



CRIME AND CORRUPTION COMMISSION

TRANSCRIPT OF INVESTIGATIVE HEARING

10 CONDUCTED AT LEVEL 2, NORTH TOWER, 515 ST PAULS TERRACE,
FORTITUDE VALLEY WITH RESPECT TO

File No: CO-18-0360

TASKFORCE FLAXTON
HEARING NO: 18/0003

20 DAY 2 – TUESDAY 15 MAY 2018
(DURATION: 36 MINS)

Copies of this transcript must not be made or distributed except in accordance with any order made by the presiding officer concerning publication of these proceedings.

LEGEND

30 PO Presiding Officer – ALAN MACSPORRAN QC
CA Counsel Assisting – GLEN RICE QC
INST Instructing – AMANDA BRIDGEMAN
HRO Hearing Room Orderly – ISABELLA PATTON
W Witness – KATE GREENWOOD
LR Legal Representative – N/A

- PO Mr RICE?
- CA Commissioner, I call Ms Katherine GREENWOOD.
- PO Ms GREENWOOD, do you prefer an oath or affirmation?
- W An oath.
- 10 HRO Would you please take the Bible in your right hand and repeat after me.
- W The evidence which I shall give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help me God.
- CA Is your name Katherine Alexandra Mary GREENWOOD?
- W That's correct.
- 20 CA You are a barrister of the Supreme Court?
- W That's correct.
- CA And currently employed by the Aboriginal and Torres Strait Islander Legal Service; correct?
- W That's right.
- CA Were you given an attendance notice to appear today?
- 30 W Yes, I was.
- CA Can I show you this?
- W Thank you, and I am here in response to that notice.
- CA Thank you. I tender that notice.
- PO Exhibit 28.
- 40 ADMITTED AND MARKED EXHIBIT 28
- CA What's your position at - I will call it ATSILS. Everyone knows it as such.
- W Yes.
- CA What is your position there?
- 50 W The acronym is PICLE. It stands for policy and law reform, early intervention and community legal education. Part of my role also, which hasn't fitted in the acronym, is to provide legal support to the coronial and public sector monitoring office, who also works in our office.
- CA Would you like to flesh out a little bit the content of the acronym, that is to say, describe your role a little bit more fully?

- W A bit more fully, I am a barrister admitted to the Supreme Court and the High Court of Australia. I work in-house with the Aboriginal and Torres Strait Islander Legal Service. ATSILS is about 40 years old. Its role is to represent Aboriginal and Torres Strait Islander clients in civil law, family law and predominantly criminal law.
- We also have other roles, including writing submissions for law reform and advocating for law reform, especially in the areas where ATSI clients are especially disadvantaged.
- 10 We also have the coronial and public sector monitoring role. Part of that is to monitor the rate of implementation of recommendations coming out of the Royal Commission in Aboriginal Deaths in Custody. We appear in coronial hearings which affect deaths of Aboriginals and Torres Strait Islanders. We also handle complaints for our clients when they wish to bring a complaint against public sector misbehaviour, discrimination or corrupt conduct.
- 20 CA There is a significant representation of ATSI people in correctional centres, is there not?
- W That's correct. If I may refer to my notes?
- CA By all means.
- W It is somewhere in the region of about 30 per cent, from memory. The figures I took from the SOFRONOFF report had it at about 31.3 per cent of the prison population, I think, by the end of September 2016.
- 30 CA Does the services role, then, bring you into regular contact with ATSI clients who are prisoners or have been prisoners?
- W Yes, absolutely. In my previous role, I was a criminal law practitioner within ATSILS. I worked in Cairns and in Townsville and transferred down to Brisbane. In all of those roles, I had a fair amount to do with clients who were imprisoned. And then, more recently, in my current role, I act as a sounding board and advise the public sector officer for making complaints.
- 40 CA Are you in a position, then, to give us a perspective on the particular difficulties that might be experienced by indigenous people in prisons?
- W Yes. Apart from the knowledge of what happens to particular clients, the way I prepared the submission for this hearing was to collect up the last six months worth of what are called blue letters, complaints made within the prison system. I spoke at length to the public sector monitoring officer, and I went and spoke to two of the civil law lawyers in our Brisbane office who handle the civil complaints that are made on behalf of prisoners.
- 50 CA You refer to a submission. You have indicated that you prefer to keep that confidential; correct?
- W Yes, for a number of reasons. Our public sector officer - his phone runs hot, day in/day out. Most of those phone calls come from a prison. Most of the calls he receives have prisoners complaining about what has been

happening to them, but most of them say that they fear reprisal if they even write so much as a blue letter and they wish those complaints to be kept confidential.

Even for the ones who do take it the next step and write the letters of complaint, they frequently report back fears of reprisal, and some of the instances that they describe to us they believe to be reprisal for earlier actions.

- 10 CA Do they ring to tell you that or to ask you to do something?
- W As I understand it, because I'm not the first person to receive the call, they mainly ring to complain. Normally what they're trying to do is see if they can have parole restored to them to get out of that situation, which is their preferred approach to get away from it.
- 20 If that hope is unrealistic and then options of a complaint are canvassed with them, they don't wish to go down that path. Some do, and the last six months worth of complaints were probably about that thick (indicating) that I went through.
- CA I won't reveal anything confidential from your submission, but you did make note of a comment by a researcher in 2005 adverting to a culture of secrecy and fear of retribution. Noting that that was said in 2005, how does that compare with your experience today?
- 30 W I think it would be the same, if not slightly worse, and the reason why I quoted that is that I thought it expressed it particularly well. It also, in that phrase, said "despite the best efforts from regulatory bodies, the situation still exists", and that's the other aspect of it, that we can't be assured of any sort of protection for the people who make a complaint.
- CA You refer to it being a common theme that there is a fear of retribution, but to get back to a question I asked a moment ago, can you give us some insight into the particular difficulties which the prisoners experience?
- 40 W As I said, I went through the last six months worth and just highlighted and summarised. The sort of behaviour that they frequently complain about is withholding of medication, which is a particularly serious one - and I'll just do a little bypass there. One prisoner even went so far as to call the - I've just forgotten the name for the moment. There is a medical Ombudsman.
- CA Health Ombudsman?
- W Thank you. No, there is one responsible for complaints of medical practitioners generally. Anyway, he made that complaint and was told there was nothing they could do in that particular circumstance.
- 50 One thing that we would be seeking would be some better mechanism for withholding of medication complaints to be made and addressed and the medication supplied in a reasonably prompt fashion after the complaint.
- CA Are there any other themes of complaint that you could inform us of?
- W Yes. Coming back to the list, excessive force or unlawful assault by the

guards. Misuse of code yellows, a failure to call code yellow when there are bashings going on between prisoners, so essentially allowing a bashing to continue.

CA Code yellow being, could you explain?

W Code yellow is something that the guards call when there is an incident in the prison. As I understand the purpose of the code yellow, it is to pull the appropriate parties apart, and the calling of a code yellow will often result in somebody being sent to the detention unit for punishment.

CA What is the implication, then, to the complainant that you speak of, of an officer's failure to call a code yellow? What is the result of that?

W So the bashings will continue and they will sustain worse injuries as a result of that, which obviously is a failure of the duty of care of the prison. It is particularly problematic for the transgender inmates. There is a lot of assault and bashing of the transgender inmates. For one in particular, it's fairly constant, and the content of her complaints is fairly graphic and she seems to be constantly subjected to injury and mistreatment.

CA Recidivism is a problem amongst indigenous prisoners, is it not?

W Yes, I think that's a fair comment, although I must admit, having worked in private practice and representing a mix of clients and then representing Aboriginal and Torres Strait Islander clients in a full-time capacity, my eyes have been opened to just how much extra emphasis Aboriginal and Torres Strait Islanders receive, mainly in public spaces.

CA By police, you mean?

W By police. The number of times they are charged with public nuisance offences and other offences is really quite extraordinary.

CA When you say your eyes have been opened, what's the comparison?

W To just the mainstream population. Again, I represented a mix of people, but until I represented the group, I had not realised just how much attention that group gets, day in, day out.

CA ATSILS operates a program, doesn't it, called Prisoner Throughcare program?

W That's correct. The purpose of that program - we get special funding from the Commonwealth and it's for prisoners who have been returned to prison so often or else who have been in for such a long time that they are practically set up to fail when they get released, so that the likelihood that they will end up being breached and sent back to prison is fairly high.

The Throughcare officer will help them with finding accommodation, accessing counselling services, accessing Centrelink, and getting jobs, if that's possible, on their release. There is a fairly close involvement between our Throughcare officers. They tend to be based around the main prisons. There is a Throughcare officer in Cairns for Lotus Glen. There are three Throughcare officers in Townsville - one for women's, one for

men's in Townsville and one for the Cleveland Detention Unit. And in Ipswich, we have - I think it's still three Throughcare officers who service the local gaols.

CA You mentioned the disincentive of making complaint being concern about retribution. Is there a credibility issue as well?

W Generally, no. Generally we know our clients reasonably well. We've had repeated interactions with them.

10

CA I'm sorry, perhaps I didn't make myself clear. In terms of the perception of the complainant's credibility upon a complaint being made?

W To the prison?

CA Yes.

W It very much ends up being a word-on-word situation between the guard's word against the prisoner's word.

20

One of the things that we are hoping might come out of this set of hearings is that the same way that the wearing of body-cam has dramatically improved police behaviour during arrests, it has also made it possible to investigate properly prisoner complaints and to have another piece of evidence other than the officer's word for what happened at that time. We are hoping, in a similar fashion, that there might be better independent recordings of what is going on in the prisons.

30

One of the incidents that I - I deidentified an incident and put it in my submission. The CCTV was magically not working when that incident occurred. Now, equipment does break down, but at the same time I would have thought that complaints should be given a great deal more credibility when the CCTV has broken down and is not available.

40

And, sorry, just coming back to the credibility issue, obviously we don't just accept point blank everything that is told to us. We do our own checking and we test it. Part of that can be to check out, with the lawyers who represented this person, what they were like. We have also had other prisoners calling up at the same time, who corroborate the account. Not that they've got any involvement in it, but they also give us their accounts of what they saw and heard. So there is a fair amount of credibility to all of these.

The other issue is that generally Aboriginal and Torres Strait Islander clients are pretty straightforward in their dealings with people. If they did something, they will tell you they did it. If they didn't do something, they will tell you they didn't do it. There are exceptions, and obviously we are alive to when we are dealing with someone who falls in that exception.

50

The other thing is that the prisoners take a pretty keen interest in what the rules are. So when they ring up to complain, they know what the rules are that should be being followed and they are not being followed, and they're complaining because they know that those rules are not being followed.

CA Can I ask you probably a pretty general question: to what extent, in your

experience, do the clients of a service suffer or appear to suffer from some cognitive impairment?

W There is a fairly large number, especially in the prisons. There is a judge who has this wonderful quote that prisons should be full of people that we are afraid of, not people we are irritated with. Our prisons are full of people that we are irritated with, and many of them have behavioural or other issues surrounding them.

10 There is some level of foetal alcohol syndrome in the community. There is a very large number of people with mental health issues, either addressed or unaddressed, who are in the prison service. So we do need to take that into account. But, at the same time, it is pretty clear if someone is being bashed, they know they are being bashed, and you don't need a great deal of sophistication to be able to report back that that's what's happening to you.

CA With what regularity are complaints of that kind made to the service, that
20 a person has been bashed or has suffered some form of excessive use of force in a prison environment?

W The excessive use of force is fairly constant. It tends to happen if there is
30 some form of confrontation within the cell. Things start to escalate, and the next thing there is a code yellow being called. Our clients complain about - well, one client complained about capsicum spray being sprayed in his face when he was surrounded by a very large number of officers and a hood pulled over his face, a spit hood. One of the reactions to capsicum spray, of course, is that you are trying to summon any moisture whatsoever to deal with it. And then they poured the water over the hood, which, of course, had no impact whatsoever. And then there were further uses of painful holds, pushing him backwards.

There is a lot of complaints about the use of excessive holds, wrists are twisted, extremely painful pressure holds are applied, in circumstances where it has gone above and beyond what is actually needed.

CA Do the circumstances of overcrowding of the centres impact on the kinds
of things you have been describing?

40 W It has a huge impact. The general figure, I thought it was tipping about 8,000, but I see this older figure is a bit lower than that, 7,900-and-something. The prisons generally are at about 118 per cent capacity. The women's prison - there was an Ombudsman report recently. That is the most overcrowded facility in Queensland.

CA I was wondering if you have reports from clients concerning the
implications of that.

50 W Yes. There are too many people kept to a cell. Also as they try to juggle these numbers - and we are going off topic a little bit, but, for example, the detention units are so full that when very young teenagers are arrested, they are being held in the watch-houses for several nights until there is an opportunity to move them into the detention unit.

There are frequent shuffles and reorganisation of - there are shared cells. A lot of these confrontations with the guards seem to also occur when

people are being moved from one cell to another cell, and there just seems to be a lot of prisoner movement in an attempt to just keep on shuffling and to keep on filling in the cells.

When I was appearing for clients in the cells here at the Brisbane City Watch House, I was aware that some prisoners were held there for quite some time simply because of the unavailability of space, but it is so overcrowded, and again I think in the SOFRONOFF report, he referred to the increased numbers of incidents that arise from the overcrowding.

10

What I have noted from a lot of these incidents and also from an inquest that I appeared in recently, a lot of the problems seem to revolve around the forceable removing of an inmate from one cell to another cell. Often these are quite sick people or people who are in fear of their safety, who don't want to be in a different unit, because they know that they are in danger of being bashed in that other unit, and they are moved, anyway, and then they are bashed. Those are the sorts of complaints that we hear a lot.

20 CA

Just for clarity, the code yellow situation which you described earlier, I take it you were describing a prisoner-on-prisoner confrontation?

W

When they don't call a code yellow, yes, that's right. Again trying not to make this person too identifiable, one particular transgender client had complained that she had been threatened, and nothing was done about that situation. She was found and assaulted. She was knocked clean off her chair. Several blows were administered to her on the floor. The guards turned off and did not call a code yellow, and that attack went on - at least in her view, it was a sustained attack - for quite some time.

30

CA

You have described the clients' reticence to make complaint. Is there some way that occurs to you that the complaints system might be more readily trusted and available to ATSI clients?

W

First of all, any complaints system should be fully independent from the line of command within the prison itself.

40

As of a few weeks ago, we were aware that the Ethical Standards Unit that used to sit within DJAG had been moved to the Department of Corrective Services. My understanding is that not even that whole unit came across, so it is a depleted number. In my view, any time people's ability to keep their jobs is reliant on the goodwill of the very organisation that they are seeking to investigate and criticise, you immediately have weakened that ability.

50

The renaming of "complaints officer" to - I think they are being called "ethical consultants" shows a lack of taking seriously that there are problems. There are always going to be complaints. Every organisation is going to have complaints. But it's really not taking those complaints seriously at all.

CA

Why not? Why, by the naming of that position, does that indicate to you that the process is not being taken seriously?

W

I worked for many years in the Commonwealth Government. For example, the Australian National Auditors Office is an independent

organisation that comes through. They have two modes, really, of auditing. One that comes through starts as a fairly friendly mode of, "These are all the problems you have. This is what you need to do to fix up these problems", and essentially it is sort of a coaching role.

10 Now, an ethical consultant - I can see the sense of having a coaching role within the Department of Corrective Services to say, "No, you're not doing this right and you need to do this properly and we'll organise training, or we will buddy people up, or we will do whatever." So there is a role for that. I'm not criticising that. But there also has to be somebody who investigates complaints as complaints and brings to them the sort of rigour that you would expect to be satisfied that not only a public service department, but one with terribly important responsibilities, is actually carrying them out the way they are meant to be and that their behaviour is not corrupt.

20 As a lawyer, when I talk to my clients, I talk about the rule of law and everybody has to be subject to the same law. It is very hard to say any of that with a straight face to clients who are suffering this sort of misbehaviour, because it is very clear that these people are not acting in accordance with the policies, the procedures or the law if they are assaulting a prisoner, and the reaction of the prisoners is very much that there is a different standard being applied and it's not fair.

CA Do you see the placement of the Ethical Standards Unit within the management hierarchy of the department as detracting from the perception of its independence?

30 W I absolutely do. I've worked on both sides of the fence. I've worked both on the prosecution side and on the defence side. Within forces, there's always this reaction that whistleblowers and people who criticise the way that things are going on are not team players; they're letting the side down. So with that sort of culture, it is very hard to make a complaint and to get a complaint investigated and to get the appropriate action taken to fix it. So - I have lost my track a bit in my answer here. So, essentially, there has to be a properly independent authority who can come in and investigate complaints and sort it out.

40 In an ideal world, there should be a number of corrective services officers here right now saying that they are not happy with the way some of the things are happening. There are plenty of decent officers in the prisons, but I think it's telling if you don't have an open system where they do readily admit that there are problems and they seek to address them. We are very much right down the end of the chain in terms of attempting to deal with these issues.

50 My colleague Rory who takes the complaints says that, in his estimation, he has made about 100 complaints, and out of them, only one turned into actual disciplinary action and charges being brought against two officers. Unfortunately those charges were discontinued because the client did not show up to the Magistrates Court hearing. We are still trying to get to the bottom of that. If we find out more information that is disquieting, we will bring that up again. But for the moment, the general experience is that those complaints go nowhere.

CA Thanks, Ms GREENWOOD. That is the evidence, Mr Commissioner.

PO Mr MURDOCH, do you have anything?

LR No.

PO Mr SMITH?

LR No, thank you.

10 PO Thank you for coming, Ms GREENWOOD. You are excused.

END OF SESSION

20

30

40

UNPROOFED TRANSCRIPT