'll mark the first one 98.

40

**#EXH-098 – [REDACTED]**

THE COMMISSIONER: The second one Exhibit 99.

#EXH-099 – [REDACTED]  
[REDACTED]

MR DUGGAN: Thank you. [REDACTED]  
[REDACTED]

THE COMMISSIONER: That will be Exhibit 100.

10

#EXH-100 – [REDACTED]  
[REDACTED]

MR DUGGAN: [REDACTED] [REDACTED] [REDACTED]

THE COMMISSIONER: That will be Exhibit 101.

20

#EXH-101 – [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

MR DUGGAN: [REDACTED]

THE COMMISSIONER: That will be Exhibit 102.

30

#EXH-102 – [REDACTED]  
[REDACTED]

MR DUGGAN: [REDACTED]  
[REDACTED]

THE COMMISSIONER: Exhibit 103.

40

**#EXH-103 – EXTRACTS FROM CSNSW OPERATIONAL  
PERFORMANCE REVIEW REPORT FROM 1 AUGUST TO 31  
OCTOBER 2013**

MR DUGGAN: And, Commissioner, I can indicate that whilst these statements and their exhibits do not themselves contain policy documents, the documents contain information or reviews of policy documents and there's Corrective Services' policies referred to throughout. I understand Mr Brasch has previously expressed an issue about that and I would submit

that consistent with the previous suppression order there be a general suppression order in relation to these documents, and if there needs to be some specific information released publicly, that that order can be varied.

THE COMMISSIONER: So that's Exhibits - - -

MR DUGGAN: From Mr Bagley's statement down.

10 THE COMMISSIONER: I think that was – I didn't actually write a note of the exhibit number for Mr Bagley.

MR HARRIS: 98 I think, 98.

THE COMMISSIONER: 98 was it?

MR HARRIS: Yeah, Mr Bagley.

20 THE COMMISSIONER: Can I take it these statements are on the restricted website, are they?

MR DUGGAN: If they're not at the moment, I anticipate they soon will be, but in terms of the individual witnesses I doubt that there will be any issue that affects any of the individuals.

THE COMMISSIONER: They're really matters that go to corruption prevention.

MR DUGGAN: Yes.

30 THE COMMISSIONER: All right. Well, they'll go up on the restricted website, if any representative has some concerns in relation to any of the issues raised and feels a need to ask further questions of a witness then an application can be made to the Commission and I'll consider it, otherwise being satisfied that it's in the public interest to do so, I direct that Exhibits 98, 99, 100, 101, 102 and 103 will not be published, except by Commission staff for statutory purposes.

40 **SUPPRESSION ORDER: BEING SATISFIED THAT IT IS IN THE PUBLIC INTEREST TO DO SO, I DIRECT THAT EXHIBITS 98, 99, 100, 101, 102 AND 103 WILL NOT BE PUBLISHED, EXCEPT BY COMMISSION STAFF FOR STATUTORY PURPOSES.**

THE COMMISSIONER: All right. Is that it?

MR DUGGAN: Commissioner, is it convenient to set a timetable for submissions at this point?

THE COMMISSIONER: Yes. I direct that you, Mr Duggan, file written submissions or circulate written submissions by 2 July, 2018, and I direct that those representing affected persons and Corrective Services New South Wales file submissions in reply by 30 July, 2018. If there's any other material that those who instruct Mr Duggan come across in the next few weeks that having done a document review we think should go up onto the restricted website, then you'll be notified. I don't anticipate there being such material, but if there is you'll be told and so you can have a look at it.

10 Can I thank everyone for their assistance during the public inquiry, and I'll now adjourn.

**AT 4.31PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.31pm]**