



Justice

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CSNSW INVESTIGATIONS

Date: March 2015

IIS Case No: 14/0227

### Formal Investigation Report

Use of Force on inmate [REDACTED]  
failed to use a video recorder when conducting a  
search, made a false report on the IRM and in his  
officer report.

SCO Terry Walker, S/N 9928443.

Author: Principal Investigator John P Glasheen

\*\*\* CAVEAT \*\*\*

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**CSNSW INVESTIGATIONS****IIS Case No: 14/0227 – WALKER**

Mr Michael Hovey  
Director  
CSNSW Investigations

Allegations of misconduct made against Senior Correctional Officer (SCO) Terrance Walker regarding the Use of Force on inmate [REDACTED] at Lithgow Correctional Centre (CC) on the 19 February 2014.

**Introduction**

1. SCO Walker is an Immediate Action Team (IAT) officer who is attached to the Lithgow CC. SCO Walker has been attached to that centre since October 2008. SCO Walker joined CSNSW in June 1999<sup>1</sup>.
2. On the 19 February 2014 SCO Walker was rostered for duty with two other officers on IAT duties at the Lithgow CC<sup>2</sup>. IAT duties at the Lithgow CC consist of responding to any serious incidents in the centre, requested tasks by the General Manager (GM), Manager of Security (MOS), Senior Assistant Superintendents' (SAS) or intelligence briefings to be followed up concerning inmates and the searching of cells for contraband.
3. On the morning of the 19 February 2014, SCO Walker spoke with Intelligence Officer Assistant Superintendent (AS) McMurtrie regarding information he had received from an informant that an inmate named [REDACTED] in Cell 208, 5.1 Unit had a large quantity of Suboxone in his cell.
4. SCO Walker was briefed by AS McMurtrie and he received instructions from AS McMurtrie which were directed to him by the A/MOS Stephen Taylor. Instructions from the A/MOS were to undertake a thorough search of Cell 208 occupied by inmate [REDACTED] and try and locate the alleged drugs.
5. SCO Walker and Officers Duncan and Graf proceeded that morning to go to Cell 208 which housed inmate [REDACTED] and another inmate [REDACTED]. It is alleged that the three officers went to 5.1 Unit and the cell door to Cell 208 was opened.

<sup>1</sup> Copy of the Employee Transfer History.

<sup>2</sup> Copy of the roster for Lithgow CC on the 19/2/2014.

6. It is further alleged that SCO Walker then spoke to the two inmates through the inner grill door who were both lying on their cell bunk beds. As SCO Walker and the other two officers entered Cell 208, Officers Graf and Duncan took inmate [REDACTED] from the top bunk and removed him from the cell and placed him outside the cell.
7. It is alleged that inmate [REDACTED] who was on the bottom bunk jumped up from his bunk and appeared to throw an object towards a toilet at the rear of the cell. SCO Walker observed this and he then noticed that inmate [REDACTED] trip on a plastic chair and fall towards the toilet and his body came into contact with the toilet bowl and then the ground.
8. Inmate [REDACTED] was then removed from the cell by SCO [REDACTED] and placed in handcuffs. Both inmates were then taken to Cell 203 whilst the officers conducted a search of Cell 208. No drugs were found in the cell. SCO Walker and the other officers then continued on with their daily duties. This search was not photographed or video recorded.
9. Later that morning inmate [REDACTED] complained that he had soreness to his ribs, eye and mouth and was later seen by the Justice Health nurse for treatment. He was later taken to Lithgow Base Hospital for x-rays to his rib area<sup>3</sup>.
10. The 48 Hour Incident/Injury Form was completed together with the Inmate Assault/Injury Form and Use of Force Forms<sup>4</sup>. Officer reports were completed and an IRM was submitted by SCO Walker<sup>5</sup>.
11. The alleged Use of Force was later reviewed by A/MOS Taylor on the 20 February 2014 and submitted to the GM O'Shea for his information and attention.
12. On the 20 February 2014 inmate [REDACTED] phoned his father and complained that the 'squad' who searched his cell on the 19 February 2014 had flogged him<sup>6</sup>. He also mentioned in this telephone call to his father that the 'Governor' came up to his cell door and said to him, "You talking to me [REDACTED] cunt?" and then the squad came in and flogged him.
13. Also in the telephone call he further made threats against officers attached to Lithgow CC and stated that he had a gaol made weapon in his cell. Further threats were made by the father to identify officers when they left the centre.
14. As a result of this monitored telephone call by Intelligence Officer AS McMurtrie, he informed the General Manager and a further search was conducted of inmate [REDACTED] cell on the 20 February 2014 to locate the alleged weapon.

<sup>3</sup> Copy of the IRM submitted by SAS Turton regarding inmate [REDACTED] taken to Lithgow Hospital.

<sup>4</sup> Copy of the 48 Hour Incident Form and Assault/Injury Form.

<sup>5</sup> Copy of the reports submitted by Officers Walker, Duncan and Graf with IRM 92719.

<sup>6</sup> Copy of the disc containing the telephone call to his father on 20/2/14

Copy of the disc of the recorded search of Cell 208 on 20/2/14.

15. During the search a small amount of a white substance was found in a puffer located in Cell 208 occupied by inmates [REDACTED] Inmate [REDACTED] admitted ownership of the puffer and its contents. No weapon was found and this search was video recorded.

### Subject Officer

**Name:** Terrance WALKER  
**Rank:** Senior Correctional Officer  
**Serial No:** 9928443

### Allegations/Issues

- i. That on the 19 February 2014, during a targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC, assaulted inmate [REDACTED] [REDACTED] contrary to the requirements of section 13.7 of the Custodial Corrections Operations Procedures Manual, Using Force on Inmates.
- ii. That on the 19 February 2014, failed to use a video recorder to record the targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC, contrary to the requirements of section 13.7 of the Custodial Corrections Operations Procedures Manual, Using Force on Inmates.
- iii. Made a false report on the Incident Reporting Module relating to the targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC on the 19 February 2014, contrary to the requirements of section 13.1 of the Custodial Corrections Operations Procedures Manual, Serious Incident Reporting.

### Investigation

16. On the 4 March 2015 GM O'Shea, Lithgow CC was seen and a statement taken off him regarding the search of inmate [REDACTED] cell on the 19 February 2014<sup>7</sup>. In his statement GM O'Shea remembers that he was rostered on duty on the 19 February 2014 and that the centre was in lock down due to searches being conducted of the cells at the centre<sup>8</sup>.
17. GM O'Shea was given a copy of the recorded conversation between inmate [REDACTED] and his father on the 19 February 2014. GM O'Shea admitted to attending 5.1 Unit at the centre where he could hear inmates being verbally abusive towards staff and he told them over the knock-up system to settle down as staff were busy and would attend their needs as soon as possible.
18. GM O'Shea categorically denies being verbally abusive towards inmate [REDACTED] as claimed in the telephone conversation with his father and did not instruct any officer to physically abuse or assault inmate [REDACTED]

<sup>7</sup> Copy of the statement by General Manager John O'Shea on the 4/3/2015.

<sup>8</sup> Copy of the roster for the 19/2/2014 at Lithgow CC.

19. GM O'Shea reviewed the Use of Force package submitted by the officers, which included the officer reports from Officers Walker, Duncan, Graf and McMurtrie. Also contained in the package were the 48 Hour Incident Form, Justice Health Incident/Assault Form and Inmate Assault Questionnaire Form and IRM submitted by SCO Walker<sup>9</sup>.
20. On the 4 March 2015 a statement was obtained from AS McMurtrie, Intelligence Officer at the Lithgow CC<sup>10</sup>. In his statement AS McMurtrie states that he submitted a report to the General Manager on the 19 February 2014 regarding information he had received from an informant that inmate [REDACTED] in Cell 208 at 5.1 Unit had a large quantity of drugs in his cell<sup>11</sup>.
21. AS McMurtrie documented this information on an Intelligence Report together with other information he had heard on a phone intercept (OTS) between inmate [REDACTED] and his father on the 20 February 2014. In this call inmate [REDACTED] complained that the 'squad' had assaulted him when they searched his cell on the 19 February 2014<sup>12</sup>.
22. Further threats are made on the telephone calls inmate [REDACTED] made to his father stating that he had a gaol made weapon in his cell and to find out who the officers are so that his father can wait outside the gaol and confront them. This information was passed on to the Manager of Security and the General Manager for their information and attention.
23. On the 25 February 2014 contact was made with Senior Assistant Superintendent (SAS) Turton requesting a statement regarding his knowledge of the incident involving inmate [REDACTED] on the 19 February 2014.
24. On the 4 March 2015 SAS Turton was spoken to at Lithgow CC where a draft statement was signed by him. SAS Turton was rostered for duty on the 19 February 2014 in Sector 2 at 8am.
25. In his statement SAS Turton acknowledges that he supervised the 48 Hour Incident/Injury Notification Form and the Inmate Assault Questionnaire Form for inmate [REDACTED] on that day as part of his duties. He confirmed that his signature appears on both those forms<sup>13</sup> and was not involved in the Use of Force on inmate [REDACTED].
26. On the 5 March 2015 a statement was obtained from A/MOS Taylor regarding his knowledge of the Use of Force on inmate [REDACTED] on the 19 February 2014<sup>14</sup>.

<sup>9</sup> Copy of the Reports and Forms submitted to GM O'Shea re the Use of Force on inmate [REDACTED]

<sup>10</sup> Copy of the statement obtained from AS McMurtrie on the 4/3/2015.

<sup>11</sup> Copy of the report submitted by AS McMurtrie to the GM on the 19/2/2014.

<sup>12</sup> Copy of the Intelligence Reports submitted by AS McMurtrie regarding inmate [REDACTED]

<sup>13</sup> Copy of the statement obtained from SAS Turton and the Incident/Assault Forms.

<sup>14</sup> Copy of the statement obtained from A/MOS Stephen Taylor on the 5/3/2015.



27. In his statement A/MOS Taylor states that according to the Lithgow roster for the 19 February 2014 he was the A/MOS that day. A/MOS Taylor was shown the 48 Hour Incident Notification Form together with the other documents, including officer reports he reviewed as the Use of Force package prepared regarding the search of inmate [REDACTED] cell. A/MOS Taylor agreed that he reviewed the Use of Force and accepted the content of the reports and other documentation submitted with the package. A/MOS Taylor after his review gave the documents to the GM for his attention<sup>15</sup>.
28. The CSNSW Investigation Branch received a letter dated 27 January 2015 from A/Assistant Commissioner Custodial Corrections, Ms Marilyn Wright an appointment to conduct an investigation into three allegations of alleged misconduct against SCO Walker regarding the incident with inmate [REDACTED] on the 19 February 2014 at Lithgow CC<sup>16</sup>.
29. Copies of Instruments addressed to SCO Walker also dated the 27 January 2015 were also received at the Investigations Branch alleging that he may have engaged in misconduct<sup>17</sup>.
30. On the 17 February 2015 contact was made with SCO Walker by email advising him that Senior Investigations Officer Glasheen had carriage of this investigation and offering him an interview concerning the three alleged allegations of misconduct<sup>18</sup>.
31. Contact was made with SCO Walker on the 18 February 2015 where he agreed to be interviewed at the Lithgow CC on the 20 February 2015. This was confirmed in an email sent to SCO Walker on the 18 February 2015<sup>19</sup>.
32. SCO Walker was sent a letter confirming the time and date of the interview, a copy of his report, copy of IRM 92719, Options for Interview and relevant sections of the Government Sector Employment Act & Rules<sup>20</sup>.
33. On the 20 February 2015 SCO Walker was electronically interviewed at the Lithgow CC where he was asked a number of questions regarding the search of inmate [REDACTED] cell on the 19 February 2014 and he stated the following<sup>21</sup>;
  - Q. How long have you been employed with CSNSW?
  - A. I joined Corrective Services in June 1999.
  - Q. How long have you been at Lithgow CC?
  - A. I came here I think in October 2008.

<sup>15</sup> Copy of the Use of Force package reviewed by A/MOS Stephen Taylor.

<sup>16</sup> Copy of the instruments sent to Director Hovey dated 27/1/2015 regarding SCO Walker.

<sup>17</sup> Copy of the instruments sent to SCO Walker dated 27/1/2015.

<sup>18</sup> Email sent to SCO Walker by Investigator Glasheen offering him an interview.

<sup>19</sup> Copy of the email sent to SCO Walker on the 18/2/2015.

<sup>20</sup> Copy of the letter and attachments sent to SCO Walker on the 18/2/2015.

<sup>21</sup> Copy of the Transcript of the electronic interview with SCO Walker on 20/2/2015.

- Q. Were you on duty on the 19 February 2014 at Lithgow CC?  
A. Yes. **(SHOWN ROSTER FOR THE 19/2/2014 – INITIALS ROSTER)**<sup>22</sup>
- Q. What duties were you performing that day?  
A. I was on IAT, my position that I hold at the Centre. We were conducting a search operation basically in 3 Unit on that day. We had some other teams in as well because we had a bit of disturbance up in the Units. There was a bit of unrest in the Units because of the pending move.
- Q. Can you tell me what IAT (Immediate Action Team) does when they are on duty?  
A. We just respond to any incidents within the Centre and follow any task, tasked to us by the General Manager or Senior Assistant Superintendents in the Centre. It can be anything from escorting an inmate to dealing with a serious event.
- Q. How long have you been an IAT Officer?  
A. Approximately 2 years since I won the position.
- Q. Were you performing duties on the 19 February 2014 with Officers Duncan and Graf?  
A. That's what the roster reflects and I believe so.
- Q. Did you submit a report dated the 19 February 2014 regarding an incident with inmate [REDACTED]  
A. Yes, I did.
- Q. Is that a copy of your report?  
A. It is. **(SHOWN A COPY OF HIS REPORT)**
- Q. Is that report true and correct?  
A. It is.
- Q. Is there anything that you would like to add or delete from that report?  
A. No.
- Q. I will now show you a report submitted by AS Brian McMurtrie, Intelligence Officer who states that he informed you that a cell occupied by inmate [REDACTED] who allegedly had a large quantity of drugs in his cell 208, 5.1 Unit. In his report he states he informed you of this information. Is that correct?  
A. Yes, I was informed just verbally that he believed the inmate had drugs and that it came from informants elsewhere in the Centre.
- Q. Can you from memory tell me what time of the day on Wednesday the 19 of February 2014 you were told of this information by AS McMurtrie?  
A. I can't remember exactly but it was mid-morning probably between mid-morning and just before lunch or about approximately lunch time, I could not remember exactly.

<sup>22</sup> Copy of the roster shown to SCO Walker, who initials same.

Q. In that report from AS McMurtrie he further states that he informed you of this information and the instruction from the Manager of Security. Is that correct?

A. That's what it says.

Q. Now what time did he tell you that he got the instructions from the Manager of Security?

A. I could not be sure, I do not remember.

Q. Now according to the roster who was the Manager of Security on the 19 February 2014?

A. Mr Taylor.

Q. Is that SAS Steve Taylor?

A. SAS Steve Taylor, yes.

Q. What was the instruction from the Manager of Security regarding the information from the Intelligence Office regarding inmate [REDACTED] in Cell 208?

A. I do remember being tasked to go and search the cell and the possibility of drugs.

Q. Now can you tell me what time you attended the cell occupied by [REDACTED] on the 19 February 2014?

A. Late morning before lunch, I can't remember exactly and I have neglected to put it in my report.

Q. Can you tell me who the other officers were who attended with you at Cell 208 occupied by [REDACTED]?

A. They would have been Mr Duncan and Mr Graf, we remain together as a team generally unless instructed or we have to break apart.

Q. Now looking at your report you have not mentioned that these officers attended with you at Cell 208 on the 19 February 2014. Can you tell me why you did not mention these officers as they were rostered with you on IAT duties that day?

A. I neglected to put it in my report however I did note them with me on the day. They are rostered and we do work together and I did get reports from both those staff members. It was a very busy day because I had been tasked with the centre search operation.

***Section 133 of the Crimes (Administration of Sentences) Regulation – Submitting Reports and include inmate and officer names.***

Q. I will now show you Section 133 of the Crimes (Administration of Sentences) Regulation, it is a report on Use of Force and it states<sup>23</sup>, (1) Any Correctional Officer who uses force on an inmate must immediately give a report about the use of force to the General Manager, and (b) specify the names or names of the inmate or inmates and the name and the names of the Correctional

<sup>23</sup> Copy of the Crimes (Administration of Sentences) Regulation Section 133.



Officers involved in the use of force. Can you tell me why you did not include Officers Duncan and Graf in your report?

A. I don't know why, it was an error on my part, but I would have verbally made the report initially to the Manager of Security to advise him of that. I always contact him in the first instance but actually at the time there was no use of force, I did not use force on the inmate.

Q. Now have you read that document I refer to Section 133?

A. Yes. And yes I did neglect to put them on my report. For that I apologise but as I say I did put the reports with it later.

Q. Now you were aware that there was Intel that a cell occupied by inmate [REDACTED] and another inmate was supposed to have drugs hidden in the cell. On receiving this information why did you not take a video camera with you to video the search for this alleged contraband?

A. I would've had a video camera with me, I went to the door, opened the cell door, there's an inner grill, from memory both inmates were laying on the bed, I spoke to them and both inmates seemed to be quite compliant.

They had no history of violence and with their compliance I believed at the time the best was just to go into the cell, speak with the inmates, remove one and just have the other guy searched as we do, patted down outside the cell, whatever, which way it was deemed best at the time and then conduct a cell search.

I generally go in and speak with the inmates where we can and converse with them, ask them if they've got any in there and get the feel of it, but at no time did I feel that there was any threats from either of those inmates and nor had I any intelligence on them that either of them would be violent or non-compliant.

Q. But you were going to search a cell?

A. That is correct.

Q. And you need a video when you do a search?

A. Actually I will refer to this here, it is part of the policy but it also said some inmate strip searches must be conducted with regard to dignity but on the other part it says a strip search must only be recorded on video when the inmate is non-compliant or has a history of aggressive violent behaviour.

I deemed that at the time I did not know whether we were going to find anything in the cell, as I say it was information received from other inmates as stated in Mr McMurtrie's report. I general employ it where we'd have found something I would have stopped immediately and conducted a video search.

Q. Why didn't you use the camera?

A. Under the policy I don't have to use the video camera every time and we don't use it normally unless we find an item or we feel that the inmate is going to be non-compliant or possibly aggressive.

We do a lot of searches a day, we search up to six cells a day, we may search 25 to 30 inmates as well so we do a lot of pat down searches, we just don't use the video every time but at any time where I believe it's required I always immediately use the camera.

***Operations Procedural Manual (OPM) Section 13.9<sup>24</sup>.***

Q. Now OPM Section, Operations Procedural Manual at 13.9 contains the recording and managing of video evidence?

A. Yes.

Q. The policy overview states that the policy applies whenever there is an incident or likely event that may later require investigation. *This includes video recordings of uses of force, assaults, deaths in custody, escapes, fights, fire industrial accidents and suspected drug trafficking.* In this case information was received that an inmate had possible drugs in his cell, why as the senior officer did you not take a video camera with you to video the cell search?

A. I've got no answer to that. I did not start a video and at any point as we do once we find something we commence the video immediately and then commence interview. The inmate is then cautioned and the camera is started when something is found.

Q. Just for your information Mr Walker that is a copy of the section, would you like to look at it?

A. Yeah, I understand where you are coming from. **(OFFICER WALKER INITIALS THE POLICY FORM)**

Q. On the 19 February 2014 did you submit an IRM 92719 regarding the search of a cell occupied by [REDACTED]? **(SHOWN COPY OF IRM)**

A. Yes, that is my IRM. **(OFFICER WALKER INITIALS THE IRM)**

Q. In the column of the IRM it states, were photos of inmates taken. You have stated that still photos as part of the standard centre procedures. Did you take still photos?

A. I believe so yeah.

Q. Do you know where those photographs are?

A. I don't know. They would have been passed on the camera was probably down loaded, I don't know who got those photos.

Q. What would you have taken photographs of?

A. Probably a photo of the cell just to show what we did, but I actually can't remember what we'd have taken photos of. We didn't find anything, so there was no force, possibly just the area where the chair had fell over and the toilet maybe I could not be sure.

Q. But you had a camera with you?

A. Yes it is in the backpack of the vest.

Q. And you only take photographs when you find contraband?

<sup>24</sup> Copy of the Operations Procedural Manual, Section 13.9.

- A. Generally if we find contraband or something, if there is something written on the wall, a symbol relating to something else we'll take a photo of it and pass it on.

It is more of a saving point like if we have a major find we will have that placed there and take photos but generally it's on the video camera and there's a caution to the inmate.

- Q. Now can you walk me through what you did when you attended inmate [REDACTED] cell that day?

- A. To the best of my recollection we got a call, probably would've been a radio call I would assume and then possibly a phone call from the Intel Manager and we were just tasked with going to search that cell. I had Mr Graf and Mr Duncan with me so we would have left where ever we were and went to that area. I opened the flap on the door, I think both inmates were still in bed from memory, I opened the outer door because there is a locked inner grill and spoke to the inmates.

I would have addressed myself to the inmates, told them that we were going to get them to get up. They were just lying on the bed and just as we opened the door one got down, I was standing and the other inmate come out and he lunged towards the toilet at the rear of the cell and I believe I saw him throw something. I've moved to try and stop him, he tripped on a chair and as he's tripped on the chair he's at the same time he was trying to flush the toilet and flush something away. I remember he fell and bounced off the toilet.

After that he fell and hit the floor, I thought he was just winded I think, but I just put the inmate in restraints, took him out of the cell. I had a look at the toilet but whatever was there was gone, so I could not do much about it. The inmate was just then taken out and he would have been searched and nothing else was found.

- Q. Did you speak to both inmates prior to entering the cell?

- A. Yes, I would have addressed them from the grill they would have both been spoken to as a group.

- Q. Can you just cast your mind back to that occasion I know it is a long time ago, where did inmate [REDACTED] make his move from to throw the stuff in the toilet?

- A. When he got out of bed.

- Q. Lower or upper bunk?

- A. I honestly can't remember.

- Q. Do you have any recollection of what they were doing when you opened the cell door? Were they watching television?

- A. I can't remember the television on they were both lying in their bunks.

- Q. Do you have any recollection of whether or not the rear door of the cell was open?

- A. No it wasn't open because it was a lockdown day.

- Q. You have stated that you tried to retrieve that item. Is that correct?
- A. Yes from memory I saw something being thrown, naturally I've just gone towards the toilet, he's ahead of me, he fell, he hit the flush and whatever it was had gone down. I could not clearly identify what it was I just saw something go down the toilet.
- Q. Where were Officers Duncan and Graf when you entered the cell?
- A. They'd have been behind me at that point.
- Q. What happened to the item as you have stated in your report he appeared to throw?
- A. It was flushed down the toilet.
- Q. Now are you aware if either of the other two officers saw inmate [REDACTED] throw what appeared to be an item towards the toilet that day?
- A. I can't recall. It would be in their reports

#### **PHOTOGRAPHS OF CELL 208, 5.1 UNIT SHOWN TO SCO WALKER<sup>25</sup>**

- Q. In this photograph you can see where the chair is?
- A. Yeah.
- Q. Was the chair there that day?
- A. No it was down here near the toilet, it was out in the open area it wasn't under the table.
- Q. That is the two bunks that is the cell door what you opened?
- A. That would have been the cell grill open.
- Q. How many inmates can it accommodate?
- A. Two is the maximum there is only two beds in those cells.

#### ***Injuries to [REDACTED] – Incident Assault Form***

- Q. Now did inmate [REDACTED] hurt himself when his torso landed on the rim of the toilet seat?
- A. I don't know it all happened that quick, I don't know what happened there but I presumed he would've had minor injuries from it, just mainly looked winded more than anything.
- Q. Were you aware of any injuries as a result of the fall?
- A. No he did not say to me he had been injured.
- Q. I have received an Incident Assault Form signed by the NUM A Sinclair?
- A. Yeah.

<sup>25</sup> Photographs of Cell 208, 5.1 Unit at Lithgow Correctional Centre.

Q. This form noted that the injuries to inmate [REDACTED] on examination were the following, contusion to the left eye, cheek, lip and bruising to the right side torso over the ribs. Were you aware of these injuries?

A. No. He had been taken from the cell he was placed in and placed in a cell on the other side I do not know at what point of time he was seen after the incident.

Q. Now are you aware how he received these injuries?

A. They definitely weren't from me. I did not assault the inmate as was put in the claim. He may have received them partially when he hit the ground, but when he was removed from the cell he was ok. He hit the toilet and then hit the floor near the basin area.

Q. Do you know what time the NUM saw him?

A. I have no idea what time the NUM saw him, she saw him obviously after the incident and would have been called over to the cell. I said to the boss I did not make contact with the inmate and that he fell. He said well we'd best be reporting it as a use of force, which I deemed to be technical use of force because I didn't make contact with the inmate.

Q. Well did you notice any injuries on him?

A. No, I did not notice any injuries on him at the time.

Q. You have mentioned in your report that his torso landed on the rim of the toilet?

A. He fell heavily.

#### ***48 Hour Incident Injury Notification Form***

Q. Were you aware that a 48 hour Incident Injury Notification Form was completed?

A. It would have been completed as part of the policy.

Q. Now were you aware that Mr Turton interviewed inmate [REDACTED] in relation to his injury?

A. Well he would have as part of his job.

Q. Did you ever see that form?

A. No.

Q. In the form when inmate [REDACTED] was asked a question, "What was the cause of the injury?" His answer was, "No comment".

A. That's a standard answer by most inmates'; they put no comment on it and don't want to say anything normally.

Q. Were you aware that inmate [REDACTED] was taken to Lithgow Hospital for an assessment to his injury to his ribs?

A. I was advised of that later in the day, yes.



- Q. Would you agree that if a hand held video camera was used to document the search of the cell everything would have been recorded on a disk as to what took place in the cell that day and provide primary evidence to support your version of what took place? Would you agree?
- A. I do agree with that however at the time I personally did not think we needed the camera, I didn't think with my years of experience that the inmate was going to act in the manner he did. I had no known history of him and as I say he was very compliant when I first spoke with him.

***Allegation of bodily contact with inmate [REDACTED]***

- Q. Now at any stage during the search of Cell 208 at 5.1 Unit on the 19 February 2014 did you come into bodily contact with inmate [REDACTED] that would have caused these injuries to that inmate?
- A. No I did not.

***Phone call made by inmate [REDACTED] to his father on the 20/2/2014***

- Q. Now are you aware that inmate [REDACTED] phoned his father on the 20 of February 2014 and complained that he had been assaulted by Officers who searched his cell on the 19<sup>th</sup>?
- A. No, I know nothing about that.

***SCO Walker's knowledge of the search of Cell 208 on the 20/2/2014***

- Q. The next day on the 20<sup>th</sup> were you aware that a search took place of Cell 208, 5.1 Unit occupied by inmate [REDACTED] and another inmate by the name of [REDACTED] were you aware of that?
- A. No, I believe I was off that day. I was told later.

***Allegation by inmate [REDACTED] that he was assaulted***

- Q. Have you got any idea why inmate [REDACTED] would report the fact that he'd been assaulted by you during that cell search?
- A. I don't know. I have no idea. Discredit the search maybe because he had the drugs, I don't know. I've no idea why he made that claim. IAT, we are probably not the most like people in the gaol because we have to do all the moves, so maybe it was just to get a bit of credibility with the rest of the inmates, make themselves sound tough or something, I don't know, I really don't know.

***SCO Walker denies assaulting inmate [REDACTED]***

- Q. I appreciate that?
- A. I did not assault him though I want to make that clear.

***1<sup>st</sup> Allegation of Alleged Misconduct - Response***

- Q. Now the first allegation of alleged misconduct is that you on the 19 of February 2014, during a targeted intelligence based search of Cell 208 at Lithgow

Correctional Centre assaulted inmate [REDACTED] contrary to the requirements of Section 13.7 of the Custodial Corrections Operations Procedures Manual using Force on Inmates. What is your reply to that allegation?

- A. I did not assault the inmate I did not come in contact with the inmate until I placed him in restraints. That was the only thing I did was put him in handcuffs to remove him from the cell.

## ***2nd Allegation of Alleged Misconduct – Response***

- Q. The second allegation of alleged misconduct is that you on the 19 of February 2014, failed to use a video recorder to record the targeted intelligence based search of Cell 208 at Lithgow Correctional Centre contrary to the requirements of Section 13.7 of the Custodial Operations Procedure Manual using force on inmates. What is your reply to that allegation?

- A. I'd like to refer to 13.7.5.1 (OPM), the video recording of inmate strip searches which is out of the current EROC which is the Procedures Manual for emergency for the course and it says, Inmate strip searches must be conducted with regard to due dignity.

I believe that covered me at the time because it says a strip search only be video recorded when the inmate is non-compliant or he has a history of aggressive or violent behaviour. And that was what I base myself around, I did not believe at the time the inmate was going to be aggressive. I thought they were going to be compliant and at any time when it was found the video would've been commenced immediately and I would have cautioned the inmate as I do.

I checked this morning we have got 107 video incidents that we have recorded that have gone through this Centre. They have all been signed off, checked all appropriate by the Centre Management and checked by S & I, so I feel I'm pretty diligent to use the video as required.

- Q. By way of clarification those provisions relate to strip searches?

- A. Yes.

- Q. Were you about to conduct a strip search?

- A. Would have patted the inmate down and possibly strip searched him at the time, yes.

- Q. You indicate in your earlier response that you carry a digital camera in your backpack?

- A. Yeah, one of the guys got a digital camera in the backpack.

- Q. Are you similarly equipped with video equipment?

- A. We used to have one video camera, a while back I put it to the Manager of Security and I asked for two because of the changes in the Centre.

- Q. And just one last question in respect of this allegation, where was the video camera on this day?

A. I could not be sure which one of us had it; it's quite possible it was in my pack.

**3<sup>rd</sup> Allegation of Alleged Misconduct – Response**

Q. The third allegation is that you made a false report on the Incident Module relating to the targeted intelligence based search of Cell 208 at Lithgow Correctional Centre on the 19 of February 2014, contrary to the requirements of Section 13.1 of the Custodial Corrections Operation Procedures Manual Serious Incident Reporting.' What is your reply in relation to that allegation?

A. It's false I put a factual report in of the events of the day.

**Phone call from inmate [REDACTED] to his father played to SCO Walker**

Q. Having heard that telephone call, is there anything you would like to say in respect of that phone call, the content of the phone call?

A. No I never assaulted the inmate, I was not aware he was actually [REDACTED]  
[REDACTED] I know nothing about that call.

As I say again, we did not assault the inmate, that's 100 per cent honest truth. As I say he fell and I at no point did I make contact with him.

Q. Now that is a photograph I have got of an inmate. Do you recognise that inmate?

A. No, I don't recognise him to be honest.

**Comments**

34. It would appear and it is well documented by the Intelligence Officer AS McMurtrie that he received information that inmate [REDACTED] had contraband in the cell he shared with inmate [REDACTED]. This information was received from an informant.
35. AS McMurtrie submitted two Intelligence Reports regarding this and other information he received when monitoring telephone calls between inmate [REDACTED] and his father on the 20 February 2014.
36. The telephone call by inmate [REDACTED] to his father on the 20 February 2014 is the day after his cell was searched. He tells his father that he was flogged by the 'squad' when they searched his cell on the 19 February 2014. He further tells his father that has been locked in for two days since the search.
37. There is documentation that inmate [REDACTED] was treated for injuries to his eye, mouth and ribs on the 19 February 2014 after the search of his cell. He was later taken to the Lithgow Hospital for x-rays to his rib area.
38. Although inmate [REDACTED] had injuries to his face and rib area, these injuries could have been sustained when he tripped over the plastic chair and came in contact with the toilet bowl and concrete floor. When inmate [REDACTED] was interviewed by SAS Turton and completed the Inmate Assault/Injury Questionnaire he declined to comment on how he received these injuries.

39. SCO Walker has denied assaulting inmate [REDACTED] on the 19 February 2014. SCO Walker has stated that he entered the cell and inmate [REDACTED] jumped up from his bottom bunk, threw something towards the toilet, brushed past SCO Walker, tripped on a plastic chair and fell onto the toilet. He further stated that inmate [REDACTED] did not appear to have any injuries and did not complain of any injuries to his body at the time he was removed from his cell.
40. There is no supporting evidence to support that inmate [REDACTED] was assaulted by SCO Walker or any other officer during the search of his cell on the 19 February 2014. Inmate [REDACTED] his cell mate did not see any assault take place.
41. SCO Walker as the senior officer on receiving information that there was a large amount of drugs in Cell 208, 5.1 Unit occupied by inmate [REDACTED] should have instructed the two officers who were with him that the search of the cell would be videoed to gain evidence if contraband was found or located in the cell. In any case searches for contraband should be video recorded to negate any complaints of alleged misconduct.
42. However this was not done and SCO Walker did state that they only video searches after they find contraband / drugs in the cells. This practise could lead to complaints being made by inmates that articles were planted in the cell by not starting the video camera when entering the cell which would alleviate that claim. *This is supported in the OPM, Section 13.9 'Recording & Managing Video Evidence'. (Attachment 24)*
43. The report submitted by SCO Walker fails to identify who the other officers were who assisted in the removal of the inmates in Cell 208 on the 19 February 2014 and the search of that cell. *Section 133 of the Crimes (Administration of Sentences) Regulation* does state that inmate and officers names should be identified in reports submitted. However SCO Walker neglected to do this and stated that it was an oversight on his part.
44. In the IRM submitted by SCO Walker he states that the offender [REDACTED] was offered medical attention by Justice Health at the Centre clinic. In his interview on the 24 February 2015 he was asked if he was aware of any injuries as a result of [REDACTED] falling on the toilet, and he replied that he didn't say anything to him that he was injured. SCO Walker further stated that he did not notice any injuries on him. **(I refer to Questions and Answers 195 to 207)**
45. Inmate [REDACTED] was interviewed as part of the investigation process and stated that he remembers the search of Cell 208 on the 19 February 2014<sup>26</sup>. In his interview inmate [REDACTED] has stated that he remembers the 19 February 2014 when the squad (IAT) came to his cell.
46. Inmate [REDACTED] stated that he was bedded on the top bunk and got dragged off the bunk by officers and taken outside. He states that inmate [REDACTED] was

<sup>26</sup> Transcript of the interview with inmate [REDACTED] on 4/3/2015.

standing near the toilet when he got dragged out of the cell. He then saw inmate [REDACTED] who was handcuffed and being dragged out of the cell.

47. Inmate [REDACTED] did not see any officer assault inmate [REDACTED] however he remembers seeing injuries later that evening to inmate [REDACTED] eye and mouth and was told by inmate [REDACTED] that the officers bashed him

### Findings

48. There is evidence that a search took place of Cell 208, 5.1 Unit on the 19 February 2014 which was occupied by inmates [REDACTED]
49. There is also evidence that a further search of that cell was undertaken on the 20 February 2014 by officers who were looking for a gaol made weapon. This is contained in the telephone calls made by inmate [REDACTED] to his father on the 20 February 2014.
50. After inmate [REDACTED] was removed from Cell 208, there is evidence that inmate [REDACTED] was treated for injuries to his lip, eye and ribs and was later taken to Lithgow Hospital for x-rays to his rib area.
51. SCO Walker has denied assaulting inmate [REDACTED] when he was removed from his cell on the 19 February 2014. SCO Walker has stated that inmate [REDACTED] got up from his bunk, threw something towards the toilet, tripped on a plastic chair and fell onto the toilet bowl. This may have been how he received those injuries.

### 1<sup>st</sup> Allegation - Finding

50. That on the 19 February 2014, during a targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC, assaulted inmate [REDACTED] contrary to the requirements of section 13.7 of the Custodial Corrections Operations Procedures Manual, Using Force on Inmates. I find there is no evidence to support that SCO Walker assaulted inmate [REDACTED]
51. Inmate [REDACTED] could have received his injuries when he fell onto the toilet. The only evidence supporting this allegation is in the telephone call he made to his father on the 20 February 2014. He makes no comment to SAS Turton who supervised the Assault/Injury Forms that he was assaulted by the IAT officers that day.
52. Inmate [REDACTED] was interviewed by police on the 30 April 2014 and stated that he was getting legal advice and did not wish to supply a statement.

### 2<sup>nd</sup> Allegation – Finding

53. That on the 19 February 2014, failed to use a video recorder to record the targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC, contrary to the requirements of section 13.7 of the Custodial Corrections



Operations Procedures Manual, Using Force on Inmates. I find there is sufficient evidence to support this allegation and it is therefore substantiated.

54. There is evidence that information was received that a large quantity of drugs was in Cell 208. When receiving this information steps should have been taken to video the search of that cell. SCO Walker was the senior officer on duty and should have made sure that a video was used to record the event. I refer to Commissioner's Memorandum No: 2015/15, recent decisions from the Industrial Relations Commission (IRC)<sup>27</sup>.
55. Although SCO Walker has admitted that the centre policy is to start the video camera when contraband is located this could lead complaints being made by inmates that contraband was planted in their cell. When conducting searches in inmate's cells the video camera should be started when they enter the cell.

### 3<sup>rd</sup> Allegation – Finding

56. Made a false report on the Incident Reporting Module relating to the targeted intelligence based search of Cell 208, 5.1 Unit at Lithgow CC on the 19 February 2014, contrary to the requirements of section 13.1 of the Custodial Corrections Operations Procedures Manual, Serious Incident Reporting. I find that there is sufficient evidence to support this allegation and it is therefore substantiated.
57. In finding this allegation substantiated I take into account that SCO Walker failed to nominate the other officers who were with him during the search in his report (Crimes Administration of Sentences) Regulation 2014, Section 133 Report on Use of Force.
58. There is also the fact that inmate [REDACTED] had injuries, which were later treated by the Justice Health nurse and he was later conveyed to the Lithgow to Hospital. There is also the fact that this was a targeted search and was not photographed or videoed.
59. I also refer to Commissioner's Memorandum No: 2015/15, Recent Industrial Relations Commission (IRC) decisions regarding Use of Force; *'The IRC also took into account whether the Use of Force was complied with by the use of a hand held video camera to record the scene, and whether appropriate and detailed reports were made after the incident'*.

### Recommendations

60. That this report and documents be forwarded to the decision maker for their information and attention.

John P Glasheen  
Senior Investigations Officer  
CSNSW Investigations  
18 March 2014

<sup>27</sup> Commissioner's Memorandum No: 2015/05 (Industrial Relations Commission Decisions).

### **List of Attachments**

1. Copy of the employee payroll history.  
Copy of SCO Walker's shift schedule from 9/2/2015 to 8/3/2015.
2. Copy of the Lithgow CC roster for the 19/2/2014.
3. Copy of the IRM No: 92718 submitted by SAS Phillip Turton.
4. Copy of the 48 Hour Incident/Injury Notification Form for inmate [REDACTED].
5. Copy of the report submitted by SCO Terry Walker on 19/2/2014.  
Copy of the IRM No: 92719 submitted by SCO Terry Walker.
6. Disc of the Use of Force on inmate [REDACTED] at Lithgow CC on 20/2/2014.  
Disc of the two phone calls made by [REDACTED] to his father on 20/2/2014.  
Disc of photos taken of Cell 208, 5.1 Unit at Lithgow CC on 24/2/2015.
7. Statement of General Manager John O'Shea on the 4/3/2015.
8. Copy of the roster for Lithgow CC for the 19/2/2014.
9. Copy of the 48 Hour Incident/Injury Notification Form for inmate [REDACTED].  
Copy of the Inmate Assault/Injury Questionnaire.  
Copy of the Use of Force Coversheet/Summary Forms.  
Copy of the Justice Health Incident/Assault Form.  
Copy of the report submitted by AS Brian McMurtrie.  
Copy of the report submitted by SCO Walker.  
Copy of the report submitted by Officer Graf.  
Copy of the report submitted by Officer Duncan.  
Copy of the IRM submitted by SCO Walker.
10. Statement of AS Brian McMurtrie dated 4/3/2015.  
Copy of the roster for Lithgow CC for the 19/2/2014.
11. Copy of the report submitted by AS McMurtrie on the 19/2/2014.
12. Copy of Intelligence Report (IR) 14-0366 submitted by AS McMurtrie.  
Copy of employee schedule for AS McMurtrie from 27/2/15 to 26/3/15.
13. Report submitted by SAS Phillip Turton on the 4/3/2015.  
Copy of the 48 Hour Incident/Injury Notification Form for inmate [REDACTED].  
Copy of the Inmate Assault/Injury Questionnaire.  
Copy of the roster for Lithgow CC for the 19/2/2014.
14. Report by AMOS Stephen Taylor dated 5/3/2015.

15. Copy of the 48 Hour Incident/Injury Notification Form for inmate [REDACTED].  
Copy of the Inmate Assault/Injury Questionnaire.  
Copy of the Use of Force Coversheet/Summary Forms.  
Copy of the Justice Health Incident/Assault Form.  
Copy of the report submitted by AS Brian McMurtrie.  
Copy of the report submitted by SCO Walker.  
Copy of the report submitted by Officer Graf.  
Copy of the report submitted by Officer Duncan.  
Copy of the IRM submitted by SCO Walker.  
Copy of the roster for Lithgow CC for the 19/2/2014.
16. Letter dated 27/1/2015 to Mr Michael Hovey to conduct an investigation.
17. Letter dated 27/1/2015 to SCO Terry Walker with three counts alleged misconduct.
18. Email from Investigator John Glasheen to SCO Terry Walker on the 17/2/2014.
19. Email from Investigator John Glasheen to SCO Terry Walker dated 18/2/2015.
20. Letter to SCO Terry Walker dated the 18/2/2015.  
Copy of the Options for Interview.  
Copy of the Government Sector Employment Act (Section 69).  
Copy of the Government Sector Employment Rules (Part 8, Sect 38).  
Copy of the Record of Interview Guidelines.  
Copy of SCO Terry Walker's report.  
Copy of the IRM submitted by SCO Walker.
21. Copy of the transcript of the electronic interview with SCO Walker on the 20/2/2015.  
Copy of the notes taken by Investigator Glasheen on the 20/2/2015.
22. Copy of the roster for Lithgow CC for the 19/2/2014.
23. Copy of the Crimes (Administration of Sentences) Regulation 2014, Section 131 and Section 133 – Use of Force on inmates.
24. Operations Procedures Manual, Section 13.9 Recording & Managing Video Evidence.
25. Five (5) photos of Cell 208, 5.1 Unit at Lithgow CC.
26. Transcript of the electronic statement made by inmate [REDACTED] on the 4/3/2015 at Lithgow CC.  
Copy of inmate [REDACTED] profile.
27. Copy of Commissioner's Memorandum No: 2015/05.
28. Copy of inmate profile for [REDACTED]