



**SPECIAL COMMISSION OF INQUIRY INTO OFFENDING BY FORMER  
CORRECTIONS OFFICER WAYNE ASTILL**

**PUBLIC HEARING  
SYDNEY**

**FRIDAY, 29 SEPTEMBER 2023  
AT 10AM**

**HEARING DAY 2**

**APPEARANCES**

**MR D. LLOYD SC appears with MS J. DAVIDSON as counsel assisting.  
MR J. SHELLER SC appears with MS C. MELIS for Corrective Services NSW.  
MR M. BURNS appears for a group of correctional officers.**

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**<THE HEARING RESUMED AT 10.08 AM**

**COMMISSIONER:** Yes.

5 **MS DAVIDSON:** Commissioner, I call John Buckley.

**COMMISSIONER:** Mr Buckley, it's necessary for you to be sworn. Will you take an oath on the Bible or an affirmation?

10 **MR BUCKLEY:** An oath, Commissioner.

**COMMISSIONER:** An oath.

**<JOHN BUCKLEY, SWORN**

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**<EXAMINATION BY MS DAVIDSON:**

20 **MS DAVIDSON:** Commissioner, Mr Buckley has prepared a statement dated 28 September 2023. What I propose, given there are some claims or foreshadowed claims in respect of public interest immunity, which will be the subject of discussion and prospective orders following his evidence, is that the same process be followed as was followed with Ms Zekanovic's statement yesterday, that is, that the statement be marked for identification and dealt with as a tender at some later point in time once those claims have been resolved.

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**COMMISSIONER:** Are you happy with that course, Mr Sheller?

**MR SELLER:** Yes. Thank you.

30 **COMMISSIONER:** Very well. MFI3.

**<MFI3 MARKED FOR IDENTIFICATION**

**COMMISSIONER:** Yes.

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**MS DAVIDSON:** Mr Buckley, you prepared a statement in this matter dated 28 September 2023?

**MR BUCKLEY:** That's correct.

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**MS DAVIDSON:** Are the contents of that statement true to the best of your knowledge?

**MR BUCKLEY:** They are.

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**MS DAVIDSON:** Mr Buckley, you've worked at Corrective Services New South Wales for 27 years; is that correct?

**MR BUCKLEY:** That's correct.

5 **MS DAVIDSON:** And that includes commencing as an officer at what was then known as the Silverwater Correctional Centre, and effectively working your way up through the ranks until, in February 2023, being appointed as the Assistant Commissioner of the Custody Metro Branch; is that right?

**MR BUCKLEY:** That's correct.

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**MS DAVIDSON:** You spent time as a Governor of a Correctional Centre?

**MR BUCKLEY:** I did both acting and also appointed to Macquarie Correctional Centre near Wellington - near Dubbo in New South Wales as a - the pre-commissioning - so the pre-building phase of that (indistinct).

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**MS DAVIDSON:** And was it an operational correctional centre at that time?

**MR BUCKLEY:** No, it wasn't.

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**MS DAVIDSON:** Did you spend periods acting as governor of an operational centre at Wellington?

**MR BUCKLEY:** That's correct.

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**MS DAVIDSON:** Is Wellington Correctional Centre a Correctional Centre that houses both male and female inmates?

**MR BUCKLEY:** Yes.

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**MS DAVIDSON:** Did you spend time as Acting Governor of any other correctional centre?

**MR BUCKLEY:** I don't think so.

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**MS DAVIDSON:** Right. You were also - held an ongoing appointment as the manager of security at Broken Hill Correctional Centre in 2016 and 2017; is that correct?

40 **MR BUCKLEY:** I think it was right towards the end of one of those, 2016, and then - but ongoing at Broken Hill - that's correct - as the manager of security.

**MS DAVIDSON:** Right. And the manager of security, according to your evidence, is effectively the second-in-charge in a correctional centre?

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**MR BUCKLEY:** That is true. In - it depends on the size of the Correctional Centre. So - which I can go into later. But large, medium and small is the way

centres are derived in terms of the staffing structure. Broken Hill was designated a small correctional centre, so the MOS or the Manager of Security was actually the officer-in-charge out there.

5 **MS DAVIDSON:** I see. So effectively whilst not the Governor, equivalent of the governor as the person -

**MR BUCKLEY:** It had governor delegations. When that came down, I'm not quite sure of the exact date that that was given.

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**MS DAVIDSON:** Right. Is Broken Hill a correctional centre that houses both male and female inmates?

**MR BUCKLEY:** It is.

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**MS DAVIDSON:** Have you spent time in any other Correctional Centres that house female inmates apart from Broken Hill and Wellington?

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**MR BUCKLEY:** Wellington; Broken Hill, yes, as you mentioned; Berrima Correctional Centre, obviously, from a number of years ago.

**MS DAVIDSON:** What was your role while you were at Berrima?

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**MR BUCKLEY:** I was the Senior Assistant Superintendent.

**MS DAVIDSON:** Any others?

**MR BUCKLEY:** Not from memory.

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**MS DAVIDSON:** Right. During your time at Silverwater - is it correct that there are female inmates held within Silverwater Complex - I'm using that in a - not the correct technical sense. Were you responsible within that - within Silverwater for any part of the jail or jails that female inmates were supported?

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**MR BUCKLEY:** Not when I worked at Silverwater Correctional Centre. It was only males.

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**MS DAVIDSON:** Right. You acted in some period during August of this year as Deputy Commissioner for the Security and Custody Subdivision. Had you previously acted as a Deputy Commissioner prior to August of this year?

**MR BUCKLEY:** No. Sorry, I will just add, the Deputy Commissioner, Security and Custody role was only created this year as well.

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**MS DAVIDSON:** I see. Do you have a copy of your statement there in the witness box with you?

**MR BUCKLEY:** My statement, yes, I do.

**MS DAVIDSON:** Yes. Could you turn to paragraph 40 of your statement. You're referring there to -

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**MR BUCKLEY:** Sorry. Page 40?

**MS DAVIDSON:** Sorry, paragraph 40 -

10 **MR BUCKLEY:** Sorry.

**MS DAVIDSON:** - on page 10. You extract there a portion of the COPP in relation to governance structures as at 16 December 2017. Is the correctional centre management team structure that you refer to there still one that is in place?

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**MR BUCKLEY:** To my knowledge, yes, it is.

**MS DAVIDSON:** Right. From paragraph 42 onwards, you refer to a benchmarking process that you were similarly familiar with. What was your involvement in relation to the benchmarking process that you describe from 2016?

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**MR BUCKLEY:** From memory, I was an acting director initially of the Southern region and then also Acting Director of the Metro East region. So that involved benchmarking two centres, Goulburn initially and then the MRRC or Metropolitan Remand and Reception Centre at Silverwater, which is the largest remand centre in the state for male offenders. So, my role after the initial launch of the program was to then work with the different union bodies and the managers and the staff to come up with a model that was best suited for the operations of that centre under a benchmarking program.

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**MS DAVIDSON:** Did you also have some involvement in relation to the benchmarking program at Dillwynia?

**MR BUCKLEY:** No.

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**MS DAVIDSON:** You refer later in your statement to being involved in discussions with unions and staff, I believe in relation to the management plan for the Dillwynia Correctional Centre. Is that something that you personally were involved in?

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**MR BUCKLEY:** Sorry, where was that one?

**MS DAVIDSON:** Sorry. Paragraph 49, you note that you facilitated benchmarking reform discussions at numerous centres -

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**MR BUCKLEY:** Yes.

**MS DAVIDSON:** - explaining and advocating the principles of reform to staff and union bodies. Was one of the centres that you were involved in those discussions Dillwynia?

5 **MR BUCKLEY:** No.

**MS DAVIDSON:** Are you familiar with how the benchmarking process occurred in relation to Dillwynia?

10 **MR BUCKLEY:** Not in detail, no.

**MS DAVIDSON:** Right. Do you know who would have been the person who was doing the benchmarking exercise for Dillwynia as you were doing in relation to the centres you were -

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**MR BUCKLEY:** So there was actually a centralised benchmarking team.

**MS DAVIDSON:** Right.

20 **MR BUCKLEY:** So that was - at the time, they were based in head office at the time, which was in Henry Deane Building, and there was a number of staff involved and heading that. We would go out and actually do the back-end work and then, when it's time to present, they would be there as well as a team.

25 **MS DAVIDSON:** Right. When you say "the back-end work", what did the back-end work of benchmarking involve?

30 **MR BUCKLEY:** That was preparing current operations and - and the routines and the staffing structures and how they could then apply a new model with new performance indicators and KPIs around a number of key areas, and that was about how they would deliver that. And then they would build the PowerPoint package, essentially, and all the staffing models or the proposed models for that and then that would be given to the Assistant Commissioner at the time, and they're directed to go and deliver that presentation.

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**MS DAVIDSON:** Right. So is the person who was the custodial director in relation to the region where Dillwynia is located the person who would have had responsibility for that benchmarking process in relation to Dillwynia?

40 **MR BUCKLEY:** One - one of the levels, yes. One of the levels.

45 **MS DAVIDSON:** You refer at paragraph 43 to the Better Prison reform, there being four main outcomes against which centre performance could be measured. One of those measures was decency and respect. Are you able to - are you familiar with what measures were used for looking at prison performance or centre performance in respect of decency and respect?

**MR BUCKLEY:** That - that relates mainly to time out of cells - for inmates' time out of cells and making sure that the structured day, or the purposeful day as it was called, or structured day, which is making sure inmates have got access to their programs for - to address their offending behaviour, leisure time, health and fitness activities. So they're judged on - on that. There's also, in that, from memory, is around self-harms - inmate self-harming and ensuring that we've got triaging in place to make sure that we're responding to those incidents and - and, where possible, using a - obviously a team to address those things and hopefully minimise those events. But that's just from memory.

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**MS DAVIDSON:** Right. And how about professionalism and accountability? How is that measured?

**MR BUCKLEY:** Yes. That's about integrity and staff behaviour. Staff misconduct is included in that one.

**MS DAVIDSON:** Right. That is, numbers of staff misconduct incidents or staff misconduct -

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**MR BUCKLEY:** It's just - it's just staff misconduct. There's a general point and then the numbers of that are submitted for each centre, are then - are measured at the end of each period.

**MS DAVIDSON:** All right. So there was some comparative exercise done as to which centres the most staff misconduct -

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**MR BUCKLEY:** Yes. So after benchmarking - it's usually a 12 month - when the benchmarking program is implemented at each location, there was usually 12 months given before the actual monitoring commenced, and that was also done via a centralised team, not the one I mentioned before, but it's our research and stats team that do all of that.

**MS DAVIDSON:** Right.

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**MR BUCKLEY:** There is - each quarter, I think it is, the - the report comes out on the - on the Tableau program. It's called Tableau.

**MS DAVIDSON:** Tableau.

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**MR BUCKLEY:** Tableau. It's quite a - T-a-b-l-e-a-u, from memory, quite strange spelling, but that is available to everybody, the governors and - and on a dashboard, and they can go into that and see and - how they're tracking.

**MS DAVIDSON:** Right.

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**COMMISSIONER:** Mr Buckley, just to go back a couple of steps. I'm not sure I understood what you were saying about the meaning or object of decency and

respect. I rather would have thought that's the way you treat prisoners, but am I wrong?

5 **MR BUCKLEY:** Good point, Commissioner. I didn't make up those. Obviously they've been developed under the benchmarking model, but it's a fair - fair observation. But from memory, they are the - what I mentioned before, the other components of that one.

10 **COMMISSIONER:** Well, don't take it from me. What was intended by that?

**MR BUCKLEY:** Well, I think it was about ensuring that inmates aren't locked in cells for extended periods, so ensuring that we're getting them out of cell as much as we can and get to their activities for the day and not having them segregated or - sorry, not segregated, locked in for excessive periods. So that was one of the factors of that, I would suggest. In terms of respect and decency as well, in terms of inmates that are self-harming, it's quite a traumatic time for them and also for staff. So that would be (crosstalk).

20 **COMMISSIONER:** I'm still not understanding. This is a measure of the way prison officers carry out their tasks within the prison, isn't it?

**MR BUCKLEY:** It's a number of components in each of those four areas.

25 **COMMISSIONER:** Yes. And decency and respect, in the ordinary meaning, would mean the way the officer behaves towards the prisoner. Wouldn't that be right?

**MR BUCKLEY:** I agree, Commissioner.

30 **COMMISSIONER:** Well then, what was intended by decency and respect in relation to the way prisoners are treated?

**MR BUCKLEY:** I just mentioned - my understanding of it, Commissioner - I'm unsure why other elements weren't included in there.

35 **COMMISSIONER:** Well, you're a very senior officer now in the Corrective Services, aren't you?

40 **MR BUCKLEY:** Yes, Commissioner.

**COMMISSIONER:** And you're telling me you don't understand what was intended by these words?

45 **MR BUCKLEY:** I'm saying that in terms of the - our staff, in terms of behaviour and accountability - it was in professionalism and accountability, number 4.

**MS DAVIDSON:** Are the Tableau quarterly reports still produced?



**MR BUCKLEY:** Yes.

5 **MS DAVIDSON:** That is, that you understand the benchmarking process to be one that is ongoing?

**MR BUCKLEY:** Benchmarking, I think, finished in 2019, from memory.

10 **MS DAVIDSON:** All right. But the reports that were produced on those KPIs continue to be produced for individual governors to review; is that correct?

**MR BUCKLEY:** That's correct. Yes.

15 **MS DAVIDSON:** And do those reports also go to more senior people within the Security and Custody Subdivision that's above individual correctional level?

**MR BUCKLEY:** No, it's - it's not emailed around. It's a dashboard, and you can just log in under your login and - and see it.

20 **MS DAVIDSON:** All right. So an officer at your level could do that?

**MR BUCKLEY:** Yes.

25 **MS DAVIDSON:** The Commissioner?

**MR BUCKLEY:** I would imagine at time, or his staff in his office would be able to do that, yes.

30 **MS DAVIDSON:** All right. And are you aware of any regular process of reporting to the Commissioner or any Assistant Commissioner or Deputy Commissioner in relation to how the centres are performing relative to each other on these measures?

35 **MR BUCKLEY:** I didn't quite hear the first part of that question, sorry.

**MS DAVIDSON:** Sorry, I'm losing my voice today. Are you aware of any regular process of reporting to an Assistant Commissioner or a Deputy Commissioner or the Commissioner himself in relation to how the centres are performing relative to each other on those KPIs?

40 **MR BUCKLEY:** Other than the Tableau tool - that's the main tool that you can see in terms of comparative.

45 **MS DAVIDSON:** So if somebody wants to go and look at it, they can, but there's no process of drawing that to their attention by a report that you're aware?

**MR BUCKLEY:** I - I think there is actually - as I said, the CRES area - corporate research area do actually have it every month, I think, that is sent out, from memory.

5 **MS DAVIDSON:** All right. Do you - as the Assistant Commissioner, what is produced every month, do you receive it?

**MR BUCKLEY:** Yes, I do. I have seen it. Yes, I do get it.

10 **MS DAVIDSON:** Right. And does it go to the Deputy Commissioner for Security and Custody, do you know?

**MR BUCKLEY:** I don't know, but I would think it would.

15 **MS DAVIDSON:** All right. Do you know whether it goes to the Commissioner?

**MR BUCKLEY:** Sorry?

**MS DAVIDSON:** Do you know whether it goes to the Commissioner?

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**MR BUCKLEY:** I'm not sure.

**MS DAVIDSON:** Right. And in respect of the staff misconduct measure in the report that you see, is that simply a number of misconduct reports -

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**MR BUCKLEY:** Yes.

**MS DAVIDSON:** - that are made in that month?

30 **MR BUCKLEY:** It's just - it's a - like a nice pretty PowerPoint type report in terms of a lot of graphs, and there will be a number and - but that's no detail about the type.

35 **MS DAVIDSON:** Right. Do you know whether that number is split out in terms of misconduct reports by - that come from inmates relative to misconduct reports that come from other staff?

**MR BUCKLEY:** No, there's no - there's no granular detail of that, from memory.

40 **MS DAVIDSON:** Right. Do you have any knowledge of how Dillwynia performed in the course of the benchmarking exercise -

**MR BUCKLEY:** No.

45 **MS DAVIDSON:** - on those KPIs?

**MR BUCKLEY:** No, I don't, sorry.

**MS DAVIDSON:** But there would be reports in existence that were produced in that period benchmarking Dillwynia relative to other Correctional Centres, to your understanding?

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**MR BUCKLEY:** I would suggest there would be.

**MS DAVIDSON:** That may be something that the Commission would call for, Commissioner, in the course of its inquiries. Other than staff misconduct incidents, are you aware of other measures that were used during benchmarking under the professionalism and accountability item?

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**MR BUCKLEY:** There was training - additional training for staff in -

**MS DAVIDSON:** Right. That is, how much additional training was delivered or -

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**MR BUCKLEY:** No.

**MS DAVIDSON:** What was KPI?

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**MR BUCKLEY:** It was just in terms of - yes, to the KPI. But in terms of benchmarking itself, which was the overall platform for these four areas, training was a big part in terms of the custodial in particular.

**MS DAVIDSON:** That is, ensuring more training - when you say training was a big part -

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**MR BUCKLEY:** Yes.

**MS DAVIDSON:** - training about the benchmarking or training on other things?

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**MR BUCKLEY:** No, no. Training about - sorry. In terms of their enhanced roles - so when we created a flatter ranking structure - so we created more senior assistant superintendents at the functional management team. So we had a - and they were split into different streams inside the jails.

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**MS DAVIDSON:** They were effectively given portfolios of their own -

**MR BUCKLEY:** That's correct.

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**MS DAVIDSON:** - and needed to be trained up in order to act?

**MR BUCKLEY:** Yes, more ownership, more accountability.

**MS DAVIDSON:** Right. So there was training for the senior assistant superintendents. Was there more training for other officers more junior than that as part of this benchmarking?

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**MR BUCKLEY:** Yes, for the senior correctional officers as well.

**MS DAVIDSON:** Right.

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**MR BUCKLEY:** We had training for them because even though the rank is still senior correctional officer, they were called supervisors inside the jails.

**MS DAVIDSON:** I'm sorry, they were called -

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**MR BUCKLEY:** Supervisors.

**MS DAVIDSON:** Right. Was that - that is a new title that was given to them as part of -

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**MR BUCKLEY:** Benchmarking.

**MS DAVIDSON:** - the benchmarking process? Right. You're aware that senior correctional officer was the rank that Wayne Astill held for a substantial portion of the time of his offending?

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**MR BUCKLEY:** Yes.

**MS DAVIDSON:** He was also acting between 2016 and 2018 in the role of chief correctional officer. Was there additional training delivered during that period, so far as you're aware, to chief correctional officers or persons holding that position?

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**MR BUCKLEY:** No, I'm not aware.

**MS DAVIDSON:** Right. In respect of the additional training given to senior correctional officers, are you aware of any relating to the framework that Corrective Services had in place for ethical conduct?

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**MR BUCKLEY:** From memory - I can't pinpoint exactly what was - the training in terms of that component.

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**MS DAVIDSON:** Do you know whether there was any training in terms of that component as part of the benchmarking exercise?

**MR BUCKLEY:** No, I can't recall. No.

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**MS DAVIDSON:** Turn to paragraph 52 of your statement. You refer to the routine of a correctional centre being structured around purposeful day or the structured day routine, and you note that this changed at correctional centres including DCC as a result of the benchmarking changes. Are you able to assist the Commission in relation to how the purposeful day changed at Dillwynia as a result of the benchmarking changes?

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**MR BUCKLEY:** Not in great detail. In terms of - it obviously wasn't under me at the time. But in terms of the management structure, that was - because Dillwynia was classed as a large correctional centre, that chief rank that you mentioned before was deleted - discontinued, and the SASL function manager became the role underneath the manager of security. So in terms of how the other changes - the intricate changes at that time, I'm unable to comment on those.

**MS DAVIDSON:** Right. Well, you've said in the last sentence:

"There were also changes to purposeful day routines at correctional centres including DCC arising from the benchmarking changes."

Is that just there in your statement because somebody told you that or (crosstalk)?

**MR BUCKLEY:** So they - sorry. So they would have developed a new model for the structured day. So it would have -

**MS DAVIDSON:** That's what I'm asking you about.

**MR BUCKLEY:** Yes. So - yes. Sorry. So it would have included our program staff and our industries staff to develop a more effective model to ensure that the out of cell times were kept and people - and the inmates got to the relevant area at the right time. So in that model, everybody would have been part of developing that structured day routine. So it would have been - that's how it has changed from the old one.

**MS DAVIDSON:** All right. So you weren't specifically referring there to particular changes in watches, for example, as a result of the benchmarking changes?

**MR BUCKLEY:** No. I do understand that the D watch time, which was pre-benchmarking, which was a rostered -

**MS DAVIDSON:** That was the 11 am to 7 pm watch?

**MR BUCKLEY:** I think so. That was deleted and discontinued when they started the new benchmarking model at Dillwynia. I do understand that to be the case.

**MS DAVIDSON:** Right. You refer at paragraph 55 of your statement - I think it's your first reference to this - to something called the DCC Award, which is the Dillwynia - as I understand it, from your statement, the Dillwynia Correctional Centre Award that also applied to a few other correctional centres. Are you aware of why Dillwynia - this - according to the information given in your statement, it was apparently in place from 2007 until some point earlier this year. Are you able to explain why officers at DCC were on a different award to others, that is, others

in the remainder of the state apart from those few other correctional centres who were -

5 **MR BUCKLEY:** Yes. So my understanding was back at the time - I think it was Commissioner Woodham at the time. The ideology of that was to have - apply - it's called the island agreement. That was -

**MS DAVIDSON:** Island?

10 **MR BUCKLEY:** Yes, as in island - as in a geographic - yes.

**MS DAVIDSON:** Yes.

15 **MR BUCKLEY:** Yes, Commissioner. So the idea of Dillwynia, I understand, was to run it as a cheaper model in terms of overtime for senior correctional officers and correctional officers. That - that was one of the big differences between a non-island agreement centre and obviously the normal centres. So -

20 **MS DAVIDSON:** That is, the overtime rates provided for in the award were lower?

**MR BUCKLEY:** That's correct. The overtime rates were lower, yes.

25 **MS DAVIDSON:** Right.

**MR BUCKLEY:** And also for the chief you mentioned before, and the principal, they didn't get as many rostered days off as their counterparts in the other centres. They only got two per year.

30 **MS DAVIDSON:** I see. Okay.

**MR BUCKLEY:** And I see that ended in January 2023.

35 **MS DAVIDSON:** At paragraph 67 - you referred previously to tables of breaks that appear in the regulation. Then at paragraph 67, you explain what, practically speaking, that meant in relation to correctional centres. Is what you set out there at paragraph 67 what applied to Dillwynia, that is, the first-in-charge was the governor, the second-in-charge was the MOS, the third-in-charge was the senior assistant superintendent, and that was informed by the principal correctional  
40 officer at DCC because the DCC Award applied?

**MR BUCKLEY:** That's correct.

45 **MS DAVIDSON:** Right. At paragraph 70, you are responding to a question as to an outline of executive oversight. Over officers in each position, you indicated that you've addressed the reporting structures above. In practical terms, in terms of oversight, for a person or officer who is operating in the position of Senior

Correctional officer or acting as chief correctional officer at Dillwynia, which is obviously relevant here, was there oversight by means of reporting to a Principal Correctional Officer?

5 **MR BUCKLEY:** Back before -

**MS DAVIDSON:** Assuming the DCC Award was in place.

**MR BUCKLEY:** Yes. Sure. It was still in existence, yes.

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**MS DAVIDSON:** Yes. We're concerned, obviously, for the purposes of this Inquiry principally with the period -

**MR BUCKLEY:** Sure.

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**MS DAVIDSON:** - 2009 to 2019 when Mr Astill was arrested.

**MR BUCKLEY:** Yes. So the - yes, the expectation would be that the Senior would be reporting up through the chief and the Chief to the Principal at Dillwynia. Absolutely.

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**MS DAVIDSON:** So when you say "reporting up", can you explain in practical terms what for a Senior or a Chief the reporting process involved?

25 **MR BUCKLEY:** Yes. Yes. So the Senior would be in charge usually of an accommodation area at the time - or inmate accommodation area where there will also be some Correctional Officers in that area. So usually three per accommodation area. The assistant superintendent would be usually somewhere else inside the centre, nearby the - in terms of location to the accommodation area.  
30 So they would be visiting - or attending that area throughout the day and seeing the staff, making sure that inmates have been - the let go routine, inmates have been let out of their cell, accountability throughout the day like inmate musters to make sure that they've been conducted, the cell searching, et cetera, interacting with the staff as well in terms of any security issues, any inmates that have been  
35 non-compliant, et cetera. And certainly at that stage, they would also get feedback from the seniors, if they needed to, about any staffing issues with the staff that are - that are there. But above that would be the principal, which would have overarching of a bigger area, including the chief and the seniors I mentioned, and a number of accommodation areas in their portfolio. So they would -

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**MS DAVIDSON:** Was there an expectation that for a senior or a chief that at the end of their shift or during their shift they would make a - was it written report to the principal or an oral report?

45 **MR BUCKLEY:** So - well, the day usually - for a day, like just a normal day shift, the - the - the day starts with a morning parade where all the staff - custodial staff are in a line, and the managers are at the front. They're making sure people

have turned up for work. Once that's confirmed, they will give instructions for the day ahead as to anything that happened overnight and also the plan for that day. And then everybody disperses to their different areas to attend to the inmates who have been obviously locked in overnight and then feeding and then getting them out for the day. Then throughout the day, as I said, that principal will go to these areas, and they've got logbooks that they need to sign to say that they've been to these areas, and that's at the time that they will have interaction with the staff. And then - so that goes throughout the whole day and then we have different components throughout -

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**MS DAVIDSON:** My question related to the staff reporting up, not so much the principal checking on them.

**MR BUCKLEY:** Yes. So they will -

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**MS DAVIDSON:** What do the staff have to do, in the course of each shift, in terms of making reports?

**MR BUCKLEY:** Yes. So - sorry. So they - depends on the - if there's nothing - it's just a normal routine.

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**MS DAVIDSON:** I'm not talking about an incident, just assuming a normal (crosstalk).

**MR BUCKLEY:** Normal - yes. So they will report - yes. So they will report that inmates have been checked in the morning, making sure they're alive and well. And then once they're - that is done, they will release them from their cells to go to - and they will report that as well. And then throughout the day, they will report in a muster, which is again accountability. And then again later in the afternoon before they lock them back in, they will report that as well. That's on a general day. They will also report movements of inmates if they're going to certain areas that require them to get through a different location. But if it's just a normal day in terms of nothing - no incidents happened, that's the general reporting.

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**MS DAVIDSON:** And for a person who is the Chief Correctional Officer, were they responsible for reporting in that way or that was (crosstalk) related to a senior and not to a chief?

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**MR BUCKLEY:** So -

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**MS DAVIDSON:** Was what you were just describing the way in which a Senior would be expected to report or the way in which a Chief Correctional Officer would be expected to report?

**MR BUCKLEY:** The Chief to the Principal, you mean? Is that what you're saying?

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**MS DAVIDSON:** I'm now asking you about the Chief to the Principal.

5 **MR BUCKLEY:** Yes. So they would report in their management position at the time. So they would be - after that morning parade that I mentioned before, they would be usually - the management after the inmates have been let go and out of their cells, the management will convene a meeting for the day and talk about the day ahead from the management perspective. And then they will go to their respective duties. But in terms of general reporting, if nothing has happened, there won't be - unless they're stationed or positioned next to each other or nearby, there  
10 won't be a lot of interaction.

**MS DAVIDSON:** That is, there won't be a lot of interaction between the Chief and the Principal?

15 **MR BUCKLEY:** No. If it's a normal day, they will be doing their tasks and then the functional manager - or not the functional manager, sorry. That wasn't at the time. The principal would be doing their role, usually in another location away from the chief.

20 **MS DAVIDSON:** All right. So it's safe to say there's not a lot of day-to-day oversight of the person performing the Chief's role; is that correct?

**MR BUCKLEY:** Not a huge amount. Not - not for normal duties, no.

25 **MS DAVIDSON:** Right. And the Chief Correctional Officer, to your understanding, had a reasonable amount of flexibility in terms of how they organised their time and where they were at any particular time; is that right?

**MR BUCKLEY:** That would be correct.

30 **MS DAVIDSON:** Okay. And is that more flexibility than somebody in a senior correctional officer role would have, for example?

**MR BUCKLEY:** Yes, definitely.

35 **MS DAVIDSON:** Right. You refer at paragraph 71 to, based on your observations in the course of carrying out your roles and your searches that you've conducted of records, there are various key policies and procedures governing expected behavioural standards, and you've set out five of them. Are you able to explain to  
40 the Commission why it was that you selected these particular ones as the key five documents?

**MR BUCKLEY:** Well, they show the ones that have been in force and also the most recent one and the one that's currently in force. And that would be the main  
45 reason.

**MS DAVIDSON:** Right. So are these the suite of documents, that is, these five that you've indicated here, that you would expect an officer to go to as a Correctional Officer at, say, the Senior Correctional Officer level, in order to find out what their core responsibilities are?

5

**MR BUCKLEY:** So my understanding is that primary training for all custodial officers incorporates that initial code of conduct training at the academy, so when they're first exposed to what the policy is. But in terms of your question, the intranet is where these documents have been stored and - and are now. And that's where people access them from.

10

**MS DAVIDSON:** Do you understand the Contact with Offender Policy still to be current? You say that so far as you're aware, this is the only version of the Contact with Offender Policy. That's consistent with Ms Zekanovic's evidence yesterday.

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**MR BUCKLEY:** That's my understanding.

**MS DAVIDSON:** Do you understand it's still current?

**MR BUCKLEY:** In terms of the 2010 one, I don't recall any other policy on that one -

20

**MS DAVIDSON:** Right.

**MR BUCKLEY:** - in terms of the (crosstalk).

25

**MS DAVIDSON:** You understand it still to be in place - still to be (crosstalk)?

**MR BUCKLEY:** That's my understanding.

30

**MS DAVIDSON:** Right. Did you check that with anybody for the purposes of preparing this statement?

**MR BUCKLEY:** No.

35

**MS DAVIDSON:** But other members of your team share that understanding in assisting you preparing this statement? Do you know one way or the other whether that's their view?

**MR BUCKLEY:** I'm not sure.

40

**MS DAVIDSON:** You, in JB4 - annexure JB4, have provided extracts in relation to various policy documents. If we can go within annexure JB4 to the - using the page numbers at the bottom - page 53. See there in the - further down, you have reference to the Commissioner's Memo of 2020/03, Mandatory Online Training for All Staff on the Code of Ethics and Conduct Policy Every Two Years. Are you

45

aware of any mandatory training for the Code of Ethics and Conduct Policy was in place, that is, any mandatory training requirements that were in place before 2020?

5 **MR BUCKLEY:** Not from memory.

**MS DAVIDSON:** Right.

**MR BUCKLEY:** Not - not mandatory training.

10 **MS DAVIDSON:** So to understand this, to your understanding, prior to 2020 when this requirement was put in place, officers had training in the Code of Conduct and Ethics in their initial training and beyond that there was no additional training given to them after that point?

15 **MR BUCKLEY:** Not that I can recall, no.

**MS DAVIDSON:** Okay. And was that your experience, that is, you weren't yourself offered any additional training in the Code of Conduct and Ethics or its equivalent predecessor ethical framework documents up until 2020?

20 **MR BUCKLEY:** There was, at some stage - I'm not sure whether it was this one - that we got an automated email that we must do the Code of Conduct training. I'm not sure of the exact dates on that, though. But there definitely was that generic email that went out that you must do the training. But I'm not sure of  
25 the dates.

**MS DAVIDSON:** Okay. Do you require at some point being required to sign that you understood that a Code of Conduct and Ethics applied to you?

30 **MR BUCKLEY:** I'm pretty sure that was done at the academy.

**MS DAVIDSON:** It was done at the - you don't recall doing it subsequently?

**MR BUCKLEY:** I don't recall.

35 **MS DAVIDSON:** You don't recall the Commissioner's Instruction requiring officers to do that?

**MR BUCKLEY:** No. I recall this one.

40 **MS DAVIDSON:** You recall this, that is, the 2020?

**MR BUCKLEY:** Yes.

45 **MS DAVIDSON:** Right. Is there some central - for Officers, is there some central place on the intranet that they can access Commissioner's Instructions?

**MR BUCKLEY:** Yes, there is. Under the - again, the Commissioner's little tile basically, they go into that.

**MS DAVIDSON:** Right.

5

**MR BUCKLEY:** The Commissioner's picture is on there, and they go into that and follow the links.

**MS DAVIDSON:** Okay. And does that go back historically to include previous Commissioner's Instructions if they're still in place?

10

**MR BUCKLEY:** Yes.

**MS DAVIDSON:** Right. Do you know whether it's updated frequently to keep things current?

15

**MR BUCKLEY:** I think it is. I'm of the opinion that we have a centralised team in the Deputy Commissioner's office that actually manages placing those amendments and additions and deletions onto the intranet. So it's pretty accurate, to my understanding.

20

**MS DAVIDSON:** In the next row down on page 53, you refer to a 12 March 2020 section of the COPP in relation to assaults, section 13.4. Do you see that? Still at page 53. Same page, bottom row.

25

**MR BUCKLEY:** 13.4?

**MS DAVIDSON:** The bottom row there, the entry - last line. It says - so we were just talking about the Commissioner's Memo.

30

**MR BUCKLEY:** Yes. I can't see 13.4 on mine.

**MS DAVIDSON:** The row underneath, there's another entry for 12 March 2020. But if you follow that across to Document Title, it says COPP 13.4 Assaults.

35

**MR BUCKLEY:** I can see that, but I can't see - yes, I can it see now. Yes.

**MS DAVIDSON:** Yes. And under that, it says "under review". Are you aware of what is the nature of the review of this section of the COPP?

40

**MR BUCKLEY:** No, I'm not.

**MS DAVIDSON:** You've given a date of 12 March 2020. Are you aware of there being any requirements as part of the COPP or its predecessor, Operation and Procedures Manual, in relation to assaults on inmates?

45

**MR BUCKLEY:** I didn't understand that question, I'm sorry.

**MS DAVIDSON:** Are you aware of there being any section of the COPP prior to 12 March 2020 or in the OPM, which I think was the predecessor document, that related to assaults on inmates?

5

**MR BUCKLEY:** I'm not sure.

**MS DAVIDSON:** Who has responsibility within Corrective Services for this section of the COPP dealing with assaults on inmates?

10

**MR BUCKLEY:** Yes, we have - as I mentioned before, we have a COPP team, so the general manager in charge of the COPP.

**MS DAVIDSON:** Right. Okay.

15

**MR BUCKLEY:** Yes.

**MS DAVIDSON:** So to the extent that you say here it's under review, is that information that was given to you by someone else?

20

**MR BUCKLEY:** From the - through our resources - our legal team.

**MS DAVIDSON:** All right. So is it fair to say that the information that's in this table is not information that you're necessarily familiar with personally; it was information that was given to you for the purposes of this matter?

25

**MR BUCKLEY:** I'm familiar with the content here, but in terms of the "under review" component, no.

**MS DAVIDSON:** Right. There's a - we can go across to the right-hand - to the extracts -

30

**MR BUCKLEY:** Yes.

**MS DAVIDSON:** - that have been provided there and how an allegation of an assault on inmate by staff is to be treated. Are you aware of that part of the COPP, which was new in 2020, being made known to officers more generally?

35

**MR BUCKLEY:** Usually any change to the COPP goes out on a broadcast email.

40

**MS DAVIDSON:** Right.

**MR BUCKLEY:** So it says what has changed. It pops on everybody's email. So that's how it usually -

45

**MS DAVIDSON:** That goes to all Officers, not just Senior Officers?

**MR BUCKLEY:** All accounts - all accounts.

**MS DAVIDSON:** Okay.

5 **MR BUCKLEY:** Yes.

**MS DAVIDSON:** Is the expectation that Officers will become familiar with changes to the COPP?

10 **MR BUCKLEY:** Yes.

**MS DAVIDSON:** And is that - apart from receiving an email, are there other means by which changes to the COPP are drawn to officers' attention?

15 **MR BUCKLEY:** Not as far as I know, no. But - sorry, I'll go back to that. Usually in every jail, the Governor will put out additional communication and they will - in some areas, they will say it on - on the parades as well, at staff meetings and - and they will reiterate any changes to the COPP.

20 **MS DAVIDSON:** Okay. So at 2019, you were the custodial - sorry, 2020 I should say, you were the Custodial Director for the Metro East region; is that right?

**MR BUCKLEY:** That's correct.

25 **MS DAVIDSON:** So at the time that this section of the COPP, according this date, was added, do you recall there being any particular communications in relation to a new section of the COPP dealing with assaults on inmates?

**MR BUCKLEY:** I can't recall.

30

**MS DAVIDSON:** Right. So I take it - tell me if this is wrong - you don't know what prompted the addition of this section?

**MR BUCKLEY:** No, I don't. No.

35

**MS DAVIDSON:** Right. You've spent time, as you've indicated in your evidence, as a governor of a couple of centres that held female inmates as well as male inmates. Are you familiar with the use of mediation as a means of dealing with inmate complaints of sexual harassment?

40

**MR BUCKLEY:** No.

**MS DAVIDSON:** In your experience as a governor, is that something that you would ever have considered as a means of dealing with inmate complaints of sexual harassment by a guard?

45

**MR BUCKLEY:** Never.

**MS DAVIDSON:** Why is that?

5 **MR BUCKLEY:** Because it's an obligation - one, talking about Code of Conduct, but any complaint about sexual harassment, whether it's staff on staff or staff on inmates, needs to be reported and action taken accordingly. Mediation - I've never heard of that.

10 **MS DAVIDSON:** You were responsible in the period that Mr Astill was employed at Dillwynia - I accept not at Dillwynia, but you were employed in a supervisory role in various correctional centres in the period of his offending, that is, dealing specifically with 2014 to 2019. What, in your understanding, was - what do you regard should have been the position, that is, what should have occurred - given your understanding of the ethical framework and the material that  
15 you've put together for your statement, what should have occurred if an inmate was to tell an officer in 2017, that is, a Correctional Officer - a Senior Correctional Officer, in 2017 that a guard or another officer had had sexual contact with an inmate? What should occur?

20 **MR BUCKLEY:** Immediate reporting up through usually to the - for that sort of an allegation, immediately to the Governor. That's how they would usually - I expect it to happen, the highest person in the centre. And then from there to the Director reports would have been - or should have been completed, submitted through to our - back then it was PSB. At the same time, the Director  
25 would have been calling the Assistant Commissioner and - in terms of - in terms of Custodial Corrections back then and then through to our PSB Governor, Assistant Commissioner - I'm not sure of the title back then. But then we would have been getting our police unit involved as well - our Corrective Services Investigations Unit, which is embedded within the PSB as well. Something like  
30 that would be absolute immediate action.

**MS DAVIDSON:** Did you have experience during your time as a Governor in dealing with complaints of - Governor and Acting Governor, in dealing with complaints of sexual harassment by inmates?

35 **MR BUCKLEY:** Not from memory, no.

**MS DAVIDSON:** What steps, drawing on your experience as a governor, should have been taken to address risks or any risks to an inmate or any fears that  
40 an inmate making a complaint of that kind held in relation to the officer still working within the centre, that is, the Officer who was the perpetrator or alleged perpetrator?

45 **MR BUCKLEY:** Good question. But I think it's about the leaders leading, and the inmates being able to feel comfortable that they can - if something like this is happening, they've got to be able to report it immediately and have that faith in the system and the people, including, obviously, custodial. So it's about having

a gender balance in terms of the senior management as well in the centres, not having all one or the other gender. It's very important, especially in female centres.

5 It's about visibility as well, to make sure that managers are getting - being around in the areas where inmates are and speaking to them openly and having that respect - respectful conversations with them. But there's avenues that inmates can use to complain. But something like that, that you mentioned before, that's just immediate action that needs to be taken.

10 **MS DAVIDSON:** So if an inmate has expressed fear - you've dealt with some big picture questions there. If an inmate in a correctional centre in 2017 had expressed fears in relation to reporting to an officer, what steps do you regard, drawing on your experience as a governor, should have been able to be taken in order to keep that inmate safe from reprisals?

15 **MR BUCKLEY:** There should have been a risk assessment done immediately once it was reported up through the Investigations Branch and the police, whether they needed to keep the alleged perpetrator or the accused on site for a period of time to gather more evidence. Other than that, if there - if it was too risky, we  
20 could have suspended or put the officer on special leave pending the investigation playing out.

In terms of the inmate, we would be looking to - obviously safety of them is paramount, whether we needed to move them but without - in maybe a clandestine  
25 type way, that they're not alerting the person complained about that something is happening. But immediate action would need to be happening with them as well so they actually feel safe.

30 **MS DAVIDSON:** But, again, you don't have any personal experience during your time as a governor of having to take any of those steps?

**MR BUCKLEY:** No, I don't.

35 **MS DAVIDSON:** All right. What is your understanding, drawing on, again, your time as a Governor, on - or your understanding of what should have occurred in relation to whether such an allegation, that is, of sexual harassment or inappropriate sexual contact with an inmate, should have been disclosed to the officer concerned, the alleged perpetrator?

40 **MR BUCKLEY:** No, never.

45 **MS DAVIDSON:** Are there any differences in terms of your understanding of how the position has - whether the position has changed in 2018 or 2019 in relation to the answers you've just given, or would that process have been what you regarded as appropriate throughout?



**MR BUCKLEY:** Yes. What I mentioned before, that would be the process you generally take now. If someone had a complaint of a sexual assault by an Officer on an inmate, immediate action would occur.

5 **MS DAVIDSON:** Right.

**COMMISSIONER:** Mr Buckley, obviously there's a significant power imbalance in a jail between the inmate and the Officer; correct?

10 **MR BUCKLEY:** Yes, Commissioner.

**COMMISSIONER:** What is the avenue for an inmate to report sexual assault, or indeed any form of assault, in respect of a prison officer when the inmate perceives that prison officer to be, as it were, on good terms with the governor of the prison and other senior officers in the prison? It would be fairly bold for that prisoner to assume that in reporting in relation to the conduct of that Officer, they would be likely to get a satisfactory response, wouldn't they?

20 **MR BUCKLEY:** Exactly, Commissioner. So some of the avenues available to the inmates are using the inmate phone line for Ombudsman they can call. They also have the Official Visitor that comes out and has confidential discussions with inmates. But definitely in terms of - given the - as you mentioned, Commissioner, being a senior staff that were involved potentially and the inmate felt that way, it would be definitely a courageous decision to go to a manager at the time.

25 **COMMISSIONER:** Even then, if you went to the visitor or someone else, the action that needs to be taken in response to the allegation, of course, will have to involve at some point the alleged perpetrator being aware of the complaint.

30 **MR BUCKLEY:** That's true, Commissioner.

**COMMISSIONER:** So what is the recourse for the prisoner in those circumstances? How do you manage this situation?

35 **MR BUCKLEY:** As I said before, when this happens, once it goes to our investigations area and our PSI, or PSB back then - and we also have a police unit there, and we then work with them to determine next steps. So if we need to move the inmate, we do that. But when we - in terms of the staff member who has been accused, we use the whole investigative process, and we only take essentially  
40 advice from them in terms of the best pathway to implement.

**COMMISSIONER:** It's appropriate, of course, for you to tell me those things. But what is the position with the prisoner in her cell, say? She is not going to understand all these processes that take place. How can she expect that her welfare  
45 will be properly managed in the event that she makes a complaint?

**MR BUCKLEY:** All I can say, Commissioner, is we have a management team there that we need to rely on, that the inmates need to feel comfortable with and interact with them and be able to come forward and have that discussion and feel supported. We do have support staff in place as well. But in this case, when an inmate is going to make an accusation of such serious offending, we would - I mean now, action would absolutely be taken, as I mentioned before.

**COMMISSIONER:** Well, I'm still not quite getting to where I want to go. The starting point for this discussion was that the management was compromised, remember? The offender is someone who is in good stead with the management. And that would be obvious to the prisoner. How can the prisoner be assured that in making a report, their position won't be compromised and their welfare would be protected if it's apparent that the perpetrator is in good stock with the governor and other Senior Officers in the jail? What do you do?

**MR BUCKLEY:** Well, all I can say is that hopefully other staff at the same level or equivalent levels would have that courage to take a different path and get involved. But in terms of what happened back in 2009 onwards, obviously the power imbalance was there and definitely a situation which was aghast, really. But certainly very difficult for any inmate at the time seeing potentially that the management potentially were new, potentially. It would be very difficult for an inmate.

**COMMISSIONER:** Well, you've obviously been involved in considering the management processes within the system. What can you offer as to what should have been done differently to enable reporting to occur and for the offending to have been stopped at an early stage?

**MR BUCKLEY:** It's a great question, Commissioner, and very -

**COMMISSIONER:** Well, it's the fundamental question for this Inquiry.

**MR BUCKLEY:** So I think inmates need to - about respect in terms of that - they need to feel respected by their - by the department and by the management and by the staff that are there. They need to feel comfortable that if there is something going wrong, like what's happened in the Astill matter, that they do have the confidence to come forward. We may need to come up with another avenue to how they can do a report in confidence, but also there needs to be some action on the back end that they feel protected and safe and immediate action taken as to what we can do with them to make sure their welfare is certainly considered. But it's certainly something that needs to be done in the future.

**COMMISSIONER:** Would it be right to think that there should be a reporting mechanism outside of that jail?

**MR BUCKLEY:** That would certainly be a good idea, I would suggest, Commissioner, yes.

**COMMISSIONER:** And would it be right to think that all inmates in any jail should be made aware of that process?

5 **MR BUCKLEY:** Absolutely.

**COMMISSIONER:** And should they not also be informed of the protective measures that will be taken in the event that they make a complaint?

10 **MR BUCKLEY:** Yes, Commissioner.

**COMMISSIONER:** Those things aren't happening at the moment, are they?

**MR BUCKLEY:** It appears not.

15

**COMMISSIONER:** Yes.

20 **MS DAVIDSON:** You've referred in some of your answers, Mr Buckley, to immediate action being taken. Is it your expectation based on your experience that immediate action should have been taken simply on the making of an allegation in relation to sexual harassment, or would you expect there to be some investigation first within the jail - maybe not mediation, but some other steps taken by the governor before referring on to what was then PSB?

25 **MR BUCKLEY:** For the gravity of the initial allegation, they may have -

**MS DAVIDSON:** Well, assume the initial allegation -

**MR BUCKLEY:** Yes.

30

**MS DAVIDSON:** - is not initially in the nature of serious sexual assault but is instead in the nature of a form of sexual harassment, groping.

35 **MR BUCKLEY:** Still serious, but I would expect that even with that, immediate action - in terms of - like outlined here, communication with our PSI team, also the Investigations Branch and again, as I mentioned before, our police branch in there, the director involved from the region, the relevant ACs as well.

40 **MS DAVIDSON:** That's still your understanding of what should have happened back at that time?

**MR BUCKLEY:** Absolutely.

45 **MS DAVIDSON:** A slightly different question. You gave some answers in response to the Commissioner's question about what was to happen if the governor was effectively compromised, and you referred to other officers getting involved and hopefully having the courage to do so. What's your understanding of what the

position - again, assuming 2016 or 2017 - another officer at the level of Senior Correctional Officer, for example, should have done in terms of reporting a situation in which they had formed the belief that somebody was - the acting chief correctional officer, somebody senior to them was engaging in sexual contact with inmates? What should that other officer have done?

**MR BUCKLEY:** There should have been -

**MS DAVIDSON:** So it's not an inmate coming to them; this is them from their own observation.

**MR BUCKLEY:** Yes. They should have reported that too.

**MS DAVIDSON:** By what mechanism?

**MR BUCKLEY:** To the Governor, again, initially. They have got avenues to go directly outside as well to the PSB back then or even to the - if they needed to, they could call the relevant director or email them. But certainly for an allegation of that type, the expectation would be to report that immediately.

**MS DAVIDSON:** All right. So in terms of an Officer knowing how to report outside the jail, that is, to the PSB directly, are you aware of how an officer would have been given any guidance on how to do that or whether an officer would have been given any guidance on how to do that as part of their training?

**MR BUCKLEY:** Maybe not back then, I don't - don't know. And I would suggest probably not.

**MS DAVIDSON:** Because the general expectation set out in the documents - the ethical framework documents is that things will be reported to your manager or supervisor?

**MR BUCKLEY:** Yes. Yes, that's correct. Yes.

**MS DAVIDSON:** So, again, it puts the relatively junior level officers in a very difficult position, does it not, if the alleged perpetrator is somebody - an officer more senior than them?

**MR BUCKLEY:** It does, yes.

**MS DAVIDSON:** Are there steps - assuming that an officer had made such a report, what in your view - again, casting your mind back to your experience as a governor back in 2016 or 2017 or a Senior Officer - could or should have been taken to address risks of retaliation to an Officer of that kind, a more junior officer who had made a report, bearing in mind that again it was somebody who was their supervisor or one of their supervisors further up the chain of command who was the alleged perpetrator?

**MR BUCKLEY:** Yes. So when a complaint is received, the governor working with the PSB team at the time, the director, they should have come up with a risk assessment and a management for both the offender and also the staff who were making the complaint. And once a decision is made on how they're going to action, that would then incorporate the complainant as well, in terms of whether we need to move them for a short period of time or - just depends on whether the evidence around a person in the complaints being made means that they've got to stay in the workplace a bit longer. It depends on the police, if it was a police investigation. But certainly the person coming forward would need to be considered at the start in terms of their welfare and making sure that they are protected.

**MS DAVIDSON:** But, again, what you've just described involves the Governor, doesn't it? So if the Governor is compromised, that places the officer in an almost impossible position, does it not?

**MR BUCKLEY:** If it - yes, if it goes to the Governor and the Governor is dealing with it - yes.

**MS DAVIDSON:** A likely result is simply that if the officer involved regarded the governor as being, to use the Commissioner's language, effectively in with the - or the alleged perpetrator as being in good stead with the Governor, the likelihood is that the more junior officer is not going to report that, are they?

**MR BUCKLEY:** Not to the Governor, no. But as I said, those other avenues -

**MS DAVIDSON:** Not to the PSB either?

**MR BUCKLEY:** No.

**MS DAVIDSON:** Because (indistinct) is aware that the PSB would likely get the Governor involved? That's right, isn't it?

**MR BUCKLEY:** If - if the Governor is not mentioned, yes. That's right.

**MS DAVIDSON:** But if the Governor is regarded by the officer as compromised -

**MR BUCKLEY:** It depends what - if the report mentioned that, though. If - if the report potentially didn't say that, then the PSB - you're right - would go back.

**MS DAVIDSON:** But even - on your evidence, even if the report doesn't mention the governor but is a concern in relation to the behaviour of another more senior officer, the likelihood is, in your understanding, that in order to take steps in relation to that Officer, the Governor would still become involved?

**MR BUCKLEY:** That's correct, yes.

**MS DAVIDSON:** No further questions, your Honour.

**COMMISSIONER:** Mr Buckley, what tertiary qualifications do you have?

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**MR BUCKLEY:** I've just got to refer to my CV. Is that all right, Commissioner? It's been a while. So an advanced diploma in leadership and management through Western Sydney University; diploma in training and assessment systems; diploma in correctional administration; and diploma in business and frontline management.

10

**COMMISSIONER:** And when did you obtain all those diplomas? How long ago?

**MR BUCKLEY:** 2019 for the leadership and management advanced diploma. This is not my updated CV. I haven't got the dates with me here at the moment, Commissioner, but they're around - in the 2000s onwards.

15

**COMMISSIONER:** And in terms of your colleagues in Corrections, the qualifications you have, would they be held by many middle ranking or Senior Officers in Corrective Services?

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**MR BUCKLEY:** Most Governors and - and MoS rank will have advanced diplomas and - and diplomas of correctional administration, I would suggest. And the functional managers or the SAS rank will have diplomas as well, most of them.

25

**COMMISSIONER:** What's the nature of these diploma courses? Are they full time?

30

**MR BUCKLEY:** No, Commissioner.

**COMMISSIONER:** So they're part time?

**MR BUCKLEY:** Yes. You go for residential block periods and then do your work afterwards and then come back again, those sort of things, but not full time.

35

**COMMISSIONER:** How long does it take to get a diploma of this type?

**MR LLOYD:** Well, the advanced diploma was - we did that over a course of a year through Western Sydney University. Four blocks, for example, that one. So that was intensive block periods and then work after-hours and that sort of thing. But the other ones are usually over the course of a year. You do course work and then go back to the work location and - yes.

40

**COMMISSIONER:** Very well. Mr Sheller?

45

**MR SELLER:** Commissioner, I was just wondering if I could have a moment to just discuss one aspect with our friends about a form of reporting, which they may want to -

5 **COMMISSIONER:** Do you want me to adjourn?

**MR SELLER:** If that was possible, just for a couple of -

10 **COMMISSIONER:** We might take the morning adjournment now.

**MR SELLER:** Thank you.

**COMMISSIONER:** Very well.

15 **<THE HEARING ADJOURNED AT 11.16 AM**

**<THE HEARING RESUMED AT 11.32 AM**

20 **MR SELLER:** Thank you for the time, Commissioner.

**<EXAMINATION BY MR SELLER:**

25 **MR SELLER:** Mr Buckley, are you familiar that there has been a rollout across centres of a form of electronic communication called a tablet to inmates?

**MR BUCKLEY:** Yes. It's just finished.

30 **MR SELLER:** And so is it the case, to your knowledge, that all inmates now have available in their cells a form of means of communicating electronically, being a tablet?

**MR BUCKLEY:** That's correct, yes.

35 **MR SELLER:** And is the tablet available for inmates to use to communicate outside the correctional centre in which they are?

40 **MR BUCKLEY:** Yes, they can use it to contact their families and lawyers, Legal Aid, Ombudsman, those sort of bodies as well. So they can also do inmate request forms electronically - inmate application forms electronically on those.

**MR SELLER:** Just on the forms, these are the forms - I think a colloquial name is a bluey?

45 **MR BUCKLEY:** Yes, "blue" was the old term for them years ago - blue form.

**MR SELLER:** Right. And whereas that form might have been a paper form to be filled out in the past, now it can be filled out electronically?

**MR BUCKLEY:** That's correct, yes.

5 **MR SELLER:** And what happens to it, to your knowledge, if it's been completed?

**MR BUCKLEY:** So my knowledge is once it's submitted, it will then be on the portal, essentially, for the management to - to then action.

10 **MR SELLER:** Yes.

**MR BUCKLEY:** But everybody in the centre can - essentially with access to that portal can see that an - an application or request or any requests that have been submitted.

15 **MR SELLER:** So one of those forms is not appropriate for making an allegation of any serious misconduct because it would be available for everyone to see; is that right?

20 **MR BUCKLEY:** That would be what I would suggest would be, yes, not ideal for that purpose.

**MR SELLER:** But the telephone service is a means of communicating outside the correctional centre of a (crosstalk)?

25 **MR BUCKLEY:** Yes. That's correct. So - yes. And they can have them in their cells when they're locked in the afternoon and night up till 10 pm, from memory, so in a more comfortable environment, more secure for them inside their cell, instead of being potentially on a phone out in a - in an open yard when people are  
30 around. So they can actually do these sort of - if there's a serious matter that they want to potentially report, they're in a more comfortable space to do it with a tablet.

**MR SELLER:** Are you aware of what guidance or training has been provided  
35 to inmates in terms of what they can do with the tablet?

**MR BUCKLEY:** Initially, I think, there was a hard copy - like a manual thing - a book when they were rolled out. But on the tablets themselves, I understand there's actually the whole instructions on - on - on the rollout - on  
40 how to use the tablet and the features of it. So it's simply preloaded and then you work through it as you - when you get them.

**MR SELLER:** Yes.

45 **COMMISSIONER:** What about someone who can't read or write? What do they do?



**MR BUCKLEY:** Good question, Commissioner. I'm not exactly sure what the workaround on that is.

5 **COMMISSIONER:** The same question is - can be asked of someone who doesn't speak English.

**MR BUCKLEY:** I understand -

10 **COMMISSIONER:** Is it made available in different languages?

**MR BUCKLEY:** I understand that it is, Commissioner.

15 **COMMISSIONER:** There would be a number of prisoners in the system who can't read and write, wouldn't there?

**MR BUCKLEY:** Yes.

**MR SELLER:** Those were all the questions I had. Thank you, Commissioner.

20 **COMMISSIONER:** Yes. No one else? No. No? Mr Buckley, thank you for your evidence. You're now excused.

**<THE WITNESS WAS RELEASED**

25 **MR LLOYD:** Commissioner, I had hoped to be in a position now to call Mr Fergal Molloy. I'm not in that position, and I want to explain why and then ask you to make directions. We received Mr Molloy's statement at 1.30 am. He addresses a range of issues associated with the CCTV cameras and associated footage at Dillwynia.

30 His evidence is important to the work of this Commission for a number of reasons. One of those is, as you heard when I opened yesterday, Commissioner, there was no footage of Astill's offending captured or available from the CCTV cameras which were at Dillwynia. That position is notwithstanding the fact that, at times,  
35 I anticipate the evidence will reveal and, in fact, the criminal trial established that some of that offending occurred in public areas, and much of it occurred in offices occupied by Astill when he was in senior positions.

40 Another of the issues that this evidence goes to is whether footage was available at some point in time, even if it did not record the actual offending, but footage which, if it was reviewed, might have been centrally relevant to investigations about various of the allegations of misconduct that the inmates were making about Astill; For example, footage which recorded where Astill was at various times and where the inmates were at various times.

45 That is to say, the topics addressed by Mr Molloy are important. What has happened is that the late receipt of the statement would not have prevented me

calling him today. What has arisen, which is why I can't call him, is that large parts of his statement are the subject of a foreshadowed public interest immunity or non-publication order claim, and it was proposed, on behalf of the Department, that you exercise your powers to receive his evidence entirely or in large part in closed court, that is, exercising powers under section 7 not to conduct that part of this hearing, receiving his evidence, in public.

These events that have occurred, Commissioner, in the context of a claim for public interest immunity and legal professional privilege which has been foreshadowed by the Department over a very large number of documents which have been produced to the Commission by the Department. That claim or foreshadowed claim or claims also have been made over portions of each of the three statements which have been provided to the Commission by the Department to date.

Commissioner, my respectful submission from those parts of the material that have been produced the subject of that foreshadowed claim is that a substantial portion of the material the subject of the foreshadowed claim - those claims, at least as public interest immunity claims, are untenable. Some of them include material which is already in the public domain, for example.

The scale of the foreshadowed claims is impeding the work of this Commission. As you said yesterday, Commissioner, there is a small team of solicitors assisting you. There is a very large number of documents that they are attempting to review, and that is why the scale of the foreshadowed claims are impeding the work and have the - or pose a risk of you being able to report as required by 15 December.

For those reasons and others, it's necessary to bring this issue of the foreshadowed claims to a head, in my respectful submission. Last week, the principal solicitor assisting you, Ms Nash, wrote to the Department proposing a regime for specific claims to be identified and evidence to be put on, and submissions, in support of those claims. This issue of the potential for public interest immunity claims has been around, if I can put it that way, since as far back as late August.

Could I hand up, in those circumstances, proposed orders, which I've shown this morning to my learned friend Mr Sheller, to try and deal with this issue. In effect, Commissioner, what you see in the regime is that the Department would be required to notify us and support that notification with evidence and submissions of any claim for public interest immunity or legal professional privilege over documents that have been produced, and with respect to Mr Molloy's statement, in addition any other claim for non-publication orders or for court closure, that to occur by 5 pm next Wednesday.

In order 3, it's proposed, then, that those notified claims be determined by you in a hearing starting at 3 pm on 5 October and that after you have considered and made orders of this kind or another kind that you intend to make that we adjourn until 10 am on 6 October for the purpose of taking Mr Molloy's evidence, that is,

taking his evidence after the determination about the claims, including in respect of his statement, are made the previous day.

**COMMISSIONER:** Yes. Mr Sheller?

5

**MR SHELLER:** Commissioner, I haven't been able to get specific instructions on the orders as shown this morning, but we don't - we accept that these issues have to be resolved, and we've taken the necessary steps towards that. So we don't say anything against the orders that are proposed.

10

Can I indicate, as I've indicated to my learned friends, that this question of public interest immunity or any other claim is one that we have notified to the Crown Solicitor's Office, which we're obliged to do, and notified to a specialist lawyer within that office to manage this issue, and we will assist that office in providing them with all the relevant documents over which a claim is made. They will, we assume, take the matter forward.

15

**COMMISSIONER:** Mr Sheller, it's a claim, firstly, that those instructing you have to identify, isn't it?

20

**MR SHELLER:** Correct. And that's what we do in the first instance, but -

**COMMISSIONER:** Well then, have you yourself reviewed what's being claimed?

25

**MR SHELLER:** Not personally. Not all of them, no.

**COMMISSIONER:** Well, I would expect you to do that.

30

**MR SHELLER:** Yes.

**COMMISSIONER:** Because I've seen some of the material over which a claim is made.

35

**MR SHELLER:** Yes.

**COMMISSIONER:** And without pre-judging it, some of it seems very difficult to sustain a claim.

40

**MR SHELLER:** Yes, I understand.

**COMMISSIONER:** And I wouldn't want time to be taken, and therefore delay to be a possibility, over claims which have no prospect of real success.

45

**MR SHELLER:** Yes, I understand.

**COMMISSIONER:** And I'm relying upon you, as counsel for Corrective Services, to help me in that respect.

5 **MR SHELLER:** Indeed. And myself and Ms Melis have already been involved in the process of dealing with some of the claims. But to some extent, the ultimate process of assisting your Honour and addressing the claims may be not one that I or Ms Melis can -

10 **COMMISSIONER:** I understand that, but unless you ask for the claim to be considered, then the matter passes without comment.

**MR SHELLER:** Yes. We're not by any means shirking our role in it, but we are involved.

15 **COMMISSIONER:** I don't know, but at the moment I'm finding it difficult to see public interest immunity in a discussion about cameras in the prison system.

**MR SHELLER:** Well, if -

20 **COMMISSIONER:** But maybe I don't understand enough.

**MR SHELLER:** I won't say anything more about it. There is something about that and how that evidence can be presented (indistinct). Whether it can be done by closed court is, of course, an option.

25 **COMMISSIONER:** Well, you understand that I will be very reluctant to close the court. But I take it that you are agreed that for the purposes of taking this discussion forward next week, the court should be - or the proceedings should be closed?

30 **MR SHELLER:** Yes.

**COMMISSIONER:** Mr Lloyd?

35 **MR LLOYD:** The hearing of the application on the 5th, Commissioner, yes, at least for the most part. Perhaps - well, often, as you know -

**COMMISSIONER:** All right. Well, you can talk to Mr Sheller about that, but -

40 **MR LLOYD:** But largely, yes, that's -

**COMMISSIONER:** My fundamental objective will be that - as the Act requires, that this Inquiry occur in public. Mr Sheller, can I just stress again: I will be very concerned if claims are to be pressed for documents where the reality is the claim could never be sustained.

45 **MR SHELLER:** Yes.

**COMMISSIONER:** And I implore you to exercise your good officers to make sure that to the extent that there needs to be a discussion, it's a very confined discussion.

5

**MR SHELLER:** Yes.

**COMMISSIONER:** All right. Thank you. Mr Lloyd, is there anything more today?

10

**MR LLOYD:** No, Commissioner.

**COMMISSIONER:** So I'll make the orders in accordance with the short minutes of order, which I've initialled and dated. And we'll adjourn until 3 pm on the 5th, with a view to a public hearing occurring after consideration of the documents on the 6th.

15

**MR LLOYD:** Yes.

20 **COMMISSIONER:** At 10 am. Yes.

**MR LLOYD:** Yes.

25 **COMMISSIONER:** Are you comfortable that you have the time to consider any claims so that we can resolve them on the 5th?

**MR LLOYD:** Sorry, your Honour. I am very hopeful that we will be able to do it, in part because I'm very hopeful that the number of claims which are actually made as opposed to foreshadowed will be a very small subset.

30

**COMMISSIONER:** Well, I do too, as you heard me say to Mr Sheller.

**MR LLOYD:** But, Commissioner, obviously if we were to have submissions and evidence in support of anything like the number of claims which have been foreshadowed, there may be an insuperable problem in us being able to properly address you at 3 pm next Thursday, but we will be doing everything in our power to make sure that the issue can be determined once and for all by you on that day.

35

40 **COMMISSIONER:** Well, we will have to see what comes. Very well. I will adjourn.

**<THE HEARING ADJOURNED AT 11.49 AM TO THURSDAY, 5 OCTOBER 2023 AT 3 PM**