

Monday 3 June 2019

## Investigation into the conduct of NSW Corrective Services officers at Lithgow Correctional Centre

### ICAC FINDINGS

The ICAC finds that the following individuals engaged in serious corrupt conduct from February 2014 by dishonestly and partially exercising their official functions as follows:

- John O'Shea, by participating in both the use of excessive force on inmate A (*name suppressed*) by a fellow Corrective Services NSW (CSNSW) officer, Terrence Walker, on 19 February 2014 and the cover-up of the incident
- Terrence Walker, by his use of excessive force on inmate A and the cover-up of the incident
- Brian McMurtrie, Simon Graf, Elliott Duncan and Stephen Taylor, each by participating in the cover-up of the use of excessive force on inmate A by Mr Walker.

More details about the serious corrupt conduct findings are available in the report summary chapter.

### ICAC RECOMMENDATIONS

The Commission seeks the advice of the Director of Public Prosecutions (DPP) on whether any prosecution should be commenced. The DPP determines whether any criminal charges can be laid, and conducts all prosecutions. The ICAC is of the opinion that the advice of the DPP should be obtained with respect to the prosecution of Mr O'Shea, Mr Walker, Mr McMurtrie, Mr Taylor, Mr Graf and Mr Duncan for various offences including hindering an investigation (contrary to section 315 of the *Crimes Act 1900*), perverting the course of justice, or attempting or conspiring to do so (contrary to section 319 of the *Crimes Act*), and the common law offence of misconduct in public office.

The Commission is of the opinion that the advice of the DPP also should be obtained with respect to prosecuting Mr O'Shea for being a principal in the second degree to the offence of inciting an assault on inmate A, and Mr Walker for the offence of assault occasioning actual bodily harm. Advice should also be obtained with respect to prosecuting Mr O'Shea and Mr Graf for offences of wilfully obstructing the Commission contrary to section 80 of the *Independent Commission Against Corruption Act 1988*, and Mr McMurtrie, Mr Graf and Mr Duncan for offences under section 87 of the ICAC Act of giving false or misleading evidence to the Commission. More details about the recommendations are available in the report summary chapter.

### CORRUPTION PREVENTION

The investigation identified a number of deficiencies with respect to controls including recordkeeping, image recording, review and oversight, and complaint management and investigation. The Commission has made 19 corruption prevention recommendations to CSNSW to help it improve its systems.

The full list of corruption prevention recommendations is available in the report summary chapter.

### BACKGROUND

In deciding to investigate, the Commission took into account a number of matters, including the seriousness of the allegations, the seniority of staff allegedly involved, and the fact that a significant number of similar complaints had been made to the Commission indicating there might be systemic issues. This included the receipt by the Commission of a significant number of complaints concerning the use of excessive force and the misreporting of such incidents in 2017 and 2018. In the circumstances, the Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred, the identity of those involved, and whether there were any corruption prevention issues that needed to be addressed. The Commission held a public inquiry as part of the investigation over 10 days from 21 May to 5 June 2018, at which evidence was taken from 19 witnesses. The investigation report is available from the ICAC website at [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au)

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