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COMPULSORY
EXAMINATION

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PATRICIA McDONALD SC
COMMISSIONER

COMPULSORY EXAMINATION

OPERATION ESTRY

Reference: Operation Estry E17/0345

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 8 MARCH, 2018

AT 10.00AM

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

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

THE COMMISSIONER: This is the compulsory examination of Simon Graf. I'll take appearances.

MS CLIFTON: Yes, good morning, Commissioner. Clifton for the Commission.

MR JALOUSSIS: Commissioner, Jaloussis for Mr Graf.

10 THE COMMISSIONER: And, Mr Jaloussis, you're seeking authorisation under section 38?

MR JALOUSSIS: I am, Commissioner. And a declaration under section 38.

20 THE COMMISSIONER: We'll get to that in a minute. Now, you've just raised some declarations. The first matter that I usually deal with is the question of confidentiality, directing who can be present at the examination and also the confidentiality provisions subsequently. You've discussed that with Mr Graf?

MR JALOUSSIS: Yes.

THE COMMISSIONER: All right. Mr Graf, you've had a discussion with your solicitor. The first direction I'm going to make is who can be present at this compulsory examination.

MR GRAF: Yes.

30 THE COMMISSIONER: I direct that the following persons may be present at this compulsory examination – Commission officers, including transcription staff; the witness and the witness's legal representative. Now, then I'm going to make a direction under section 112. It restricts the publication of information with respect to this compulsory examination. It will prevent those present today, other than Commission officers, from publishing or communicating information relevant to this compulsory examination. It will permit Commission officers to publish or communicate information for statutory purposes or pursuant to any further order made by the Commission, and the direction can be lifted by the Commission without notification if the Commission is satisfied that it is necessary or desirable to do so in the public interest, and it's a criminal offence for any person to
40 contravene a section 112 direction.

MR GRAF: Yeah.

THE COMMISSIONER: Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by this witness, the contents of any exhibits tendered, the contents of any

documents shown to the witness, any information that might enable the witness to be identified and the fact that the witness has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

10 **BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN
THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO
SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST
CORRUPTION ACT THAT THE EVIDENCE GIVEN BY THIS
WITNESS, THE CONTENTS OF ANY EXHIBITS TENDERED, THE
CONTENTS OF ANY DOCUMENTS SHOWN TO THE WITNESS,
ANY INFORMATION THAT MIGHT ENABLE THE WITNESS TO
BE IDENTIFIED AND THE FACT THAT THE WITNESS HAS
GIVEN EVIDENCE TODAY SHALL NOT BE PUBLISHED OR
OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY
COMMISSION OFFICERS FOR STATUTORY PURPOSES OR
PURSUANT TO FURTHER ORDER OF THE COMMISSION.**
20

THE COMMISSIONER: Now, the next matter is, as Mr Jaloussis has raised, is the section 38 declaration. And he's explained that to you?

MR GRAF: A little bit.

THE COMMISSIONER: All right. I'll just emphasise again. You have what is known as a right to silence. So if you were out walking along Elizabeth Street and somebody stopped you and asked you a question and
30 you thought I don't want to answer this because it might get me in trouble or might incriminate me, you can say, no, I'm not answering that. That common law right doesn't really exist here. When you're asked questions, you have to answer them truthfully.

MR GRAF: Yeah.

THE COMMISSIONER: And although you may object to the fact that it may incriminate you or cause some trouble, you've got to answer it.

40 MR GRAF: Yes.

THE COMMISSIONER: But I can make this declaration which will prevent any of your answers being used – with one exception – being used in a criminal case against you and also in respect of New South Wales public officials. Evidence given by a public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official has engaged in or attempted to engage in corrupt conduct. Now, there is an important exception. As I said, when you

answer questions today, you've got to answer them truthfully, and in a minute we're going to administer an oath to you whereby you are promising to tell the truth.

MR GRAF: Yes.

THE COMMISSIONER: If you don't tell the truth, you may subsequently be prosecuted for an offence under the ICAC Act that you've given false or misleading information.

10

MR GRAF: Yes.

THE COMMISSIONER: It's like perjury.

MR GRAF: Yeah.

THE COMMISSIONER: It is a very serious offence. It has a substantial penalty attached to it.

20

MR GRAF: Yeah.

THE COMMISSIONER: So I'll make the declaration. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all the answers given by this witness and all the documents and things produced by this witness during the course of the witness's evidence at this compulsory examination are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

30

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

40

THE COMMISSIONER: Now, Mr Graf, I understand you'll take an oath. The oath can be administered.

<SIMON THOMAS GRAF, sworn

[10.25am]

THE COMMISSIONER: Thank you Ms Clifton.

MS CLIFTON: Thank you Commissioner. Mr Graf, for the purpose of the record, could you please tell us your name.---Simon Thomas Graf.

And our date of birth?---[REDACTED] [REDACTED] [REDACTED].

10

What's your current role within Corrective Services?---I'm just a trainee dog handler actually.

All right. When did you attain that job?---I'm in week three of the course now, so once I complete the 16 weeks then I'm qualified.

All right. You're aware we're here to talk an incident in February, 2014? ---Yes.

20 What was your role in February, 2014?---I was first class Correction Officer in the IAT at Lithgow.

With regards to the incident on 19 of February, 2014 and the following day, the 20 February, 2014 you've participated in two interviews.---Yes.

One with Corrective Services on 24 February, 2015.---Yes.

One with Commission investigators on 2 August, 2017.---Correct.

30 I've provided you with copies of those - - -?---Yes thank you.

- - - earlier in the week and again this morning.---Yes.

I understand that there are portions of those that you would like to correct today, is that correct?---If I could.

Now you have copies with you from that.---Yes.

40 All right. I understand that Mr Jaloussis has copies. Commissioner, do you have copies of these?

THE COMMISSIONER: I have my copies, yes.

MS CLIFTON: So what we might do, is perhaps if you want to take us to the portions that you'd like to correct.---I've got the page numbers, if I could.

All right. Yes. So we've all got copies so if you could take us to the pages that you'd like to correct.---So the first one, is the Corrective Services interview.

Corrective Services interview, that's 24 February, 2015, yes.---Page nine.

If you have a look on the left hand side you'll see there's Q44 and A.---This is 46.

10 46 thank you.---It's asked if Mr Walker, sorry, I've just written a question, basically I said you were there to do a search. At that time I didn't know we were there to do a search, it wasn't until later on in the day when we were writing reports that I was told that's what we were there for. So that's kind of I was wrong about that one.

All right. Can I just ask you a few questions about that.---Sure.

20 Because I know in your interview with Commission Officers I think you did, you did say that you weren't, you found that out later.---I've got that, yes, as well here.

So when did you find out that - - - ?---I believe it was, shortly before I did the reports, because I asked because in the reports I usually write we attended cell 208 whatever it was to do to do a cell search or a strip search.

All right. Do you remember where you were when you found out?---I don't, I don't remember where it was but I remember at the time I didn't know and I've stated there that I did, but I don't know why.

30 So who told you that you, that you went there to do a search?---Mr Walker.

Mr Walker.---Yes.

Did Mr Walker have a report with him at that stage or how did he come to tell you?---No, I don't think we'd even gone up to do the reports then. I think we might have been walking to or from the other search we did after the incident.

40 So, was it, so I'll show your report shortly that you made that day and your report says that it was about 9.30am when you went to the cell.---I think it was, yes.

So, was it immediately after that or - - - ?---No, or - - -

Lunch time?---Before lunch.

Before lunch.---Between then and lunch, sorry I can't be more specific.

No, that's quite all right. Do you remember if there was anyone else there other than yourself and Mr Walker?---I think Mr Duffy might have been there and may be Mr Duncan.

Right. And it was at that stage Mr Walker said the reason we went there was.---Well, he said, he told me I didn't have to do a report because I wasn't involved in the use of force but I told him that I was going to do one anyway.

10 So Mr Walker told you you weren't required to do one?---Correct.

And at that stage did you know there was a use of force?---Well, they said there was and Mr Duffy said something different, so that's why I was writing a report, to make - - -

Sorry, who was the first person you said there was?---Mr Walker said there – there were two contradicting stories.

20 So what was Mr Walker's story?---Mr Walker said he dived for the toilet for to flush something, and Mr Duffy told me he didn't, so - - -

And so Mr Walker said you weren't involved in - - -?---Because I didn't, because I had the other inmate and wasn't involved in the use, alleged use of force or anything, I didn't have to write a report.

But you wanted to?---I always do to cover. It's just a witness report to say what I did, that's all.

30 Did you want to do one because you had been told there was a use of force? Is that right or - - -?---Yeah, I, I guess - - -

Or because you knew there was? I'm just trying to figure out - - -?---I didn't know because I didn't see. I, I did not see any use of force.

I'm just trying to understand why you felt compelled to do a report. ---Because I would do a witness report regardless of whether – I understand what you're saying.

40 So Mr Walker says the prisoner dived for the toilet. Mr Duffy said that didn't happen.---Yes.

And you still determined, well, I need to do a report. I'm just wondering - - -?---Well, only you can never get in trouble for doing a report to say what I saw and heard or - - -

No, I'm not being critical.---No, I understand.

I'm just wondering what was the event that - - -?---Maybe I think, I think because we were talking about doing reports, what to do, and I think there was some discussions between Mr Duffy and Mr Walker about what reports to do. Said I didn't need to do one. I said, well, I'm going to do one anyway.

And did you - - -?---Sorry, sorry.

10 THE COMMISSIONER: Sorry, can I just ask, you said on this day there was the incident and then you went and searched another cell or another area.---Well, we were doing searches in another area when they called us on the radio to attend down there.

So you attended - - -?---We went down to the unit.

Yes.---And then we went back up to finish the searches we were at.

Searches.---The whole gaol was getting searched, yeah.

20 And this conversation with Mr Walker where he said, look, you don't have to do a report, where - - -?---I think it was from going from the 5 Unit back to the top, to 3 Unit, to go up to finish. I'm pretty sure that's where I was. Or on the way back down, I don't - - -

And who was participating in the conversation?---I think Mr, I think it was just Mr Walker and myself, but I think Mr Duffy was there because I'm, yeah, I'm pretty sure Mr Duffy was there as well because I remember walking back up with him.

30 Thanks.---Sorry.

MS CLIFTON: And did you hear the conversation between Mr Walker and Mr Duffy?---Only bits and pieces of it.

And did you hear if Mr Walker told Mr Duffy whether he had to do a report or not?---I can't be sure of that. I know they were contradicting what they said happened. That's all.

40 They didn't agree about what had happened in the cell?---No, no.

And that was because Mr Walker was saying the prisoner dived for the toilet?---Yes. They said two different things.

And what was Mr Duffy saying occurred?---That he didn't.

That he didn't. That was - - -?---Well, I think that's, that's the impression I got, that he did.

Now, I understand that prior to going to cell 208 you were searching elsewhere?---Yes. Correct.

And so you found out later the reason you went to 208 was to do a search?
---Yes.

Who instructed you to leave the searching area to go to 208?---Got a call on the radio by Mr Taylor.

10 You got a radio call?---Yes.

And what did Mr Taylor say? For you to - - -?---Just to attend down there straightaway.

Attend straightaway?---Yes.

I'll come back to that.---Yeah.

I'll let you correct and we'll try and keep it in a bit of order.---Yeah. Yeah.
20

What was the next thing that you wanted to correct?

THE COMMISSIONER: Sorry, can I just clarify?---Sure.

You're on page 9, question and answer 46, was it?---Yes.

And so are you now saying that your answer to 46 should be "no"?---Yes. At the time I didn't know he was. And I think throughout this whole thing, both of them I may have said, well, they're for searches. But I think
30 because I found out later so I just kept referring to it there to do. Does that makes sense?

Yes.---Sorry.

MS CLIFTON: And so the next - - -?---Page 11 of the, so I'll deal with the first one first. Page 11, question 62.

Yes. And that is - - -?---And it - - -

40 "You further state that inmate [REDACTED] jumped up from the lower bunk and moved to towards the toilet. Is that correct?" And your answer was, "Yes."---Yeah, I, I don't know, well, I can't be a hundred per cent sure if he was sitting on the bunk or standing there. So he moved towards the back. That's all I know. I don't know whether he's sitting or standing. And that's sort of also question 50 says the same thing. Oh, no, sorry, that was the last one.

“ [REDACTED] may have been sitting on the bunk or” - - -?---I don't know whether he's sitting or standing. I don't know whether that's important to you guys. I'm just, I'm trying to remember everything.

All the details are important. Thank you. So you saw him move towards the back?---Whether, yeah, he moved towards the back.

You don't know, you don't know whether he was sitting and then stood to move - - -?---No, or standing.

10

- - - or whether he was standing and then moved?---I wasn't really, I wasn't really paying attention. But I know he was there and I know he went towards the back. That's all I remember.

And did he run towards the back or - - -?---He moved very, yeah, he did move quick.

He moved quickly?---Yes.

20 Did you see him dive towards the toilet?---No. No.

All right. Yes, thank you. What was the next part that you wanted to - - -? ---Page 14.

Yes.---Again it's, I don't know whether – question 94.

Yes.---It says the outer door was open. I said it was shut. I'm pretty sure it was opened. So the inner - - -

30 So that's the solid door?---Yeah. And then the grille was open.

The grille was also - - -?---Sorry, the outer door was open. The grille was shut, locked.

Shut?---Yes.

All right.---So that - - -

40 And that's when you arrived? The outer door was open. The grille - - -? ---I'm pretty sure it was open the whole time.

And the grille was locked shut?---I, I assume, I hope it was locked.

Did you see who opened the grille?---I think Mr Walker may have opened it when we went in.

All right. Thank you.---I think that, oh, hang on. A couple more. Page 19, question 138.

138, down the bottom.---It sort of relates to the first one where I said we were there to do searches. They've asked me in the summary of the IRM it states that we were there to do a search for buprenorphine and I said that's right. Well, that's not right. At the time I didn't know that's what we were there for. Later in the day I got told, the same as what I said to you before. Does that, do you know what I mean?

Yes, I do.---Okay.

10

And over time it sounds like the time between being told to go and do a search and being there has melded into - - -?---Yeah. And I keep referring to the search, but I shouldn't and I'd like to take that back.

Yes, no, thank you for that.---Yeah.

You said before that you went to the cell because Mr Taylor did a radio call.---Correct.

20 IAT to attend.---Yes.

Or words to that effect.---Yes.

Did he give you a reason?---No.

Either over the radio when he called you down?---To the best of my knowledge when I, like, it sounded urgent but not, not like someone was dying, but - - -

30 And when you got to the door were you told - - -?---We came through into the unit and I'm pretty sure Mr Walker went and spoke to Mr Taylor and then came back very quickly. Then came back and said we're getting them out.

So at the time your understanding was you were there to get prisoners out of their cell?---Yes, that's correct.

All right.---Yeah.

40 And we're getting them out, is that – does that happen often?---Just move, move, yeah, a lot, just they get us to move them all the time for different, different reasons.

But you had no idea why you had to get them out?---No. No.

And you weren't told then - - -?---No.

- - - get them out to search?---No. Not then. Not till later.

Thank you. Were there other - - -?---Yeah, there's quite a few more. A lot of them sort of probably the same thing that - - -

I'd like to be as precise as possible.---Yeah.

So please don't feel like we're rushing you through it.---Okay. Page 22, question 154. It's just about whether he was sitting on the bunk or not, and I've sort of covered that in the last one.

10

Right. So 154. Your answer was, "[REDACTED] was on the bottom bunk, yes, and [REDACTED] was on the top bunk."---He was near the bottom bunk. I don't know if he was on it or sitting or standing. That's - - -

All right. Thank you.---Okay. And that's it for that interview. I've just got the second one now.

All right. Well, I might, just so we can keep it all together in - - -?---Yeah.

20 I might tender the version that you've written on if that's okay. Keep it with you - - -?---All right. It's all scribble.

- - - because we'll come back to it.---Okay.

But I might tender that version, if I may, Commissioner. That's the Corrective Services interview with Mr Graf of 24 February, 2015.

THE COMMISSIONER: The Exhibit will be - - -

30 MS CLIFTON: The Exhibit will be the one that Mr Graf has been working from.

THE COMMISSIONER: That you've got there.---It's scribble in it sorry.

That's all right, and you're happy with the, all the scribble becoming an Exhibit?---I'll go through it later if that's all right. It's just that I've written what I've said to you, not a hundred per cent sure, yeah, there's no, yeah. That's fine.

40 MS CLIFTON: I can provide fresh copies if Mr Jaloussis or Mr Graff.

THE COMMISSIONER: Mr Jaloussis, are you all right with the version that Mr Graf has which he's written upon becoming the exhibit?

MR JALO USSIS: Yes, I have no objection to that.

THE COMMISSIONER: The transcript of the interview between Investigations Branch of The Corrective Services of New South Wales with

Mr Graf on 24 February, 2015 with Mr Graf's written amendments is Exhibit 32.

**#EXH-032: TRANSCRIPT OF RECORD OF INTERVIEW
BETWEEN CORRECTIVE SERVICES NSW AND SIMON GRAF
HELD ON 24 FEBRUARY 2015 WITH SIMON GRAF'S
HANDWRITTEN AMENDMENTS**

10

THE WITNESS: Do you want me to write that on it?

THE COMMISSIONER: My associate will in a minute but if you keep with you.--- All right.

MS CLIFTON: All right. Thank you. I understand there were also some amendments that you'd like to make.---Not as many but yes.

20 All right. So that interview was with Chief Investigator Tim Fox, Investigator Paul Grainger and yourself on 2 August, 2017?---Correct.

What would you like to correct there?---Page nine, line seven, Mr Grainger asked, "Was anyone more senior than Mr Taylor there?" Yes, I said, yes in the office Mr Peebles and Mr O'Shea were there.

Yes.---I can't be sure if they were in the office or the day room, I'm just not sure where they were standing at the time.

30 All right. Can you explain to us the layout and what the difference is.---Can I use this court room as an example?

Yes, please do.---Say if this is, we would come in that door there from outside.

40 The door just behind you?---So we would there to the side, sorry, five or six cells may be more down each side. Then an office in the middle and then it's mirrored again on the other side. So the office is all glass so when we came in, I'm not sure if they were in this day room section here or in the office. I know that they were there.

And so the day room is the area between the office and the cells, like the corridor, is that right?---Yes, yes.

Okay, thank you. A little bit difficult to understand if you're not in Correctives.---Yes, sorry.

So you don't know if they were in the, I might call your day room a corridor - - - ?---They were there but I don't know where.

In the corridor - - - ?---I'm not sure if they were in the corridor or the office.

Okay. Thank you. Did you hear any conversation with- - - ?---No.

- - - with Mr Peebles and Mr O'Shea?---No.

10 All right. So, but you're not disputing or you're not correcting that Mr Peebles and Mr O'Shea and Mr Taylor were all there.---I'm pretty sure they were all there.

Okay, thank you. ---Page 18 line eight. Mr Grainger's asked me, "What's the next thing you remember happening?" I said, "I can't remember whether we searched the cell or not." We definitely did not search the cell.

You definitely didn't.---Definitely did not. I didn't, whether someone else went back, I don't know but I didn't.

20 And did you see Mr Walker search the cell?---No, I saw no one search the cell.

Mr Duffy didn't search the cell?---No.

Mr Duncan didn't search the cell?---No.

Just to be complete, did Mr Taylor search the cell?---I don't think so.

All right. So defiantly did not search the cell, thank you.---Can I move on?

30 Yes.---Just on that same page line 21, "Do you recall there was any discussion about documentation?" I covered that before about the reports that they told me not to do it.

Yes, so Mr Walker was the person who told you not to do a report?---Yes.

Thank you.---The last one, Page 26 line ten, 15, it relates to this last one about doing a search as well.

40 All right. So, line 15 where you say, "I have a feeling we did," that's in relation too - - -?---I've written I did not.

Did not.---Then - - -

But at line ten you said - - -?---So Mr Grainger said, "Just to make it clear from your understanding that you were told so you've taken two prisoners out of the cell. I think we found out later." I've just underlined later, that's all.

Yes.---Take them out for a search.

So line ten is actually correct, is it not?---Yes, sorry I don't know why I've -
- -

Yes. Mr Grainger's question to you is actually correct, your understanding was that you were simply taking two prisoners out of the cell.---That's correct.

- 10 Yes, great, thank you. Then what you're correcting is line 15 where you say, you're asked, whether you searched the cell and you said, "I have feeling we did." But your recollection now is that you did not.---No, I did not, that's I do not.

Thank you.---I think that's it from.

All right. Keep those with you, I will also tender that transcript if I may Commissioner. I'd like to tender the one that Mr Graf has worked on.

- 20 THE COMMISSIONER: Mr Jaloussis, again, are you happy with this document to be the exhibit?

MR JALOUSSIS: I am.

THE COMMISSIONER: The transcript of the record of interview between Chief Inspector Tim Fox and Investigator Paul Grainger and Simon Graf on 2 August, 2017 with Mr Graf's handwritten amendments will be Exhibit 33.

- 30 **#EXH-033: TRANSCRIPT OF RECORD OF INTERVIEW
BETWEEN PAUL GRAINGER AND SIMON GRAF ON 2 AUGUST
2017 WITH SIMON GRAF'S HANDWRITTEN AMENDMENTS**

MS CLIFTON: Thank you Commissioner. Mr Graf, I've got a few general comments and then a few extra things that I might want to ask you about in Exhibit 32 and 33. Firstly, can I ask you about being a member of IAT and that's the, what does IAT stand for?---Immediate Action Team.

- 40 Immediate Action Team. And how long had you been a member of IAT in February, 2014?---I joined the Department in 2005 so, a couple of years after that I started doing IAT.

All right. And what does IAT, what's their speciality or what are their responsibilities?---We just help maintain good order and security in the centre, any trouble inmates and they're moving, we'll move them or they will move them. Any targeted cell searches we'll often do, segregation move any cell extraction and things like that.

All right. Is there special training or - - - ?---Yes, it's a one week course.

A one week training course. What does that training course cover?---Cell extractions, handcuffing techniques, negations, a whole variety of things.

All right. I understand for - - - ?---Chemical, using the chemical munitions as well.

10 So I understand for any particular roster there are three IAT officers rostered on.---Correct, a senior and two first class or two, as long as there's a senior and two baggies they call it.

THE COMMISSIONER: Baggies?---Baggies. I don't know why they call them that. So it could be a zero, one or two stripes, so.

MS CLIFTON: All right. And as a first class, how many stripes do you have?---Two stripes.

20 Two stripes. And a senior has three?---Three, yes.

Three, thank you. On this particular day Mr Walker was three stripe or the senior?---Correct.

And yourself and Mr Duncan?---Both two stripes.

Both two stripes. I understand that there is a different uniform that involves a vest with - - - ?---Different pants.

30 And different pants as well?---Yes.

All right. And you have a variety of weapons, do I call them that?---Yes, no.

No. Munitions, I'm not sure?---We carry chemical munitions in the vest and we have handcuffs in the back.

All right. You're an ordinary officer, if I can call them that, they don't have that?---They have a radio and a duress.

40

So everybody has a radio, is that correct?---Yes, everyone is issued a radio and a duress in the morning.

Now the 19 February, 2014 we have been told the gaol was in lock down, do you agree with that?---Yes.

That was for general searching.---There's many different reason it would be locked down for but I think it would have just been for searching.

All right. Sometimes there's a staff shortage, they'll lock it down but I'm pretty sure that was just for searching.

All right. I think it might be easier if I tell you my version of events a little bit and then you interrupt if I get it wrong. So there's a parade at 8.00am. ---Correct.

10 All officers attend and there's a roll call and you're assigned tasks for the day, is that correct?---Yes, a lock down day, yes.

A lock down day.---Every day we have a parade but on lock down day they'd say, well, you and you are in Team 1 you can go and search that area.

All right. On that day were you assigned task with IAT?---Not usually on IAT usually we just do our own, go and sort of pick our own targets and do those.

20 All right. So where you - - -?---I can't be sure on that day what we did.

Thank you. So we have the parade at 8.00am, tasks assigned, and off you go to search, is that correct?---Correct. Well, after head checks are done. They head-check the whole gaol first to make sure everyone is alive and well, yeah.

30 Can you give me a time frame generally, not particularly that day, of how long the parade, the head check, the assigning of tasks would take? So when would you be on the floor searching?---So the parade would start at 8.00, usually right on the dot. And maybe 10 minutes maximum, maybe five to 10 to call everyone's, roll-call everyone. Then maybe only five minutes to read out the teams and just tell them where they're searching, and they'll go and do head. So maybe, say, quarter past by then. And then everyone would go and do head checks. They'd be done in 10 or 15 minutes. And that'd be, then they'd start searching after that.

So potentially you're on the floor searching, say, 8.30?---Around that, I would guess, yes.

40 And do you recall who you were searching with that day?---No. Oh, would have been the IAT. Mr, I'm pretty sure Mr Duffy was with us. There was an SOG there, a dog handler, a shepherd handler, Mr Watson.

That's Michael Watson?---Michael Watson.

He was with you searching, was he?---I'm pretty sure he was up the, I know he was down in 5 Unit later on with us. I'm pretty sure he was with us.

And Mr Walker was there with you as part of the IAT?---Yes, yeah.

And do you remember where you were when you got the radio call from Mr Taylor?---I'm pretty sure it was 3 Unit.

3 Unit. How far away is that from 5 Unit?---100 metres, maybe.

100 metres. Great.---Yeah.

10 And were you with Mr Walker from parade to when the radio call was made?---I couldn't tell you that.

You couldn't tell me?---No, sorry.

Did you see Mr McMurtrie between parade and attending the cell?---I wouldn't think so. I - - -

You know who Mr McMurtrie is, Brian McMurtrie?---Yes. Yes.

20 Sorry, was that you couldn't remember or you didn't?---I, I wouldn't know if we saw him or not.

Because you can't remember?---Can't remember, no, no.

Thank you. Now, you've corrected some of the things I wanted to ask you about, so if you could just give me a moment. I think just to be clear, we might go to Exhibit 33, which is the interview with Mr Fox and Mr Grainger of the Commission.---Yeah.

30 And if you just look at page 4, and you'll see at line 5 you've answered "yes". Mr Grainger says, "Tell me what you recall." And then you say, "The last few nights".---All righty.

And the second - - -?---Hang on, sorry.

Sorry.---So we, is it the second one with Mr - - -

Yes, the second one.---I'm sorry.

40 No, quite all right.---And which line?

It's page 4.---Yes.

And you'll see at line 5 - - -?---Oh, yes.

- - - you've answered "yes".---Yeah.

Mr Grainger asks you to tell what you recall.---Yeah.

And here you say, "The last few nights it's been going through my head." Second line at the end you say, "Mr Taylor, I don't know. I think he might have been the area manager that day. I'm not sure."---I don't, well, going back through the original one, they told me he was the manager of security that day.

Do you recall that he was the - - -?---No, only from reading this after you guys sent it to me.

10 Sure.---The, the, Mr Glasheen I think said in it that on the roster he's the manager of security, so - - -

Yes, yes, he was rostered on that day as manager of security if that helps you.---Yeah. Yeah.

But I'm more interested in confirming that you said, "He calls onto the radio for us to come down to 5.1 Unit."---Yeah.

20 "And when we got there, I think it was Mr Taylor told us to speak to, we spoke to Mr Walker, who was the senior on that day, to go in and get the inmates out."---Yeah.

So I'm just confirming that is now your recollection, that you were called there by Mr Taylor.---Yes, that's correct. He called us down.

And Mr Walker and Mr Taylor had a short conversation that you weren't part of.---Correct.

30 And Mr Walker then told you, "We're just getting them out."---Correct.

And that was the extent of the instruction given to you.---Yeah, I'm, best I can remember, yes.

Yes. At those times, this is again more of a general question so the Commission officers can understand, there's four of you about to go into a cell.---Yes.

40 You're told, "We're getting them out." Do two of you say we'll get the first guy - - -?---Not really.

- - - we'll get the second guy? How do you do that? Or is your training sufficient that you can go in and do that?---I think so because if you train, if you say we'll do that, it never goes like that. So it's just those two went to that bloke, so I just get - and they weren't, they weren't being aggressive or anything. Like, if they were being aggressive we would, you'd do it a lot differently.

Sure.---But - - -

So when you turned up you could – there was a grille door was - - -?---Yes, so you could still see in the cell.

So you could see into the cell.---Yeah.

Were they saying anything?---I don't recall.

Were they told anything, the prisoners?---I don't, I don't know.

10

Would it be unusual – and again, this is more a general question – for the door just to be cracked open and four officers run in?---You can, you - - -

Or would it be more the usual case that you were giving instruction to the prisoners?---Depends on why you went in there.

But in this case you're just told to get them out and they weren't being aggressive is your evidence?---No, you, you just crack the door and say come out here and put the handcuffs on and walk them out. And, and 99 per cent of the time they'll do that, so - - -

20

Now, you've said – and if we go to page 7, I don't want to verbal you, but over on page 7 at line 1 you talk about, initially I think you told Mr Grainger that Mr Taylor sounded panicked, and then you go on to fix it a little and say, "Well, he always sounds a bit panicked when he's on the radio. I wouldn't say he was panicked but he told us to come down straightaway." ---Yeah.

30

So was there some - - -?---To the best of my recollection it was "IAT attend 5 Unit straightaway, immediately."

So did his tone sound urgent? Or what was the urgency?---Yeah, it sounded urgent.

It sounded urgent?---Yes. But in saying that, I don't think we ran down either. Like, it wasn't, yeah (not transcribable)

40

And so we've got, attending we've got Mr Walker, Mr Duncan, Mr Duffy, yourself. You think Michael Watson also came down?---I'm pretty sure, yes.

And he had an Alsatian dog that day?---A German shepherd.

A German shepherd, thank you.---Correct.

Yes. Do you know an officer Cameron Watson?---Yes.

Do you know if he attended the cell?---Yeah, I think I've said in here somewhere he did. Just down on line 25, 26, 27, 28.

Line 28?---“Both Watsons”. I was obviously saying Cameron Watson was another one.

Yes.---Yeah.

All right.---Yeah, he was there.

10

Did Cameron Watson go into the cell?---I don't know.

Do you see Michael Watson go into the cell?---No, he didn't go near the cell.

He didn't?---No.

And on your version – I can take you to it, and let me know if you want me to – you say, “Mr Walker opened the door.”---Correct.

20

So he obviously had a key to unlock it.---Yeah.

He opened the door. Mr Walker entered, then Mr Duffy, then yourself and then Mr Duncan. Is that the correct order that you saw?---I'm pretty sure, yes.

And then you immediately went to the upper bunk where Mr [REDACTED] was seated, is that correct?---Sitting or laying, I don't know, but he was on the top bunk, yes.

30

And you removed him.---I said, I grabbed his wrists. Always just grab their arms so they can't dispose of anything if they've got anything. And then I told him to jump down. He said something along the lines, “I can't. You've got my arms.” So I let go of one or both. He's jumped down and then he, then I took him out.

And did anyone assist you to take him out?---I think Mr Duncan followed me out.

40

He followed you out?---I, I think. Well, you know, he told me he did.

All right.---So I don't know. He was behind me, so - - -

And so when you get Mr [REDACTED] outside, I understand you place him on his knees?---Correct.

Is that immediately outside the door, in the day room area?---This was the door here. I just took him beside it. Knelt him down.

Knelt him down and had him face - - -?---Yeah.

- - - face the wall?---Yes.

And did you give him any instruction at that stage?---Told him not to move, yeah.

10 And did you stay with Mr [REDACTED]?---No, I think by the time I cuffed him, I went to walk back in and they were walking out with the other inmate, Mr [REDACTED].

And so the time period we're talking of between entering and you having Mr [REDACTED] on his knees - - -?---Not a great deal of time.

A minute? I know I'm asking a lot.---Yeah. A minute or less, maybe.

20 A minute or less. Thank you. And whilst you had Mr [REDACTED] outside, did you hear any yelling from inside?---No, just commotion of, no yelling, no.

The usual commotion or removing a prisoner or more than that?---No, more than the usual commotion, yes.

All right. At that stage we have Mr Walker, Mr Duffy and Prisoner [REDACTED] in the cell?---Correct.

Mr Duncan may have been there but you weren't sure?---I can't answer that, I'm not sure.

30 All right.---Well, when I just about to go in, he was in the cell so he'd gone back in at some stage.

All right. Do you remember Mr Duncan running back in?---I wouldn't know.

Did you at any time hear Mr Walker say, "Stop resisting, stop resisting?"---No.

40 Did you at any time hear Mr [REDACTED], the prisoner cry, state, "I didn't do it, I didn't say it, I didn't do nothing?"---I didn't hear anything come out of it, like that.

I understand that there, as somebody, as one of the prisoners came out of the cell there was a concern that the dog might have almost bit someone, did you, are you aware of that?---Yes, the one I had, he tripped or, I don't know because he his hands behind his back and he fell over right and landed out of the door and the shepherd was near him. It wasn't, it wasn't going to get him but lucky he didn't much further, yes.

All right. Okay.

THE COMMISSIONER: Sorry who fell, Mr [REDACTED] fell over?---I had Mr [REDACTED] yes.

MS CLIFTON: Did Mr [REDACTED] sustain any injuries from falling over?---No, no, it wasn't hard.

10 All right. You said that you say then, you had Mr [REDACTED] down on the ground facing and then Mr [REDACTED], prisoner came out and who was accompanying him?---I think Mr Walker had him, was walking him out and the other two followed him out or one of them may have come first, I don't know.

All right. And Mr [REDACTED] was handcuffed at that stage?---It was only just, like he just walked past as I walked towards him so, I would hope he was handcuffed, it's what we do, so.

20 All right. Did you notice any injuries on Mr [REDACTED] at that stage?---No, I didn't look but either.

Sorry, you didn't look?---He just walked out and they took him straight to another cell, I sort of followed behind them.

All right. Did you see which cell they took him to?---I know which cell it is but I don't know the number of it.

30 If I tell you 203 does that help you or?---It was the first one on that side, I think.

So it was on the other side - - - ?---Opposite side.

- - - of the office?---Well, I think it was anyway.

All right.---That's how I remember it, they walked him across into another cell on that side. I don't remember what I did with [REDACTED] after that, whether I put him back in that cell, I don't.

40 All right. If I can go back, you see Mr [REDACTED] being walked over to another cell?---Correct.

Who walked him over to that cell?---I think Mr Walker and Mr Duffy.

Mr Walker and Mr Duffy.---I think so.

All right. Did you see them come out of that cell after they put him there?---I can't recall, sorry.

You can't recall?---No, I don't know whether they went in there with him or just put him in and undid the handcuffs at the door. I don't know what they did there, sorry.

All right. Well, given that answer, this might sound like an unusual question but, did you see Mr Walker assault Mr [REDACTED] in that second cell?--No, I didn't.

10 Did you see Mr Duffy assault Mr [REDACTED] in that second cell?---No, I didn't.

Did you see Mr Duncan assault Mr - - - ?---No.

THE COMMISSIONER: Where did Mr Duncan go?---I don't know.

You've got Mr Walker walking - - - ?---He may have walked across with them, I just.

20 You just don't know.---I'm honestly doing my best to remember it's a long time ago.

Sorry, you just watched them because you then put Mr [REDACTED] - - - ?---I can't, I don't know what I did with Mr [REDACTED], I don't know whether I put him back in that cell or with his old, back to where Mr [REDACTED] went, I don't know.

But your recollection is you saw, you can remember seeing Mr Walker - - - ?---Walking out with him, yes.

30 With Mr Duffy?---I mean, Mr Walker, that's the only a hundred per cent I remember. I don't know who else was with him. I assume the other two walked over with him, that's just an assumption, so sorry.

MS CLIFTON: Thank you. I think you said earlier you can't remember what you did with Mr [REDACTED] - - - ?---No.

- - - from that moment on.---I don't remember whether I put him back in the original cell or put him over with [REDACTED] or a different cell. I just can't for the life of me remember.

40 All right. But you told us that you defiantly did not search that cell, cell 209.---No.

Can't recall what you did with Mr [REDACTED]---No.

Do you recall what you did after that?---I'm pretty sure we went back up to 3 Unit to finish the searches we were doing originally.

All four of you, actually there's six of you sorry?---Yes, I don't know about all of us.

All right. But you specifically remember Mr Walker, Mr Duffy and yourself - - - ?---I remember walking up with those two, I don't know if the other guys were there, in front, behind, I don't know, yeah, I don't know I'm sorry.

10 But that was where you had one of the conversations about reports?---Yes.

Mr Walker told you, you didn't have to do one because you didn't see?---I believe that's where I asked what happened and I got two different stories.

Okay. All right. So you did complete a report, I can show you a copy of that.---Yes.

Did you watch the CCTV footage - - - ?---No.

20 - - - from outside the cell?---No.

Never?---Never.

All right. Is that something you would ordinarily do before you write a report or?---No.

It depends on the circumstances?---No, not really. It would be put in with a use of force package.

30 The footage?---The day room footage, we can't burn that.

All right. Who can burn the day room footage?---Intel officer does that.

All right. Can any officer delete footage?---I wouldn't think so.

All right. Can any officer go and view footage?---Yes, they can go up to the control room and watch it up there.

40 Okay. So if I wasn't involved and but Corrective Services Officer, could I go up and watch?---Yes, you could walk upstairs and rewind it and have a look, yes.

Okay. Prior to drafting your report, I know we've had a conversation with Walker and you've heard a conversation between Duffy and Walker. Did you discuss the contents of your report with anyone?---I don't think so I would have just said what I was writing in the report because I took control of [REDACTED] and took him out of the cell.

Okay. Where did you draft the report, was it in the meal room, I call it?
---Yes, the IAT office.

The IAT office.--- Yes.

Is that where you congregate and have lunch as well?---Yes, correct.

And there's computers in there for you to - - -?---Yes.

10 All right. So was that at lunch time or you don't recall?---During the lunch
break I'm pretty sure.

Okay. Who else was there writing their reports?---Mr Duffy was up there,
Mr Duncan I'm not sure about Mr Walker, I'm pretty sure he wasn't there at
the start.

Wasn't there at the start?---No.

20 But he arrived later did he?---Yes.

As you and Mr Duncan and Mr Duffy were discussing writing your reports
or preparing to do that, did you tell Mr Duncan and Mr Duffy that you had
to wait for Mr Walker before you completed your reports?---No.

No. Was there any need to wait for Mr Walker before you completed your
reports?---I don't believe so.

30 Mr Walker came in at some stage while you were having your break and
completing your reports?---Yes.

Did Mr Walker tell you anything about his report at that stage?---Not his
report, he said he had an IR an Intel Report form Intel.

What did he tell you about the Intel Report?---Not much, just that he had
one.

All right. Did he say it was about that cell or that - - -?---He said it was
about that cell.

40 That cell.---Yes.

Did he say which prisoner it was about?---No, he may have, but not that I
recall.

All right. So when were you told that you went there to search?---I can't be
sure when it was, before I wrote it, I know that.

All right. Could it have been at that stage?---It may have been, it may have been when we were walking back up, I don't know.

You don't know - - - ?---Sorry, I don't, yeah.

No, no, that's quite all right.---I can't be specific.

Did the Intel Report that Mr Walker was referring to, did you see that?---
No, I still have not seen it.

10

THE COMMISSIONER: Did he have it in his hand or anything like that?
---I believe so I believe he had a copy of it.

MS CLIFTON: All right.---But I didn't see it so I can't be - - -

Did you hear Mr Walker say words to the effect of, "This is why we went in?"---May be something like that but I can't remember the exact words.

20 But you remember him saying along that lines?---Intel Report from, the incident this morning or something along those lines.

All right. I might just show you your version which is Exhibit 26 please Associate. I'm sorry I didn't bring along a spare copy for Mr Jaloussis, I may need to bring it up on screen Exhibit 26 Mr Graf's report.---Thanks very much.

I think it's page 8 of our brief, if that helps. Thank you. Have you had a chance to read that, Mr Graf?---Yes, ma'am.

30 Thank you. All right. And so we've already covered this, but just so that we're quite clear. The narrative which begins "At approximately 9.30am on the 19th of February, 2014, I was carrying out my duties as IAT2 when the following incident occurred." So you're content with 9.30am, that date and - - -?---Only because that's what I've written, so I'm assuming that's when it was.

All right.---But, yeah.

40 But that doesn't strike you now as something that may have been incorrect?
---I hope not.

No, no. That's fine.---Sorry.

I'm just trying to be as precise as possible.---That's okay.

And the third paragraph, if I can call it that, or the narrative about the incident.---Yes.

“IAT attended cell 208 in 5.1 Unit – occupied by inmates known to me as [REDACTED] and [REDACTED] – to search the inmates and the cell.” And you've already corrected this. You've said you realise now that initially when you attended it wasn't – you weren't told that it was to search the cell. ---No. That's, what I was asking this morning. 'Cause when I, it was sort of glaringly obvious to me when I read the other transcripts. I didn't know what, yeah.

Yes.---Yes, okay.

10

All right. And so that error may have come about because as you were typing this up Mr Walker came back and said, “I've got this intel report.” ---Whether it's from that or he said it earlier, I don't know. But I'm guessing that's why I keep referring to it as we went to the cell search, but - - -

Sure. That's where you think you got that information from?---Yeah.

And you've said, “SCO Walker entered the cell and I followed and saw [REDACTED] jump off the lower bunk and move towards the toilet and sink.”

20

And again you've said, look, I'm not sure if he was already standing or if I saw him jump off the bunk. It was one or the other.---Yeah. I know he moved towards the back, where the toilet and the sink are.

And then again you say, “I ordered [REDACTED] to get off the bunk, put his wrists behind his back.” You take him outside. You're content with that bit of the narrative?---Yes.

And then you've got “SCO Walker escorted [REDACTED] to cell 203 and I returned [REDACTED] to cell 208 with” - - -?---Well, there you go. I must have put him back in there if that's what I've written. I don't recall that, but - - -

30

You don't recall that? But - - -?---No.

- - - given it was in your report at the time, you feel that that may have been correct?---Yes.

Now, this is no criticism. I just don't really understand. Why are Mr Duncan and Mr Duffy not mentioned in your report?---I suppose because I had nothing to do with them. Like, I did my own, like - - -

40

But we've got Mr Walker in there.---Yeah.

I'm just interested - - -?---I guess to say that I didn't go in first.

Right.---Yeah, that's the only thing I can think, that I would have done that.

And is it the policy that you mention all people who were there? Or is it a bit of a - - -?---Not in my witness one. In, in the, the incident reporting

module it's completely different to this incident report. It's, that lists everyone that was involved, the witness that was there.

That's in the IRM, is that right?---Yeah.

I'll show you Mr Walker's IRM.---So if I was the senior on the day, I would have listed everyone that was there. Because I was only a witness to my little thing, I wouldn't have written - - -

10 All right.---Does that make sense?

It does. I just wonder why you wouldn't have put – I mean, we've got Mr Duncan in front of you, Mr Duffy, I'm sorry - - -?---Yes.

- - - in front of you, as well as Mr Walker in your versions to Correctives. ---I don't know why I would have not written them down.

You don't know why you didn't?---No.

20 All right.---I guess just to state that I didn't go in first.

All right. I'm sorry. I won't be a moment.---That's okay.

And we've talked about earlier that you know Mr O'Shea and Mr Peebles and Mr Taylor were all on the floor before you went in. Did you at any time see them outside the cell?---I don't believe so.

Did you see Mr Taylor go into the cell at any stage?---No.

30 Do you remember what the prisoners were wearing?---No.

Sorry, you've corrected a bit so my notes - - -?---Sorry, yeah.

No, no. That was very helpful. I appreciate it.

THE COMMISSIONER: Can I just clarify - - -?---Sure.

- - - about Mr O'Shea, Peebles and Taylor? Your recollection was that they were not in the office but they were in what was described as the corridor?

40 ---I don't, no, I think I said, I think I said they were in the office, but I can't be sure if they're in the office or in the – they're somewhere in the vicinity, yeah.

You remember that they were there somewhere in the vicinity?---I remember seeing, yes, correct.

Can I just ask, if they were in what you've described as the corridor, does that mean that they would be near the cell door or is it a - - -?---I suppose the cell, office to the cell door is probably 10 metres away, maybe.

From?---From the office to the cell door.

And that distance includes the corridor?---Yeah, I, yeah.

10 All right.---Sorry, I'm just trying to think of distances. Yeah, maybe 10 metres.

All right.

20 MS CLIFTON: All right. Was there anything else about your incident report, now that you've had a look at it, that you would like to tell us?---I don't think so. "Directed [REDACTED] to get onto his knees but he laid on the floor." So I, so I, well, I did handcuff him, there you go. "Ordered him to stay there." I think that's all right. It's just the search thing (not transcribable).

Yes. No, I appreciate that. Thank you. Do you know who else completed incident reports about this particular day?---I don't know who did, no.

You don't.---I know Mr Duffy did.

You know Mr Duffy did?---Yeah, yeah.

30 Have you seen Mr Duffy's report?---On the day I saw it, yes. He showed it to me.

And now, in your interview with Corrective Services you said that you were told later that morning, I think, that Mr [REDACTED] was being taken to the hospital. Do you remember that?---Correct. Yes.

Do you remember who told you that?---No, I don't.

And do you remember when you were told?---I think maybe in the afternoon, after lunch.

40 After you completed your report?---I believe so, yes.

And were you surprised that he required hospitalisation, hospital attention? ---Yes. Yes.

You were?---Yes.

And why is that?---Because I asked them what happened and they said nothing happened.

All right.---That he dived, like, they said he dived towards the toilet and that's - - -

Well, when you said "they said", I'm just trying to be as precise as possible. Who - - -?---Sorry. Mr Walker.

Mr Walker said?---Yes. Yes.

10 And Mr Duffy disputed that earlier.---Earlier, earlier in the day, correct. And then after I'd read his report it disputed it as well, yes.

So when you were told that he was required to be taken to the hospital, did you have another conversation with Mr Walker at that stage?---I have a feeling that, yeah, I should, I have a feeling it was Mr Walker that told me he was going to hospital. I can't, but I, I really can't be sure of that, so. Someone, I know someone told me because I found out that day. And whether it was him or not, and that's when they told me he, from when he hit the toilet.

20

And so would you expect – in terms of completing reports for this matter – that Mr Duncan would do a report, given his involvement?---Absolutely.

Yes?---Yes.

Mr Walker, obviously?---Yes.

You know Mr Duffy did.---Yeah.

30 Would you expect Mr Watson, Michael Watson, to do a report?---If he saw. If he could see in the cell. But I don't know whether, whether he was standing where he could see in the cell or not. But, yes.

Well, you couldn't see in the cell, though?---Sorry?

So you couldn't see into the cell to see - - -?---I was in, I was in the cell.

40 Right. So the fact that you were in the cell even though you didn't witness the use of force?---Technically all witnesses, everyone that was there should write one, yes.

All right. So Mr Michael Watson ought to have done one?---Yes.

And Mr Cameron Watson, should he have done one?---Everyone in the area should have, yes.

Do you see the IRM that Mr Walker, as senior, has to fill out, do you see that before it's lodged or?--No.

No. Do you ever see the whole package, the use of force package?---If I wanted to I could but, normally no.

All right. You just provide - - - ?---Even when I fill them out I just collect everyone's the whole package together and then I take it to (not transcribable) if I was a senior, so, I'm assuming he did that.

10 Okay. All right. I won't be a moment. Now when you were interviewed by Corrective Services on 24 February, you did an additional half a page document which I have a copy here, I won't be a moment. I'll show you a copy of that one for The Commissioner and one for Mr Jaloussis. I'll just give you a moment to read that.---Thank you.

Have you read that?---Yes.

That's your signature and your document is it?---That's correct.

20 Okay. Can you tell us what the purpose of this document was, why did you draft it?---Did I? I guess I think I must have taken it in with me.

Yes, I can take you to the portion.---It's right at the end though I think.

It is. It's when the allegations at Corrective Services - - -?---I think I read it out in this don't I?

Yes, you do.---Yes, okay. Sorry.

30 It's when the allegations are being put to you and I think you've prepared this beforehand so that you can answer those allegations.---- All right.

Is that your recollection of why you did this?---Yes, I didn't remember until I read the other, but yes, that's correct.

All right. So we've got under number one, alleged assault.---Yes.

There you've done your recollection of what you think happened on 19?
---Correct.

40 You'll see fourth line down at the end of that line the new sentence, "SCO Walker and First Class Officer Duncan removed [REDACTED] from the cell and I returned [REDACTED] and secured him in the cell." Does that help you to remember, firstly, who removed [REDACTED]?---I guess, all I remember is Mr Walker walking past, I'm guessing that Mr Duncan was there as well because I've written down here so.

All right.---I'm sorry I can't remember it.

No, no, that's quite all right. So you can't recall if it was Mr Duncan or Mr Duffy who assisted Mr Walker?---No.

Okay. There you said, "I returned [REDACTED] and secured him in the cell."
---Yes, I don't remember that either.

You don't remember that.---No.

10 All right. You don't feel now that that was something that you need to correct, I'm not suggesting it is. I'm just giving you the opportunity.
---Sorry.

And again, I'm interested there that Mr Duffy is not - - - ?---First thing I noticed too.

- - - mentioned. Was there a reason for that?---No one asked me who was there this whole interview, I don't think anyone asked me who was there. I don't know why, it's Mr Duffy only mentioned, either of the Watson's. I don't know.

20

THE COMMISSIONER: Can I just ask you, you say that you retrieved Mr [REDACTED] from the top bunk, escorted him from the cell. Then you say [REDACTED] refused and laid down on the floor. So you actually got him out of the cell and is that when he refused and laid down on the floor?---I think he laid down or fell over or tripped or what on the way out.

30 All right.---To the best of my recollection, he didn't fall hard, like I had him but then, this makes me think he wouldn't get up when I told him to. Knelt down, I don't recall exactly what happened there. There was no, when I helped him up it wouldn't have just been helping him back to his knees.

MS CLIFTON: I'm interested under number two, Make False Report IRM.
---Yes.

You stated there the report that I submitted was not false, it was a report of what I did in this particular incident.---Well, I clarified that after the fact, it was not this report that they were talking about, it was the Incident Reporting Module.

40 Right. But you didn't draft - - - ?---No, I had nothing to do with it.

- - - the IRM?---No and that was my, when I wrote a letter to the Assistant Commissioner for the findings of this to dispute what he, that's what I said, I didn't write the Incident Reporting Module Mr Walker did.

THE COMMISSIONER: Mr Graf, you just held up a piece of paper, that was your Exhibit 26, your report?---That's correct, yes.

MS CLIFTON: Yes. All right. So your response there, make false report IRM, you thought when you were drafting this you were referring to Exhibit 26 your report?---Correct, correct.

But you found out later, is that correct, that you were then accused of falsities of the IRM?---Yes, the one that, the electronic version.

Right. Did you have anything to do with the drafting of the IRM?---No.

10 Okay. So your statement there, the report that I submitted was not false, it was a report of what I did in this particular incident refers to?---Apart from the stuff that we spoke about earlier, about the search.

All right. Lawyers are very suspicious people, that seems quite particular language or specific language, it was reported what I did in this particular incident. Did you chose your words carefully there so that you didn't report on what else you saw?---I didn't see anything else in there, I was out the whole time. No, I would have just written because it was a witness report what I did, not anyone else.

20

I know, but a witness can also see things.---Correct.

Other than do things.---Yes.

Did you see anything that you did not include in report?---I did not see anything in there.

30 Did you hear anything that you did not include in your report?---Only like I said to you earlier about commotion in there, I heard no one yelling anything out.

I think you said, both prisoners were, this is my word and please correct me if I'm wrong, compliant?---Absolutely.

Certainly not aggressive?---No.

Thank you. All right. You can hand all three of those exhibits back. I'm going to move onto another Exhibit but I note the time.

40 THE COMMISSIONER: Can I just ask Exhibits 32 and 33 can our Associate now mark those up?

MS CLIFTON: Yes, she can thank you.---Thank you.

Now I was going to show you the Walker report, and we can work through that and then have a break. I'm in your hands Commissioner.

THE COMMISSIONER: Can I just stop you. Are you tendering?

MS CLIFTON: I'm sorry, I will tender that report by Mr Graf dated 24 February, 2015.

THE COMMISSIONER: The report by Mr Graf dated 24 February, 2015, will be Exhibit 34.

10 **#EXH-034: REPORT OF SIMON GRAF DATED 24 FEBRUARY 2015**

MS CLIFTON: Thank you. So if the witness could please be shown Exhibit 16, which is Mr Walker's report from that day. And again, I'm sorry, I don't have a copy for Mr Jaloussis, so if we could bring it up onscreen. It was page 9 and 10 of the ICAC brief, or Exhibit 16, whichever. And have you seen this report previously, Mr Graf?---Yes.

You have?---Yeah, they showed it to me in the last interview.

20 They showed it to you in the last interview. But you haven't seen it prior to that?---I don't think I saw it in the first interview. I - - -

And you didn't see it when Mr Walker drafted it?---No.

And I know that you've answered this in a previous interview, but just to be clear, under Summary, which I guess is, say, a quarter of the way down - - - ?---Yeah.

30 - - - Mr Walker has entered there his narrative of what he says happened. And he says, "During an intel-based centre search," so that's the wider search that you were participating in, is it?---I think that's what he might mean there.

All right. "IAT were detailed by the MOS to search cell 208 in 5.1, with directions to specifically look for buprenorphine," I'm sorry. ---Buprenorphine.

Buprenorphine.---I think he's spelt it wrong.

40 He spelt it wrong. Thank you.---Yes.

I'm not sure I'd get it right anyway.---No, I wouldn't know. I just know it looks different to that.

All right. And so you say at the time it wasn't in your knowledge that you were detailed by the MOS to search and look specifically for buprenorphine?---No.

All right. "Inmates have spoken at the cell door prior to entry and appeared compliant and reasonable."---I don't know about spoken to at the cell door. I can't answer that but - - -

All right. But your recollection is - - -?--- - - - they didn't, they didn't seem angry. They seemed quite - - -

Compliant and reasonable?---From what I remember, yes.

10 Yes. Great. "As officers entered the cell, offender [REDACTED] ran without warning towards the back of the cell, in the direction of the toilet." And you say you didn't witness that?---No, no.

So you don't know whether that's true or not?---No.

"During the action, the offender tripped over cell furniture and fell heavily onto the toilet itself." Did you witness that?---No.

20 Did you hear a scuffle that sounded like someone tripping over cell furniture?---No.

No. All right.---Don't think so.

"IAT officers were unable to intervene in time to stop the offender disposing of an unidentified article in the toilet." Did you witness that?---No.

Were you told immediately afterwards that he - - -?---No.

30 All right. "The offender was handcuffed and did not resist. The cell was searched thoroughly with only nuisance items found." And you said today you definitely did not search the cell.---No, I didn't.

And you didn't see Mr Walker search the cell?---No. Or anyone.

Or anyone?---No-one.

40 "Offender offered medical attention by Justice Health at centre clinic." You didn't know about that at the time?---I didn't know, no. No.

I'm interested in this, just if you know what it means.---No.

"Reported as a technical use of force."---No idea what that means.

You don't know what a technical use of force - - -?---No.

It's not a commonly used - - -?---I've never used it. Never seen it before.

And that was on the direction of the general manager. And that was Mr O'Shea on that day, is that correct?---I, I assume so. He was there and he was the general manager, so - - -

But you didn't hear Mr O'Shea tell Mr Walker to - - -?---No.

- - - do a report?---No.

Now, over on page 2 of that IRM.---Yes.

10

You'll see the first section has a number of staff members listed, but underneath that we've got a heading Involved Parties.---Yeah.

And we've got firstly "Offender – [REDACTED] And his role was "subject to the use of force".---Correct.

And then we've got Mr Walker, Mr Duncan, yourself and Mr Taylor.---Yes.

Do you know why Mr Duffy is not listed there?---No, I don't.

20

Ought he have been?---Yes, absolutely.

And likewise Mr Michael Watson. Do you know why Mr Walker has not listed him there?---No, I don't.

And again is that something that he ought to have done?---Yes.

And again Mr Cameron Watson?---Exactly the same, yes.

30 He ought to have been listed there?---Correct.

And Mr Taylor, Stephen Taylor, is listed there as "use-of-force reviewing officer".---Yes.

Is that – this is more a general question – is Mr Taylor added at a later date?---Yes. So - - -

Yes. Because you can't know who's the - - -?---No. When he does the review, or whoever does the review, then they get added onto it then.

40

All right.---Yes.

And so in terms of Mr Walker's version of events, you didn't witness any of that?---Any of that, no.

I'd like to show you a report by Mr McMurtrie now. You can hand back that exhibit and you'll be handed Exhibit 15, which was page 4 of our brief,

if that helps. And have you seen that report previously?---No. No, I don't think I've been shown it.

And could that have been the report that Mr Walker had on - - -?---It may, it may have been. I don't know.

But you didn't see the piece of paper if he had one in his hand?---No. If I have seen this, the only time I would have seen it, during interviews. But I don't recall any of that.

10

And just to clear up, you'll see at the very bottom it's dated Monday, 13 January, 2014. I'm told that that's effectively a "save as" error. So a previous, older document has been used and that date wasn't updated. But you'll see Mr McMurtrie says at the top, "Today, Wednesday, 19 February."---Oh, okay, yeah.

So the January date can be ignored if you accept from me it's just a "save as" error.---Okay.

20

And you'll see that Mr McMurtrie is reporting to sir that the centre was attended by SOG, and that's Mr Michael Watson's group - - -?---Correct. Yes.

- - - to assist the local IAT with target searches of cellmates. And that was the general searching that you were doing.---I guess, yeah.

30

And Mr McMurtrie reports that "During the searching, numerous inmates were questioned in regards to drug and weapon possession at the centre. During the informal interviews, an informant stated that there was a large quantity of Suboxone in a cell occupied by [REDACTED], cell number 208, 5.1.1 Unit. The informant was confident in the information and has previously been reliable." And he goes on to say, "This is consistent with the drug of choice. The manager of security was informed and instructed to have this information forwarded to the search teams and have [REDACTED] included in the target searches." Mr McMurtrie goes on to say, "I informed the search 2IC, Mr T. Walker, of the information and instruction from the manager of security." Now, to your knowledge, did you see Mr McMurtrie speak to Mr Walker at all before you went into the cell?---No.

40

And you weren't told before you went into the cell that you were searching for a large quantity of Suboxone?---No.

I'm interested in the time line that this occurred in.---Yes.

We've heard earlier from you that it was 8.30 when you were searching in the cells, by the time you, thereabouts?---I would guess so, yes.

Your report that we looked at earlier said that you were at the Cell 208 with [REDACTED] at 9.30.---Yes.

So, Mr McMurtrie' s information must have been provided sometime between 8.30 and 9.30?---By the looks of this, yes.

10 And in that time he's had time to type up this report and he's had time to speak to the manager of security and then to brief Mr Walker and for you to all to be sent into the cell. Is that your understanding of that must have occurred if this is true?---If that's true.

All right. Do you have concerns about the contents of this report now that you've seen it?---Yes.

What are your concerns?---The whole lot.

As to?---He may have questioned inmates I'm, that's what he does, that's their job but like you say, the time frame doesn't add up.

20 All right. Well - - -

THE COMMISSIONER: Can I just put something different. What about if he had been given the information and that acted upon it, you know, for example informed Walker etc but typed this up afterwards?---He may have, I can't really answer that.

Because you don't about this, yes.---It's a possibility, absolutely.

30 MS CLIFTON: I'm sorry, did I interrupt you?---No, no, no.

Mr McMurtrie has told us that his usual way that he deal with intel is that he would receive information and he would then check his databases to ensure that there wasn't intel say that [REDACTED] was ordinarily aggressive or had access to weapons prior to sending other officers into the cell, that would be something that you would expect?---I would hope that an intel officer would do that, yes.

40 Yes. If this was correct and, I guess I'm talking generally now rather than, if you were sent to a cell to search for a large quantity of an illicit substance is there a usual process?---How do you mean?

Would you be briefed?---How I would do it?

Would you have a camera, would you be told the intel, what would the usual process be?---So how I'd do it if I was in charge of it?

Well - - -?---Is that what you mean?

I'd like to know what your experience is and perhaps if you could take your mind back to 2014 as an IAT member, if you were told we're going in to do a targeted search because we've been told there's drugs in that cell.---If I got told that?

Yes.---There would definitely be a camera.

10 All right. So when would you be told that you were going in to do a targeted search, ordinarily? Obviously before you go in?---Yes, very similar I suppose what would happen, they'd call us down, say, can you go and search that cell. It doesn't go into a lot of detail usually but it can.

Thank you. Yes, all right. But you would be given, perhaps a briefing is making it sound too formal - - - ?---Not necessarily to us as the baggies, the senior definitely would.

Yes.---If I was a senior I would tell my staff what I was doing.

20 In your report in your sorry, I won't be a moment I'll make sure that I'm write.

THE COMMISSIONER: Can I ask you said that there would be a camera? ---Yes.

We've heard about a camera in your vest, is that what you're referring to? ---It's just like a normal home video camera, yes. Back then, just one person had it.

30 So out of the three IAT members - - - ?---One of you had a camera.

- - - one of you had a camera?---Yes.

Do you remember on that day who had it?---I'm pretty sure I didn't have it, yes, I don't know, there was definitely only one camera back then.

40 MS CLIFTON: I'm happy to show it to you but I'll read it to you and tell me if you want to see it, it's out of Exhibit 33 which is your interview with Mr Grainger and Mr Fox of The Commission. Mr Grainger is asking you, "Do you remember Mr Walker showing you any paperwork?" We're back on the 19 in the meal room, you said, "No."---Yes.

Then Mr Grainger says, "Do you remember any discussion about the intelligence report?" Your answer is, "Later on in the day may be or maybe that's where he actually," and then you say, "I remember someone, something about one but I can't recall what was is it, I don't think I even spoke to them about it."---I remember he came back upstairs with it I'm pretty sure.

With it, but you don't know?---Whether it's this one or a different one, I don't know.

One of the allegations that was put to you in the New South Wales Corrective Services Interview was why a video camera wasn't used and you said, "Well, it was a spontaneous event."---Not, spontaneous probably wasn't the right word it was just a move that wasn't - - -

10 Sure. You ordinarily wouldn't use a camera - - -?---Back then, no.

- - - to move prisoners?---Back then no.

Do you do that now?---Since this, we video everything we do, absolutely everything.

But that is your personal practice rather than a policy of Corrective Services, is that correct?---Yes.

20 All right. So since this - - -?---I think I was reading this morning in one of my things, I think it said something along the lines of, the policy says, if there's a chance of a use of force or anything planned you would use one but to me, that wasn't, that was just we were moving these guys.

Sure. If it was a planned search, would you have used a camera?---Back then, no, now yes.

30 THE COMMISSIONER: Can I just ask, to move the prisoners, is that always the task of IAT or do other Correctional Officers move prisoners? ---They can move them but we get, IAT used to get used a lot just for moving people here and there.

Was it a precautionary measure or?---Yes, and people just use us all the time for, because it's just easier.

40 So the fact that you got over the radio a call from Mr Taylor saying, come down here, and when you got down there it was to move the two prisoners, that didn't alert you to something unusual happening or something where you had to be cautious or anything like that?---Not that I recall because it was all, it was all pretty calm from what I remember when we got there, it wasn't, I understand what you're saying but I don't, I don't remember it being tense or anything when we walked in there, sorry.

MS CLIFTON: Commissioner, I have about an hour to go, I just wonder if the witness needs a short break?

THE COMMISSIONER: Would you like a break?---If you're happy to keep going, I'll keep going, whatever you guys want.

MS CLIFTON: Perhaps if we could just have a five minute break and not a particularly long one.

THE COMMISSIONER: Certainly.

MS CLIFTON: If that would be all right.

THE COMMISSIONER: I'll adjourn for about five minutes.

10 MS CLIFTON: Thank you.

SHORT ADJOURNMENT

[11.48AM]

THE COMMISSIONER: Thank you, Ms Clifton.

MS CLIFTON: Thank you, Commissioner. And I believe that the previous exhibit has been handed back to you, and I'm going to show you Exhibit 25
20 now, which is a copy of the report that Mr Duncan did of the day.---Thank you.

And I'll just give you a moment to read that. And have you seen Mr Duncan's - - -?---I think I, I think I've seen that before.

You think you have?---It seems familiar, yes.

And do you remember when you may have seen that?---No, I don't.

30 And do you remember who showed it to you?---I don't know whether it was other investigators or – I don't know, sorry. It just seems familiar.

Well, I don't believe our investigators showed it to you.---Okay. Maybe I saw it on the day.

And you'll see then that Mr Duncan says he was with IAT3. I think you said IAT2. I don't think anything turns on that, but there are different IAT - - -? ---Just on the roster, that's all.

40 All right.---Yeah.

And again he says it was about 9.30 that IAT were called to search cell 208 in 5.1.---Yes.

And it seems then that Mr Duncan has also mistaken that you were called to the cell to do a search.---(not transcribable)

Yes. Now - - -?---Yes, that's right, yeah.

Mr Duncan doesn't mention that Mr Duffy was there either.---No.

And we know that Mr Duffy was inside the cell.---Yes.

And that Mr Duffy at least exited with Mr [REDACTED] and Mr Walker.---Sorry, Mr Duffy, did you say?

Yes.---Yes.

10

Came out.---Yeah.

And so is that something ordinarily – and I'm not asking you to be critical of Mr Duncan – but is that something ordinarily that Mr Duffy ought to have been included in Mr Duncan's - - -?---Yes.

Mr Duncan says that he assisted you in the removal of [REDACTED]. You don't recall that but his version of “assisted” could be that he was behind you.---I think, walked out behind me or - - -

20

Yes.---Yes.

But you don't have any great concerns about the way he's worded that?
---No. Because he told me, I remember he said on the day he followed me out.

So your knowledge of him following you out, though, comes from Mr Duncan telling you, not what you saw or heard?---Yeah, correct, yes.

30 And you'll see then that he says, “I then entered cell 208 and observed Mr Walker placing [REDACTED] in handcuffs.”---Yes.

“And [REDACTED] was then removed to cell 203.” And he says he submits his report. At any time did you hear Mr Duncan being told not to include Mr Duffy?---I didn't hear that, no.

You didn't hear that. All right.

40 THE COMMISSIONER: On the day after the incident, did you have any discussions with Mr Duncan?---With Mr Duncan? I don't, regarding the incident? I don't think so.

Was he around in the group when you were preparing your reports at lunchtime?---I, I assume he was up there at lunch because that's where we have lunch.

But you can't recall talking to him about it?---Can't recall, definitely, no, no. I don't think I discussed any reports with Mr Duncan at all. It was only with Mr Walker. Yeah.

MS CLIFTON: Have you discussed it with Mr Duncan since this time?
---Since, since the incident?

Yes.---I, I probably would have but I can't remember.

10 Is this a matter that is the subject of some discussion amongst Corrective Services officers?---This incident?

Yes.---Absolutely.

And why is that?---Before the initial investigation, we, there was rumours going around that - - -

By Correctives? The initial, when you - - -?---Yeah, sorry. Sorry, yes.

20 Yes.---Yeah.

There were rumours going - - -?---But the rumour was initially it was through, through ICAC. The original, that was the rumours we got told.

And what did the, why was there an investigation? What was the rumour about the investigation?---That it was a cover up of a use of force.

And so you and Mr Duncan may have discussed that at that stage?---Oh, I think we would have, yeah, we would have said we heard it, that kind of
30 thing.

All right.---Yeah.

Did Mr Duncan ever say to you that your career was going places but it is no longer?---Yes.

And what was that in relation to?---A different, nothing to do with this.

40 All right.---Something to do with Mr Turton.

Something to do with Mr Turton?---Correct. I don't believe it had anything to do with this anyway.

Can you just tell us perhaps a short bit about that? What, what was it involving Mr Turton?---Mr Turton and I, he's got history with you guys. I assume youse know about that.

Yes.---And I'm friends with him and they don't like him, basically.

So was Mr Duncan's reference to your career going nowhere because you were friends with Mr Turton?--I believe that's what he meant, yes.

But it had nothing to do with this?--I don't believe it had anything to do with this, no.

THE COMMISSIONER: And when did you have that discussion?--Within the, probably in the last 12 months or two years. Not, not that long ago.

10

MS CLIFTON: And did Mr Duncan ever tell you to stick with your version that was in the report and not tell the truth about what happened that day? --I don't think he said that, no. Not him.

THE COMMISSIONER: Did somebody else?--Mr Walker may have said something along those lines about, about not changing anything, not to roll on anybody.

20

MS CLIFTON: Not to roll on anyone seems to indicate that there was a version that is incorrect and that you ought not now tell the truth.---No. I'm, I'm telling you a hundred per cent, I've not lied to you guys once. I've corrected things that I made a mistake and I wish I put Mr Duffy in the reports. But it just, I think they just - - -

No, I appreciate that. I'm just wondering about Mr Walker's comment to you.---I don't, it wouldn't have been not to roll. It would have been, I don't remember what it was regarding. It was just – I, I can't remember the exact words he used but it was just, you know, like, the boys' club thing, not to give anyone up.

30

Sure.---And, like, I remember saying somewhere along the line to him was "I didn't say anything anyway, so I can't give anyone up anyway." So, I wasn't in the cell.

THE COMMISSIONER: When did you have that discussion?--Oh, probably when the first initial Corrective Services one came up.

So around the time of the first interview?--Yes, correct.

40

MS CLIFTON: Does that boys' club still exist?--Absolutely.

Absolutely. All right. And the boys' club – tell me if I've got this wrong – is essentially if you see something that you don't like, you look the other way. Is that correct? Or what does the boys' club - - -?--That's not how I interpret. Like, all the - - -

How do you interpret - - -?--Just mates. And I suppose what you're saying, yes.

All right. So you don't dob in - - -?---Don't snitch and, yeah.

You don't snitch. You don't roll.---Absolutely.

And - - -?---Otherwise you're mud.

But your ethical or moral compass in terms of doing the job is you do it right.---Absolutely, it is.

10

You do it fairly.---Yes.

And so if you saw somebody who wasn't doing it right or fairly, does the boys' club demand of you that you don't snitch?---I suppose so, yes.

And that's still the case today, is it?---Not, not so much with me. It might sound silly but they would, they'd never do anything in front of me because they know - - -

20

Your reputation is that you don't tolerate that kind of behaviour?---Absolutely, I think if you asked anyone that I worked with would back that up, saying, I don't assault inmates I don't do that.

Sure. What's Mr Walker's reputation?---Heavy handed I suppose.

Heavy handed.---I think that's the term you guys asked me last time in the interview.

30

Is that a term you would use?---Again, he's never done it in front of me but I have heard the rumours, yes definitely.

What about Mr Duncan, was there rumours about his conduct?---Yes, not as much as the other, but yeah.

All right. When you say not as much, also there was rumours that he was heavy handed?---Yes.

All right. And Mr Duffy, any rumours about him?---No.

40

No.---I'd like to think he's like me, he's by the book, hence he made his report.

Okay. Mr McMurtrie, were there rumours about his conduct?---Most definitely.

And what were those rumours?---There were many.

Sorry.

THE COMMISSIONER: I'm sorry.---There were many rumours.

MS CLIFTON: Can you give us the gist?---Well, to do with this, again, this was rumour, this is what I heard, that he deleted all the day room footage.

Right.---So - - -

10 Okay. And generally about Mr McMurtrie' s conduct there were rumours about - - - ?---Especially now after his dismissal and - - -

He's now been dismissed, yes.---Yes.

Just at the bottom of Mr Duncan's report you'll see [REDACTED] was then removed to Cell 203, do you, did you witness who took him, it seems to be different in some reports that Mr [REDACTED] was taken by Walker and Duffy or Walker and Duncan?---I don't' know and I can't answer that, I really don't remember.

20 All right. ---To the best of my knowledge it was just to another cell I saw them walk over.

All right. On the other side of the office though, in the meal room?---No, that was the same corridor, other side of the corridor.

Right.---Not through the office.

30 Okay.---I'm sure it was on this side. I'm guessing that I don't remember why because only going off my report that I returned him back to his cell that I was doing that while they were taking him.

Sure.---Sorry I can't be more specific.

No, no, that's quite all right. Was there anything else that you wanted to comment on from Mr Duncan's report while that's in front of you?---Again, just search the cells not correct.

40 The searching the cells you say is incorrect. I might have you hand back Mr Duncan's' version and we'll now go to Mr Duffy's version which is Exhibit 18.---Thank you.

Have you read that?---Yep.

Have you seen this incident report previously?---Yes.

You have. When have you seen it before?---I believe it was on the day of, Mr Duffy showed me the report he was going to put in, yes.

All right. Did he show it to you after you'd submitted your report?---I believe so.

You believe so.---I think so.

All right. Did you have a conversation with Mr Duffy saying, well that's a bit different to my report, I thought we were there to do searching, search the cell?---No, I didn't even realise that when I just read that then.

10 All right. He says there that he thought it was about 10.30 that - - - ?---Yes, that's the first thing I noted the times are different.

Yes. He says that there was a radio call out, which we now agree.---Correct.

IAT to attend 5.2 Unit. You see he says this call appeared to be a response situation.---Well, response is if a duress alarm goes off, like if the buttons that people press.

20 Right. All right.---I think I know what he's saying, like it sounded urgent yes, when Mr Taylor called, yes.

Yes. And that was your feeling when you heard that as well that there was some urgency to it?---Yes.

All right. Now curiously Mr Duffy doesn't mention that you were there? ---No, he doesn't.

30 That may be because you weren't inside the unit, inside the cell for what - - - ?---I would think that would be the reason.

You think that's the reason, all right. You'll see Mr Duffy has provided quite a bit more information than the other reports we've seen?---Absolutely.

He says there that Mr O'Shea was there as was Mr Peebles?---And in the office.

40 And then Mr O'Shea directed us to Cell 208 and asked us to remove the inmate?---That's not how I remember it but - - -

It's not how you remember it, all right.---No, but I could be wrong as well, I thought it was Mr Taylor that told us to go and do it.

All right. Do you remember Mr O'Shea being present when Mr Taylor was telling you to move the prisoners?---I think well, I know Mr Walker spoke to them I didn't know all three were there.

All right. Okay.---That's why I was saying, I can't remember if they in the office or outside of the office, I'm not sure.

All right. Now, you and Mr Duffy agree in some ways because Mr Duffy says Mr Walker entered the cell and he followed directly behind him. So that's the order you remember is that?---That's how I, yes.

10 Now he says that and I'm reading from the second paragraph of the narrative, "[REDACTED] backed up to the rear of the cell and raised his hands as though to strike Officer Walker." You didn't see that, did you, you saw Mr [REDACTED] moving towards the back - - - ?---Just that, just the moving and that was it.

And then you took Mr [REDACTED] out?---Mr Duffy told me about this after the fact.

Mr Duffy says that Mr Walker then retaliated with a strike to the side of [REDACTED] head. You didn't witness that?---No, no.

20 No. He then says that he then applied a figure four leg lock to [REDACTED] leg in the attempt to take him to the ground to apply handcuffs.---Yes.

If Mr Duffy was working, was not on the IAT roster.---Yes.

He would not have had handcuffs ordinarily would he?---No, oh a search day, he may have.

30 Right.---I can't say whether he did or he didn't but he may have, often on search days teams will get a set of handcuffs but he does say he was attached to us this day, so, I don't know.

Right. So it might - - - ?---But again, he may have grabbed someone else's handcuffs to put on.

Sure. Or it could just be improvised and I'm not being critical here of the precise wording there, that he was trying to get them to the ground so someone could apply handcuffs.---That's right, to stop, yes.

40 He says there that [REDACTED] continued to struggle and you didn't witness the prisoner [REDACTED] struggling with anyone?---No, no.

All right. He then says, "Well at that point Mr Duncan came into the cell to assist." That could accord with your recollection?---May have, yes.

He says that Officer Duncan then tripped on the end of the bed and fell to the ground with Mr Walker and himself falling as well. Do you see that? ---Yes.

Did you witness that?---That was obviously the commotion I heard.

That was the commotion. You think that accords with what the commotion may have been?---May have.

Sure. I understand you're attributing sounds to a particular type of action that you did not witness but - - - ?---Yes.

10 - - - that doesn't strike you at completely at odds with what you heard?---If Mr Duffy says that I would believe what he says.

I'm more interested in what you heard, that doesn't strike you as completely at odds with what you heard?---No, that could have been.

20 All right. He goes on to say, at this point, [REDACTED] had three officers on top of him and could struggle no more. [REDACTED] was restrained and handcuffed and moved to a vacant cell opposite Cell 208. I then left the cell, washed up in 5.1 and returned to search in 3 wing. Now he doesn't say he searched the cell there either.---No.

And you didn't witness any of that struggle at all in the cell?---No. No.

And now that you've seen that report again, does that accord with your memory of the discussion that Mr Duffy and Mr Walker were having about the contents of their reports?---Yes. Yes.

30 And was that disagreement about their two versions, was that a heated conversation?---Slightly. Like, they weren't screaming at each other but - - - Sure.--- - - - it was a discussion.

It seems very odd that two officers who have immediately been involved in the same incident have such divergent recollections of what occurred.---It does, but I'm sure that's when the conversation took place, after we left there and went up to 3. And they had the argument at lunchtime too about a similar thing. I think we - - -

And did you hear the contents of that argument at all?---No.

40 You don't know what was said?---I just, I heard about the reports. Wes said he's going to put this report in.

And when you say you heard about it, did Mr Duffy tell you about that afterwards or did you see them having the argument but didn't really tune in?---No, it was at lunchtime. At lunchtime. And I didn't remember it until you guys asked me about it. I remember them having a, a heated discussion about reports. And I have a feeling Wes left after it and Mr Duffy left after it. I can't, yeah.

Yes. Thank you. There was something I should clear up on that document, which Mr Jaloussis has kindly pointed out. You'll see it's headed Incident Report from Wesley Duffy. Rank, first class correctional officer. And you'll see there, date, 7/12/2016.---Yeah.

And then he goes on to say at approximately 10.00am on 19 February.
---Yes. It happens a lot.

10 I have been told that this is one of those documents where the date automatically updates each time you print it.---That's right. You have to do it yourself. If you forget to do that bit, that's – it happens all the time, yeah.

Yes, so it has a field that updates.---Yeah.

So the 7th of the 12th, 2016 is actually just when this copy was printed.---Oh, okay, right. Yeah.

It doesn't actually relate to when he was typing it.---Yeah.
20

I'm told, and I certainly accept, that this was typed within the very close vicinity of the 19th, the 20th and the 21st.---I agree. That's very similar to what I read.

Thank you. Is there anything else that you would like to comment about Mr Duffy's version of this?---The only thing that gets me is he says Mr O'Shea directed us to the cell. I, I can't be a hundred per cent sure either way. Can I, this might sound silly but I, I find it hard to remember what people told me and what really – it was that long ago. Like, I don't - - -
30

No, that doesn't sound silly.---That I can't be - - -

I think that's human nature.---I can't be a hundred per cent, yeah.

Yes. All right. Do you have any knowledge as to whose version is correct between Mr Walker and Mr Duffy's? And I'm talking about actual knowledge.---No, no knowledge, no.

And in terms of the differences between Mr Duffy's version and Mr
40 Duncan's version, particularly where Mr Duncan says he was not involved in any scuffle. Well, he doesn't say that. He just doesn't mention being involved.---I didn't realise that until you just said it. Yes.

Do you have any knowledge, and again I'm talking about your knowledge -
- -?---No.

- - - as to whose is correct?---No, no knowledge, no.

I think I asked you, but other than the O'Shea direction - - -?---Yeah, I'm just having a quick read over it one more time.

Yes, take your time.---Little things like "I was called to attend 5.2." I, I don't think that matters, but I don't, it was actually 5.1. I don't - - -

Yes.---I don't remember that part of it, but – I think that's about it.

10 Thank you. You can hand that version back, that exhibit. Thank you.
Now, I just want to put to you another version that we have been told, and I'd like you to comment on those bits as I go along. So we have been told that at least four officers entered the cell, and we agree on that.---Yes.

Yes. And that Mr [REDACTED] was actually on the bottom bunk and he was in his underwear. Do you recall that at all?---I don't remember what he was wearing.

20 But your version is he could have been on the bottom or he could have been standing.---That's right.

He then backed up towards the toilet and was assaulted by Mr Walker or another officer. Did you see that at all?---No, I did not.

One of the officers who entered the cell called out a number of times, "Stop resisting." Did you hear that?---No.

30 So there were a number of punches thrown, connecting with Mr [REDACTED], and he has then tried to protect himself by putting his arms up to cover his face. Did you witness that at all?---No.

And we've been told that Mr [REDACTED] was then grabbed in an arm bar by – not by Mr Walker but by another officer. Did you see that at all?---No.

And a third officer then did some floor sweeps to cause Mr [REDACTED] to fall to the ground.---No, I didn't see that.

Didn't witness that?---No.

40 Did you hear Mr [REDACTED] calling out that he had asthma and couldn't breathe?---No.

Do you know if Mr [REDACTED] lost consciousness at any stage?---No.

Did you witness Mr [REDACTED] being removed from the cell and, on the way out, his head being banged against the door?---No, I didn't.

Didn't witness that?---Saw it right at the cell door.

I'm sorry, what was that?---They were, he was pretty well out of the cell, from my recollection, when they came out.

Did you hear any thumps or thuds, the sound of an assault?---No. Only the scuffling that I heard.

And we have been told that Mr [REDACTED] was then assaulted in another cell. ---Absolutely not.

10 THE COMMISSIONER: Sorry, when you say absolutely not - - -?---I've never heard of that.

You've never heard that?---No.

MS CLIFTON: And you didn't witness that?---No, definitely not.

But it could have happened?---I don't, that was the first I've heard about that.

20 I'd like to show you Exhibit 23. You're aware that Mr [REDACTED] was taken to the hospital. We've already covered that.---Yes.

Exhibit 23 is the Justice Health report, which was page 14 of our brief. ---Thank you.

And when I say Justice Health report, I mean one page.---Yeah.

30 So you'll see that's the report of surname up the top, [REDACTED]. Date of presentation, 19 February, 2014. "Injuries noted, contusion to left eye/cheek/lip. Bruising to right side of torso over ribs."---Yes.

Yes. Do you know how Mr [REDACTED] received those injuries?---No. Well, in the cell, I guess.

Well, he had no injuries before the morning of the 19th.---Yes, that's right. Yes.

And he had the injuries after - - -?---Correct.

40 - - - after you went in and took him out.---Yes.

And when I say "you", I don't mean you in particular.---Yeah, I understand, yes.

And so these injuries have occurred in that intervening period.---Yes. Yes.

Do you know how he received those?---Only from what Mr Duffy's report said.

So you think they occurred in the scuffle that Mr Duffy reports?---Well, that or, if you say, someone went back later and did it.

All right.---I don't - - -

But you have no knowledge of how he received a contusion to the left eye - -?---Absolutely. No.

10 - - - cheek, lip? Bruising to the right-side torso over the ribs?---No.

Is there anything else you'd like to tell us about that Justice Health report, having now seen it?---It's incomplete. Doesn't have his MIN number or anything. But - - -

THE COMMISSIONER: I'm sorry, what did you say?---Just doesn't have his number or anything on it. It's sort of, date of birth. And only if, I didn't notice those when they, when he walked past me for that second either.

20 MS CLIFTON: All right.---I didn't notice – well, it says left eye. I would have, I would have, he'd have been, I would have been on his right.

All right.---But it was only a split second I saw him for anyway, so - - -

All right. So it's possibly, are you saying, it's possible he could have had those injuries but because it was so quickly that he was taken past you may not have noticed?---I don't know whether he did or not.

30 You can hand that exhibit back thank you. I'm happy to show you a copy of a phone call transcript but I know during the Corrective Services Interview you were asked about the knowledge of a phone call that Mr ██████ made to his father the next day on 20?---Yes.

Did you ever listen to that phone call?---I don't think I listened to it, I got told about it.

All right. Are you aware that Mr ██████ told his father that he was ogflayed by the squad and ogflayed is flogged?---Yes.

40 You're aware of that?---They said, what I remember I got told was something about his dad was going to wait for them after, that's what I remember from it.

All right. So you weren't told that he made what we call in legal circles immediate complaint to his father that he had been bashed by the squad? ---Yes, that's why his dad was going to wait for them.

So you knew about that?---Well, that's what, that's what we got told, said his dad was going to wait and something about weapons in the call or something?

Yes, yes.---Yes.

10 I understand why again, I'm not being critical of Corrective Services but all Corrective Services seems to focus on the fact that dad was going to possibly going to extract some revenge and that Mr [REDACTED] might have had a weapon?---Yes.

Nobody seems too concerned that Mr [REDACTED] the day after officers have entered his cell and he receives bruising to the left side of his face and sore ribs, tells his dad he as bashed by the squad and it was the squad who went in.---Yes.

Did that not raise concerns with you?---Well, yes, it sort if, contradicts from what Mr Duffy and Mr Walker so, so.

20 Yes.---It goes to what Mr Duffy said.

Yes.---Yes.

Was that ever raised with you, this prisoner's saying he was bashed by the squad, you're on the squad, that was the day, was he bashed by you, was that ever raised with you?---Not by me.

Not with you?---Not by me.

30 Not by you. But was it ever raised with you?---I don't believe so.

All right.

THE COMMISSIONER: When were you told about the phone call between Mr [REDACTED] and his father.---I think the next day.

40 By whom?---I don't know, I couldn't tell you sorry, I just remember those parts saying the father was going to wait and something about a weapon or something, that's all I remember.

MS CLIFTON: Now as a result of the Corrective Services Investigation, I understand that Mr Walker, Mr Duncan and yourself were all fined, received a fine.---Correct, yes.

Was that for not using a camera?---I'm pretty sure they had the three charges.

Yes.---The fine and the disciplinary action was for not using a camera and lying on the IRM.

All right. Did you explain to Corrective Services - - -?---Yes, I wrote a letter to Mr Corcoran, Assistant Commissioner.

All right. And what did you say in that letter?---I did print it off to bring to you but I forgot it.

10 No, that's quite all right. Would you mind emailing it through to Mr Grainger, he has a copy just here.---Wow.

I'll hand this up to you and a copy for the Commissioner. Thank you. ---Thank you.

Is that the letter, you've read that now?---Yes, sorry.

That's all right. Is that the letter that you wrote to Mr Corcoran.---Yes, correct.

20

This was an objection to you being fined.---I got his, when he sent out the results of the disciplinary action you could either come to Sydney and talk to him or write a letter so I chose to write to a letter.

All right. So in that in you say, I didn't write the IRM, that was Mr Walker's.---Yes correct.

30 And in fact, didn't see it beforehand. Over on page two of your letter that starts, activities that I participated in. "It is my understanding that the IRM on the other hand is an overview of the entire incident, as for my name listed on the IRM I believe that to be correct as I was an involved party." Do you know - - -?---Sorry, yes.

Yes?---Yes.

So why didn't you mentioned that Mr Duffy and Mr Watson were there, because they weren't listed on the IRM?---I didn't do the IRM.

40 No, I know but you're now saying, well I shouldn't be held accountable but I understand why my name was on it because I was an involved party. ---Okay, sorry, yes.

But at that stage you didn't go, well, Duffy and Watson, the IRM incorrect in another - - - ?---I hadn't seen the IRM at this stage.

So you had to comment on whether it was correct or not without having seen it, is that - - - ?---I did, yes.

You had seen it?---I knew my name was on it.

Right.---Mr Walker had told my name was on it, yes.

All right. So you were commenting on whether it was correct or not without having actually seen it?---I was commenting on my name was on it, correct, yes.

10 Yes. I'm moving away from that now.---I'm sorry.

I'm moving to the contents of what Mr Walker detailed which Correctives fined you for it being false.---Yes.

You're saying well, how can I be held accountable for what somebody else has written in it?---Correct.

20 Are you telling me now that you had not seen the IRM to be able to comment on the correctness or not of the information?---No, I was just arguing the point that I was named on it, not the content.

I'm being critical of Corrective Services now, not of you.---I understand.

So you were not shown the IRM to be able to comment on whether the contents of it were correct or not. Is that correct?---That's correct.

Right. So here where you're trying defend yourself from findings, were you not shown the IRM to defend yourself?---No, no.

30 Thank you. All right. Were you shown it, I'm not trying to trick you here Mr Grainger has helpfully pointed out that in the Corrective Services interview you were shown the IRM?---Oh was I, there you go.

Just one moment. Sorry, I'll read it so that I don't ambush you with this. It's on page 19. Perhaps if the witness could be handed – I think it was Exhibit 32.

THE COMMISSIONER: Yes.

40 MS CLIFTON: Yes.---Thank you.

And you'll see at question 133 - - -?---133?

Oh, that's the policy, I'm sorry. Page 19.---Oh, 19.

You're offered the policy if you want to read it. And then at question 135, pretty much halfway down the page.---Yes.

“Now I'm going to show you an IRM completed by Walker.”---Yeah, and I've highlighted that too, yeah.

Pardon?---Sorry. I have, I've highlighted it too. That was one of my things from this morning.

No, that's all right. There's a lot to - - -?---I had read it prior to that, I'm sorry.

10 All right.---Okay.

And over at 142, the questioner, who I think is Mr Glasheen, says, “I'm not saying that you put that detail there.”---Yes.

And then he just goes on to say, “But you were listed on there,” I think he's saying.---Yes.

20 But you're not specifically asked about the contents and the truth of them. Is that your recollection?---From reading this, I think he must have shown it to me.

Yes.---Yes. And I was mistaken, sorry. I didn't know where I'd seen it before, though.

No, no. That's fine. But your issue is that you didn't draft it at the time? ---Correct, yes.

30 And that you were being fined.---It wasn't, the fine wasn't the issue. It was, it was the fact that I was found guilty of doing it. Does that, do you understand what I'm saying?

So it goes on your record.---Yes. And my integrity's been - - -

THE COMMISSIONER: Well, you say in your letter, “I want to clear my name.”---It says that, yeah, somewhere, I think, don't I?

Right at the end.---Yeah. Yeah. The money wasn't the issue. It was, yeah.

40 MS CLIFTON: And so your issues with the allegation of a falsity in the IRM is, well, I didn't draft it.---Yeah.

And I didn't see it at the time. Is that correct?---Yes, that's correct.

And your issue with the failure to use a video recorder, over on page 2 - - - ?---Yes.

- - - is, you say, “Look, we didn't use one. I only believe, I did not believe it was necessary due to the fact that the inmates were totally compliant.”

---Yes.

And you go on to say, a couple of sentences down, “The inmates were not aggressive in any way. There was absolutely no indication that use of force was going to take place.”---That’s right.

“If there was any indication that a use of force was even remotely possible, I would have retrieved the video camera and started it straightaway.”---Yes.

10 And is that your understanding of the policy that if inmates are - - -?---If there’s a likelihood, yeah.

And is there an exemption from the use of a camera for the removal of inmates from the cell, from cell to cell?---No, it’s not an exemption but, yeah. We did it all the time without a camera.

Sure.

20 THE COMMISSIONER: Can I just ask you about the terminology “use of force”?---Yes.

What was your understanding of what it meant?---How do you mean? Like ---

Well, for example, you spoke about taking Mr [REDACTED] by the wrists.---Yeah.

30 Is that a use of force?---I don’t think so, because we’re allowed to handcuff and, without it being deemed a use of force, because we’re issued them each, each day by the governor.

So if that’s not covered by use of force, what is?---Probably anything more than that. It’s, yeah. I don’t think that’s a use of force at all.

What about the fact that Mr [REDACTED] went onto the ground and you had to pull him up?---I, I helped him up. I didn’t drag him up or anything. Yeah. Yeah, I don’t, I wouldn’t say that was a use of force, no. If I had to drag him out there, definitely. But, no.

40 So not grabbing Mr [REDACTED] by the wrists?---I don’t think so, no, because that’s just more controlling him.

So controlling isn’t a use of – controlling an inmate - - -?---No, because you grab their wrists before you put their handcuffs on anyway. Yeah, so I just took his wrists and got him out of the cell. Yeah, I understand what you’re saying but I don’t think – in IAT’s duties, I don’t think that would be a use of force, no.

MS CLIFTON: Thank you. I'm just a little bit curious. You've corrected things here today from your Correctives interview.---Yes.

Why didn't you correct them in October 2015 - - -?---I don't - - -

- - - when you were writing to Mr Corcoran?---I don't know.

Pardon?---I don't know why. The search thing you're referring to?

10 Well, yes.---Yeah. On page 1?

Pardon?---The, about the cell search on page 1 you're referring to?

Well, yes, and the other things that you've corrected today.---To be honest, the things I corrected today I got from reading these all over again.

Sure. All right.---And that's – as soon as I just read this then, that's the first thing that stood out to me too.

20 So you're saying when you wrote to Mr Corcoran you didn't remember that it wasn't about a search?---Because I didn't think about that.

Sure.---I just, it wasn't, yeah, it wasn't an issue at the time, I suppose, until I've, I went back and looked.

And was it an issue that Mr Duffy and Mr Watson - - -?---Again, yes, now it is.

30 Yes.---But I didn't think about that at the time, no.

Are you aware that Mr Duffy was not interviewed?---Yes.

And did you raise that with anyone at Correctives or - - -?---With Mr Duffy I did, yes.

You raised it with Mr Duffy?---Yes. We spoke about it.

40 When was that?---When that investigation was taking place. I asked if he'd been interviewed and he said no. And I think he said something along the lines, "I think my report's been, they haven't entered the report with the rest of it." But he, he did something to make sure it was, he registered it with the dep's clerk or something like that, so it couldn't be, yeah - - -

Do you know if Mr Duffy's report was part of the use-of-force package?---I don't think it was, no.

You don't think it was, but you don't know.---Well, from, from what he says now, that's just, yeah.

I'm going to move on to - - -

THE COMMISSIONER: Can I - - -

MS CLIFTON: Yes.

THE COMMISSIONER: Sorry, before we do that, I'm sorry, Mr Graf. Can we go back to the Operations Procedures Manual?---Yes.

10

You refer to section 13.9.---Yeah.

That obviously was the one current in 2014.---Yes.

It talks about uses of force or – well, it says, “This includes but is not limited to video recordings of uses of force and then potential uses of force.”---Yes.

20

The reference to potential uses of force, what was your understanding that that would cover?---Cell extractions. Like - - -

A cell extraction?---Well, not that. Just - - -

Sorry, what is a cell extraction?---Oh, like if an inmate doesn't want to come out of the cell and we have to, have to get them out, go in. Like, if those, if we got to that cell and they were yelling and screaming and saying, “You're not taking us out,” that would be a planned use of force. What do they call it? A potential use of force.

30

Potential.---That's more of a planned one. So, yeah, that kind of stuff.

Because a potential use of force would suggest that maybe you should have the camera recording on many occasions.---Correct, yes. If there was a potential one, I would have a camera running, definitely.

But on the day there was no discussion between the three or four of you - - - ?---Absolutely, no.

40

- - - about using the camera - - -?---No.

- - - or who was going to?---No. No. It was all very quick. We got there and went in, I think. It was all very short time.

Thanks. Do you wish to tender this?

MS CLIFTON: Yes, I ought to, please. If I could tender the letter from Mr Graf to Assistant Commissioner Corcoran, dated 29 October, 2015.

THE COMMISSIONER: Right. The letter from Mr Graf to Mr Corcoran, Assistant Commissioner (Custodial Corrections), dated 29 October, 2015, will be Exhibit 35.

#EXH-035: LETTER FROM SIMON GRAF TO KEVIN CORCORAN DATED 29 OCTOBER 2015

10 MS CLIFTON: Thank you, Commissioner. Mr Graf, following on from the Commissioner's questions, would it be assistance for IAT to have body-worn cameras?---Absolutely. I know they've trialled them at Silverwater, and I don't think they went very well, the trials.

Do you know why they didn't do well?

20 THE COMMISSIONER: Why not?---They had troubles with them. They weren't the same one the police use. I don't know why they just wouldn't use the same ones that have already been tested, but I think, I heard that they, they keep cutting off and they were hard to turn off and on, or it was all little technical stuff. And they were, I think they were big and bulky too. I think they'd be fantastic.

MS CLIFTON: For IAT alone or for every officer?---Everyone, but to start with IAT, definitely.

Sure. And just one other question about your Corrective Services interview and when you were shown the Walker IRM.---Yeah.

30 Is there a reason why you didn't take that opportunity to say what Mr Walker has recorded there is not what I witnessed?---No, I don't know why I didn't.

Thank you. So if we move on to the next day, the 20th.---Yes.

Are you aware that the search, that the cell, Mr [REDACTED] and Mr [REDACTED] cell was searched that day?---Yes, I was aware of that.

40 And I understand that you were told that you could not be part of the searching party.---Correct.

Were you told why?---Because I was involved in the incident the day previous.

The previous day. Was that because of the threat by Mr [REDACTED] father or just - - -?---I, I don't know what the reason was.

It was general. Anyone involved can't be - - -?---He just said, well, it was Mr Duncan was on with – I don't know who the third was, but they said, “Youse two sit this out.”

And who told you that, do you remember?---Mr Kennedy.

Mr Kennedy.--- Yes.

10 And Mr Kennedy was in charge of doing the search, was he?---I assume so, yeah.

What was Mr Kennedy's role that day, do you remember?---I don't know.

And are you aware that Mr Watson was involved in that search, Mr Michael Watson?---The next day?

Yes.---No, I didn't know that.

20 But if the instruction to yourself and Mr Duncan was you were involved the previous day, so you sit out - - -?---Correct.

- - - does it naturally flow that Mr Michael Watson also should have - - -?
---Yes. Yes.

And is it possible that Mr Kennedy didn't know that Mr Michael Watson was involved because he was not on the IRM?---Maybe, yes. I don't even remember Michael Watson being there, but.

30 And what was your position or role on 20 February?---IAT.

IAT. And were you still a first class?---Yeah, I don't know whether one of us were acting up that day. Without seeing the roster, I couldn't tell you. I don't even know who our third was that day.

I think we do have the roster, and whilst Mr Grainger helps me with that, I'll have you – do you know, did you complete any paperwork about the search?---The next day?

40 Yes. On the 20th.---No.

No.---They went up, I know they went up, Mr Dippel and Mr Murdoch went upstairs and did it in the IAT office.

When you say “did it”, they did the reporting?---Yes.

So Mr Dippel and Mr Murdoch were part of the searching team?---They're the only guys I remember.

Mr Grainger's just pulled up the roster from the 20th.---See, Mr Duncan was the senior.

Pardon? Sorry, I talked over you.---There you go. Mr Duncan was the senior and Mr Dippel and myself. There you go. That's why – Mr Dippel went and did the search.

I'm sorry. I'm not familiar with it. Can you point out what - - -?---Sorry. Security on the right-hand side just down from the top.

10

Security on the right-hand side. Thank you, yes.---Yeah.

So out of Duncan, yourself, Graf and Dippel - - -?---Yes.

- - - you were the three IATs.---Correct.

So Mr Duncan was acting up as the senior, is that correct?---That's correct.

And you and he were told to sit out the search?---Correct.

20

And Mr Dippel was part of it?---Yeah. I'm just trying to look where Mr Kennedy was (not transcribable).

Mr Grainger has helpfully pointed out to me it's the middle column underneath reserves.---Yeah, reserve, yes. So I'm not sure what he was.

Looks like AAGM.---No, it's acting general manager. That was his rank.

30

That was his rank, not his job that day?---The general manager over the other side was Mr O'Shea.

Yes.---Same.

Yes, so Mr Kennedy wasn't - - -?---It's like extra maybe.

And where did Mr Murdoch come from to - - -?---He might be under sector 2.

40

Yes.---I'll just, yeah, there he is. MPUC04. So that's 5.1 That's the unit where he was.

So he was probably pulled in because he was there?---That's right.

And do you know if anyone else was involved in that search that day? ---There would have been but I don't know who they were. I just remember those two. There may not have been as well.

And you don't recall filling out paperwork about that search?---No.

I'm going to show you now Exhibit 12.

THE COMMISSIONER: Could I just ask, is that an exhibit, the roster?

MS CLIFTON: Exhibit 12? I can't – I'll have to check.

THE COMMISSIONER: We'll come back to it.

10 MS CLIFTON: So do you have Exhibit 12? That's page 99 from our brief.---Yes.

You've read that?---Yeah.

Yes. So obviously you didn't recall completing that?---No, they would have done it on my log-in. I'm sure Mr Dippel did it on my log-in. I didn't do that, and if you ask him he'll tell you.

20 Well, I'm asking you now.---All right.

So you say you did not - - -?---Definitely did not do that.

So can another officer access your log-in?---He might have forgotten passwords or anything, and I could have logged in for him to do it.

So you absolutely deny that was your work?---Absolutely, yes.

30 And have you ever seen this before?---Probably after it was done, maybe. I don't recall if I saw it in interviews or not.

So over on page 2 of that document, you'll see again we've got the involved parties, which starts on page 1, and we've got Mr [REDACTED] there as in possession of contraband.---Yes.

And over on page 2 we've got Mr Murdoch listed as the finding officer.---Yes.

Mr Dippel as the witness.---Yes.

40 And Michael Watson as the searching officer.---Yes.

And this might seem quite obvious to you, but in terms of being listed as a finding officer, what does that mean Mr Murdoch did?---He'd be the one that probably opened the, the asthma puffer. Actually found the item.

And are you aware that the find was re-created on the video?---No.

Not aware of that. And that was because the video camera wasn't on when they first found the item. Are you aware of that?---No, I was not.

Is that a usual thing, that you save the batteries and only record when a find is made?---Back then, yes. Say you went to do, search a cell. You, you probably video the strip-search or the searching of them. And then when the inmates, remove the inmates from the cell, then they go back and search the cell. And if something's found, start the video, do a spiel for the camera and call the inmates in and question them, and then bag it in front of them.

10

All right. Can you see any difficulties with suddenly turning on a camera and saying, "I just found this in a cell."---Yes, absolutely and the inmate has never denied it.

An inmate has never denied it.---They never said you've planted it to us or to me, so looking back, yes, it's a bad way of doing it, that's why we video it from go to woe now so there can't be any allegations.

All right. Well, in this instance we've been told that Mr Murdoch did in fact make the find and that Mr Dipple recreated that on the camera because Mr Murdoch was very new to the job and didn't know what to do. Were you aware of that?---I wasn't aware of that.

20

You said there was no search of the cell the day before?---No.

Did you see anyone search any asthma puffers the day before?---No.

Did you see any asthma puffers the day before?---No.

I'd like to show you some emails now, as I do that, the roster from the 20 has not been tendered, I don't have copies, but the Associate could extract it from the brief at a later date but perhaps if I could just tender the roster from 20 February.

30

THE COMMISSIONER: I think it's Exhibit 14 we've got the one from the 19, so it would be described as an Employee Daily Schedule for Lithgow Gaol for 20 February, 2014 will Exhibit 36.

#EXH-036: EMPLOYEE DAILY SCHEDULE OF THE 20TH OF FEBRUARY 2014

40

MS CLIFTON: Now as part of providing someone, do you say it might have been Mr Dipple that you gave your log in to?---I think, I think it was but it could have been either of those two.

Dipple or Murdoch when say I - - - ?---I may have just had the OIMS up, OIMS is the program we use to write all those OIMS on, it might have just been up on my computer so he may have just used it.

All right. So it automatically, whoever's logged in fills in reported by.
---That's correct.

10 Do other officers ever use each other's emails account?---I suppose it would happen, yes.

All right. Is that something, if it was Mr Dipple, let's assume it was Mr Dipple, is that something that he would have - - - ?---No, he's very by the book as well.

All right. Is there a reason why you would have emailed the IRM to Mr Watson?---Which Watson?

20 Mr Michael Watson the person who was involved in the - - - ?---May be so he could do a report.

All right. That is something you would have done?---I don't know, I'd like to think not but see, if he's going to write the report and he can get all the details off it, inmates names and, because they don't work in the gaol.

No, I understand SAG's are special operations are located off-site?
---Correct.

30 All right. I'll just show you some - - - ?---Does it say what time it was at all?

I'm going to show you some emails. I'm sorry I'll just get, two copies and I'll just give these to you now. There is a copy for Mr Graf and a copy for The Commissioner.---Thank you.

If you look, those are two emails from you to Mr Watson.---Yes.

We'll look at the first one which was sent at 15.39 on 20th.---Yes.

40 All right. That says, at the top, emailing IRM 92786 PDF and the attachments are that IRM.---Yes.

If you wait, you'll see, the attachments are attached.---Yes.

That is the report that we just looked at that you say you didn't do.
---Correct.

Did you send this email?---I may have, I, I'm assuming it came from my email I guess I would have, yes.

All right. You wouldn't have given Mr Dipple and Mr Murdoch access to your email?---It may have been opened to, but often SAG will take a copy of that anyway, you'll find there's been many times I've emailed that to SAG the IRM for their stats.

All right. So you're saying it's not unusual for you to send it to?---Not SAG.

10 If SAG were involved?---Involved, yes, that's correct.

All right.

THE COMMISSIONER: Why would you be doing that when - - - ?---
Probably just being helpful.

Because you were told at, you were told at the beginning of the day to sit it out.---The search, correct.

20 All right. Even the results of the search with reports in that, you would become involved in emailing to SAG.---I may have just been sitting next to, can you email that to them, I don't know.

MS CLIFTON: All right. I'm sorry, I've shown those to you in the wrong order.---That's all right.

You will see the earlier one is sent at 14.57, three minutes to 3.00.---Yes.

30 And is, that has an attachment IR.doc and you, have said here me just doing the IRM now.---Yes.

You've attached this blank incident report form. Do you know why you would have done that?---Because he wouldn't have one.

All right.---I don't know, just it wouldn't surprise me, or I may have been a new one at that time, I don't know.

So you send him a blank form saying, "I'm just doing the IRM now."
---Yes.

40

Do you remember sending that to Mr Watson?---No, I don't remember that.

Here Mick, you don't say I am just but you say, "Here Mick, just doing the IRM now."---See I don't call him Mick either.

You don't.---No.

What do you call him?---I call him Watto.

Watto.---Everyone calls him Watto, so, I'm not saying I didn't send them but there's nothing untoward, I'd do that, I would have done that a few times sent blank things to people are doing reports and that, I definitely send the IRMs to SAG if they're involved in something.

All right. So about 43 minutes later, 42 minutes later you send him the IRM
- - - ?---Yes.

10 - - - which has a version of events.---Yes.

Can you see any difficulties with that and that it opens you up for collusion or allegations of collusion?---I don't think the IRM if it was a report, yes, but the IRM's sort of, you could look that up any time he wants.

All right. So prior to Mr Watson filling out his own report he could look up and see what the official IRM says, is that what you're saying?---Yes.

20 THE COMMISSIONER: If you could do that, why did you send it to him?--
--This one? I probably just sent everything as one package, just send it to him so he could have it for his files.

But I thought it could look it up?---He could.

So why did you send it to him?---I don't know, I don't know why I did.

30 All right. Can I take you back you back to the earlier email, you typed the message, "Here Mick, just doing the IRM now."---Yes, well, it says here that I did.

Does that suggest that you're completing the IRM?---No, I did not do that IRM, I'm a hundred per cent did not do it.

Do you know what you mean by that message?---Here Mick, I guess here's that, I'm doing the IRM now, I know how this looks but you've got this completely wrong. I didn't send it for any other reasons bar, I don't remember sending them but it's on my email so I must have.

40 Why would you send Michael Watson the blank?---Because Watto probably wouldn't have that, Mr Watson probably wouldn't have that, he's not big on writing reports, never has been.

So that's a pro forma incident report.---Yes, everyone can have that on their computer if they want it.

All right. The message you send him, I would suggest, conveys that you were completing the IRM.---Yes, yes but again, I don't call him Mick so I don't know whether I would have, may be if Mr Murdoch and Mr Dipple

were using our computers them to them, I don't know and I will never know but - - -

But your recollection today is that you did not complete the IRM on the search.---I can tell you one hundred per cent I did not.

MS CLIFTON: Is there anything in particular about that IRM that makes you say a hundred per cent did not fill it out? Is there wording that you don't use or is it simply that - - -?---I just know I didn't.

10

- - - you definitely remember you did not?---I definitely remember I did not.

But you have no recollection about whether you did or did not send these emails?---It's very - I've never, ever called him Mick in my life. That's the only reason I think that. And I know I didn't do the IRM. I understand what you're saying. It looks like whoever's writing that. I'm just guessing that whoever was on the computer doing the IRM just sent the emails from mine.

20 THE COMMISSIONER: Can I just ask, on the 20th, when you were told to sit it out - - -?---Yes.

- - - you and Mr Duncan to sit it out, did you then perform duties elsewhere in the gaol?---No. Sat in the office.

In the office just near the cell?---Corridor, yeah. Near the, yeah.

Or near the corridor?---Yes.

30 And so you would have heard when they did find - - -?---No.

You didn't - - -?---I don't remember them coming and saying it. Maybe after the fact, they finished, when they said we're going to do reports. That's probably the first I would have known of it.

MS CLIFTON: Yes, Commissioner, may I tender those two emails, and if I could tender them in the order that they were sent, being the email at 14.57, "Here, Mick. Just doing the IRM now," as I think Exhibit 36 we're up to.

40 THE COMMISSIONER: 37.

MS CLIFTON: 37.

THE COMMISSIONER: So the email from Simon Graf to Michael Watson, dated 20 February, 2014 at 14.57.53 will be Exhibit 37.

**#EXH-037: EMAIL FROM SIMON GRAF TO MICHAEL WATSON
DATED 20 FEBRUARY 2014 AT 14:57:53**

THE COMMISSIONER: And then the email from Simon Graf to Michael Watson, dated 20 February, 2014, at 15.39.31 will be Exhibit 38.

10 **#EXH-038: EMAIL FROM SIMON GRAF TO MICHAEL WATSON
DATED 20 FEBRUARY 2014 AT 15:39:31**

MS CLIFTON: Thank you. And I literally have five more minutes. I have one more email that I'd like to show you. And copy there for the Commissioner. Copy for my friend. And you'll see here that this is an email sent from you to Mr Dippel.---Yes.

And less than a minute after the previous email is sent to Mr Watson.
---Yeah.

20

Attaching the blank incident form.---Yes.

And why would you have sent that to Mr Dippel?---My first thoughts, Mr Dippel may have been, like, doing the IRM and sent the other one to Mr Watson. Maybe sent it to himself because he doesn't have one. I'll often send blank reports to officers who don't have them on their computer, because I keep everything on mine.

30

So there's not a set of templates that every officer when they - - -?---There is, but most people can't find them, so I just keep them all in an easy one and I just, I, I send them to a lot of people. Like, whole packages' worth of stuff and, like, all blank - - -

Yes.---I don't, I can't answer for this one but I don't know why.

But this indicates, given that it's from you to Mr Dippel - - -?---Yes.

40

That Mr Dippel was not the person emailing them to Mr Watson.---He may have emailed it to himself because he doesn't have one. I don't, I'm just - - -

You think he might have emailed it to himself?---I don't know. Like - - -

Do you recall sending this email?---No, not at all.

But you have no memory of it. It's not that you say - - -?---No, but it's there in black and white, isn't it?

- - - unequivocally I did not.---Yeah. I don't remember sending it.

In your interview with the Commission investigators, you said that you were present while those two guys wrote their reports.---Yes, I was up in the office. I remember that.

And that was Mr Murdoch and Mr Dippel, is that right?---Correct, yes.

Who you're referring to. All right. And did you give them any advice as to the contents of their report?---No. No. No.

10

No.---Definitely not.

Are officers trained on what they should put in reports?---Yeah, but when officers are new, it takes a long time to – well, not a long time. Just - - -

No, I understand.---Yeah.

We've all been new in jobs where, yes.---Yeah. I, I don't think I gave them any help at all.

20

Yes, thank you. I have no further questions. Thank you, Commissioner. Oh, being helped by everyone. And I had forgotten to tender that. So if I may just tender that email.

THE COMMISSIONER: That's the email from Simon Graf to Troy Dippel dated the 20th of February, 2014 at 14.58.34. It will be Exhibit 39.

30 **#EXH-039: EMAIL FROM SIMON GRAF TO TROY DIPPEL
DATED 20 FEBRUARY 2014 AT 14:58:34**

MS CLIFTON: Yes, thank you, Commissioner. I have no further questions.

THE COMMISSIONER: Mr Jaloussis, do you have any questions?

MR JALO USSIS: No questions, Commissioner.

40 THE COMMISSIONER: Could you just wait a minute, Mr Graf. I just want to check something. Mr Graf, can I ask you this. Usually when people give evidence their recollection is better closer to the day of the incident that they're recalling.---Yes.

And you usually find over time memories fade.---Yes.

Here with some aspects of your accounts of what happened on the 19th it seems the reverse has happened, that closer to the date you recorded, "We

were called down to do a search,” and now today straight off you said, look, I want to clarify the account that I had given previously both to the ICAC investigators and Correctional Services, which is a little bit different. Can you assist me in why your recollection has changed?---I think when I sat down and read the interviews, it sort of jumped out of me glaringly saying – about the searching mostly. That was the biggest thing. My recollection of the date’s not good. I, I just remember, yeah, I think I assumed, because I was told it was a search later on, I guess I just referred to it as that the whole time.

10

And when you were told it was a search, are you referring to what you were told subsequently on the 19th?---After the event, yes.

And when you read through the transcripts in full, that’s just been recently? ---Yes, they sent it to me a week or so ago. Yeah.

And that was one of the things that struck you when you read through the two transcripts?---Absolutely. Definitely, yes.

20 Anything arising from that?

MS CLIFTON: Commissioner, I think it probably just flows for me to ask Mr Graf if there was any pressure put on you prior to the Corrective Services interview to give certain answers?---Yes.

And by whom?---Mr Walker.

And what did he say to you?---To leave Mr Duffy out of the reports.

30 To leave stuff out of the reports?

THE COMMISSIONER: No, Mr Duffy.---Mr Duffy’s presence out of the reports.

MS CLIFTON: He told you not to mention that Mr Duffy was - - -?---He said just to leave him out. You don’t need to write him in there.

That was before your Corrective Services interview or before you completed your report?---I think it was before I completed the report.

40

THE COMMISSIONER: Sorry, can I just confirm. On the 19th - - -?---Yes.

- - - before you completed the report that you’d been taken to, Mr Walker told you to leave Mr Duffy out?---He said he doesn't need to, he wasn't, he's not getting included in the IRM so he doesn't have to be written into it.

MS CLIFTON: And did he tell you why Mr Duffy wasn't going to be included in the IRM?---I just figured it was because what Mr Duffy told me. Their stories don't match.

All right. And before your interview with Commission investigators, did anybody tell you to stick with a particular version or give you any advice as to what to say to Commission investigators?---No advice, they just said, to stick with what you'd been saying.

10 And who said that?---Mr Walker.

How did Mr Walker know you were going to be interviewed Commission investigators?

THE COMMISSIONER: Can I just confirm, was that Correctional Investigation or ICAC?---Both I believe.

So Mr Walker had, I'm sorry. You spoke first to Mr Glasheen is it?---Yes.

20 On 24 February, 2015.---Yes.

Did Mr Walker have a discussion with you before that interview?---Not a discussion but just said, stick with what your report said, just make sure he was involved in it.

All right.

MS CLIFTON: When you say, "Make sure he was involved in it." That was don't mention Duffy, effectively?---Yes.

30 Yes. And the same advice from Mr Walker was given before you spoke to ICAC?---Yes, I can't be a hundred per cent sure about that one.

But he spoke to you before you spoke to ICAC investigators, is that - - - ?
---I think everyone knew we were being, everyone, yes.

How did everyone know?---I don't know, everyone knows everything there.

40 Did you tell anyone that you were being interviewed?---No, I don't think so, may be Mr Duffy, I'm not, I can't be sure, I'm not sure about that sorry.

All right. But Mr Walker was quite clear in his advice that Mr Duffy should not be mentioned?---He didn't mention his name he just said, just stay how the report was.

All right.---The report wasn't a lie it was just, one part wasn't in it, that's it.

THE COMMISSIONER: It was an omission.---Yes.

MS CLIFTON: Yes. Did Mr Walker seem concerned that you were going to say something that you ought not?---Yes, they did.

Did he tell you why he was concerned?---No, they were worried I was going to say something I shouldn't I suppose.

10 You were aware that when you were spoken to Commission Investigators that you were told it was an offence to falsely state anything?---Yes, with those guys, yes.

All right. So, did you wilfully make false or misleading statements to the investigators?---No, I told them Mr Duffy was there.

All right. Yes, thank you. That's all I have arising.

THE COMMISSIONER: Can I just ask, when you finish your training course with the dog.---When I do?

20 Yes. Are you assigned a particular gaol or do you move around?---Western region.

All right. So somewhere within that?---Yes.

30 Thank you very much for your evidence and also for being forthcoming today. Can I just emphasis again the direction I made at the beginning of your examination under 112 that you're not to discuss or even tell anybody other than obviously discussing it with your legal representative the fact of your examination today and the evidence you gave.---Yes, I understand that.

We stand adjourned.

THE WITNESS EXCUSED

[1.24pm]

AT 1.24PM THE MATTER WAS ADJOURNED ACCORDINGLY

[1.24pm]