

COVER SHEET INVESTIGATION REPORT

Reference No: [REDACTED]

Date: 28 January 2016

Title: REPORT INTO THE CIRCUMSTANCES SURROUNDING THE USE OF FORCE ON PRISONER [REDACTED] BY A MEMBER OF THE CORRECTIOANL STAFF AT THE ARTHUR GORRIE CORRECTIONAL CENTRE ON 30 DECEMBER 2015

Subject to legal professional privilege

Investigation Recommendations Submitted for Endorsement

I submit the attached Investigation Report on the above matter and make the recommendations detailed in pages 68-69 for endorsement by the Managing Director.

[REDACTED] 28.I.16
Office of Professional Integrity
The GEO Group Australia Pty Ltd

Approval by the Managing Director

The General Manager is directed to implement the endorsed recommendations, as amended.

[REDACTED] 28/01/2016
Managing Director
The GEO Group Australia Pty Ltd

Certification by General Manager (to be completed and returned to the Director Correctional Services)

I certify that the endorsed recommendations have been accepted and will be implemented. Accordingly, they have been logged in the Centre's Register of Recommendations together with deadline dates for implementation to readily track the status of implementation.

General Manager
Centre:

9.1 This investigation is satisfied, on the available evidence and on the balance of probabilities, that as a consequence of force being used on his person by CSO [REDACTED] at the AGCC on 30 December 2016, Prisoner [REDACTED] sustained a wound above his left eye.

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wound sustained by Prisoner [REDACTED] during that use of force incident at the AGCC on 30 December 2015.

- 9.3 CSO [REDACTED] participated in an electronically recorded interview with the Investigator. At the commencement of the interview CSO [REDACTED] was informed of the subject of the internal investigation, in accordance with the relevant Company policy he was cautioned that he was not obliged to say or do anything; he was also warned about the potential consequence of providing any information that was deliberately false and/or misleading during the course of the interview.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

- 9.4 CSO [REDACTED] told the investigation that he had attended the call for assistance (Code Yellow) at [REDACTED] on 30 December 2015 and he had been involved with others (CSO [REDACTED] CSO [REDACTED] and CSO [REDACTED] in securing Prisoner [REDACTED] in his cell.

- 9.5 It is CSO [REDACTED] assertion that Prisoner [REDACTED] became abusive and directed racially abusive comments toward him. CSO [REDACTED] recorded in his Officers' Report that Prisoner [REDACTED] had used his hands to stop his cell door from being closed by the correctional staff. During questioning he stated

that the Prisoner had used his foot to stop the cell door from being closed. When this inconsistency was put to CSO [REDACTED] he conceded that, whilst it was being closed, he [REDACTED] had pulled the cell door open immediately before entering the cell. This is consistent with the account given to the investigation by Prisoner [REDACTED]. It is the evidence of both CSO [REDACTED], CSO [REDACTED] and CSO [REDACTED] who were present, that they did not see Prisoner [REDACTED] do anything to stop the cell door from being closed.

- 9.6 CSO [REDACTED] told the investigation that he was "very upset" by the comments made to him by Prisoner [REDACTED] and that because of this he forcefully kicked the plastic property box belonging to the inmate causing it to be destroyed. This was a wilful act amounting the destruction of property. CSO [REDACTED] told the investigation that he heard CSO [REDACTED] and Prisoner [REDACTED] involved in "a verbal altercation...a screaming match".
- 9.7 **Finding. This investigation finds that CSO [REDACTED] failed to exercise an appropriate level of control over his emotions whilst dealing with Prisoner [REDACTED]**
- 9.8 **Finding. This investigation finds that CSO [REDACTED] without any lawful authority or reasonable excuse, intentionally destroyed the plastic property box belonging to Prisoner [REDACTED]**
- 9.9 It is clear from the evidence of those others in attendance ([REDACTED] [REDACTED] and [REDACTED]) that the destruction of Prisoner [REDACTED] plastic property box had a marked deleterious effect on his behaviour. It is accepted; however, that whilst loud and verbally abusive he did not threaten any of the correctional staff present with physical violence.
- 9.10 **Finding. This investigation finds that the actions of CSO [REDACTED] in destroying the plastic property box belonging to Prisoner [REDACTED] unnecessarily caused the situation involving that prisoner to escalate.**
- 9.11 It is the evidence of CSO [REDACTED] that he struck Prisoner [REDACTED] deliberately and forcefully on the face using a closed right hand and that as a (albeit unintentional) consequence of that strike the prisoners' face collided with the frame of a mirror affixed to the cell wall. This caused the laceration above Prisoner [REDACTED] left eye which bled profusely requiring medical treatment to be rendered.
- 9.12 CSO [REDACTED] would ask the internal investigation to accept that his striking Prisoner [REDACTED] on the face with his closed right hand was justifiable and a reasonable use of force in the circumstances.
- 9.13 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." The deterioration in

the behaviour of the prisoner was a consequence largely of CSO [REDACTED] own misconduct in destroying his property box. Whilst the prisoner did "*get on the wall*" as directed, he kept turning his head to face CSO [REDACTED] with whom he was verbally remonstrating about the destruction of his cell property. There was no overt threat to any of the correctional staff present. There was no necessity to forcefully strike the prisoner on the face with a closed hand.

- 9.14 CSO [REDACTED] gave no prior warning to Prisoner [REDACTED] that force would be used. He said he was "*very upset*" by Prisoner [REDACTED] and it is likely that because of this he allowed his emotions to overrule his reason. The CSO conceded when interviewed that when trained in using force on prisoners he had been taught that strikes to the face should be avoided. It is apparent that no proper consideration was given by CSO [REDACTED] to seeking an alternative to using force. In considering all of the evidence there is no reasonable justification for CSO [REDACTED] striking the prisoner on the face.
- 9.15 **Finding. This investigation finds that CSO [REDACTED] intentionally struck Prisoner [REDACTED] on the face using a closed hand.**
- 9.16 **Finding. This investigation finds that the force used by CSO [REDACTED] on Prisoner [REDACTED] was, in the circumstances, unreasonable and unjustified.**
- 9.17 This internal investigation notes that although this occurred within the narrow confines of a cell; CSO [REDACTED] CSO [REDACTED] and CSO [REDACTED] claim not to have observed the prisoner being struck on the face by CSO [REDACTED]
- 9.18 When he was interviewed, CSO [REDACTED] stated that he and Prisoner [REDACTED] had been involved in a "*wrestle*". He described a physical contact lasting in the vicinity of 15-20 seconds. The other three correctional staff members who were present each stated that they did not see this occur and what is more said that had it occurred they would have taken direct action to assist him. It is noted that CSO [REDACTED] did not record this "*wrestle*" with Prisoner [REDACTED] in his Officers' Report. The assertion by CSO [REDACTED] that, whilst in the cell, he was wrestling with Prisoner [REDACTED] is not accepted.
- 9.19 **Finding. This investigation finds that CSO [REDACTED] deliberately provided false information to the investigation when he stated that he and Prisoner [REDACTED] were physically wrestling in the cell.**
- 9.20 The Officers' Report submitted by CSO [REDACTED] did not record that he had struck Prisoner [REDACTED] on the face using a closed hand. This was a directly relevant fact and should have been reported at that time. This investigation concludes CSO [REDACTED] deliberately omitted to record that relevant fact in his Officers' Report. That omission had the potential to mislead the post incident managerial review. As it is the relevant Incident Report submitted to QCS did not record that the prisoner had been struck on the face by CSO [REDACTED] The Incident Report was submitted by the Nightshift Manager who was on duty when the incident had occurred and who had to rely on the information provided in the Officers' Reports. As stated previously, the punch

to the prisoners face his was not recorded in any of the Officers' Reports that had been submitted.

- 9.21 Finding.** This investigation finds that CSO [REDACTED] was in contravention of the Gross Misconduct provisions of the Company's Code of Conduct & Ethical Behaviour at 4.5.15 when he deliberately failed to record material information (striking the prisoner on the face) in an official record (Officers' Report) that he had an obligation to record.
- 9.22** CSO [REDACTED] Officers' Report fails to describe how it was Prisoner [REDACTED] sustained the wound to his face. This investigation concludes that CSO [REDACTED] deliberately omitted to record that relevant fact in his Officers' Report. He also reported that Prisoner [REDACTED] used his hands to keep the cell door from being closed. It is the evidence of the others present as well as Prisoner [REDACTED] that did not occur. This investigation concludes that in that material particular CSO [REDACTED] Officers' Report is false/misleading.
- 9.23 Finding.** This investigation finds that CSO [REDACTED] was in contravention of the Gross Misconduct provisions of the Company's Code of Conduct & Ethical Behaviour at 4.5.15 when he deliberately failed to record material information (how the prisoner sustained a facial wound) in an official record (Officers' Report) that he had an obligation to record.
- 9.24 Finding.** This investigation finds that CSO [REDACTED] was in contravention of the Gross Misconduct provisions of the Company's Code of Conduct & Ethical Behaviour at 4.5.15 when he negligently failed to record material information (the wilful destruction of the property box had on Prisoner [REDACTED] in an official record (Officers' Report) that he had an obligation to record.
- 9.25 Finding.** This investigation finds that CSO [REDACTED] was in contravention of the Gross Misconduct provisions of the Company's Code of Conduct & Ethical Behaviour at 4.5.15 when he deliberately failed to record material information (his behaviour when he became involved in a verbal altercation with Prisoner [REDACTED] in an official record (Officers' Report) that he had an obligation to record.
- 9.26 Finding.** This investigation finds that CSO [REDACTED] was in contravention of the Gross Misconduct provisions of the Company's Code of Conduct & Ethical Behaviour at 4.5.14 when he knowingly made a false declaration (that prisoner [REDACTED] used his hands to prevent the cell door from being closed) in an official record (Officers' Report).
- 9.27 Police Action.** As previously mentioned, the incident had been reported by the Centre to the CSIU. On 21 January 2016, IOMS recorded that the CSIU had referred the matter back to the Centre for action.
- 9.28** The Officers' Report submitted by CSO [REDACTED] failed to record; his observations of Prisoner [REDACTED] plastic property box being destroyed, the

effect of this on Prisoner [REDACTED] behaviour, the conduct of CSO [REDACTED] in engaging in a verbal altercation ("*screaming match*") with the prisoner, specifically how the inmate had sustained the wound to his face as well as any description of how CSO [REDACTED] had used force on the prisoner. CSO [REDACTED] denied deliberately omitting this relevant information from his Report. Taken at its best this failure to record this highly relevant information was negligent by CSO [REDACTED]

- 9.29 Finding.** This investigation finds that CSO [REDACTED] was in contravention of the Gross Misconduct provisions of the Company's Code of Conduct & Ethical Behaviour at 4.5.15 when he negligently failed to record material information (how the prisoner sustained a facial wound) in an official record (Officers' Report) that he had an obligation to record.

- 9.30 Finding.** This investigation finds that CSO [REDACTED] was in contravention of the Gross Misconduct provisions of the Company's Code of Conduct & Ethical Behaviour at 4.5.15 when he negligently failed to record material information (the effect the destruction of the property box had on Prisoner [REDACTED] in an official record (Officers' Report) that he had an obligation to record.

- 9.31 Finding.** This investigation finds that CSO [REDACTED] was in contravention of the Gross Misconduct provisions of the Company's Code of Conduct & Ethical Behaviour at 4.5.15 when he negligently failed to record material information (the behaviour of CSO [REDACTED] when he became involved in a verbal altercation with Prisoner [REDACTED] in an official record (Officers' Report) that he had an obligation to record.

- 9.32 Finding.** This investigation finds that CSO [REDACTED] was in contravention of the Gross Misconduct provisions of the Company's Code of Conduct & Ethical Behaviour at 4.5.15 when he negligently failed to record material information (a description of the force used by CSO [REDACTED] on Prisoner [REDACTED] in an official record (Officers' Report) that he had an obligation to record.

- 9.33** The investigation notes that CSO [REDACTED] did describe the destruction of the plastic property box as being accidental when CSO [REDACTED] "*tripped*" over it. Though maintaining that he did not see CSO [REDACTED] punch Prisoner [REDACTED] on the face he described in his Report how Prisoner [REDACTED] face "*accidentally*" made contact with the frame of the mirror affixed to the cell wall. No adverse finding is made in relation to the conduct of CSO [REDACTED]

- 9.34** The investigation accepts the evidence of CSO [REDACTED] that he could not see very much of what occurred in the cell as he remained at the door and there were three CSOs in front of the prisoner. No adverse finding is made in relation to the conduct of CSO [REDACTED]

10.0 Matters Arising.

- 10.1** Matter Arising 1 - The use of body worn/ hand held video recording devices at incidents. It was apparent that no body worn or hand held recording devices were deployed at the incident in [REDACTED] on 30 December 2015. The responding correctional staff, who were interviewed, each stated it has not been the practice, for some considerable time, to deploy such video recording devices during incidents at the AGCC. In NSW particularly the deployment of hand held video recording devices are mandated by the client on any planned use of force, deployment of the CERT 1 response or at any occurrence where use of force may, in the circumstances, reasonably be foreseen.
- 10.2** These video recordings must be reviewed as part of the post incident managerial review of any incident involving the use of force by custodial staff on inmates. There is very effective policy and procedure currently in place in the NSW centres that are being operated by the Company. That doctrine gives direction on by whom, how and when hand held video recording devices are to be deployed. It also gives direction on how the video products are to be stored. The use of body worn or hand held video recording devices at incidents is viewed as an essential safeguard for the Company's employees as it records exactly what happened in the interaction between custodial personnel and a prisoner including the words exchanged, as well as the demeanour of the inmates and employees involved.
- 10.3** It is apparent that similar doctrine is not currently place at the AGCC and it would also appear that it is not mandated by the client in that State. It is also noted that in November 2015, QCS initiated the trial of body worn video recording devices in a number of correctional facilities it operates.
- 10.4** It is the experience of the OPI that incidents (where force has reportedly been used on prisoners by correctional staff) sometimes occur in areas where there is no CCTV coverage such as the interior of cells and in interview rooms. In these cases, lacking CCTV recordings, hand or body worn video recordings of what transpired would assist greatly in determining proper outcomes. They may also assist the Company in managing any subsequent litigations arising from incidents.
- 10.5** There has been an increase over time in the reported number of incidents at the AGCC. This includes incidents involving use of force by custodial staff on prisoners. It is highly likely that the matter subject of this investigation may have had very different outcomes had the interaction between Prisoner [REDACTED] and the responding correctional staff been recorded using a hand held or body worn device. In this case whilst the initial incident was spontaneous the response involved a large number of custodial staff attending the unit and locking it down. In such a case it would have been practical and beneficial for a body worn or hand held recording device to be deployed.
- 10.6** Matter Arising 2 – The concern raised by United Voice about the treatment of CSO [REDACTED] by senior managers at the AGCC. When CSO [REDACTED] presented for interview he was accompanied by an official from United Voice

██████████. The Union Official raised his concern that the letter produced by CSO ██████████ on 7 January 2016, had been written following a meeting he had been directed to attend with the Deputy General Manager and two senior managers where the incident involving Prisoner ██████████ had been discussed. The voluntariness of CSO ██████████ admissions, contained within that letter, was clearly being questioned by the Union Official. CSO ██████████ is currently suspended from duty. This was initially without pay; however, that has since been re-considered following an approach by the Union and the employee is now being remunerated.

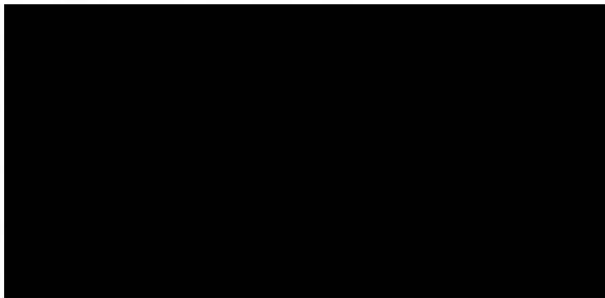
- 10.7 The circumstances of the production of the letter by CSO ██████████ had not previously been known to the investigation which endeavoured to ensure that CSO ██████████ was afforded procedural fairness during this investigation process.
- 10.8 Matter Arising 3 – The employment of CSO ██████████ It has been established that CSO ██████████ had been employed at the ██████████ Correctional Centre (██████████) between late 2009 and early 2010 when his employment with the Company was terminated. This would appear to have related to an unacceptable attendance record.
- 10.9 Head Office confirmed the relevant Company database had been endorsed to reflect Mr ██████████ was not suitable for re-employment with the Company. Despite this he gained employment with the Company at the AGCC during 2015.
- 10.10 The AGCC HRM told the investigation she had not been aware of the database recording former employees who were deemed to be unsuitable for any further employment (it may be recalled that this had been created following a recommendation from an internal investigation conducted by the OPI). It is likely then that other Centre's may not be aware that the status of any former employees seeking re-employment with the Company should be checked against this record and appropriate advice/guidance obtained before any offer of employment is made to them.

11.0 Recommendations.

11.1 It is recommended that:

- 11.1.1 A disciplinary hearing is convened to determine whether CSO ██████████ has contravened any of the provisions of the Company's Code of Conduct & Ethical Behaviour relating to the findings at 9.15, 9.16, 9.19, 9.21, 9.23, 9.24, 9.25 and 9.26 of this Report.
- 11.1.2 A disciplinary hearing is convened to determine whether CSO ██████████ has contravened any of the provisions of the Company's Code of Conduct & Ethical Behaviour relating to the findings at 9.29, 9.30, 9.31 and 9.32 of this Report.

- 11.1.3 As soon as practicable body worn or hand held video recording devices are purchased and deployed on any occasion at the AGCC when a use of force on a prisoner(s) is planned, where a use of force may be reasonably foreseen as well as during any CERT 1 response to an incident involving prisoners.
- 11.1.4 Prior to deployment, a local procedure is implemented at the AGCC regulating the use and deployment of body worn and hand held video recording devices.
- 11.1.5 Prior to deployment, training is delivered to all custodial staff (including Supervisors and Managers) at the AGCC on the requirements for use and deployment of body worn and hand held video recording devices.
- 11.1.6 The requirement to consult the relevant Head Office database on the status of any former employee (before making any offer of employment) is promulgated to all HRM and General Managers.



28 January 2016

Investigation Report Accepted/ ~~Not Accepted~~.



Managing Director
The GEO Group Australia Pty Ltd

28 January 2016