



CRIME AND CORRUPTION COMMISSION

TRANSCRIPT OF INVESTIGATIVE HEARING

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FORTITUDE VALLEY WITH RESPECT TO

File No: CO-18-0360

TASKFORCE FLAXTON
HEARING NO: 18/0003

20 DAY 3 – WEDNESDAY 16 MAY 2018
(DURATION: 1 HR 14 MINS)

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LEGEND

30 PO Presiding Officer – ALAN MACSPORRAN QC
CA Counsel Assisting – GLEN RICE QC
INST Instructing – AMANDA BRIDGEMAN
HRO Hearing Room Orderly – KELLY ANDERSON
W Witness – MICHAEL THOMAS
LR Legal Representative – N/A
CM CHRISTOPHER MURDOCH, Crown Law (QCS)
AS A J SMITH, GEO Group Legal (GEO Group)

CA Commissioner, I call Michael THOMAS.

PO Mr THOMAS, would you prefer an oath or affirmation?

W Affirmation, thank you.

HRO Please repeat after me.

10 W I solemnly affirm and declare that the evidence given by me in these proceedings shall be the truth, the whole truth and nothing but the truth.

PO Just have a seat, thanks. Mr RICE?

CA Is your name Michael Silvanis THOMAS?

W Yes.

20 CA Mr THOMAS, you occupy the position of Director of Industrial Services within the union Together Queensland; correct?

W Yes.

CA You were given a notice to attend the inquiry?

W Yes, I was.

CA Can I show you this, please.

30 W Yes, that is the notice I received.

CA I tender that notice.

PO Exhibit 37.

ADMITTED AND MARKED EXHIBIT 37

CA The union has also made a submission for the assistance of the inquiry?

40 W Yes, we have.

CA Can I show you this, please. Is that the submission you made?

W Yes.

CA It attaches, I think, a report entitled Anti-bullying and Harassment Committee Report?

W Yes.

50 CA I tender those two documents together, Commissioner.

PO Thank you. Exhibit 38.

ADMITTED AND MARKED EXHIBIT 38

- CA Feel free to refer to that as we talk, Mr THOMAS. You have been the Director of Industrial Services since 2001?
- W No, no. I've been with the union since 2001. I've been an organiser with the union, an advocate, and have been the Director of Industrial Services, I think, since 2009.
- CA Can you tell us, firstly, what representation your union offers to correctional services officers?
- 10 W We have coverage of all staff in the state-run corrective services. We provide individual support in the case of disciplinary matters, and so forth, or grievances or complaints. We also represent members collectively, both with disputes and issues, bargaining, matters before the Queensland Industrial Relations Commission in relation to award changes, and the like.
- CA What does the title that you hold of Director of Industrial Services convey?
- 20 W It is a nebulous, important-sounding title. I am responsible for oversight of much of the union's industrial strategies. Less so now. I am now predominantly working in the private sector. I used to have oversight of public sector as well, where I have done the majority of my work. I am also responsible for a team that organises in the private sector, so the organising and the industrial activities. And I have a legacy involvement, if you like, with corrections. I have been involved with corrections for, I think it would be at least a decade, both as an advocate and I have kept responsibility for them. So the industrial services goes to the fact that
- 30 I was an advocate and so provide some of that legal analysis across the union.
- CA I was going to ask you whether you have been active in the representation of custodial correctional officers. I gather the answer is yes?
- W Yes, collectively. Not so much individually. We have another group within the union that will deal with individual matters. But certainly collectively, I have been active in negotiating collective agreements, collective disputes, meeting with delegates, with the Commissioner, the minister, on behalf of members.
- 40 CA For how long now, Mr THOMAS?
- W The best part of 10 years.
- CA Just in terms of the submission, it is not, on the face of it, under your hand, but you are familiar with it?
- W I edited it and put it together, so, yes.
- 50 CA Thank you. Can I ask you how many corrections staff your union represents?
- W In terms of custodial corrections officers, we have just over 1,800 financial members. We also cover other staff working in custodial centres, such as some of the program staff, administration, and so forth.

All up across corrective services, which includes probation and parole, we're approaching something like 2,500.

CA With emphasis on custodial correctional officers, that figure of 1,800, what proportion of officers would that represent?

W Based on the figures the Commissioner gave the other day, that, I think, puts us - somewhere around over 60 per cent of correctional officers are members of our union, so our density is significant.

10

CA Your submission commences, really, with a reference to the proportion of people entering the prison population with some cognitive disability. We see that, for example, in the second-last paragraph.

W Yes.

CA Do members give you feedback on how such a proportion impacts on the performance of their duties?

20

W Yes, they do, but it goes to just the general difficult nature of the work. Later on, I talk about the issues of the overcrowding. You know, you have got people that are in prison because they exhibit difficult behaviours, they exhibit dangerous behaviours on some occasions, and our officers are the frontline interface with them. So they are expected to deal with them in a system at the moment that is significantly overcrowded. So the sort of one-on-one attention, if you like, for people that demonstrate that level of behavioural issues is difficult to apply and has become more so over the last half-decade.

30

CA Could you give us your custodial correctional officer members' perspective on the difficulties and dangers of their job?

W I can certainly relay to you the perceptions I've got from speaking with correctional officers.

CA Yes.

40

W The perspective they have is that they are dealing with that group of society that society has decided needs to be incarcerated. I saw a statement given earlier that talked about we should be gaoling those people we are afraid of, not just who are a nuisance. I think we do both. So our members are dealing on a daily basis with people that exhibit immensely challenging behaviours.

50

They are expected to deal with them. They have a degree of training. But when you see things like the Human Rights Watch report that talks about being able to, in some way, assess mental capacity, they're not trained to do that. They are working in a system that was designed for a certain number of people that we haven't seen for many years. The detention units or the observation cells - they're full.

So the people that in the past - there is an assessment done that we will need this many DUs for this many prisoners, this many single-cell observation units for this many prisoners. That's based on the capacity of the gaol. Now, every gaol is - I got some figures over the weekend. One gaol is down I think at about 115 per cent, which is stunning for them.

They haven't been that low in ages. But everyone is at about 130 per cent. So all those ratios of, do we have enough of the facilities to deal with difficult prisoners don't apply any more.

10 We also have the situation that most of our infrastructure was built at a time when there were other options available to society to deal with people with mental impairment. I am talking about the - "institutions" is a horrible word, but that sort of thing. They are all closed down. The mental health care that was possibly available when some of our centres were built doesn't exist any more, so we end up with people that possibly shouldn't have ended up incarcerated now being incarcerated, and our guys are dealing with that. So they are dealing with people that possibly shouldn't have ended up in the system, in a setting that's not really designed for those people that have ended up there, and in an environment where - one of my delegates talks about we have gone from a rehabilitation model to a rack-and-stack model, not by choice but by necessity.

20 The amount of time available to concentrate on rehabilitation, to make sure there are programs available, to do all the detailed case noting - it's just not there any more. We are just trying - when I say "we", our members are trying to manage a prison population in a set of facilities that is woefully inadequate.

CA Do you have a view on what corruption risks arise from the scenario you have described?

30 W I do, and this is why I talk in my submission about the devalued, disempowered and disrespected. If you are under constant stress - I think it is fair to say that the prison system at the moment is operating based on a fair degree of goodwill by prison staff coping with the increased pressure. If you had said to any of the witnesses from corrective services, now or coming - if three years ago you had said to them that this was going to be the prison population, they would have said, "We wouldn't cope with it." I think every day is a pressure-cooker.

40 In terms of the corruption risks there, the CCC issues paper talks about that constant stress and the devaluing, and so forth, disassociating you from the job. If you are always there, that is going to be a stressor.

When we talk about some of the use of force stuff, if you are working in an environment where - I put in the submission to the CCC on 20 April. To my knowledge, there have been 18 assaults of correctional staff since I put in my submission.

CA Across centres?

50 W Yes, across the - that's the public centres alone. That has resulted in people being hospitalised. Their lives are fundamentally changed. So you're working in that scenario. The tools that used to be effective to try to manage prisoner behaviour, such as breaches, the use of the detention unit - they don't apply any more. You put someone in the detention unit, but because of the population, a day later they are having to be moved out because someone else has done something worse. You hear anecdotes of people getting out of the single cells in maximum-security units, getting out and immediately punching someone, because then they will go back

to a single cell rather than having to go and share.

So you're working at that level of stress, the tools available don't work, and then people snap. Once they do, they have to be dealt with. There is no question of that. But that systemic pressure that led - I know of one example. A guy of 30 years, really well respected, a great correctional officer - they knew that he was on edge. I don't think there's a lot of work to be done with post-traumatic stress disorder with correctional officers. And yet this guy, who had been a great officer for 30 years, snaps. He left corrections as a result of that, as a result of the issue. Once it happens, you know, you can't say that that's an improper action, but where was the recognition of the underlying factors that led that to happen? Our guys are facing that every day.

10

CA In light of that, do you and your union receive reports from staff about the impact of that kind of environment on their capacity to professionally perform their corrective function?

20

W Yes, and that goes to the rack-and-stack comment that I was talking about. There was some evidence given earlier about dynamic security, and that's based on officers observing what is going on, getting the tenor for what's happening in the units.

30

But at the moment, because there are so many prisoners, they're sitting there entering reports, to the extent that they're not watching, their capacity to interact with the prisoners, to provide that example - because that's the example they're seeing. If I am rehabilitating and going back into society, the example of behaviour they are seeing on a daily basis that isn't other prisoners is the correctional staff. So, yes, it is certainly something that our delegates and members have raised, that not through their choice, but they are now in a process of just having to house the prisoners.

CA Does rehabilitation suffer?

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W Yes, absolutely. The directions make it suffer in two ways. The obvious one is the programs, the industries, and so forth. There is still a finite number of them. If there are more prisoners that require it, they just can't do it. You have the issue that we saw under the Newman years: there were cuts to industries, and it went from seven-day operations down to five-day operations.

CA That's in the prisons?

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W Yes. They haven't been restored in a number of prisons because there simply hasn't been the money allocated because of the cuts that were made. So there is another two-sevenths of their time that they could be proactively involved. Bored prisoners are dangerous prisoners. So that is the obvious one.

But the other one is just that capacity to interact, to be aware of prisoners' behaviour, to be aware of - it sounds trite - their journey in the prison system. Apart from a very, very small cohort, every prisoner is on a journey back into the community. The people that are facilitating that journey don't have the time to do their job, or the training, or the tools to do their job. In the long run, society suffers because the community is at

risk with people who get out and who haven't had the opportunities of rehabilitation you would like to see.

CA The correctional officers exercise daily power over the prisoner cohort, don't they?

W Yes.

10 CA Do you see a link between a disaffected or distressed staff of correctional officers and corruption risks in the environment that you have described?

W Yes, absolutely. It is a hierarchical structure. By that, it is a rank-driven structure. This is why I think the bullying stuff is so important, why I think some of the deficiencies that exist within HR and management are so important, because if the normal behaviour that correctional officers are seeing is the way people in a position above them treat them, it's a certain paradigm, if you like, and then that is going to be reflected in way they treat the people that are subordinate to them, which are the prisoners.

20 So if they feel unsupported, if they feel that they are unappreciated - and, look, some of the stuff the Commissioner said was great and spot-on. Society just wants to know that prisoners are somewhere out of sight. There is a reason why prisons aren't sitting there in full view of main roads. They are tucked away, because society just wants to know that they are back there. And that's the same with correctional officers.

30 I will be perfectly honest, with this hearing, our delegates and our members are supportive of the review, but there was an element of: we're dealing with this overcrowding; assaults have gone through the roof; we have lost all the tools; the only reason prisons are working is because of our goodwill, so what is the community response or the overarching response? Well, we had better see if you're corrupt. That is not what this is about, but if the cohort is isolated like that, that creates a problem.

CA The overcrowding that you have spoken about, do members have a perspective on the impact of that on their safety?

W Oh, yes. It's immense.

40 CA How does that manifest itself in the daily routine of work?

W You have situations where - let's talk about a cell, whether it is a double-bunk or a mattress on the floor. The mattress on the floor is an obvious one, because if you are the person on the floor with your head or feet up against the toilet, but it is one of the two - and you see the photos, there is not a lot of room - the guy that needs to get up in the middle of the night is walking over the top of you. So when you wake up in the morning, you're not happy.

50 When our officers go to open the door now, it's not - you know, there are two officers and there is one person inside that cell. They are now opening the door to two people inside the cell. They are opening the door to people that, because of the amount of time to get medication out, might have chronic pain issues. The last time they got pain relief was 4 pm the day before.

CA Because that's when they were locked down?

W Well, that is when the medical run was done under the structured day that you heard about from the Commissioner. So there has been 14 hours since they last got pain relief. So there are two people in the cell that is designed for one. They're not happy because they are in a cell that is designed for one. They might have pain issues, so they're not happy as well. They might have cognitive or mental issues. And there is still only one doorway that our officers need to open. So that's an issue.

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You have an issue with just the number of people on the floor. I don't know whether there has been evidence yet, but at some centres we are considering staggered unlocks. These discussions are happening between delegates and management at the centres. It's not a one size fits all.

I was up at Lotus Glen, I think it might have been last year, but there are just simply not enough tables and chairs for everyone in that block to sit down and have lunch at the same time. There is one zip boiler, because it was designed for half the numbers of the people that are in there now.

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CA Is that inviting conflict?

W Yes, and we have seen that. You look at the reported budget papers, the massive - and the Commissioner's statement goes to it, but the massive increases in prisoner-on-prisoner assaults, prisoner-on-officer assaults. I have heard some of the evidence that goes to officers observing prisoner assaults. A lot of the times, our officers get hurt because they are intervening. Their job, when there is a prisoner-on-prisoner assault, is to go and intervene, and they get hurt.

30

While we were here Monday, there was a significant assault at Lotus where two officers went into a block and were attacked by a group of prisoners, one with a broom, one with a mop bucket, and they had to get extracted out of the cell. They need to be physically pulled out by other officers through the airlock while the code was called. While the code is called, another fight, as I understand it, has erupted within the block. That goes to the problems we have with all the overcrowding. Our officers are responsible for trying to manage that, as I said, in a set of facilities that wasn't designed for it.

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CA You use a compendious expression, "devalued, disrespected and disempowered". That rather conveys an air of general pessimism; is that accurate or not?

W I think, to be fair, there is a slight lightening of that air at the moment. I think if you had asked me that question last year, I would have said "absolutely". We have raised a number of issues. We had two town halls, if you like, where the GMs from every centre got together. This was something we had requested. We had delegates from every centre. And we just talked about, okay, if the reality is we are hitting that 10,000 threshold - and I have no idea where they get put, by the way. Brisbane Women's is getting to the point that they are starting to go, "When do we start tripling up?" But if that is the reality, if the government green-lighted another prison tomorrow, we are still three or four years down the track.

50

There has been some capacity announced. Borallon is slowly opening back up. There has been some announced for Capricornia. But it's a drop in the bucket. I'm going off on a tangent, and I apologise. SOFRONOFF won't do it, either, because even if every single person who was in the correctional system on remand was not in there, we are still overcrowded. So sitting there saying if we get the parole bit right and the remand bit right, we have fixed the capacity issue - we haven't.

10 I will give the new Commissioner his due. I think he is genuinely - his engagements with the staff through the video conferences, and so forth, there is an air of optimism, I think, right at the moment. The problem is that corrections is a big ship to try and turn around. I am not sure how long that optimism is going to survive 20 assaults in the last month, and that's just prisoner-on-officer.

20 So I don't know, as the numbers continue to increase, as the pressures continue to increase, I think the Commissioner has a limited, a small window, to do what - but what he is saying, to give him his due, I think there is an air of hope. It is almost to the extent that in the same way when the participation rate for unemployment stays low and no-one thinks they can get a job, I have seen the Commissioner getting letters written to him, there are motions being passed in centres around the state raising concerns, and I think a year ago, they would have just gone, "Why would we bother?" But, yes, it is a really difficult time.

CA You refer to the increasing pressure on the members, and your take on it is that the system is surviving on their goodwill increasingly over the past few years. Has that been met by any recompense?

30 W Financially?

CA Yes.

W No. Oh, no, sorry, that's probably a little bit unfair. We certainly did some innovative work in the last collective agreement where we restructured the classification structure and removed - there were some qualification barriers that were pitched at the wrong level. We removed some of those, but we did that within a funding envelope of government that was based on the 2.4 wages policy. Certainly there hasn't been any sort of review of, okay, what are we asking our correctional officers to do? Is there greater work value as opposed to workload expectations that we should be rewarding? There is certainly a lot more overtime going around, which is a double-edged sword in terms of not getting a break away from the workforce.

CA But no increase in pay to reflect the increasingly difficult environment?

50 W No, no. The funding bucket that we redistributed in the last agreement, which expires next year, so it must have been 2016 - the funding bucket was finite, based on the government wages policy of 2.5 per cent.

CA You would say, I think, that even without the overcrowding set of difficulties, correctional services officers, custodial correctional officers, are underpaid?

- W Yes. The problem is that people look at their take-home ordinary time earnings. But those take-home ordinary time earnings are reflective of 12-hour shifts of 24-hour shift operations, weekend operations, and the like, so there is an aggregated shift allowance that compensates for night shifts, weekend rates, public holidays and so on.
- CA Is that all rolled into salary?
- 10 W Yes. There is a 28.5 per cent aggregated shift allowance. When you put on that base bit and say, oh, here is the take-home pay, it is very nice - well, it's nice-ish. But when you actually look at their base pay rate, which is what you really need to look at in terms of what work value they are being remunerated for, and I put it in my submission, the entry level CCO comes in somewhere near the bottom of the AO2 rates, and the most they can get to, as a level 1 CCO, is the mid AO3 rate. So it is definitely an unskilled rate. It is one of the lowest in the sector.
- CA AO2, for example - can you give us an example of the kind of job that might equate to?
- 20 W AO2 is your base grade administration worker.
- CA What in the past might have been called clerks?
- W Yes. Given the complexity of work these days and the tools available, we are seeing a diminishing number of AO2s across the public sector as well. But it is your base grade administrative clerk. In terms of the amount they are paid as a base grade CCO, it is not excessive in any terms and certainly doesn't go to recognising a skill set where in the optimal - you know, you look through the indicia of the healthy prisons and the, sort of, almost pastoral aspects of the job, I can't see how it's remunerated.
- 30 CA Just so that we can understand the data you have provided, that, can we take it, is supplemented by a shift allowance, which is rolled into salary?
- W Yes. Under the agreement, there are five triggers to get the aggregated shift allowance, which is working over seven days a week, rotating, and so forth, but basically your continual shift workers. They would have that augmented by 28.5 per cent. Those people who didn't trigger the aggregated shift allowance would still be entitled to afternoon shift penalties and weekend shift penalties. But you tend to not get - the only ones, going back to the industries issue, those industries that were reduced to five days a week, those guys - well, men and women - lost the aggregated shift allowance but are still doing 10-hour, 12-hour shifts Monday to Friday. In fact, the ignominy of that time was that they went to the trade instructors, because once it went from seven days down to five, there was a reduction in the number of TIs needed. So they went to the TIs and said, "Well, you are the best, you are the ones we want to keep as TIs" -
- 40 50 CA "TIs" being?
- W Trade instructors. Sorry. "You are the ones we want to keep as TIs, so you are now going to move to a Monday to Friday gig and lose your

28.5 per cent." "You are the ones that we are happy not to have as TIs, so we will put you back on the general run, where you will keep your aggregated shift allowance." At one stage in Capricornia, there was one TI left from the change, because everyone else just couldn't live on the money. This guy loved what he did, so because he was the most valued TI, he ended up taking a huge pay cut.

10 CA You make a number of points about particular issues. We are not here strictly to talk about industrial issues, but they have a bearing, do they, on whether your staff are happy or disaffected?

W Yes. The HR issues are a big one. I know we're not here for individual matters, but one of my delegates talked about - you know, there are two ways you can do human resources. You can approach human resources from a transformational viewpoint, "How do we improve our human resource? How do we skill them? How do we value them? How do we motivate them?", or you can come from simply a transactional model.

20 The structure of HR within corrective services is fairly autonomous to correctional centres. The HR managers answer to the GMs. There is very little technical - or mandated technical control from head office. Some HR managers will ring head office for advice. Some won't. The problem I see in a number of centres - I don't see much transformational. I see a lot of transactional and, in a number of centres, they continually get the transactions wrong.

CA Can you give us an instance of the kind of transaction you are talking about?

30 W A chap at one centre is on holidays. As I said, there is a lot of overtime going around because of the number of extra prisoners. He gets rung on his holidays and asked - they are really short staffed, they have to get someone in, can he come in and do a shift? He said, "I'm at home. Yes, I'll come in and pick up the overtime. That'll be nice."

40 He came in and did the shift. After doing the shift, the HR manager said, "Actually, we can't pay you overtime while you are on leave. All we can do is re-credit you the leave day and pay you ordinary time." Now, a transformational HR person would have gone, "Hang on, that is not the right thing to do. How do we look after this person who did inconvenience themselves?" The transactional one would have looked at the award and said it is a recall, which means you get paid double time, anyhow. So they got the transaction wrong. If this chap had not raised it through the union, he would have been not paid what he was entitled to, because of the HR manager.

CA Is that kind of HR interaction a source of complaint?

50 W Yes. Just recently, the last couple of weeks, a correctional officer who has been employed for about two years needs an operation. He goes to the doctor, with a significant potential health problem. He rings up and says, "Look, I've got to go and have this operation. I'm going to be off." "Yes, don't worry, give us your medical certificates at the end." Now, he has only been there for two years. Because of 12-hour shifts, they can basically take 6.3 shifts off a year before they exhaust their 10 days.

CA How is that calculated, that number of hours leave?

W It is 10 days leave, but that's 10 ordinary days of the - I'll have to do the maths - 72-hour fortnight. So because they are doing 12-hour shifts, if you take a day off, they are deducted 12 hours of sick leave. And there has been a Commission decision on that. There is some stuff happening federally that might change it in the next bargain, but not at the moment.

CA So it is not really 10 days leave; it is 6?

10

W No. The most this guy could have accrued was 12 days off. He had taken some sick leave, not excessive sick leave. He had to go into hospital for this operation. He advised the centre before it happened, got back, and the centre said, "Right, you didn't have enough sick leave to cover your four-week absence. You now owe us \$1,800. We will start taking the money out." "Can I use my annual leave?" "No, we will not do that."

20

Now, in terms of how staff feel - because that gets right around the centre. There is the capacity for this guy to have used his annual leave. He hadn't been misusing sick leave. He had only worked long enough that there was no capacity for him to have accrued enough sick leave. That's not looking after your people properly.

CA The various things that you have mentioned, including sick leave, aspects of WorkCover, and a number of things that you have mentioned in your submission - do they take on any additional significance when the members are now under the increased pressure through the overcrowding?

30

W I'd say yes, tangentially, because, as I said, the overcrowding is being dealt with by prison officers, correctional officers, going above and beyond, and when they feel unappreciated. You know, go back to the issues paper. There is a corruption risk. This chap here now owes \$1,800 through no fault of his own, and he is one of the lowest-paid public servants. So having to pay that money back over instalments, when he has a family, and the centre is aware of all this - he is now really feeling the pinch. So absolutely that - apart from just the, "My HR, my management, doesn't really care about me", and that isolation in the job itself, it's a cultural issue.

40

I had another one the other day where a person was putting in for - short notice, admittedly - leave for defence force service with the Reserves. He went in and filled out the application as soon as he could, was left to stand outside the GM's office, while the HR manager went in, came out with the application and said, "It has not been approved, because it is a public holiday." Putting aside that that is a breach of the *Defence Reserve Service (Protection) Act*, so the HR manager has broken the law, this guy has been left to stand outside the principal's office while this happens. He doesn't get to put his case. He doesn't get to explain why.

50

And there are numerous other instances. Just before Christmas, one of our delegates needed leave: because school was finished, he thought his partner was working, and he had to look after his child. He asked if he could do a swift swap from day to night. That was refused because they don't do that over the Christmas period. It was said, "Well, see if you can change duties." Couldn't do that with someone else. He eventually said,

"I will have to put in for personal leave" and was told he would have to provide a stat dec based on the Family Leave Award - it wasn't the 2014 one that had been made obsolete by the modern award. It was the one that the 2014 one - had been replaced. So the HR manager is quoting an obsolete award to tell this person he has to put in a stat dec to look after his child, when the directive says he has an entitlement to do that. And, again, these are examples, but if you think of that, then, culturally-

- 10 CA They have a compounding effect?
- W Yes. You have a group that feels unappreciated, under increasing stress, and you go to the types of issues that are raised in the issues paper - they are triggers.
- CA Can I ask you something at perhaps a fairly high level. You would have heard the Commissioner speak about his desire to have a top-tier, professional service and to take the staff with him in that objective. From the interaction you get with your members, do members want that also?
- 20 W Yes.
- CA What are the barriers? If you could sum it up, what are the barriers, from their perspective, to achieving that?
- W I think the barriers are, again, that cultural aspect that it is a hierarchical structure that they feel doesn't appreciate them, in a way. I think there are just the barriers to how much can you do with - you know, all of this comes back to capacity. Everything that we have been speaking about is magnified by the capacity problem.
- 30 How can you be given time to go and train, when the system is bursting at the seams? How can we talk about - use of force. They do control and restraint training once a year. Now, there is no way known to man that that allows you to build the sort of neural pathway, muscle memory thing that allows you to restrain a prisoner without some application of force, which they are then - you know, the magnifying glass is on them.
- CA Apt to be criticised?
- 40 W Yes, absolutely. I talked about some of the issues we had with JAG ESU, and I think that the ESU unit going to corrective services is outstanding.
- CA Do you think it fits within the corrective services overarching control?
- W I have been listening to some of the evidence on that. I will preface it with, I am not an expert, but I will certainly give my opinion. Let me answer it this way. A good ESU culture is one where the staff are comfortable that the ESU understand their job, understand the pressures of their job, and so understand the decision-making framework, if you like. One of my delegates talks about the first 30 seconds of an incident. The first 30 seconds is a fight. In the first 30 seconds, you are trying to gain some sort of upper hand from which you can then go and start applying approved control and restraint. But the first 30 seconds, when someone is trying to do you significant harm, is a fight.
- 50

So an ESU that understands that; an ESU that staff are comfortable that if

what they did was justified, excused, and so forth, if what they did was right, they will be fine; an ESU that they're comfortable that if the ESU makes a decision that disciplinary action should be taken, that is a righteous decision, if you like; and an ESU where justice is quick - we do not have that at the moment.

Now, I understand it is now being set up. So taking it away, whether it sits - when it was with JAG, it was outside corrections. It might have been the same department, but that unit was wholly external and treated itself as wholly external to QCS.

10

CA You have made some criticisms of the manner in which proceedings are conducted by that ESU?

W Oh, look, it was terrible. If you talk about the educational level of the average CCO, they'd get a letter - and it's still administrative action; it needs to be written in a formal sense. But they would get a letter saying that everything is - virtually everything, you could have committed official misconduct, "And in the event it's this, or in the alternative this, or in the alternative that" - you had to be a lawyer to even understand what the letter was. It wasn't, "We think you inappropriately applied force, which is contrary to this. We want you to answer it." It was boom, boom, boom. "Denied access to CCTV footage when filling out the report", so if what they said in the interview didn't gel with CCTV, now they were being disciplined for lying. So that was happening.

20

I will give you an example - I had one member who had an interaction with an external agency and was suspended. The external agency came back, sent him a letter saying, "We are not taking any action", and he asked me whether he should send that off to ESU to see if he could get back to work.

30

I went around the office and talked to the director that looks after member support, and our considered opinion was that if you send that letter to ESU now, the chances are they will just "show cause" you for something else. If they were going to "show cause" you for the thing that this letter said you had no case to answer, they would just "show cause" you for something else. That's not paranoia on my part. That was what we saw. So we didn't do that. That because just before Christmas.

40

He finally got interviewed two months later. So he languished, suspended. Apart from just the psychological issue of that, he was losing extensive money. He was on full pay, but because of the overtime, that had a significant impact on his family as well.

So, yes, we had significant issues with the way ESU ran under JAG, to the extent that the head of ESU one time wrote me a letter asking me to talk to my delegates to get them to desist talking about an investigation that had been dragging on for six months, because it might impact the investigation. I ignored the letter, but just the sheer arrogance of an investigation that had been dragging for six months, that had been raised - and the catalyst was out of a motion passed by members, and members were starting to say, "Well, what's happening?" Two letters were sent, one was to me and one was to the delegate, basically threatening him with disciplinary action if he raised any concerns at a meeting of members.

50

So, yes, the issue under JAG was quite bizarre. You know, it's not just me. Our union has - we have written to the premier to talk about review of a lot of ethical standards functions, because we think they have gone down a path that goes away from that culture I was speaking about earlier. And we're not against - an ESU has a really important role, but if the staff have no faith in it, the staff don't trust it, don't trust the outcomes, don't trust that they will be treated fairly-

10 CA There is also a question of method, which you spoke about before?

W Yes. There is a way to sit there and say, "This is a formal letter", to say it has to be formal. But the letter was signed off, "I have been given delegated powers under section" blah, blah, blah "to write this letter." When someone gets a termination notice, the termination notice doesn't say, "I've got delegated powers under the *Public Service Act* to terminate." You just do.

20 But the tenor of the letters that came out of JAG ESU were just unnecessarily stressful. This is reported by members. Their interactions with us were unnecessarily antagonistic. Refusals - an investigation would be on the next day at Lotus Glen. We asked if we could get a support person to dial in, and it was refused. It was refused to have a support person dial in by phone. I got that reversed, but it went to the culture.

30 CA To change the topic a little bit to something else you raise, consultative interaction between management and staff - is that an aspect of empowerment, or how do your members view that aspect of empowerment?

W It is haphazard. I would not fault certainly the engagement of the Commissioner - and, actually, I could contact the previous Commissioner. But the proactivity of Commissioner MARTIN is laudable. At the head office level, I think the interaction is good.

40 One of the structural problems I think with Queensland Corrective Services is that the centres operate as fiefdoms. There is not a lot of consistency across centres. There are centres-

CA On what kinds of matters?

W On lots of things. We negotiated - I was talking about not being able to do the dynamic security because of paperwork. Under the initial healthy prisons, I think six case notes had to be done in a set period of time on a prisoner, and it just became unworkable. So we negotiated over a period - it took about four months - to go back to event-based case noting. So where there was something notable, a case note was made.

50 No-one told me that this change that we had negotiated had actually been sent out. I got that from a delegate. I rang head office to confirm that it had gone out. Once I knew that it had gone out, I sent an email out to all our members saying, "Hey, this has happened. Be aware of it", and immediately got half a dozen emails from Lotus Glen saying, "No, we've been told we're not applying that." Escort and Security Branch is still not applying it, as far as I'm concerned.

So that sort of stuff, the consistency - there was the capacity for the GMs to tailor, which they need. You know, it is the case that each centre is slightly different, but I think the capacity they've got is extended, and I would say there are some centres where the interaction between our delegates, members and management is exemplary.

10 Capricornia is a really good example. I don't get a lot of issues out of Capricornia, because they are resolved locally. But I also know the centres where the delegates are tolerated, because the government's union encouragement policy says to management that delegates have to be tolerated. That was pretty easy to see when the Newman Government came in and withdrew that policy, because suddenly those centres stopped interacting in a huge way.

20 And that's a problem, because if we go back to that culture bit, that creates a combative culture that is unnecessary. When I make my comments about the support or the interaction or the genuineness in working with delegates, I don't want to tar the whole organisation, but there are certainly areas within the organisation where I think they would be much better off - I gave the example of the perimeter fences. There is this big upgrade happening with the perimeter fences at the moment. It is changing all the way - you can monitor what's happening within the centre, and it's changing the way it's operating in every centre back to the initial specs that were set up.

30 No-one went to the people who worked in master control and said, "Hey, why are you doing this differently from the way it was originally set up? Is what you are doing better?" No-one did that. So now we have got this fundamental problem that this thing was halfway rolled out, and we're going, "Hang on, what you're doing is a retrograde step."

CA Is there any ongoing mechanism of dialogue between management and staff-

W Yes.

40 CA -which would throw up issues potentially such as that for discussion and input?

W The mechanisms are there. Under the collective agreement, there is an agency consultative committee. We meet every six weeks. That gives us the opportunity to raise things. There are local workplace committees that function to different degrees of effectiveness, depending on the centre.

CA Are they satisfactory in structure at least?

50 W Yes, the structure is fine, but the issue is the proactivity. That perimeter - the ACCC was the vehicle for someone to go, "Hey, we're having to upgrade the system. We want to talk to you about how we are proposing to change it." It didn't happen. So it is only when it starts getting rolled out by the contractor, Honeywell, that our members are now raising it at the LWCC and going, "Hey, what's going on?" But we are halfway down the process and extensive - millions have been spent, so just stopping it isn't viable, either. So the mechanisms are there, but it

doesn't matter how many mechanisms you have if there is not a genuine engagement.

10 Now, the messages from the Commissioner are very, very positive. He walks that walk as well. Hopefully we will see - he spoke about trying to exemplar his values. If that rolls out, that will be of value. I think structurally the issue is still that fiefdom bit, though. I think that is something that is being looked at now. But when you have one centre that deals with emergency response one way and another centre that deals with it another way, when the coronial inquest is on and someone gets asked, "Why do you do it this way and not the way they do it at that centre?", and the answer is, "Oh, because the GM thought that one was better", I'm not sure how well that goes in a coronial inquest.

CA Can we just touch on the bullying that you spoke about earlier and the impact of it. You did speak about the impact of it.

W Yes.

20 CA But you have attached the report of the committee in, I think, December 2016. Would it be right to say that you have no particular complaint about the formation and work of that committee?

W No. I was on it.

CA Yes, I know.

30 W It was late in being formed. As mentioned there, the catalyst for it was actually - it came out of us. The government does an annual Working for Queensland survey, which is like a staff satisfaction survey, if you like. It must have been the results of the 2015 that showed that in corrections - there was only one question on bullying, but the statistics there were considerably worse than the norm across the public service.

40 I endeavoured, for the best part of six months, to get the breakdown. I eventually didn't have to go down the RTI, but that's the point I was at. Once you got the breakdown centre by centre, it was horrendous. By that stage, we were only about a month out from the next year's figures, so I agreed to wait, or we agreed - not "I" - the delegates agreed to wait until we saw those figures. They were equally horrendous. Based on two years - when you have got figures where 40 per cent of staff are saying they've witnessed bullying, that's bad. So that-

CA Could I-

W Sorry, you go. I have a tendency to chat.

50 CA We know the work of that committee. The figures are included in your submission and in the report. Perhaps the important thing is how and whether things have moved on since then.

W I'm not confident that there have been great strides.

CA Is there a cultural problem?

W Yes.

CA Across the service?

W Yes, I think there is still a cultural problem.

CA Of bullying?

10 W Yes, absolutely. But to the extent of, you know, a fairly senior manager in a centre, and a witness overtly says to one of the delegates if you're going to play - no, actually, a better example. A delegate puts in a provisional improvement notice relating to the CERT response, and the management of that centre emails all staff, criticising the delegate for putting in that pin. That then led to another delegate being told that if this is the way we're going to play it, you know, fine.

CA Is the problem one of interaction with the union and not with the corrective-

20 W No, because that's the staff. That's not me. When we say "the union", the union is our members. The union is those 60 per cent of correctional officers and their elected delegates. I am just the union office. This is the interaction directly with those members. I think there is still a significant issue.

30 One of the recommendations of the bullying committee was to do a follow-up survey. We've pushed that out to 18 months. You are going to talk to Alan BUTLER, I think, tomorrow. It will be coming up where we review that. My feeling at the moment is just a feeling. We'll get a better idea once we roll out that survey in coming months. But I still am of the view that there are still behaviours I see that I think are a poor culture. And some of those HR examples I just gave, that's a misuse of power.

40 The only other thing I will add around that is some of the issues I have raised here in terms of those concerns. Since the Office of the Chief Inspector has taken carriage of ESU, he has met with us twice for us to raise - because the other huge - well, sorry, I'll finish that sentence before I go off on my next little tangent - to raise those issues around ESU, around bullying, and so forth.

The big structural problem with bullying, and it is actually across the public sector, is that it is very hard to catch. One-on-one bullying is kind of easy. Someone can make a complaint and say here are five instances of behaviour that can be investigated. There can be natural justice provided. And sometimes bullying is just, "I'm sorry, it's not bullying for me to tell you to do your job properly."

50 The big problem is that if you look at the accepted definitions of bullying and the definition in the *Industrial Relations Act*, you can have bullying that is one to many. So if one person treats this person improperly, and this person and this person, and there is a pattern of them treating a group of people, that is defined as bullying. I am not entirely sure how you fix this, but under the regime for investigating complaints of inappropriate conduct, you have to take each case in isolation.

If I make an allegation that someone is bullying me, and the answer comes

out, "Well, it is not bullying because it is not a pattern. It might be inappropriate conduct", no-one goes in and asks everyone else in the office and uncovers that there have actually been five allegations made against the same person. That was the outcome of one of the catalysts out of the bullying report, where I saw seven substantiated outcomes of inappropriate - or failure to treat with courtesy and respect that had been substantiated against a single individual, and, as far as I am aware, that individual was never held to account.

10 I think it's hard. I think there needs to be a capacity for - where there is an allegation of bullying, it's not just good enough to go, "There's no pattern. Therefore, there's no problem", because it can still be inappropriate conduct under the code of conduct and it should still be dealt with. But there is a pattern of, "No, the allegation is bullying. There's no bullying, so it's okay." Well, no, it was still inappropriate conduct.

20 There needs to be a capacity for an investigator to say to someone, "Actually, there is enough here to raise a reasonable suspicion that there needs to be a wider inquiry happen to validate whether there is a pattern", and that doesn't happen now.

CA Thanks, Mr THOMAS. Thank you, Commissioner.

PO Mr MURDOCH?

CM Thank you, Commissioner.

30 Mr THOMAS, in the course of your evidence, you gave some evidence in respect of examples of - I think you said in terms of matters of entitlement that there were transactional problems, that people in the various prisons got the details of the transactions wrong. It is the case, is it not, that within the industrial relations system in Queensland, there are a range of mechanisms available to try to remedy problems that arise in respect of entitlements, aren't there?

W Yes.

40 CM That can be sought to be dealt with informally through discussion internally in an organisation, can't they?

W Yes.

CM If it is a matter that arises under the enterprise agreement, a dispute can be brought under the agreement?

W Yes.

CM Disputes can be brought in the Commission, can't they?

50 W Yes.

CM Grievances can be lodged, et cetera?

W Yes.

CM So there are mechanisms in place that if people have legitimate concerns,

they can seek to have them dealt with; correct?

W Yes, there are.

CM You also referred to issues in respect of shift swaps, and the like?

W Yes.

10 CM It is the case, is it not, that under the certified agreement, the matter of shift swaps is regulated, in the sense that the agreement provides for the circumstances in which a shift swap can occur?

W The agreement provides for the capacity to request change of duty.

CM Yes.

W But requires that that must be approved.

20 CM That's right.

W There is nothing that regulates the circumstances by which HR should approve it or should not approve it. So, again, you would go back to what you were talking about before. There are mechanisms to, then, challenge that. Certainly, if they are a union member, they will have support in doing that. If they are not a union member, given the cohort we are talking about, if the HR manager whose job it is to know two awards and the Industrial Relations Commission says, "No, you are not entitled to this", and they haven't got the capacity to come to the union and find out that the HR manager, whose job it is to know their industrial conditions, is actually wrong, every mechanism in the world won't help.

30

CM In respect of roster changes that an employee seeks, there first needs to be an agreement between that person and another employee?

W That's change of duties versus roster variation. Under the agreement, the employer could roster vary, because you can do that with - I think it is 72 hours, or it might be 24 hours notice. In the instance I gave, there was an initial request to see if there could be a roster variation, but the employer chose not to take that action that they were entitled to do, directed the employee to seek to try and find a change of duty, and the employee was unable to find another employee that was willing to swap.

40

CM Just in terms of the first issue you raised, about the employer refusing it, do you accept that there can be a range of circumstances that can give rise to a refusal, such as, for example, the unavailability of someone to swap with or to change with?

W Not for roster variations, because you have the whole roster that's available. Change of duties, the employer might refuse a change of duty is if there is a particular skill set. Absolutely, if it goes to - there can be justifiable operational reasons to refuse a change of duty, absolutely.

50

CM Yes.

W Whether there were justifiable reasons would then require the employee to trigger one of those mechanisms you were talking about that they may

be, to a greater or lesser degree, empowered to do.

CM In an individual case, there may or may not be relevant operational reasons to refuse the change, mightn't there?

W In some cases, that would be the case.

10 CM Just very briefly, you mentioned in terms of the ESU various problems that occurred in the past. Again, you would agree that under the current system that exists, if people have concerns about how their particular case is being dealt with by the ESU, they have the capacity to, for example, bring a dispute in the Commission in respect of that issue?

20 W Absolutely. Well, actually, no, I'd say that - because the ESU is not the decision-maker, the ESU recommends, so the example I gave before where a delegate was told to cease and desist, we lodged adverse action - the precursor of adverse action we lodged in the Commission, but we actually had to lodge against the decision-maker who had been given the written direction from ESU to take a particular course of action. And there is a series of cases that bring into question the ability to directly hold to account someone who simply recommends a course of action as opposed to the decision-maker who in good faith acts upon that recommendation.

CM But in light of the answers that you have just given, whether one goes via a dispute or whether one goes via an adverse action complaint, you agree that in situations such as that, there are means available to seek to have the matter dealt with by the Commission?

30 W Yes, there are means available to hold someone to account when they break the law. It doesn't mean they should be allowed to.

CM But your members, the people you represent, have the capacity to go to the Commission to seek to have these things dealt with?

W Yes.

CM No further questions. Thank you.

40 PO Thank you. Mr SMITH?

AS No questions.

PO Thank you. Nothing arising, Mr RICE?

CA No, thank you, Mr Commissioner.

PO Thank you for coming along, Mr THOMAS. You are excused.

50 CA Those are the witnesses for today, and it is just past 4, Commissioner.

PO Thank you. We will adjourn and resume at 10 in the morning.

END OF SESSION