

14.0 Assessment of the Evidence and the Findings of Facts.



Prisoner [REDACTED] CSO [REDACTED] and CSO [REDACTED] are all agreed that on 26 September 2016, CSO [REDACTED] forcefully used his knee to strike Prisoner [REDACTED] on the rear upper left leg. The relevant CCTV recording accurately showed that taking place. It is an established and an agreed fact.

14.3 What is not agreed and is to be determined to the required evidentiary standard, is whether the force used by CSO [REDACTED] on Prisoner [REDACTED] was justifiable, that is was it necessary and if so was it a reasonable level of force in all of the prevailing circumstances.

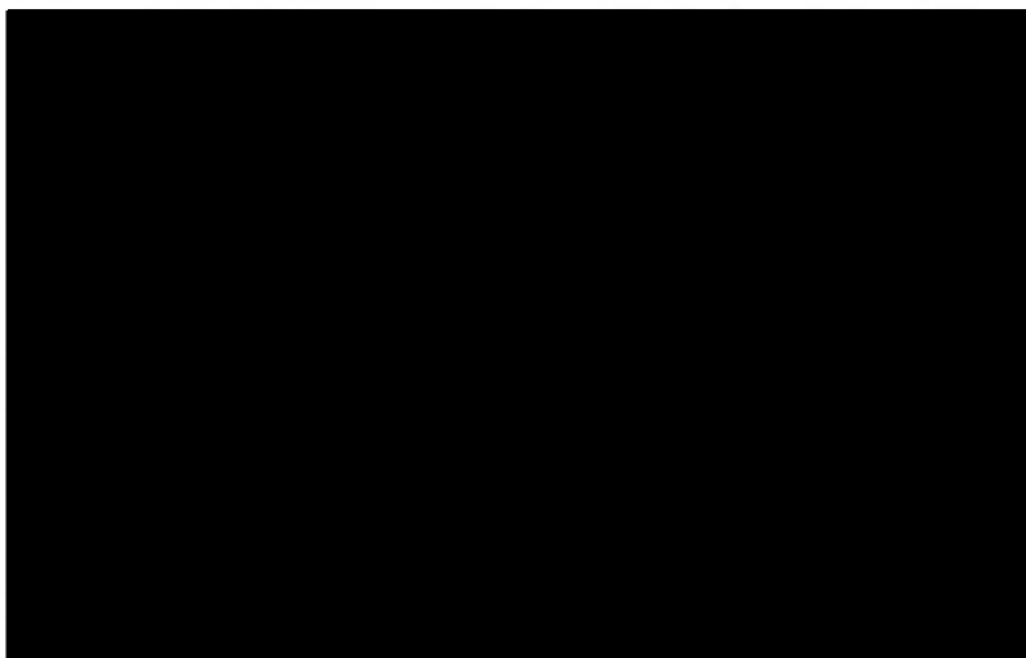
14.4 Prisoner [REDACTED] said that, at the material time, he was lying face down on the ground of the Exercise Yard at [REDACTED] and was being handcuffed by two members of the correctional staff. He said that he was being fully compliant with all directions being given to him and was not offering any resistance to them.

14.5 CSO [REDACTED] and CSO [REDACTED] each told this internal investigation that they were applying mechanical restraints to Prisoner [REDACTED] who was face down on the ground. They said the prisoner was being fully compliant with their directions.

- 14.6 Both of these officers said that they did not see the delivery of the knee strike on the rear left leg of Prisoner [REDACTED]
- 14.6 CSO [REDACTED] stated that he heard a loud noise like a bone breaking (a noise he has heard before) and Prisoner [REDACTED] scream out in obvious pain.
- 14.7 CSO [REDACTED] said he felt a vibration accompanied by a blow on his left leg and experienced pain. Given that the knee strike was delivered in a swift motion from the rear and both of the officers can be seen on the CCTV recording to be looking at the prone prisoner when it occurred, this internal investigation accepts their evidence that they did not see the strike delivered.
- 14.8 Both CSO [REDACTED] and CSO [REDACTED] stated that they had not requested any assistance in dealing with Prisoner [REDACTED] and that none was required as he was being fully compliant with their directions and they were not experiencing any difficulty in applying the mechanical restraints to him.
- 14.9 CSO [REDACTED] told this internal investigation, when he was interviewed, that he saw Prisoner [REDACTED] lying face down on the ground only a short distance from him being managed by CSO [REDACTED] and CSO [REDACTED]. He said that the prisoner was not offering any physical resistance and was being compliant with directions from the correctional officers. He saw CSO [REDACTED] forcefully drop his knee toward the rear upper leg area of Prisoner [REDACTED]. He claims not have seen the knee actually make contact with the prisoner. He did not think that any use of force was necessary in the circumstances and that the type and level of force used by CSO [REDACTED] was not reasonable.
- 14.10 CSO [REDACTED] would ask this internal investigation to accept that his application of physical force on the upper rear left thigh of Prisoner [REDACTED] was justifiable and a reasonable use of force in the circumstances. He said that Prisoner [REDACTED] had adopted a fighting stance ("shaped up") when he first engaged with him in the Exercise Yard. He thought the Prisoner was being non-compliant (with CSO [REDACTED] and CSO [REDACTED] and still presented as a threat. This was still operating on his mind when he delivered the knee strike to the rear upper left leg of Prisoner [REDACTED]. He likened this to a peroneal strike where the large fleshy part of the upper leg (where there are a lot of nerve endings), is struck. This is an approved technique.
- 14.11 It is accepted that the relevant doctrine permits force to be used to "*compel compliance with an order given or applying to a prisoner*" it also requires that "*A corrective services officer must utilise all methods of tactical communications and situational response and consider the most appropriate option for a safe and effective outcome to ensure only a reasonable amount of force justified by law is used to effect a lawful purpose.*" There was actually no overt threat to any of the correctional staff present. Prisoner [REDACTED] was not disobeying any lawful direction given to him. It cannot be seen that there was any necessity to use any physical force on the prisoner. Prisoner [REDACTED] can be seen in the CCTV recording to momentarily adopt an aggressive stance with clenched hands. His attention; however, was clearly directed toward Prisoner [REDACTED] who was lying on the ground and with whom he had just been in physical combat.

- 14.12 This investigation accepts the medical evidence insofar that Prisoner [REDACTED] sustained a dislocation of his left leg at the hip which was re-located at the hospital.
- 14.13 CSO [REDACTED] even on his own evidence, gave no prior warning to Prisoner [REDACTED] that force would be used. It is apparent that no proper consideration was given by CSO [REDACTED] to seeking an alternative to using physical force. In considering all of the evidence there is no reasonable justification for CSO [REDACTED] striking the prisoner in the manner described by Prisoner [REDACTED] CSO [REDACTED] and depicted by the CCTV recording.
- 14.14 This investigation is satisfied, on the available evidence and on the balance of probabilities, that as a consequence of unreasonable, unnecessary and therefore unjustified force being used on his person by CSO [REDACTED], at the AGCC on 26 September 2016, Prisoner [REDACTED] sustained a serious injury when he occasioned a dislocation of his left hip.
- 14.15 This investigation considers that it is unlikely CSO [REDACTED] intended to inflict the serious injury to Prisoner [REDACTED] however, given his size and weight and the fact that the blow was forcefully delivered from the rear suddenly and without warning he was reckless as to the potential consequence(s) of those actions.
- 14.16 **Finding.** This internal investigation finds that at the AGCC on 25 September 2016, CSO [REDACTED] did, without justification or reasonable cause, unnecessarily use physical force on the person of Prisoner [REDACTED] when he forcefully delivered a strike with his right knee to the rear upper left thigh of the prisoner causing a dislocation of his left hip.
- 14.17 **Finding.** This internal investigation finds that, it is more likely than not, when at the AGCC on 25 September 2016, CSO [REDACTED] did, without justification or reasonable cause, unnecessarily use physical force on the person of Prisoner [REDACTED] by forcefully delivering a strike with his right knee to the rear upper left thigh of the prisoner he had not intended to cause a dislocation of the prisoner's left hip; however, was reckless as to the potential consequences of his actions.
- 14.18 Prisoner [REDACTED] also sustained bruising and some minor grazing to the area around his right eye and cheekbone (see the photograph at 12.2.1), during the same incident when unreasonable, unnecessary and therefore unjustified force was again used on his person by CSO [REDACTED]. CSO [REDACTED] and CSO [REDACTED] told the investigation that they did not see CSO [REDACTED] push Prisoner [REDACTED] face onto the ground. This investigation considers it is more likely those facial injuries occurred when CSO [REDACTED] propelled himself back by placing his hand on the back of Prisoner [REDACTED] causing him to be pushed forward. It is more likely than not that it was at that time the prisoners' face collided with the hard surface.

- 14.19 Finding. This internal investigation finds that, albeit that it was taken three days after it occurred, that the copy of the photograph reproduced at 11.2.1 of this Report is an accurate depiction of the injury sustained by Prisoner [REDACTED] to his face during the use of force by CSO [REDACTED] at the AGCC on 25 September 2016.
- 14.20 Finding. This internal investigation finds that at the AGCC on 25 September 2016, CSO [REDACTED] did, without justification or reasonable cause, unnecessarily use physical force on the person of Prisoner [REDACTED] when he forcefully caused the prisoner's face to contact the ground causing swelling and bruising to the area around the tight eye and cheekbone.
- 14.21 CSO [REDACTED] stated that he felt a blow to his left leg at the time when the CCTV recorded that CSO [REDACTED] had delivered the forceful knee strike to the rear upper left leg of Prisoner [REDACTED]. The CCTV recording appeared to show CSO [REDACTED] making contact simultaneously with the lower left leg of CSO [REDACTED]. Whilst it was in all likelihood an unintended collision by him it is further evidence of the recklessness of CSO [REDACTED] actions. CSO [REDACTED] has submitted the necessary injury on duty report.
- 14.22 Finding. This internal investigation finds that at the AGCC on 25 September 2016, CSO [REDACTED] did without justification or reasonable cause, unnecessarily use physical force on the person of Prisoner [REDACTED] during which he also unintentionally struck the left leg of CSO [REDACTED] causing injury.
- 14.23 Prisoner [REDACTED] told the investigation that after receiving the forceful blow to his rear left upper leg from a correctional officer, that same officer had pushed his face causing it collide with the ground. This correctional officer also said words to the effect, *"That's what you get for shaping up."*
- 14.24 CSO [REDACTED] told this investigation, whilst in the [REDACTED] Exercise Yard, he heard CSO [REDACTED] say to Prisoner [REDACTED] *"Shut the fuck up cunt."* CSO [REDACTED] said he could recall CSO [REDACTED] say something about *"shaping up"* but did not hear everything that was said.
- 14.25 CSO [REDACTED] denied using any abusive, intimidating and/or threatening language toward Prisoner [REDACTED]. He recalled that after he delivered the knee strike he leant down and *"counselled"* the prisoner.
- 14.26 According to CSO [REDACTED] whilst Prisoner [REDACTED] was in the [REDACTED] Common Area awaiting medical attention, CSO [REDACTED] spoke to the prisoner in his presence. CSO [REDACTED] recalled that CSO [REDACTED] had said, *"Leave that cunt for me I will sort him out."* This was denied by CSO [REDACTED].
- 14.26.1 CCTV screen capture depicting CSO [REDACTED] addressing Prisoner [REDACTED] whilst he was seated in the [REDACTED] Day Room.



- 14.27 Finding. This internal investigation finds that at the AGCC on 25 September 2016, when interacting with Prisoner [REDACTED] in the [REDACTED] Exercise yard, CSO [REDACTED] unreasonably and unnecessarily used abusive, intimidating and threatening language toward a prisoner and in doing so failed to adhere to the standards of professional conduct reasonably expected of a correctional services officer and an employee of the Company.
- 14.28 CSO [REDACTED] was the [REDACTED] response to the initial incident in [REDACTED]. The relevant AGCC Instruction requires that body worn camera **must** be used “on responding to **any incident**”. The relevant Register confirmed he was issued with a body worn camera at the commencement of his shift on 25 September 2016 and on his evidence was wearing it when he attended at the incident in [REDACTED] that day. It is his evidence that whilst he thought he had activated the camera at the commencement of the incident he must have failed to do so correctly as no product was actually recorded by that device.
- 14.29 This is very concerning not least because evidence is emerging of a similar non-compliance by another Team Leader at a recent serious incident (that internal investigation is still ongoing). Of course, had CSO [REDACTED] deliberately not activated his body worn camera that may be construed as evidence of a prior **intention** to act outside of the relevant policy. Whilst very concerned, this internal investigation is unable to conclude that this was an intentional act.
- 14.30 Finding. This internal investigation finds that at the AGCC on 25 September 2016, CSO [REDACTED], without reasonable excuse, failed to properly use the body worn video recording device that had been issued to him to record his actions during the relevant Incident at [REDACTED] that day.

- 14.31 Whilst it is apparent that body worn cameras are being issued to and deployed by some AGCC personnel under some circumstances they are not being operationally deployed to all correctional personnel on duty. This Office would prefer that eventually all correctional personnel on duty at the Centre will have a body worn video recording device issued.
- 14.32 It will be apparent to the reader that CSO [REDACTED] did not record his observations of the use of force by CSO [REDACTED] on Prisoner [REDACTED] (described by him when interviewed) in his Officers' Report.
- 14.33 When interviewed, CSO [REDACTED] initially said that he did not observe the use of force by CSO [REDACTED] on Prisoner [REDACTED] and that was the reason for his omission of that highly relevant fact from his Report. Later in that interview he reversed himself and said that he had observed CSO [REDACTED] strike Prisoner [REDACTED] with his knee.
- 14.34 CSO [REDACTED] said that the omission of this highly relevant fact was not intentional and was an oversight. This cannot be accepted and the only reasonable explanation for such a glaring omission must be that it was an intentional act.
- 14.35 **Finding.** This investigation finds that, in his Officers' Report dated 26 September 2016, CSO [REDACTED] [REDACTED] deliberately failed to accurately describe the true circumstances of the use of physical force on the person of Prisoner [REDACTED] by CSO [REDACTED] which had occurred at [REDACTED] Exercise Yard earlier that day and that the Report was therefore deliberately false and misleading in a material particular.
- 14.36 The issue identified with the non-reporting of relevant facts by CSO [REDACTED] is similar in many respects to that previously identified and reported vide internal investigations [REDACTED], [REDACTED] and [REDACTED] which related to other unnecessary and unreasonable uses of force on prisoners by members of the correctional staff. This reluctance by correctional employees to report serious misconduct by others is perplexing. As previously reported, if it remains unchecked this misconduct being engaged in by Company employees is likely to be, and with some justification, interpreted by external bodies as systemic at the AGCC.
- 14.37 The alleged intimidation of Prisoner [REDACTED] at the AGCC Medical Unit on 25 September 2016, by one or more of the three correctional employees nominated by CSO [REDACTED] is a matter that should be dealt with by the General Manager. If it is true, when taken together with this and more recent unjustified uses of physical force by correctional employees working at the Centre ([REDACTED], [REDACTED] and [REDACTED]), it could give rise to a reasonably held negative perception about the current professional standards (including leadership at the Supervisor/Team Leader level) at that Centre. It is noted also that the two relevant Post Assault/Sexual Assault forms were completed by the two correctional supervisors ([REDACTED] and [REDACTED] who were reportedly acting in that way toward the inmate at the treatment room. It would provide greater accountability if in future all of those questions are asked whilst being recorded using a body worn camera.

14.38 The AGCC Human Resources Manager provided this internal investigation with the following summary of CSO [REDACTED] employment history:

- 22/09/2014 - commenced employment as casual CSO trainee.
- 01/11/2014 - promoted to full-time CSO Security Level 1.
- 16/11/2015 - promoted to full-time CSO Security Level 2.
- 28/08/2016 - email commendation for his professionalism as [REDACTED]
- [REDACTED] under investigation for use of force on Prisoner [REDACTED] on 9 November 2015 - investigation not yet finalised.

14.39 When they were interviewed CSO [REDACTED] CSO [REDACTED] and CSO [REDACTED] all said that the unnecessary and unreasonable use of force by CSO [REDACTED] on Prisoner [REDACTED] provoked a strong verbal response from some of the inmates in the Exercise Yard with some describing it as a "*cheap shot*". An attack delivered with great force, from the rear and without warning is akin in most respects to the "*cowards punch*" now proscribed by law in NSW. This would almost certainly have heightened the risks to correctional personnel associated with managing an incident involving large numbers of prisoners.

14.40 In this case, the person responsible for exercising sound judgement and providing tactical leadership (at the scene) was the designated Team Leader CSO [REDACTED]. This internal investigation notes that CSO [REDACTED] only has some two years of correctional experience. In this regard his actions were clearly irresponsible and he failed to exercise appropriate judgement and leadership which must call into question his selection as a Team Leader.

[REDACTED]

[REDACTED]

[REDACTED]

15.0 Recommendations.

15.1 It is recommended that:

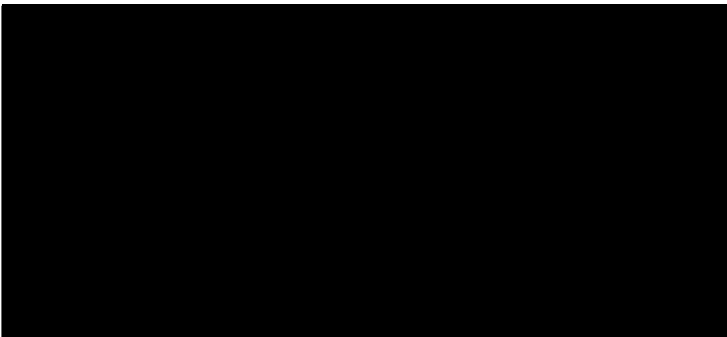
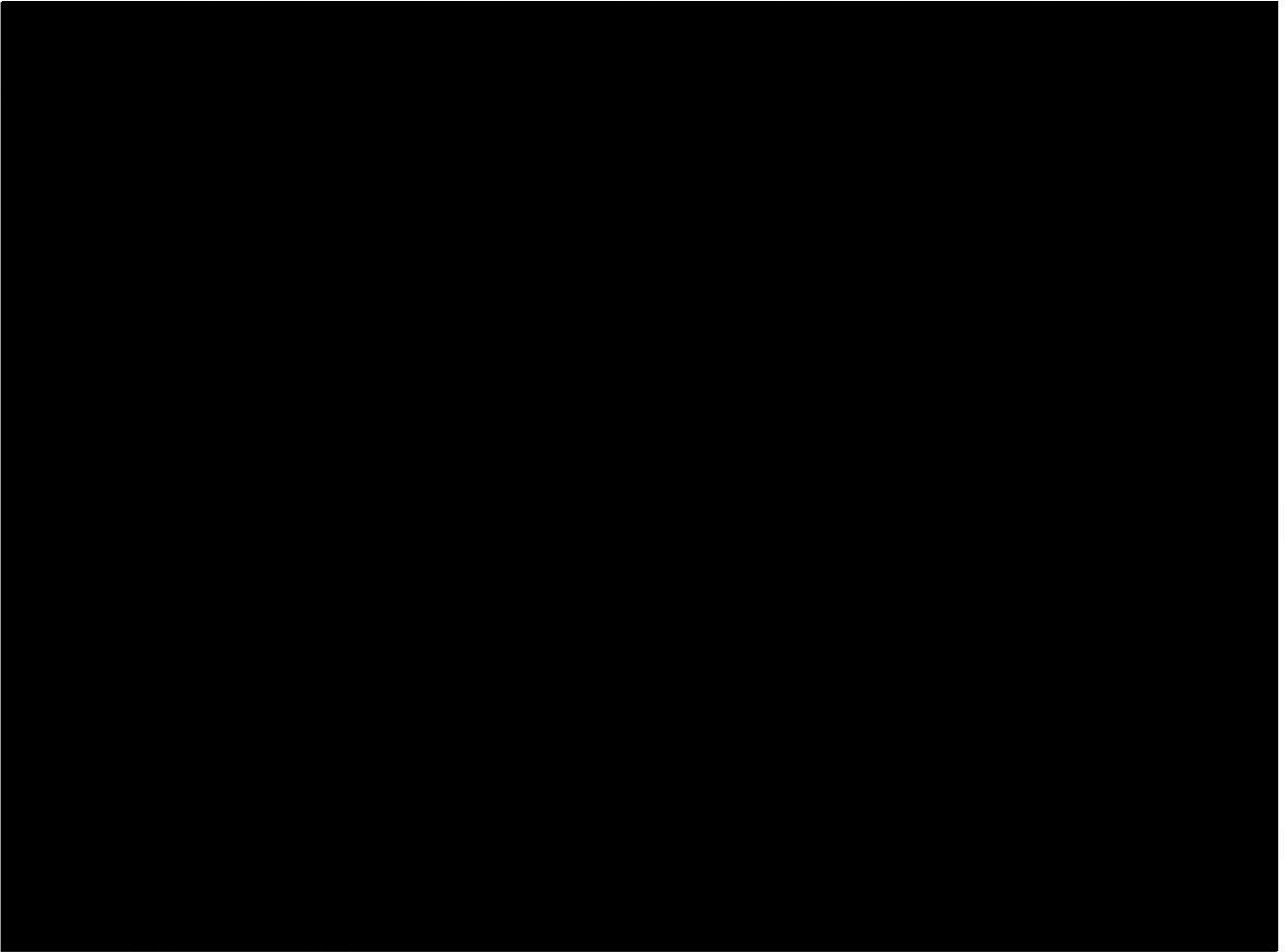
- 15.1.1 A disciplinary hearing is convened to determine whether CSO [REDACTED] has breached any of the relevant provisions of this Company's Policy HR2.02 Code of Conduct and Ethical Behaviour in respect of the findings of this Report at 14.15, 14.16, 14.19, 14.21, 14.26 and 14.29.

15.1.2 A disciplinary hearing is convened to determine whether CSO [REDACTED] has breached any of the relevant provisions of this Company's Policy HR2.02 Code of Conduct and Ethical Behaviour in respect of the findings of this Report at 14.33.

15.1.3 All Post Assault/Sexual Assault forms (Form 302) are to be completed by a senior officer not involved in the use of force incident whilst being recorded using a body worn camera.

List of Annexures:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
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Investigation report accepted/ ~~not~~ accepted.

